From: **Alphonse Talarico** contact@lawofficeofalphonsetalarico.com
Subject: Fw: Fix 2 petition with appendix in one PDF
Date: January 11, 2024 at 3:42 PM
To: Paul Dulberg Paul_Dulberg@comcast.net, Paul Dulberg pdulberg@icloud.com, T Kost tkost999@gmail.com

AT

From: Paul Dulberg <pdulberg@icloud.com>
Sent: Wednesday, January 10, 2024 3:17 PM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: Tom Kost <tkost999@gmail.com>
Subject: Fix 2 petition with appendix in one PDF

Attachment available until Feb 9, 2024

Hopefully Getting close need your help - unzip and take a look

First 20 pages petition - needs to be checked - Particularly any text is pink/red

Balance is Appendix stuff

Click to Download
Fix-2_2023-01-08_Petition for leave to appeal - Supreme Court.pdf.zip
292 MB

No.

In the Supreme Court of Illinois

PAUL R. DULBERG, Plaintiff-Appellant, v. **HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C.** Defendants-Appellees	)	On Petition for Leave to Appeal from the Illinois Appellate Court, Second Judicial District, Case No. 2-23-0072 There on Appeal from the Circuit Court of McHenry County, Illinois, Law Division, 17LA377 Hon. Joel D. Berg, *Judge Presiding*

PAUL R. DULBERG'S PETITION FOR LEAVE TO APPEAL

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Dated: January 08, 2024

Oral Argument Requested

PREAMBLE:

Much of the matter that follows can be characterized as a snowballing effect caused by fraud committed by officers of the court. Currently there are nine (9) related ARDC investigations pending (#2023INO2517[1], #2023INO2518[2], #2023INO3135[3], #2023INO3136[4], #2023INO3894-R[5], 2023INO3898-R[6], #2023INO3897-R[7], 2023INO3895-R[8], #2023INO3896-R[9])**(A2)**[10], one (1) submitted Judicial Inquiry Board "Complaints against a Judge," (Associate Judge Joel D. Berg) and one (1) Judiciary Inquiry Board "Complaint against a Judge" that was unable to be processed because the individual named (former Associate Judge Thomas A. Meyer) is no longer an active Illinois state court judge.

The events of this matter occurred over a period of time in excess of 13 years and the Record on Appeal[11], with at least two known dates of ROPs missing from the file, is currently equal to or greater than two thousand six hundred and sixty pages (2660).

This matter was hampered not only by the fraud committed by officers of the court but also by the traumatic life events that befell Plaintiff/Appellant Paul R. Dulberg but also his attorney as follows:

- **a.** The unexpected death of key witness, lifelong friend and live-in caretaker Michael McArtor;
- **b.** The disappearance of, false arrest and medieval interrogations , imprisonment and, by law, lack of the ability to consult with an attorney, nor contact anyone of Plaintiff/Appellant's attorney Alphonse A. Talarico's fiancé during a scheduled stopover in Tokyo, Japan on the way to O'Hare International Airport, Illinois.

The Appellate Court was made aware of each traumatic life event through motions for extension of time and other related and consequential motion practice but culminated in the order that ended this matter before the Appellate Court.

PRAYER FOR LEAVE TO APPEAL

Pursuant to Illinois Supreme Court Rule 315(c)(1)

Paul R. Dulberg petitions for leave to appeal the judgment of the Illinois Appellate Court for the Second District in *PAUL R. DULBERG v. HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C.* 2023 IL App (2nd) 2-23-0072.

STATEMENT OF THE DATE UPON WHICH THE JUDGMENT WAS ENTERED

Pursuant to Supreme Court Rule 315(c)(2)

The Date the Judgment was entered is December 4, 2023. There was no petition for rehearing filed. **(A1)**[12]

STATEMENT OF THE POINTS RELIED UPON IN ASKING THE SUPREME COURT TO REVIEW THE JUDGMENT OF THE APPELLATE COURT

Pursuant to Illinois Supreme Court Rule 315(c)(3)

1. There are 9 ARDC COMPLAINTS filed and a submitted Judicial Inquiry Board "Complaints against a Judge," in relation to this case. **(A2)**[13]

- **a.** Due to the nature and severity of the ARDC complaints there is the need for the exercise of the Supreme Court's supervisory authority in this case.
- **b.** Dulberg was targeted by his own attorneys (in collaboration with opposing counsel) by a sophisticated system of document and information suppression to sabotage his case against the Defendant/Appellees.
- **c.** Dulberg was subject to fraud perpetrated by officers of the court so that the judicial machinery could not perform in the usual manner its impartial task of adjudicating cases.

2. APPELLATE COURT ORDERS DENIED DULBERG THE ABILITY TO SUPPLEMENT THE RECORD WITH RELATED CASES.

- **a.** Recusal ORDERS of Associate Judge Thomas A. Meyer in cases with Defendants-Appellees **(A4)**[14]
- **b.** Motion to fix 17LA377 clerks file (problems with clerks file described in next section)
- **c.** Motion to add Barbara G. Smith thumbdrive. **(A5)**[15] Also described in Clinton-Williams ARDC Section 2K and Section 2C (#2023INO2517[16], #2023INO2518[17]) **(A2)**[18]
- **d.** Motion to add related cases **(A6)**[19]. Significance of cases also described in ARDC complaint Popovich-Mast, Balke, Baudins, Gooch-Walczyk (#2023INO3135[20], #2023INO3136[21], #2023INO3894-R[22], 2023INO3898-R[23], #2023INO3897-R[24], 2023INO3895-R[25], #2023INO3896-R[26]) **(A2)**[27]

e. Supreme Court Rule 329 gives us the right to supplement or correct the record through the appellate court.

f. Law never requires doing a useless thing. At this point it was impossible for us to return to the 22nd Judicial Circuit Court for the request. **(A7)**[28]

3. APPELLATE COURT ORDER DENIED DULBERG'S REQUEST FOR AUDIT (concerning missing and altered documents in Clerks file)

a. The Record on Appeal was filed on April 24, 2023.

b. Common Law Record Volume 1, Common Law Record Volume 2 and Reports of proceedings all have a submission date of April 24, 2023 from 10:00 AM to 10:03 AM. **(A8-1)**[29]**, (A8-2)**[30]**, (A8-3)**[31]**, (A8-4)**[32]

c. The Record on Appeal was made available for download on April 25, 2023 at 8:48 AM **(A9)**[33]

d. Common Law Volume 1 has a creation date of April 24, 2023 at 9:31 AM. Common Law Volume 2 has a creation date of April 24, 2023 at 9:28 AM. The Reports of proceedings has a creation date of April 25, 2023 at 8:06 AM and is missing ROPs from two different dates. Note creation date is AFTER submission date. **(A10)**[34]

e. The creation dates show that the CLR vol 1 and 2 were treated differently than the ROP. They followed a different pathway in the digital system.

f. There are missing ROPs, mismatched sections and broken hyperlinks.

g. Hyperlinks are broken in a way that only defendants motion-to-dismiss and after are working. Hyperlinks are broken in a way which favors the defendants

4. APPELLATE COURT ISSUED ORDERS WITHOUT JUDGES NAMES

a. The following orders were issued by the 2nd Appellate Court, none of which were signed by any Judges and were signed only by the clerk:

5-26-2023 granted (A12)[35]

7-25-2023 granted (A13)[36]

10-10-2023 denied (A14)[37]

11-09-2023 denied (A15)[38]

b. All motions had Illinois Supreme Court approved proposed order forms submitted with them that were tossed aside and disregarded by the Second District Appellate Court:

5-24-2023 proposed order (A16)[39]

7-24-2023 proposed order (A17)[40]

10-01-2023 proposed order (A18)[41]

11-03-2023 proposed order (A19)[42]

c. Dulberg contacted the Appellate Court clerk to ask for the actual order signed by a Judge and not just what appeared to be the clerk's notice. He was informed that the one signed by the clerk was the court order. (A20)[43]

d. The only appellate court order showing some of the Judges names is the final dismissal order on 12-04-2023 and was only signed by the clerk (A21)[44]

e. The final dismissal order on 12-04-2023 is when Dulberg first saw Hutchinson's name typed on an order signed by the clerk. (A22)[45] Dulberg lost his statutory right (735 ILCS 5/2-1001(a)(2)) to substitute the Judge because he was not informed which judges were assigned to his case. Dulberg and his attorney believed these rulings came from the clerk's office alone since that is all they were shown.

f. Dulberg can find no local rule in the appellate court allowing the clerk to create and sign their own ORDER while tossing aside and disregard the Illinois Supreme Court approved proposed order form properly filed with each motion.

5. Judge Hutchinson previously presided over a 1990 case involving Dulberg in McHenry County Illinois that was a was a high profile case and heavily covered in the local press.

a. In a 1990 case Dulberg had filed a series of motions all to be heard at the same time based on witness testimony previously given before Judge Hutchinson.

b. Before the motions were to be heard, Dulberg remembers that Judge Hutchinson asked the parties to approach the bench and explained to Dulberg's attorney and the states attorney why she was splitting the motions up. Judge Hutchinson would hear the motions for reconsideration and was having the motion to quash assigned to another judge.

c. Judge Hutchinson explained that she had to hear the motions for reconsideration because she made the prior rulings but the motion to quash was new and since she felt the states witnesses were less than honest when testifying before her on the issues now raised in the motion to quash she was concerned with the political implications of her possible ruling and how it would be played in the local press due to her running for the position she currently holds in the Appellate court.

d. During the 1990 case Judge Hutchinson did cause a split of the series of motions filed at the same time, she did hear the motions to reconsider and had the motion to quash assigned to another Judge that was not present for the live testimony.

e. Judge Hutchinson had placed her political aspirations to become an appellate court judge above the case before her because she feared the local press coverage and possible political ramifications if she were to rule in favor of Dulberg.

f. Hutchinson was then reassigned to less publicized cases for the duration of her campaign for appellate Court Judge.

g. The 1990 case was a high profile case for Hutchinson and widely publicized by the local newspaper covering McHenry County. During Dulberg's case Hutchinson decided to run in the election for Appellate Court.

If Dulberg knew Judge Hutchinson was assigned to this appeal more than 30 years after his prior 1990 case he would have asked for a substitution of Judge by right.

6. MOTION TO RULE WAS ACCEPTED DECEMBER 3, IGNORED BEFORE FINAL RULING ON DEC 4, AND SENT BACK ON DEC 5

(this is a retroactive use of dismissal order on motions timely and properly filed before the dismissal)

- **a.** On December 3, 2023 Dulberg filed a Motion for Ruling on his November 21, 2023 Motion to Reconsider. (A23)[46]
- **b.** On December 4, 2023 Dulberg received a final ORDER, dismissing the case for not filing a brief, The ORDER was signed only by the clerk with a few of the Judges names appearing for first time in print on the ORDER. (A21)[47]
- **c.** On December 5, 2023 the Motion for Ruling filed on December 03, 2023 was sent back because the case was dismissed on December 04, 2023 after the proper and timely filing of the motion prior to dismissal. (A24)[48] It is as if the later dismissal of the case can be applied retroactively to motions timely and properly filed before the case was actually dismissed.

7. ORDER DENIED OVER EXTENSION OF TIME TO FILE

Previous motions for extension of time were based on serious family emergencies.

8. Contrary to the precise ruling contained in Suburban Real Estate Services, Inc. v. Carlson, 2022 Il 126935, 193 N.E.3d 1187, 456 Ill.Dec.779 (Ill.2022) the trial court was not clear and error-ed. Associate Judge Joel D. Berg, being a personal friend of the sole (at this time and 50% with ex-wife previously) owner of the Defendant/Appellee's Law firm, was not clear in his ruling and failed to take into account or recognize the principal/agent relationship between the co-defendants in the underlying case (12LA178). Associate Judge Joel D. Berg erroneously set the date that Plaintiff/Appellant knew or should have known of the pecuniary injury back to the time of the alleged wrongdoing as sometime on or before the Defendant's/Appellee's withdrawal from the underlying case (12LA178) in March of 2015. Associate Judge Joel D. Berg did not take into account the fact that without the coerced settlement the principal would remain vicariously liable for anything the agent could not pay if found negligent (which did occur on December 12, 2016, the only time the pecuniary injury could be calculated since anything prior would be purely

speculative).

9. Article XI Illinois Code of Judicial Conduct was violated:

Rule 1.2 Promoting Confidence in the Judiciary;

Rule 2.2 Impartiality and fairness;

Rule 2.3 Bias, Prejudice and Harassment;

Rule 2.11 Disqualification.

A FAIR AND ACCURATE STATEMENT OF THE FACTS, WHICH CONTAINS THE FACTS NECESSARY TO AN UNDERSTANDING OF THE CASE

Pursuant to Illinois Supreme Court Rule 315(c)(4)

I. WHAT HAPPENED IN THE TWENTY SECOND JUDICIAL CIRCUIT COURT OF MCHENRY COUNTY:

1. 12LA178 was filed On May 15, 2012 and is the underlying case to 17LA377.

a. The case records from 12LA178 were motioned to be added to the record on appeal but the motion denied by the Appellate Court so it cannot be referenced in the record on appeal.

b. It is not possible to give a fair and accurate statement of the facts necessary to understand the case without referencing 12LA178.

c. A statement of the facts of 12LA178 was already provided to the Supreme Court in the following 5 ARDC complaints: #2023INO3135[49], #2023INO3136[50], #2023INO3894-R[51], #2023INO3897-R[52], #2023INO3898-R[53]. **(A2)**[54]

d. In 2011 Plaintiff/Appellant Paul R. Dulberg was permanently injured by a chainsaw owned by Caroline and William McGuire (principles) but operated by their chosen agent David Gagnon.

e. The debilitating injuries caused Dulberg to seek out a law firm (Law Offices of Thomas J. Popovich, P.C.) and they filed a cause of action for negligence in the Twenty Second Judicial Circuit Court of McHenry County, case number 12LA178 against both the chainsaw owners for negligence under vicarious liability and their chosen operator for negligence.

f. The Trial Court Judge for the original matter (12LA178) was then Associate Judge Thomas A. Meyer. Thomas A. Meyer is a close personal friend of Thomas J. Popovich, owner of the Law offices of Thomas J. Popovich, P.C.. Associate Judge Thomas A. Meyer did not disclose his personal friendship with Thomas J. Popovich

nor did he recuse himself from the underlying case 12LA178.

g. The Law Offices of Thomas J. Popovich, P.C. systematically coerced a $5000 settlement out of the Plaintiff/Appellee Paul R. Dulberg. Popovich and Mast submitted an unauthorized settlement offer of $7500.00 on October 22, 2013 to the attorney (Ronald Barch) representing the McGuires without informing Dulberg. Popovich and Mast repeatedly told Dulberg in emails, telephone conversations and at meetings that case law doesn't support Dulberg's claim against the McGuires. Popovich and Mast claimed the case against the McGuires is a common law 318 case not adopted by Illinois. Popovich and Mast provided Dulberg with a certified slip copy of Patricia TILSCHNER, Plaintiff–Appellant, v. Lowell SPANGLER and Ralph M. Ruppel, Defendants–Appellees. No. 2–10–0111.Decided: May 06, 2011 and other rulings copied from law books to prove it his legal opinion. The Law Offices of Thomas J. Popovich provided forged documents (depositions) to Dulberg to read from which Dulberg was to make the settlement decision. This took place years prior to final adjudication of the matter with the chainsaw operator or agent (Gagnon).

h. As a direct result of the coerced settlement the remainder of the underlying case 12LA178 became an asset of a Federal Bankruptcy Estate, Bk No. 14-83578 in the Northern District of Illinois, Western Division in November 2014 and was under an automatic stay.

i. The Law Offices of Thomas J. Popovich P.C. proceeded to file motions attempting to settle with the remaining defendant (Gagnon) in the 22nd Judicial Circuit Court as if no stay was in place and without permission of the bankruptcy estate trustee or court. Unsuccessful in settling with the remaining defendant, The Law Offices of Thomas J. Popovich withdrew in March 2015.

j. Associate Judge Thomas A. Meyer continued in circuit court in violation of the automatic stay. Associate Judge Thomas A. Meyer instructed Plaintiff/Appellate Paul

R. Dulberg that he would need to find new counsel, file a pro se appearance or face dismissal of the cause of action. Dulberg, having no standing but following Associate Judge Meyer's instructions, hired Brad J. Balke.

k. Brad J Balke operated in violation of the stay and pressed forward in the 22nd Judicial Circuit Court attempting to get Plaintiff/Appellee Paul R. Dulberg to accept the same settlement deal the Law Offices of Thomas J. Popovich, P.C. pursued. Plaintiff/Appellate Paul R. Dulberg fired Brad J. Balke, P.C. and was once again instructed by Associate Judge Thomas A. Meyer to find new counsel, file an appearance pro se or have his case dismissed. Dulberg, having no standing but following Associate Judge Meyers instructions, hired Baudin and Baudin an association of attorneys.

l. Baudin and Baudin operated in violation of the stay in the 22nd Judicial Circuit Court for about 16 months. Baudin and Baudin struck a deal with the remaining Defendants' insurance carrier Allstate to enter into a capped ADR agreement, reporting the deal to Associate Judge Thomas A. Meyer on August 10, 2016 against Plaintiff/Appellant Paul R. Dulberg's desires and in violation of the stay.

m. Attorneys Kelly Baudin and Randall Baudin (acting under the name Baudin Law Group) then made contact with a newly appointed bankruptcy estate trustee sometime after September 1, 2016 and were approved to be hired by the bankruptcy court on October 31, 2016, providing falsified affidavits containing contracts for legal services with Baudin and Baudin an association of attorneys. The bankruptcy Trustee then made misrepresentations of Dulberg's desires to the bankruptcy court claiming Dulberg wanted the capped ADR agreement.

n. After the ADR award on December 12, 2016, Dulberg could finally calculate and realize a pecuniary injury from the Law Offices of Thomas J. Popovich, P.C. for mishandling his case against the principle (the McGuires).

o. Plaintiff/Appellant Paul R. Dulberg, now able to realize a pecuniary injury, hired Thomas Gooch of Gauthier and Gooch and filed a legal malpractice suit in the 22nd Judicial Circuit Court of McHenry County, case number 17LA377 in November 2017.

2. 17LA377 was filed on November 28, 2017 and is the underlying case to 2-23-0072 filed in the Illinois Appellate Court Second District. **(A12)**[55]

a. A statement of the facts of 17LA377 was already provided to the Supreme Court in the following 4 ARDC complaints: #2023INO3895-R[56], #2023INO3896-R[57], #2023INO2517[58], #2023INO2518[59] **(A2)**[60]

b. Associate Judge Meyer was assigned to 17LA377 in the 22nd Judicial Circuit Court of McHenry County and did not self recuse (even though he was personal friends with the defendants and possibly a witness in the instant case, since he presided over the underlying case 12LA178).

c. Defendant/Appellee moved for Summary Judgment, Judge Meyer set the hearing date and was replaced by Associate Judge Joel D. Berg.

d. Associate Judge Joel D. Berg did not self recuse and is also an admitted close personal friend of Thomas J. Popovich and also has self recused from cases where Thomas J. Popovich is a defendant. This was discovered in documents filed in other cases but not allowed to be part of the record on appeal.

e. Associate Judge Joel D. Berg entered Judgment in favor of the defendants.

f. Associate Judge Joel D. Berg set the date that Plaintiff/Appellant knew or should have known of the pecuniary injury back to when the Defendant/Appellee committed the wrong doing (before Defendant/Appellee withdrew in March of 2015 even though Dulberg pled the discovery of the pecuniary injury came after the final award was issued against the principles agent on December 12, 2016).

II. WHAT HAPPENED IN THE ILLINOIS APPELLATE COURT SECOND DISTRICT:

1. Appeal 2-23-0072 was filed on March 3, 2023.

A. There were 2 previous extensions of time granted for Motions filed on May 24, 2023 and July 24, 2023 based on:

a. The unexpected death of key witness, lifelong friend and live-in caretaker Michael McArtor;

b. The disappearance of, false arrest and medieval interrogations , imprisonment and, by law, lack of the ability to consult with an attorney, nor contact anyone of Plaintiff/Appellant's attorney Alphonse A. Talarico's fiancé during a scheduled stopover in Tokyo, Japan on the way to O'Hare International Airport, Illinois.

c. Incomplete Appeal Package

B. On October 2, 2023 Dulberg filed a Motion which asked for:

a. Extension of time to file

b. Amend docking statement to include related cases

c. 22nd Judicial Circuit clerk amended record to include missing documents

d. Allow appellant to request record on appeal for related cases

e. Allow appellant to file brief in excess of prescribed page limit

C. All 5 were denied with no explanation, with no judges names on the ORDERs and only the clerk signing the Court Orders (filed motions contained Supreme Court approved court proposed order forms that must be used by all courts in the state when submitted).

D. On November 3, 2023 Dulberg filed an Emergency Motion which asked (a) to Supplement record on Meyer Recusal ORDERs, (b) for the thumbdrive of Barbara G. Smith and (c) For an audit of the 17LA377 clerks documents, the emergency motion being based on:

a. Newly discovered Associate Judge Thomas A. Meyer recusal issues with Defendant/Appellee.

b. Associate Judge Thomas A. Meyer was the same judge in underlying case 12LA178 in violation of recusal issues with Defendant/Appellee and Associate Judge Thomas A. Meyer would be a potential witness in the current case 17LA377.

c. Meyer refused to enter a subpoenaed thumb drive from Barbara G. Smith into the record that put the entirety of the Mast deposition issues in full context.

d. Discovered missing or materially altered documents and requesting an independent audit of clerks files for the missing documents.

E. All 4 were denied with no explanation, with no judges names on the ORDERs and only the clerk signing the Court Orders (filed motions contained Supreme Court approved court proposed order forms that must be used by all courts in the state when submitted).

F. On November 21, 2023 Dulberg filed a Motion to Reconsider based on:

a. Previous motions for extension of time were based on serious family emergencies

b. Supreme Court Rule 329 gives us the right to supplement or correct the record through the Appellate Court

c. Law never requires doing a useless thing. At this time it was impossible for Dulberg to return to the 22nd Judicial Circuit Court for the request

G. Dulberg's Motion to Reconsider was denied on December 4, 2023 and the case was dismissed.

A SHORT ARGUMENT STATING WHY REVIEW BY THE SUPREME COURT IS WARRANTED AND WHY THE DECISION OF THE APPELLATE COURT SHOULD BE REVERSED OR MODIFIED

Pursuant to Illinois Supreme Court Rule 315(c)(5)

I. The Illinois Supreme Court should review this matter because the trial court summary judgment ruling disregarded the Supreme Court's clear statement in Suburban Real Estate Services, Inc. v. Carlson, 2022 Il 126935, 193 N.E.3d 1187, 456 Ill.Dec.779 (Ill.2022) that in a legal malpractice case the Statute of Limitations does not begin to run until a pecuniary loss is incurred.

1. In this matter the pecuniary loss was first experienced on December 12, 2016. Dulberg filed his Legal Malpractice action on November 28, 2017 within 2 years of the December 12, 2016 date.
2. Furthermore, the Constitution of the State of Illinois, Article VI (The Judiciary) Section 16 states:

   SECTION 16. ADMINISTRATION

   General administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules. The Supreme Court shall appoint an administrative director and staff, who shall serve at its pleasure, to assist the Chief Justice in his duties. The Supreme Court may assign a Judge temporarily to any court and an Associate Judge to serve temporarily as an Associate Judge on any Circuit Court. The Supreme Court shall provide by rule for expeditious and inexpensive appeals.

   (Source: Illinois Constitution.)

II. A major issue that was discovered subsequent to the trial court granting summary judgment to the Defendants/Appellees is that one trial court judge was the judge for the underlying case and the current case, a matter of over (10) years, and the second judge who replaced the aforementioned judge for the hearing on Defendants/Appellees Motion for Summary Judgment had, for all times relevant herein each recused themselves for all cases assigned to them other than this case, based upon the fact that they were personal friends of the owner of Defendant/ Appelees law firm.

III. The decision of the Appellate Court should be modified to allow the requested relief of supplementing the Record on Appeal to include the underlying case, the recusals of the two judges who regularly recused themselves as personal friends of the Owner of the Defendant/ Appellee Law firm and the auditing by the suggested (in the motion) Expert attorney who had previously filed an audit report that was not allowed to be used to supplement the Record on Appeal indicated two missing Report of Proceedings.

IV. Due to the nature and severity of the ARDC complaints there is the need for the exercise of the Supreme Court's supervisory authority in this case. **(A2)**[61]

CONCLUSION

For the foregoing reasons, Paul R. Dulberg respectfully requests that this Court grant this Petition and reverse the Second District's December 4, 2023 ruling.

Dated: January 8, 2024

Respectfully submitted by:

/s/ Alphonse A Talarico
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Needs new copy

CERTIFICATE OF COMPLIANCE

~~I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and the Appendix, is # pages.~~

/s/ Alphonse A. Talarico

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

keep or delete??

/s/ Paul R. Dulberg

CERTIFICATE OF SERVICE

The undersigned certifies under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that on January 8, 2024, a copy of the foregoing Paul R. DULBERG's Petition for Leave to Appeal and the attached Paul R. Dulberg's Appendix to Petition for Leave to Appeal were filed and served upon the Clerk of the Illinois Supreme Court via the efileIL system through an approved electronic filing service provider and was served on counsel of record below in the manner indicated:

Via Email and approved efiling system

GEORGE K. FLYNN (ARDC # 6239349)
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Counsel for Defendant-Appellees

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Alphonse A. Talarico

Alternatives to (A1-A24) - Copy/Paste links to Online Documents

1 http://www.fraudonthecourt.net/ardc/2023-07-24_ARDC%20Complaint%20Clinton-Williams.pdf
2 http://www.fraudonthecourt.net/ardc/2023-07-24_ARDC%20Complaint%20Clinton-Williams.pdf
3 http://www.fraudonthecourt.net/ardc/2023-08-28_ARDC%20Complaint%20Popovich-Mast.pdf
4 http://www.fraudonthecourt.net/ardc/2023-08-28_ARDC%20Complaint%20Popovich-Mast.pdf
5 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_BRAD%20J%20BALKE.pdf
6 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_KELLY%20N%20BAUDIN-WILLIAM%20RANDAL%20BAUDIN%20II.pdf
7 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_KELLY%20N%20BAUDIN-WILLIAM%20RANDAL%20BAUDIN%20II.pdf
8 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_THOMAS%20W%20GOOCH-SABINA%20WALCZYK.pdf
9 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_THOMAS%20W%20GOOCH-SABINA%20WALCZYK.pdf
10 http://www.fraudonthecourt.net/ardc/
11 http://www.fraudonthecourt.net/exhibits/Group%20Exhibit%2041_Appeal%20Package%20for%2017LA377/
12 http://www.fraudonthecourt.net/17LA377%20appeal/2023-12-04_Notice%20of%20the%20Order%20-%202nd-1.pdf
13 http://www.fraudonthecourt.net/ardc/
14 http://www.fraudonthecourt.net/exhibits/Group%20Exhibit%2048-Recusals%20and%20related%20cases/2023-12-29_MEYER%20BERG%20RECUSALS%20COMBINED-reassignment%20of%20a%20judge%20outside%20of%20McHenry%20County.pdf
15 http://www.fraudonthecourt.net/exhibits/Key%20Clinton%20Folder%2014-Barbara%20G%20Smith%20Subpoena%20Responsive%20Thumbdrive/
16 http://www.fraudonthecourt.net/ardc/2023-07-24_ARDC%20Complaint%20Clinton-Williams.pdf
17 http://www.fraudonthecourt.net/ardc/2023-07-24_ARDC%20Complaint%20Clinton-Williams.pdf
18 http://www.fraudonthecourt.net/ardc/
19 http://www.fraudonthecourt.net/17LA377%20appeal/2023-10-02_FILED%203RD%20Amended%20Motion%20for%20Extension%20of%20Time%20and%20AMN%203rd%20MOT%20EXT.pdf
20 http://www.fraudonthecourt.net/ardc/2023-08-28_ARDC%20Complaint%20Popovich-Mast.pdf
21 http://www.fraudonthecourt.net/ardc/2023-08-28_ARDC%20Complaint%20Popovich-Mast.pdf
22 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_BRAD%20J%20BALKE.pdf
23 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_KELLY%20N%20BAUDIN-WILLIAM%20RANDAL%20BAUDIN%20II.pdf
24 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_KELLY%20N%20BAUDIN-WILLIAM%20RANDAL%20BAUDIN%20II.pdf
25 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_THOMAS%20W%20GOOCH-SABINA%20WALCZYK.pdf
26 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_THOMAS%20W%20GOOCH-SABINA%20WALCZYK.pdf
27 http://www.fraudonthecourt.net/ardc/
28 http://www.fraudonthecourt.net/17LA377%20appeal/2023-11-21_Filed%20and%20Accepted%20MOT%20TO%20RECON.pdf
29 http://www.fraudonthecourt.net/17LA377%20appeal/2023-11-03_11032023%20Emergency%20Mot%20Ext.pdf
30 http://www.fraudonthecourt.net/17LA377%20appeal/2023-04-25_CLR_Vol_1_of_2_230421_1627_D4CDE198.pdf
31 http://www.fraudonthecourt.net/17LA377%20appeal/2023-04-25_CLR_Vol_2_of_2_230421_1627_22D90D40.pdf
32 http://www.fraudonthecourt.net/17LA377%20appeal/2023-04-25_ROP_Vol_1_of_1_230421_1628_8FF9DDF1.pdf
33 http://www.fraudonthecourt.net/17LA377%20appeal/2023-11-03_11032023%20Emergency%20Mot%20Ext.pdf

34 http://www.fraudonthecourt.net/17LA377%20appeal/2023-11-03_11032023%20Emergency%20Mot%20Ext.pdf
35 http://www.fraudonthecourt.net/17LA377%20appeal/2023-05-26_Appellate%20Court%20Order%20May%2026,%202023%20Notice%20of%20the%20Order%20-%202nd%20(3).pdf
36 http://www.fraudonthecourt.net/17LA377%20appeal/2023-07-25_Notice%20of%20the%20Order%20-%202nd.pdf
37 http://www.fraudonthecourt.net/17LA377%20appeal/2023-10-10_Clerks%20statement%20of%20denial%20of%20motion%2010%2010%202023%20GetFileAttachment.pdf
38 http://www.fraudonthecourt.net/17LA377%20appeal/2023-11-09_Notice%20of%20the%20Order%20-%202nd%20-%202023-11-09T130315.722.pdf
39 http://www.fraudonthecourt.net/17LA377%20appeal/2023-05-24_Proposed%20Order%20for%20First%20Motion%20for%20Extension%20of%20Time%20to%20July%2031%202023.pdf
40 http://www.fraudonthecourt.net/17LA377%20appeal/2023-07-24_Illinois%20Statewide%20Forms%20-%20Order%20Appellate%20Motion%20V2D1%20-%20010218.pdf
41 http://www.fraudonthecourt.net/17LA377%20appeal/2023-10-01_Filed%20Draft%20Order%2010012023%20draft%20order%20(1).pdf
42 http://www.fraudonthecourt.net/17LA377%20appeal/2023-11-03_11032023%20proposed%20order.pdf
43 http://www.fraudonthecourt.net/17LA377%20appeal/2023-11-09_Gmail%20-%20Fw%20Appellate%20Court%20-%202nd%20District%20Case%20No.%202-23-0072%20Order%20-%20Responding%20Order.pdf
44 http://www.fraudonthecourt.net/17LA377%20appeal/2023-12-04_Order%20dismissing%20appeal%20for%20failure%20to%20file%20a%20brief.%20GetFileAttachment.pdf
45 http://www.fraudonthecourt.net/17LA377%20appeal/2023-12-09_Gmail%20-%20HUTCHINSON%20ISSUE.pdf
46 http://www.fraudonthecourt.net/17LA377%20appeal/2023-12-03_12032023%20MOT%20for%20Ruling.pdf
47 http://www.fraudonthecourt.net/17LA377%20appeal/2023-12-04_Order%20dismissing%20appeal%20for%20failure%20to%20file%20a%20brief.%20GetFileAttachment.pdf
48 http://www.fraudonthecourt.net/17LA377%20appeal/2023-12-05_Gmail%20-%20Fw%20Filing%20Returned%20for%20Envelope%20Number%2025435393%20in%20Case%202-23-0072,%20Dulberg,%20Paul%20R.,%20v.%20Mast,%20Hans,%20et%20al.%20for%20filing%20Motion%20-%20Miscellaneous.pdf
49 http://www.fraudonthecourt.net/ardc/2023-08-28_ARDC%20Complaint%20Popovich-Mast.pdf
50 http://www.fraudonthecourt.net/ardc/2023-08-28_ARDC%20Complaint%20Popovich-Mast.pdf
51 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_BRAD%20J%20BALKE.pdf
52 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_KELLY%20N%20BAUDIN-WILLIAM%20RANDAL%20BAUDIN%20II.pdf
53 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_KELLY%20N%20BAUDIN-WILLIAM%20RANDAL%20BAUDIN%20II.pdf
54 http://www.fraudonthecourt.net/ardc/
55 http://www.fraudonthecourt.net/17LA377%20appeal/2023-05-26_Appellate%20Court%20Order%20May%2026,%202023%20Notice%20of%20the%20Order%20-%202nd%20(3).pdf
56 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_THOMAS%20W%20GOOCH-SABINA%20WALCZYK.pdf
57 http://www.fraudonthecourt.net/ardc/2023-10-31_ARDC%20Complaint_THOMAS%20W%20GOOCH-SABINA%20WALCZYK.pdf
58 http://www.fraudonthecourt.net/ardc/2023-07-24_ARDC%20Complaint%20Clinton-Williams.pdf
59 http://www.fraudonthecourt.net/ardc/2023-07-24_ARDC%20Complaint%20Clinton-Williams.pdf
60 http://www.fraudonthecourt.net/ardc/
61 http://www.fraudonthecourt.net/ardc/

A1

ILLINOIS APPELLATE COURT
SECOND DISTRICT

55 SYMPHONY WAY
ELGIN, IL 60120
(847) 695-3750

December 4, 2023

Alphonse A. Talarico
Law office of Alphonse Talarico
707 Skokie Blvd., #600
Northbrook, IL 60062

RE: Dulberg, Paul R., v. Mast, Hans, et al.
Appeal No.: 2-23-0072
County: McHenry County
Trial Court No.: 17LA377

The court has this day, December 04, 2023, entered the following order in the above entitled case:

Appellant's motion for leave to file a reply is denied.

Appellant's motion to reconsider is denied. As appellant has failed to file an opening brief pursuant to this court's order of November 9, 2023, this appeal is dismissed.

THIS ORDER IS FINAL AND SHALL STAND AS THE MANDATE OF THIS COURT.
(McLaren, Hutchinson, Schostok, JJ.)

Jeffrey H. Kaplan
Clerk of the Court

cc: George Kenneth Flynn
McHenry County Circuit Court
Michelle Marie Blum

A2

From:

Paul Dulberg
4606 Hayden Ct.
McHenry, IL. 60051

Dated: July 17, 2023

To:

ARDC
130 E. Randolph Dr., Ste. 1500
Chicago, IL 60601-6219
Fax: (312) 565-2320
Email: information@iardc.org

ARDC
3161 W. White Oaks Dr., Ste. 301
Springfield, IL 62704
Fax: (217) 546-3785
Email: information@iardc.org

Members of the ARDC Committee,

This complaint explains in detail the main techniques Illinois attorneys Edward X. Clinton and Julia C. Williams used to suppress the release of discovery documents of their own permanently disabled client without their client knowing. Clinton and Williams used quite sophisticated methods of document and information suppression in attempts to undermine and destroy the valid claims of their own handicapped client.

Chapter 1 describes how Clinton, Williams and the defense counsel suppressed documents and information.

Chapter 2 shows how these document and information suppression techniques were then used to create confusion and vulnerability in their own client's case in at least 10 different ways (labeled A through J).

The methods Clinton and Williams used are carefully coordinated with one another and can be said to constitute a system of document and information suppression. In simple terms, this method of large-scale document and information suppression is used to destroy the claims of ones own client by gaslighting ones own client over and over again as can be verified in this complaint.

The people against whom these acts were done would like to state, in simple laymans terms, that attorneys in the Illinois Bar have access to sensitive information of their clients and these attorneys act in a position of trust similar to that of a medical doctor. If a medical doctor used their position of trust, knowledge, skill, privilege, and membership in the AMA to basically drug and rape certain clients, we would all be able to see such behavior as a serious breach of social trust and if how they acted were publicly known, I believe we could all agree it would be unthinkable to allow them to continue to work as medical doctors.

In parallel, the sabotaging of claims of a permanently disabled client seeking redress for wrongs by using the techniques described in this complaint is stunningly vacuous with respect to any concept of ethics and decency. To allow professional attorneys who act in these ways to continue to practice as attorneys in Illinois, while knowing the techniques of deception they have used on at least one of their own (handicapped) clients, is to allow stealth predators to feed on the general population as prey while using their membership in the Illinois Bar as cover.

If Clinton and Williams are allowed to act toward one of their own clients using the sophisticated system of document and information suppression described in this complaint, then the said client could have easily been you, or your parents, or your children, your friends or neighbors. The techniques of deception described here show attorneys gaslighting their own permanently disabled client repeatedly, pure and simple. Would you or your relations be able to discover and defend themselves against the secret methods of deception described in detail in this complaint if they were to happen to you? If not, these attorneys should not be allowed to practice law among the general public.

In addition to exhibits this complaint makes use of 11 'Visual Aid' graphics. These are not mere 'pictures'; they are scalable vector graphics and are designed to allow the viewer to zoom in on any portion with great detail. They are used here to help the reader understand, in simple visual ways, how Clinton and Williams suppressed large numbers of documents and the ways they arranged documents in their case file in order to deceive their permanently disabled former client.

/s/ Paul Dulberg

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION
of the
SUPREME COURT OF ILLINOIS

COMPLAINT FORM

Use this form to file a complaint about:
1) an Illinois lawyer;
2) a non-Illinois lawyer who has provided legal services in Illinois; or
3) a non-lawyer who you are claiming has engaged in the unauthorized practice of law in Illinois.

Return the completed form by e-mail, mail or facsimile to:

ARDC
130 E. Randolph Dr., Ste. 1500
Chicago, IL 60601-6219
Phone: (312) 565-2600 or (800) 826-8625
Fax: (312) 565-2320
Email: information@iardc.org

or

ARDC
3161 W. White Oaks Dr., Ste. 301
Springfield, IL 62704
Phone: (217) 546-3523 or (800) 252-8048
Fax: (217) 546-3785
Email: information@iardc.org

---

1. Your name: Paul Dulberg

Street address: 4606 Hayden Ct.

City: McHenry State: Illinois Zip: 60051

Home phone: (847) 497-4250 Work phone: _____ Cell phone: Same as Home phone

Email address: Paul_Dulberg@Comcast.net

2. Name of lawyer/person you want to be investigated: EDWARD X. CLINTON, (and) JULIA CHRISTINE WILLIAMS, a.k.a. Julia C. Floyd

Name of law firm or business: Clinton Law Firm, LIC (and) Williams Law, LLC

Street address: 111 West Washington Street Suite 1437

City: Chicago, State: Illinois Zip: 60602-2708

Phone: 312.357.1515 (and) (312) 508-3376

Email address: ed@clintonlaw.net (and) juliawilliams@clintonlaw.net Julia.c.floyd@gmail.com

3. Have you previously contacted the ARDC regarding this matter? Yes _____ No X

If yes, when and how did you contact us? _____

4. Did you employ the lawyer/person you are complaining about: Yes _____ No X

4a. If you answered yes to question 4:

When did the employment start? OCTOBER 31, 2018

What was the fee agreement? one-third of any recovery whether from settlement or judgment

How much have you paid the lawyer/person to date? Costs + They filed a lien with the defense counsel and expect to be paid from it.

over

4b. If you answered no to question 4 what is your connection to the lawyer/person?

I did not retain the Attorneys directly, I retained Clinton Law Firm, LIC. and EDWARD X. CLINTON, (and) JULIA CHRISTINE WILLIAMS, a.k.a. Julia C. Floyd are the attorneys I delt with at Clinton Law Firm, LIC

5. If your request relates to a court case or other proceeding, please provide the following:

Name of court or agency: TWENTY-SECOND JUDICIAL CIRCUIT MCHENRY COUNTY, ILLINOIS

Name of case: PAUL DULBERG vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST

Case number: No. 17 LA 377

6. Please explain your complaint(s). Include important dates and names of witnesses and others involved. Use additional pages if necessary. Attach copies of documents that support your complaint, such as fee agreements, receipts, checks, letters and court papers.

Please see the accompanying thumb drive containing a file called "Final ARDC Clinton-Williams.pdf" which has a cover letter and a detailed 127 page complaint. There are also 3 folders named "Exhibits", "Group Exhibits (showing key folders)" and "Visual Aids" which contain all the supporting documentation for the complaint.

Signature: /s/ Paul Dulberg Date: July 17, 2023

ARDC Complaint against Edward X. Clinton and Julia C. Williams for Legal Malpractice, Discovery Abuse, Intentional Tort, Fraud, Conspiracy to commit Fraud, Playing Elaborate Hoaxes on their (fully disabled) Client, and Mocking their (fully disabled) Client

Chapter 1: SUPPRESSION OF DOCUMENTS

Chapter 2: COLLABORATION WITH OPPOSING ATTORNEY TO BENEFIT THE DEFENDANTS AND SABOTAGE PLAINTIFF'S CASE

2A THE EXAMPLE OF BANKRUPTCY

2B THE EXAMPLE OF SAUL FERRIS

2C THE EXAMPLE OF TILSCHNER V SPANGLER

2D THE EXAMPLE OF BRAD BALKE

2E THE EXAMPLE OF SUPPLEMENTAL DISCOVERY REQUEST FOR DOCUMENT PRODUCTION FILED ON JULY 2, 2020

2F THE EXAMPLE OF THE BAUDINS

2G THE DEFENDANT GAGNON FFECTIVELY ADMITTED NEGLIGENCE FOR DULBERG'S INJURY

2H BARCH DOCUMENT AVAILABILITY BEFORE DULBERG'S DEPOSITION

2I THE EXAMPLE OF WEAKENED VERIFICATION PAGES OF DISCOVERY PRODUCTION

2J CLINTON AND WILLIAMS EFFORTS TO PLACE AN UPPER CAP ON THE VALUE OF DULBERG'S LEGAL MALPRACTICE CASE 17LA377

2K UNEXPLAINABLE TECHNICAL DIFFICULTIES DURING THE DEPOSITION OF HANS MAST AND AFTER

2L OTHER WAYS CLINTON AND WILLIAMS ATTEMPTED TO SABOTAGE PLAINTIFF'S CASE

Chapter 3: COMPARISON BETWEEN LEGAL MALPRACTICE ATTORNEY GOOCH AND LEGAL MALPRACTICE ATTORNEYS CLINTON AND WILLIAMS

CHAPTER 1: SUPPRESSION OF DOCUMENTS

Relevant facts:

1. Dulberg retained Ed Clinton and Julia Williams of the Clinton Law Firm to represent him in a legal malpractice claim against Thomas J. Popovich, Hans Mast and the Law Offices of Thomas J. Popovich around November 1, 2018.[1]

2. Dulberg's previous attorney was Thomas Gooch who was fired by Dulberg on October 8, 2018. Gooch received the termination letter on October 9, 2018.[2]

3. On October 10, 2018 at 5:25 PM Dulberg sent an email to Williams stating:[3]

> "... Per our discussion, here are the files.
>
> Please find the attached zip file.
>
> Download and extract the file to see what has been pleaded, the rulings etc...
>
> Among the files is a file named second_amended_complaint_comments.txt. Pay special attention to this file as it lays out what was going into the second amended complaint and lays out the case moving forward. There are large gaps of empty lines in this file. Please keep scrolling down to read all of it.
>
> I hope this helps prepare you for our consultation this Friday. ..."

Dulberg then wrote at 5:34 PM:

> "Oops forgot to attach the file...
> Here it is"

4. On November 1, 2018 at 7:18 AM Dulberg sent an email to Williams stating:[4]

> "... do I need to get the case file from The Gooch Firm or is that something you will work out with them?
>
> For your information,
> The Gooch Firm also has all the supporting documents including but not limited to the following;
>
> Scanned in Case files from both the Popovich Firm and the Baudin Firm, all emails between myself and Hans Mast from the Popovich firm with my emails to the Gooch firm identifying which of hundreds are the critical emails showing the false choices Hans

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1 Exhibit 1a-Dulberg Draft Retainer 2018 Oct 31.pdf
2 Exhibit 2A-2018-11-17_1247 PM_SENT_Supporting Documents_ATTACHMENTS.pdf (Pages 10-11)
3 Exhibit 2-2018-10-10_1734 PM_Legal Malpractice Case_ATTACHMENTS.pdf
4 Exhibit 4A-2018-11-01_0718 AM_SENT_Legal Malpractice Case.pdf

Mast pushed along with the emails assuring me that the Popovich firm handled the matter correctly long after the McGuire's were dismissed, Disability determination, Solvent Bankruptcy Documents that prove every creditor including medical was paid in full, ADR award, all emails from myself to the Gooch firm answering all their questions, etc...

I would like to get a digital copy of everything the Gooch firm turns over because I should be able to provide anything they missed. ..."

5. On or just prior to November 27, 2018 Williams and Clinton received a thumb drive from Thomas Gooch (called "Gooch Thumbdrive")[1] that contains 6 main folders:

Gooch Thumbdrive/Dulberg DISCOVERY
Gooch Thumbdrive/Dulberg ORDERS
Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client
Gooch Thumbdrive/Dulberg PLEADINGS
Gooch Thumbdrive/Dulberg SUMMONS
Gooch Thumbdrive/Dulberg UNDERLYING CASE DOCS

Four of the main folders contain public documents from 17LA377 (Dulberg's legal malpractice case against Mast and Popovich). Only the 2 folders called "Dulberg UNDERLYING CASE DOCS" and "Dulberg Paul Dulberg Files From Client" contain documents that needed to be disclosed to opposing counsel to comply with opposing counsel's document production requests.

6. When preparing documents to turn over to opposing counsel on May 30, 2019 Williams used only the contents of one of the folders called:

Gooch Thumbdrive/Dulberg UNDERLYING CASE DOCS

Williams did not include any of the contents of the other main Gooch Thumbdrive folder:

Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client

'Visual Aid 1 - Sources of bates order'[2] shows (in a simple way) how only one of the two main folders of Gooch Thumbdrive was given to opposing counsel on May 30, 2019 and how the other main folder only appeared as bates stamped documents over 13 months later as Williams was resigning as counsel.

7. 'Dulberg Master File'[3] is the electronic case file that Clinton and Williams gave to Dulberg after they resigned as counsel, so this is all we can see of the work product and folder systems which Clinton and Williams used to do day to day work on Dulberg's case.

8. Williams combined the contents of the folder 'Dulberg UNDERLYING CASE DOCS' with 18 pdf files she received directly from Dulberg (as email attachments) and placed them in a folder called:

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1 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive
2 Visual Aids/Visual Aid 1 - Sources of bates order.png
3 Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File

Dulberg Master File/Dulberg Production JCW Working Folder/Dulberg JCW DRAFT To Be Produced[1]

9. Williams inexplicably included 15 public documents related to 17LA377 in the same folder. The names of each of the 17LA377 public documents were changed before being included among the bates-numbered documents. 'Visual Aid 3 - 377 Document Insertion hoax'[2] shows from where each 17LA377 public document was taken, what name each file was changed into, and into which folder the files were placed so they would appear in alphabetical order among bates-numbered documents given to opposing counsel.

From there the 17LA377 public documents were placed in the folder 'Dulberg JCW DRAFT To Be Produced'[3] to be bates-stamped as 'Visual Aid 3' shows in detail.

It is not possible that the renaming and movement of so many 17LA377 public documents and the insertion of them among bates numbered documents was accidental. Someone must have intentionally done this.

10. Williams merged the contents of the folder 'Dulberg JCW DRAFT To Be Produced' in alphabetical order into a single pdf in the same folder called:

1 Dulberg Documents to BE Produced NON TAX Complete JCW 2019 May 28.pdf[4]

11. Williams inexplicably removed an additional 121 pages from this pdf and duplicated one page to make another pdf in the same folder called:

1 Dulberg Documents to BE Produced NON TAX redacted Complete JCW 2019 May 28 copy.pdf[5]

The pdf is 2460 pages. The pages in this last pdf became the first 2460 bates-stamped documents in the pdf that Williams gave to opposing counsel on May 30, 2019 called:

"Dulberg Document Disclosure FINAL 2019 May 29.pdf"[6]

12. Williams did not inform Dulberg that "Dulberg Document Disclosure FINAL 2019 May 29.pdf" did not contain any of the files from the main Gooch Thumbdrive folder:

Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client

13. Williams had 3 sets of Dulberg's emails before May 30, 2019 from these 3 sources:

1) Gooch Thumbdrive/Dulberg UNDERLYING CASE DOCS/Paul Dulberg's Emails[7]

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1 Group Exhibits (showing key folders)/Exhibit folder 3-Dulberg JCW DRAFT To Be Produced
2 Visual Aids/Visual Aid 3 - 377 document insertion hoax.png
3 Group Exhibits (showing key folders)/Group Exhibit folder 3-Dulberg JCW DRAFT To Be Produced
4 Exhibit 3-1-Dulberg Documents to BE Produced NON TAX Complete JCW 2019 May 28.pdf
5 Exhibit 4-1-Dulberg Documents to BE Produced NON TAX redacted Complete JCW 2019 May 28 copy.pdf
6 Exhibit 5-Dulberg Document Disclosure FINAL 2019 May 29.pdf
7 Group Exhibits (showing key folders)/Exhibit folder 6-Paul Dulberg Emails, 422 pages total

2) ‘Paul Dulberg’s Emails’ sent to Williams as email attachments[1]

3) Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Emails[2]

The first 2 sets have 422 unique email pages and the third set has 844 pages because it consists of 2 identical sets of emails which are 422 pages each.

14. On May 30, 2019 Williams handed over only the contents of “Gooch Thumbdrive/Dulberg UNDERLYING CASE DOCS/Paul Dulberg’s Emails” to opposing counsel but with many email documents inexplicably missing. The email documents Williams removed from the contents of ‘Dulberg Document Disclosure FINAL 2019 May 29.pdf’[3] that are included in ‘Gooch Thumbdrive/Dulberg UNDERLYING CASE DOCS/Paul Dulberg’s Emails’[4] and the subject each document covers are as follows:

Hans Mast2-14 .... with Balke on picking up electronic file and paper file
Hans Mast2-15 .... with Balke on picking up electronic file and paper file
Hans Mast2-16 .... with Balke on picking up electronic file and paper file
Hans Mast2-17 .... with Balke on picking up electronic file and paper file
Hans Mast2-18 .... with Balke on picking up electronic file and paper file
Hans Mast2-19 .... with Balke on picking up electronic file and paper file
Hans Mast2-21 .... with Balke on lean buyout and picking up case file
Hans Mast2-24 .... with Balke on lean buyout
Hans Mast2-29 .... with Balke on lean buyout
Hans Mast2-32 .... with Balke about Balke and Mast leans buyout in exchange for case file
Hans Mast2-33 .... with Balke about Balke and Mast leans buyout in exchange for case file
Hans Mast2-34 .... with Balke about Balke and Mast leans buyout in exchange for case file
Hans Mast2-35 .... with Balke about Balke and Mast leans buyout in exchange for case file
Hans Mast2-36 .... with Balke about Balke and Mast leans buyout in exchange for case file
Hans Mast2-37 .... with Balke about anticipated Randall Baudin phone call
Hans Mast2-38 .... with Balke about anticipated Randall Baudin phone call
Hans Mast2-39 .... with Balke about case being not winnable and signing release for $50,000
Hans Mast2-40 .... with Balke about case being not winnable and signing release for $50,000
Hans Mast2-41 .... with Balke about case being not winnable and signing release for $50,000
Hans Mast2-42 .... email empty of content message
Hans Mast2-43 .... with Balke long message about why Dulberg rejects Balke’s advice
Hans Mast2-44 .... with Balke, Balke is trying to get him to sign a release for $50,000
Hans Mast2-45 .... with Balke, Balke is trying to get him to sign a release for $50,000
Hans Mast2-46 .... with Balke, Balke is trying to get him to sign a release for $50,000
Hans Mast2-47 .... with Balke, Balke is trying to get him to sign a release for $50,000
Hans Mast2-48 .... with Balke long message about why Dulberg rejects Balke’s advice
Hans Mast2-49 .... with Balke long message about why Dulberg rejects Balke’s advice

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1 Group Exhibits (showing key folders)/Exhibit folder 7-folders of emails sent to Williams as email attachments, 422 pages total
2 Group Exhibits (showing key folders)/Exhibit folder 8-Emails, 844 pages total
3 Exhibit 5-Dulberg Document Disclosure FINAL 2019 May 29.pdf
4 Group Exhibits (showing key folders)/Exhibit folder 6-Paul Dulberg Emails, 422 pages total

Hans Mast2-50 .... with Balke on bankruptcy questions
Hans Mast2-51 .... with Balke on bankruptcy questions
Hans Mast2-52 .... with Balke on bankruptcy and Gagnon's insurance
Hans Mast2-53 .... email from Dulberg to Dulberg with message for Balke on bankruptcy
Hans Mast2-54 .... with Balke on bankruptcy and pre-trial conference
Hans Mast2-55 .... with Balke on missing pre-trial settlement memo and Saul Ferris with a box of Dulberg's documents
Hans Mast2-56 .... with Balke on missing pre-trial settlement memo and Saul Ferris with a box of Dulberg's documents
Hans Mast2-57 .... with Balke on missing pre-trial settlement memo and Saul Ferris with a box of Dulberg's documents
Hans Mast2-58 .... with Balke on signing settlement check and deposit
Hans Mast2-59 .... with Balke on settlement conference canceled
Hans Mast2-60 .... with Balke about April 9 pre-trial conference
Hans Mast2-61 .... with Balke about April 9 pre-trial conference
Hans Mast2-62 .... with Balke about April 9 pre-trial conference
Hans Mast2-63 .... all communication with Balke on lean buyout and picking up the case file
Hans Mast2-65[1] ... with Balke on missing pre-trial settlement memo and a box from Ferris
Hans Mast2-69 .... with Stretch on bankruptcy
Hans Mast2-73 .... with Ferris on declining case
Hans Mast2-78 .... with Ferris on declining case
Hans Mast2-149 .. with Stretch on medical lean expiring
Hans Mast2-152 .. with Stretch on bankruptcy
Hans Mast2-153 .. with Mast, angry
Hans Mast2-169 .. SSDI and rosencrance
Hans Mast2-170 .. SSDI and rosencrance
Hans Mast2-252 .. SSDI
Hans Mast2-254 .. SSDI
Hans Mast2-255 .. SSDI
Hans Mast2-257 .. SSDI
Hans Mast2-259 .. SSDI
Hans Mast2-260 .. SSDI
Hans Mast2-262 .. SSDI
Hans Mast2-282 .. Missing emails
Missing Emails.pdf . Missing emails
Baudin
Baudin1
Baudin2
Baudin3
Baudin4
Baudin5
Baudin6
Baudin7

1 Exhibit B12-Hans Mast2-65.pdf

SSDI
SSDI1
SSDI2
SSDI3
SSDI4

The subject matters of other documents that Williams suppressed on May 30, 2019 are as follows:

BANKRUPTCY

SSDI

MENTAL HEALTH EVALUATIONS, SCHEDULING

BALKE BUSINESS CARDS, FAX AND CHECK

LETTER AND REPLY TO WALGREEN'S CUSTODIAN OF RECORDS

DULBERG NOTES ON NEEDING TIMESTAMP FROM WALGREEN'S CUSTODIAN

CENTEGRA MEDICAL RECORDS CUSTODIAN ABOUT SECURITY CAMERAS

FERRIS AND OTHER LETTERS OF DECLINATION **(3 documents suppressed from 2 different sources)**

HAND WRITTEN NOTES ON UNDERLYING CASE

DEPOSITIONS WITH HAND WRITTEN NOTES

BAUDIN FEE AGREEMENT

CRIMINAL COMPLAINT AGAINST GAGNON AND MCGUIRE'S

DEB FISCHER BILL TO POPOVICH

DEB FISCHER LETTER

CERTIFIED SLIP COPY OF TILSCHNER V SPANGLER SENT AS EMAIL ATTACHMENT TO WILLIAMS ON APRIL 18, 2019

15. Williams repeatedly misled Dulberg into believing that all relevant documents that she received from both the Gooch Thumbdrive and from Dulberg were contained in the file "Dulberg Document Disclosure FINAL 2019 May 29.pdf"[1] and were given to opposing counsel on May 30, 2019 with the only exception being documents protected by attorney-client privilege.

16. On Jul 8, 2019 at 11:06 AM Dulberg sent an email (which contained a different forwarded email) to Williams stating:[2]

"... You Have my permission to talk with Tom Kost (My Brother) about this. ..."

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1 Exhibit 5-Dulberg Document Disclosure FINAL 2019 May 29.pdf
2 Exhibit 6-2019-07-08_1106 AM_SENT_Fwd Forward to Julia_ATTACHMENTS.pdf

Begin forwarded message: From: T Kost, Subject: Forward to Julia, Date: July 7, 2019 at 7:48:33 PM CDT To: Paul_Dulberg@comcast.net

"Paul, please forward this email to Julia.

Julia, please look at the information in the attached folder.

After examining all the documents in the Dulberg disclosure file and the Popovich disclosure file very carefully, Paul and I have discovered a number of things that are very useful for us to know.

Please read the "READ_ME" file in the folder first. That will guide you through the rest of the information.

After you feel that you are familiar with the contents of the folder, I think that you and I should talk about it by phone.

You can contact Paul through email to set up a time for a phone conversation between us when you are ready.

Thanks,

Tom Kost (Paul's brother)"

The attached zipped folder was called 'To_Julia.zip"[1]

17. On July 22, 2019 at 6:58 AM Dulberg sent another email to Williams stating:[2]

"... I'm sending this email to confirm that you received the email below I sent on July 8th. ..."

Williams never responded to the request to meet or discuss these issues by phone.

18. On Jul 23, 2019 at 4:42 PM Williams wrote an email to Dulberg stating:[3]

"... First, we have not completed our discovery disclosure to the other side. We need to do so. Mast and the Popovich firm sent discovery requests to you (through us) some time ago. You sent responses and then we have modified them. We need to finalize these responses and send them. I received additional time, but we are well over our time and we need to get this completed.

Attached are the responses that I sent for your review on July 2, 2019 based upon your prior changes.

---

1 Group Exhibits (showing key folders)/Exhibit folder 14-To_Julia (unzipped version)
2 Exhibit 7-2019-07-22_0658 AM_SENT_Forward to Julia.pdf
3 Exhibit 8-2019-07-23_1642 PM_RECV_Dulberg v Mast et al Discovery.pdf

Please review and respond by the end of the week. ...”

19. On July 26, 2019 at 5:09 PM Dulberg sent an email to Williams with an attached zip folder containing 4 files. One of the 4 files is called:[1]

‘2019-07-25_Notes on DULBERG’S RESPONSES TO DEFENDANTS REQUESTS FOR PRODUCTION TO PLAINTIFF.pdf’

Under each of the 11 requests for production of documents Williams responded:

“All relevant documents in Plaintiff’s possession will be produced.”

Under each of the 11 responses written by Williams Dulberg wrote:

“Notes to Julia: A. This should read; All relevant documents in Plaintiff’s possession have been produced and will be updated if more become available.”

20. On July 31, 2019 at 2:44 PM Williams sent an email to Dulberg with 4 attached files:[2] [3]

Dulberg’s Answers to Popovich Interrogatories to Plaintiff 2019 July 29.docx
Dulberg Answers to Thomas Popovich Expert Interrogatories Draft 2019 July 31.docx
Dulberg’s Answers to Popovich Interrogatories to Plaintiff 2019 July 31.docx
Dulberg RTP Resposes 2019 July 31.docx

The file called:[4]

‘Dulberg RTP Resposes 2019 July 31.docx’

contained all of Dulberg’s answers as:

“All relevant documents in Plaintiff’s possession were produced”

as Dulberg instructed her to do.

21. On October 4, 2019 at 10:50 AM Dulberg sent an email to Williams stating:[5]

“... Please let me know what day and time you would prefer a call from my Bother Tom and me. ...”

Williams again never responded to the July 8, 2019 request for a telephone meeting or to the

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1 Exhibit 9-2019-07-26_1709 PM_SENT_Dulberg v Mast et al Discovery_ATTACHMENTS.pdf (Pages 10-12)
2 Exhibit 10A-2019-07-31_1444 PM_RECV_Discovery Responses_ATTACHMENTS.pdf
3 Group Exhibits (showing key folders)/Exhibit folder 4-2019-07-26_1709 PM_SENT_Dulberg v Mast et al Discovery
4 Exhibit 10-Dulberg RTP Resposes 2019 July 31.docx
5 Exhibit 11-2019-10-04_1050 AM_SENT_FW Dulberg v The Law Offices of Thomas J Popovich PC et al McHenry County IL No 17 LA 377.pdf

October 4, 2019 request for a phone meeting.

22. On October 21, 2019 at 1:40 PM Williams sent an email to Dulberg with 15 pdf attachments totaling over 4100 pages of documents.[1]
In a pdf called:[2]

'Dulberg RTP Responses FINAL 2019 September 4.pdf'

all of Dulberg's written answers stating:

"All relevant documents in Plaintiff's possession **were produced**" [emphasis added]

were changed by Williams to:

"All relevant documents in Plaintiff's possession **will be produced**" [emphasis added]

without Dulberg's permission or knowledge.

The meta-data[3] in the pdf code shows that the document 'Dulberg RTP Responses FINAL 2019 September 4.pdf' was created and modified on September 4, 2019.

A certification page signed by Dulberg called:[4]

'Dulberg Paul Signed Verification for Discovery.pdf'

was also attached to the email.

23. On November 4, 2019 Williams informed the Judge and opposing counsel that she produced "pretty much everything" in her possession in the following exchange:[5]

> "MR. FLYNN: So I think they are amending the discovery answers and possibly producing more documents. I'm not sure.
> THE COURT: Is that correct, counsel, not putting you on the spot, but is that an accurate representation?
> MS. WILLIAMS: Right. **So I think we have produced pretty much everything we have, but I can talk to counsel about the documents.**" [emphasis added]

24. On November 26, 2019 at 3:33 PM Williams sent an email to opposing counsel Flynn stating:[6]

> "... Attached is the supplement interrogatory disclosure. **As for documents, we have produced everything in our possession.** ..." [emphasis added]

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1 Exhibit 12A-2019-10-21_1340 PM_RECV_Discovery and status update_ATTACHMENTS.pdf
2 Exhibit 12-Dulberg RTP Responses FINAL 2019 September 4.pdf
3 Exhibit 13-creation date metadata of exhibit 12.png
4 Exhibit 14-Dulberg Paul Signed Verification for Discovery.pdf
5 Exhibit 15-Pages from ROP_Vol_1_of_1_230421_1628_8FF9DDF1-3.pdf (Page 3 Lines 10-18)
6 Exhibit 16-2019-11-26_1533 PM_RECV_Re Dulberg _ATTACHMENTS.pdf (Page 1)

25. On December 17, 2019 at 11:00 AM Williams sent an email to Flynn stating:[1]

> "... In preparation for our call today, I am resending the all discovery as I don't think you received some of them the first time. ..."

with 9 files attached.

The email had the following bates numbered documents attached and a verification statement signed by Dulberg:

> Dulberg BK Files Bates 2599.pdf
> Bates 2620.pdf
> Dulberg Document Disclosure FINAL 2019 May 29.pdf

26. The file:[2]

> "Dulberg BK Files Bates 2599"

is 21 pages and consists of the contents of this file in alphabetical order:[3]

> Gooch Thumbdrive/Dulberg UNDERLYING CASE DOCS/Files From Baudin's Office/Paul Dulberg - BK Docs

But Williams already turned over all contents of the folder 'Dulberg UNDERLYING CASE DOCS' on May 30, 2019 including the sub folder:

> Gooch Thumbdrive/Dulberg UNDERLYING CASE DOCS/Files From Baudin's Office/Paul Dulberg - BK Docs

so there were no files in "Dulberg BK Files Bates 2599" turned over in December 17, 2019 that were not already included in 'Dulberg Document Disclosure FINAL 2019 May 29.pdf'[4] which was turned over on May 30, 2019.

Williams must have known this because she created the original pdf and the files with the same names are in her working folder of the May 30, 2019 document production:[5]

> Dulberg Master File/Dulberg Production JCW Working Folder/Dulberg JCW DRAFT To Be Produced

27. The pdf "Bates 2620"[6] contains the following files merged together appearing in alphabetical order:

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1 Exhibit 17-Dulberg case.pdf (Pages 3-4)
2 Exhibit 18-Dulberg BK Files Bates 2599 .pdf
3 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive
4 Exhibit 5-Dulberg Document Disclosure FINAL 2019 May 29.pdf
5 Group Exhibits (showing key folders)/Exhibit folder 3-Dulberg JCW DRAFT To Be Produced
6 Exhibit 19-Dulberg Bates 2620.pdf

Baudin
Baudin1
Baudin2
Baudin3
Baudin4
Baudin5
Baudin6
Baudin7
Proof of Service of Documents 2018 October 8.pdf
SSDI
SSDI1
SSDI2
SSDI3
SSDI4

These are the emails from SSDI and the Baudins that Williams suppressed earlier and one public document from the current case Dulberg v Popovich and Mast (17LA377) was inexplicably renamed and added to the group.

28. On Jan 31, 2020, at 12:45 PM, Julia Williams sent an email to Flynn stating:[1]

> "... I am writing regarding the outstanding discovery issues. I am producing further documents bates stamped 2639- 2645.
> ...
> "2. Brad Balke. Brad Balke's appearance is attached as 2645. This should resolve all of the current discovery issues that you presented to us. We will continue to supplement our discovery responses if more documents are discovered. ..."

Williams was suppressing about 40 email documents between Balke and Dulberg while Williams wrote this and Flynn will later claim in a motion for summary judgment that Dulberg had the opportunity to inquire from Balke about Popovich and Mast.

29. The document:[2]

> "Dulberg Bates 2639 to 2645 2020 Jan 31.pdf"

consists of 4 documents of 7 total pages including a single email document 'HansMast 2-65'[3] of an exchange between Balke and Dulberg about a packet of documents which was mishandled and mailed to the Law Office of Thomas J. Popovich P.C. when in the possession of Saul Ferris and remained at the Law office of Thomas J. Popovich P.C. `for two months without Dulberg's knowledge or consent.

30. Dulberg was deposed by opposing counsel on February 19, 2020 and Defendant Mast was

1 Exhibit 20-Dulberg v Popovich et al.pdf (Pages 78, 87)
2 Exhibit 21-Dulberg Bates 2639 to 2645 2020 Jan 31.pdf
3 Exhibit B12-Hans Mast2-65.pdf

deposed on June 25, 2020.

31. On June 19 2020 at 2:35 PM, six days before the deposition of Mast, Flynn sent an email to Williams stating:[1]

> "Julia: I just received your notice of attorney lien. Will you still be taking the dep next week?
>
> My experience with receiving liens at this stage of litigation(in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for Mast's dep. ..."

32. On June 25, 2020 at 12:31 PM, about 20 minutes after the deposition of Mast, Flynn sent an email to Williams stating:[2]

> "... Just wanted to write while it is fresh in my mind, but I'd like to close the dangling issues from your client's deposition, including the production of communications with Mr. Gooch in view of the "discovery rule" issues. Please advise ..."

33. On June 26, 2020 12:13 PM Williams sent an email to Flynn stating:[3]

> "... Thank you for the follow up. I am working on the production today. Are you around on Monday—can we chat then? ..."

Williams never worked on any production of communications with Mr Gooch and she did not address the issue in court. Instead, she produced over 6000 pages of documents that were not related to Gooch in any noticeable way and then resigned as Dulberg's attorney.

34. On June 26, 2020 at 9:40 AM Williams sent an email to Dulberg stating:[4]

> "... I am working to produce more documents to the other side as we indicated in your deposition and pursuant to our duty to continually update discovery. There appear to be some documents from the Gooch file that were not produced in discovery in the legal malpractice case and I want to make sure we have produced everything required to the other side. We are going to produce those now. Many appear to be duplicates. ..."

35. On July 9, 2020 at 11:42 AM Williams sent an email to Flynn stating:[5]

> "... Attached are more documents. As I stated on the phone, many are duplicative of what has already been produced but some are not. Because they came from a difference source, I could not determine what had been produced previously and what had not, thus, to be safe, I am producing everything. The documents should be searchable." The documents

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1 Exhibit 22-Dulberg -2.pdf (Page 1)
2 Exhibit 23-Dulberg -3.pdf (Page 1)
3 Exhibit 23-Dulberg -3.pdf (Page 2)
4 Exhibit 24--2.pdf (Page 1)
5 Exhibit 25a-Dulberg v Popovich et al Documents.pdf Page 1

are in four files as follows:

1. 2646-2649
2. 2650-7892
3. 7893-8551
4. 8552-8708

I may need to send them in separate emails due to the size. ..."

Attached Files:

'Dulberg Stamped 2646-2649.pdf'[1]
'Dulberg 7893-8551.pdf'[2]
'Dulberg 8552-8708.pdf'[3]

36. On July 9, 2020 at 11:43 AM Williams sent an email to Flynn stating:[4]

"Here is the final file."

Attached file:

'Dulberg 2650-7892.pdf'[5]

37. Williams claimed to Flynn that these documents "came from a different source". Williams was in possession of all of these documents before May 30, 2019 when she produced "Dulberg Document Disclosure FINAL 2019 May 29.pdf"[6] to opposing counsel.

38. On July 9, 2020 at 11:44 AM Williams sent an email to Dulberg stating:[7]

"... More documents were sent to George Flynn today to ensure that Gooch's entire file on the underlying case was sent as well as communications from your subsequent counsel in the underlying case.

There are two emails. This is the first with three files attached. ..."

Attached files:

'Dulberg Stamped 2646-2649.pdf'[8]
'Dulberg 7893-8551.pdf'[9]

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1 Exhibit 26-Dulberg Stamped 2646-2649.pdf
2 Exhibit 28-Dulberg 7893-8551 .pdf
3 Exhibit 29-Dulberg 8552-8708.pdf
4 Exhibit 25b-Dulberg v Popovich et al Documents-2.pdf
5 Exhibit 27-Dulberg 2650-7892.pdf
6 Exhibit 5-Dulberg Document Disclosure FINAL 2019 May 29.pdf
7 Exhibit C0i-2020-07-09_1144 AM_RECV_Fwd Dulberg v Popovich et al Documents_ATTACHMENTS.pdf
8 Exhibit 26-Dulberg Stamped 2646-2649.pdf
9 Exhibit 28-Dulberg 7893-8551 .pdf

'Dulberg 8552-8708.pdf'[1]

39. On July 9, 2020 at 11:47 AM Williams sent an email to Dulberg stating:[2]

"... This is the second email I sent to George with the fourth and final file. ..."

Attached files:

'Dulberg 2650-7892.pdf'[3]

40. On Jul 10, 2020, at 10:46 AM Williams sent an email to Flynn stating:[4]

"... I believe there may have been three, but simply because the first email took forever to send as the documents attached were so large. The first contained all four of the files. The second contained three files and the third contained one file. There are only four files total—so the emails are duplicative as originally I did not believe the first email would send. Thus, you should have these four files:

1. Dulberg Stamped 2646-2649
2. Dulberg 2650-7892
3. Dulberg 7893-8551
4. Dulberg 8552-8708.

Please let me know if you did not receive all of the documents. ..."

Williams is 'flooding' Dulberg with an overwhelming number of documents and sneaking all but one of the documents that were previously suppressed into the flood, behind thousands of pages of useless material. Williams continues to suppress one document: the Appellate Court slip ruling Tilschner v Spangler.

41. The document disclosure on July 9, 2020 contained more than 6000 pages of documents which is more than double the amount of all document pages Williams disclosed to the opposing counsel before that date. In the region from DUL 005246 to DUL 008708 documents were produced for the first time from the folder:[5]

Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client

The July 9, 2020 document production consisted of the following regions as listed (and as shown in 'Visual Aid 1 - Sources of bates order'[6]):

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1 Exhibit 29-Dulberg 8552-8708.pdf
2 Exhibit C0j-2020-07-09_1147 AM_RECV_Fwd Dulberg v Popovich et al Documents_ATTACHMENTS.pdf
3 Exhibit 27-Dulberg 2650-7892.pdf
4 Exhibit 25b-Dulberg v Popovich et al Documents-2.pdf (Page 7)
5 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client
6 Visual Aids/Visual Aid 1 - Sources of bates order.png

DUL 008552 to DUL 008708[1] are the contents of the following folder in alphabetical order:[2]

Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Client Handwritten Misc. Notes

DUL 007853 to DUL 008551[3] are the contents of the following folder in alphabetical order:[4]

Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Depositions

DUL 007561 to DUL 007852[5] are the contents of the following folder in alphabetical order:[6]

Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Client's Brown Jacket File

DUL 007532 to DUL 007560[7] are the contents of the following folder in alphabetical order:[8]

Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Documents Still In Envelopes

DUL 006688 to DUL 007531[9] are the contents of the following folder in alphabetical order:[10]

Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Emails

DUL 006354 to DUL 006687[11] are the contents of the following folder in alphabetical order:[12]

Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Misc

DUL 005246 to DUL 006354[13] are the contents of the following folder in alphabetical order:[14]

Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/TJP & Attorney Documents

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1 Exhibit 30-DUL 008552-DUL 008708.pdf
2 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Client Handwritten Misc. Notes
3 Exhibit 31-DUL 007893-DUL 008551.pdf
4 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Depositions
5 Exhibit 32-DUL 007561-DUL 007892.pdf
6 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Client's Brown Jacket File
7 Exhibit 33-DUL 007532_DUL 007560.pdf
8 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Documents Still In Envelopes
9 Exhibit 34-DUL 006688-DUL 007531.pdf
10 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Emails
11 Exhibit 35-DUL 006354-DUL 006687.pdf
12 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Misc
13 Exhibit 36-DUL 005246-DUL 006353.pdf
14 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/TJP & Attorney Documents

42. There are 3 large blocks of email documents in 'Dulberg 2650-7892.pdf'[1] as shown in 'Visual Aid 5 - Email hoax'[2].

DUL 002682 to DUL 002942[3] is 261 pages of the contents of the folder:

'Lawyer Emails by date'[4]

in alphabetical order. The folder contains 422 pages of unique email documents so 161 pages are missing.

'Visual Aid 6: Lawyer Emails by date hoax'[5] charts how the folder:

'Lawyer Emails by date'[6]

appears in the Williams-Clinton electronic case file. Williams first received the folder 'Lawyer Emails by date' on July 8, 2019 from Dulberg[7] as an attachment with 4 text files. One of the text files was named "_READ_ME.txt"[8] which has a section called "REFERENCE INFORMATION" in which Williams was informed:

> "... Folder: Lawyers Emails by date
>
> The emails in (pop) and (ddd) can be a real headache to look through. This folder helps Paul and me see the streams of email exchanges as they happen month by month. We find it useful. It is yours if you want it. If not, please ignore.
>
> Within these files I reference emails by using this folder and using the form (email: folder_name, file_name).
>
> For example, the reference (email: 2013 10, Mast2-219) should be easy to find in folder 2013 10. This folder contains emails from October, 2013 and each email stream is given a separate name. ..."

43. On February 20, 2020, one day after Dulberg's deposition, Williams and Clinton ignored the '_READ_ME.txt'[9] file and treated the contents of 'Lawyer Email by date'[10] as if they were new email files that needed to be disclosed to opposing counsel. This is shown in detail in'Visual Aid 6'-Lawyer Emails by Date hoax'[11]. During the 6th step as described in 'Visual Aid 6', 161 pages of the emails inexplicably disappeared. The truncated 261 page version of the contents of 'Lawyer Emails by date' was merged with 32 pages of documents to make a pdf of 297 pages

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1 Exhibit 27-Dulberg 2650-7892.pdf
2 Visual Aids/Visual Aid 5 - Email hoax.png
3 Exhibit 37-DUL 002682-DUL 002942.pdf
4 Group Exhibits (showing key folders)/Exhibit folder 9-Lawyers Emails by date, 422 pages total
5 Visual Aids/Visual Aid 6 - Lawyer Emails by date hoax.png
6 Group Exhibits (showing key folders)/Exhibit folder 9-Lawyers Emails by date, 422 pages total
7 Exhibit 38A-2019-07-08_1106 AM_SENT_Fwd Forward to Julia_ATTACHMENTS.pdf
8 Exhibit 38-_READ_ME.txt
9 Exhibit 38-_READ_ME.txt
10 Group Exhibits (showing key folders)/Exhibit folder 9-Lawyers Emails by date, 422 pages total
11 Visual Aids/Visual Aid 6 - Lawyer Emails by date hoax.png

which can be found in Williams' work product at:

> Dulberg Master File/Dulberg Documents to Be Produced 2020 June 25/Dulberg Files to be produced legal mal 2020 june misc. (done)/Dulberg 1 Gooch Retainer Contract.pdf[1]

44. 'Visual Aid 7 - Repeating document hoax'[2] shows how this pdf was constructed by adding repeating patterns of previously released documents with bankruptcy documents that have nothing to do with Dulberg's' case and merging these with 261 pages of the contents of 'Lawyer Emails by date'.

45. DUL 004853 to DUL 005245[3] are 393 pages of the folder:

> 'Paul Dulberg Emails'[4]

in alphabetical order. The folder contains 422 pages of unique email documents so 29 pages are missing.

46. DUL 006688 to DUL 007531[5] are 844 pages of the contents of the folder:

> Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Emails[6]

This is the only bates numbered group of emails in which no emails were removed.

47. Of the 4 large blocks of email documents Williams turned over to opposing counsel in total, only one block had no documents missing. All missing email documents from each email block are listed in 'Visual Aid 7 - Email hoax'[7]. The pattern of missing email documents creates a type of hidden obstacle course for anyone who has to locate bates-stamped email documents. It could take a person hours or days just to locate a specific bates-stamped email document. It is impossible to know which email pages are missing from each email block section without carefully analyzing each document individually.

The collections of emails that Williams received from Dulberg and from the Gooch Thumbdrive were very organized as can be seen in:

> Group Exhibits (showing key folders)/Exhibit folder 6-Paul Dulberg Emails, 422 pages total[8]
>
> Group Exhibits (showing key folders)/Exhibit folder 7-folders of emails sent to Williams as email attachments, 422 pages total[9]

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1 Exhibit 39-Dulberg 1 Gooch Retainer Contract .pdf
2 Visual Aids/Visual Aid 7 - Repeating document hoax.png
3 Exhibit 40-DUL 004852-DUL 005245.pdf
4 Group Exhibits (showing key folders)/Exhibit folder 6-Paul Dulberg Emails, 422 pages total
5 Exhibit 34-DUL 006688-DUL 007531.pdf
6 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Emails
7 Visual Aids/Visual Aid 7 - Repeating document hoax.png
8 Group Exhibits (showing key folders)/Exhibit folder 6-Paul Dulberg Emails, 422 pages total
9 Group Exhibits (showing key folders)/Exhibit folder 7-folders of emails sent to Williams as email attachments,

Group Exhibits (showing key folders)/Exhibit folder 8-Emails, 844 pages total[1]

Those same collections of emails were turned into a hacked-up, confusing mess by Williams and Clinton just before being bates stamped and sent to opposing counsel as 'Visual Aid 5'[2] shows.

48. DUL 002943 to DUL 004852[3] is an exact duplicate of DUl 000001 to DUL 002460[4] with some files removed so it contains no new documents that were not already produced. It is not plausible that Williams did not know DUL 002943 to DUL 004852 did not contain the same files as DUL 000001 to DUL 002460 because she could easily compare the 2 folders containing the contents of each section:

Dulberg Master File/Dulberg Production JCW Working Folder/Dulberg JCW DRAFT To Be Produced[5]

Dulberg Master File/Dulberg Documents to Be Produced 2020 June 25/Gooch Files to Be Produced in Legal Mal 2020 June/Dulberg UNDERLYING CASE DOCS (done)[6]

The contents of both folders are compared side by side in 'Visual Aid 10 - Duplicating long alphabetical list hoax'[7] and their source folders are shown. With the exception of the documents added to the May 30, 2019 document disclosure (the sources of which are mapped in 'Visual Aid 10'), the contents of the two folders can be seen to be basically identical.

49. DUL 002650 to DUL 002681[8] are the same 4 files totaling 7 pages from "Dulberg Bates 2639 to 2645 2020 Jan 31.pdf"[9] already turned over to opposing counsel on January 31, 2020 repeated 3 times with a 10 page bankruptcy document of 'Patricia Gallagher' and another bankruptcy document. The repeating pattern of 4 files is shown in 'Visual Aid 7 - Repeating document hoax'[10] and the source folders for the documents are shown.

50. This means that in the massive file 'Dulberg 2650-7892.pdf'[11] (which is over 5200 pages) the first 2596 pages does not contain a single relevant document that had not already been produced. The last 2646 pages had information being produced for the first time from the folder:

Gooch Thumbdrive\Dulberg Paul Dulberg Files From Client[12]

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422 pages total

1 Group Exhibits (showing key folders)/Exhibit folder 8-Emails, 844 pages total

2 Visual Aids/Visual Aid 5 - Email hoax.png

3 Exhibit 41-DUL 002943-DUL 004851.pdf

4 Exhibit 42-DUL 000001-DUL 002460.pdf

5 Group Exhibits (showing key folders)/Exhibit folder 3-Dulberg JCW DRAFT To Be Produced

6 Group Exhibits (showing key folders)/Exhibit folder 10-Dulberg UNDERLYING CASE DOCS (done)

7 Visual Aids/Visual Aid 10 - Duplicating long alphabetical list hoax.png

8 Exhibit 43-DUL 002650-DUL 002681.pdf

9 Exhibit 21-Dulberg Bates 2639 to 2645 2020 Jan 31.pdf

10 Visual Aids/Visual Aid 7 - Repeating document hoax.png

11 Exhibit 27-Dulberg 2650-7892.pdf

12 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client

The documents being produced for the first time were hidden behind 2596 pages that did not contain a single document that was not already produced. The final bates numbered documents were then given to their fully disabled client **just before** Clinton and Williams resigned as counsel and **just after** opposing counsel filed a supplemental document production request for some of these documents being bates stamped and released by Williams for the first time. They are gas-lighting a handicapped person to the extreme to greatly weaken his valid claims.

51. On July 27, 2020 at 2:24 PM Ed Clinton sent an email to Dulberg stating:

> "... Please see the attached letter. Best Regards ..."[1]

In the attached letter[2] Clinton and Williams resigned as Dulberg's attorneys.

52. On July 29, 2020 at 1:56 PM Dulberg sent an email to Ed Clinton and Julia Williams with the subject "Need clarification on outstanding issues before your departure" stating:[3]

> "... Outstanding questions on open issues for Clinton firm before departure:
> ...
> 2. What happened with the objections raised during Dulberg's deposition when Dulberg was questioned about conversations with Dulberg's former counsel Gooch? Did you get a ruling or does that still need to be argued before judge Meyer? ..."

Williams answered:

> "... There has been no motion practice on the issue and thus, there is no ruling. Your future counsel will need to bring that before the Judge at some point. ..."[4]

Dulberg also asked:

> "... 3. Similar to the last question, Have the objections in the Mast deposition been worked out or ruled on by judge Meyer? ..."

Williams answered:

> "... There has been no motion practice on the issue and thus, there is no ruling. Your future counsel will need to bring that before the Judge at some point. ..."

53. The Clinton law firm filed[5] their Motion to Withdraw as Dulberg's counsel on August 18, 2020 and were granted[6] the Motion to Withdraw on September 10, 2020.

54. On August 19, 2020 at 8:11 AM Paul Dulberg sent an email with Williams and Clinton

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1 Exhibit 44-Dulberg v Popovich 2017 L 377.pdf (Page 1)
2 Exhibit 45-Dulberg Client Letter 2020 July 27.pdf
3 Exhibit 46-Need clarification on outstanding issues before your departure.pdf (Page 1)
4 Exhibit 46-Need clarification on outstanding issues before your departure.pdf (Page 2)
5 Exhibit 47-Dulberg Motion to Withdraw Stamped 2020 August 18.pdf
6 Exhibit 47a-Pages from CLR_Vol_1_of_2_230421_1627_D4CDE198-3.pdf

stating:[1]

"Hi Julia & Ed,

Now that you have filed for withdrawal I need to ask for a few things before you depart.

1.) The case file.
2.) PDF's of all communications/correspondence with opposing counsel.
3.) The paper copies of the Baudin case file I provided you with at our first meeting in your office.

The first 2 items I can download from a link you provide but the 3rd Item I will need to pick up or you can ship it to me at my expense. Also, I still have your thumb drive. I can mail it back to you or drop it off when I pick up the paper Baudin file. Let me know which you prefer. Thank you both again for your professionalism and help with my case ..."

55. On August 19, 2020 at 1:26 PM Julia Williams sent an email to Dulberg stating:[2]

"... We are happy to provide whatever documents you need. Mary will be preparing an electronic copy of the file for you. Because your file is large, we will likely send you a drive with the full file. We will mail it to your home. For the paper copies of the Baudin file, please work directly with Mary on picking those up or having them shipped. ..."

56. On August 20, 2020 at 5:10 AM Dulberg sent an email to Clinton and Williams stating:[3]

"... I emailed Mary about the case files but I have one other concern. At our first meeting Ed made copies of the checks I wrote to Gooch. I would like a copy of these included in the case file. The retainer check was $10,000 and another $5,000 check was written to cover the initial costs for filing fee's and an expert witness. Ed said he would get the $5,000 back from Gooch. Was anything done with this or does Gooch still have the extra $5,000 for the expert witness that was never hired? ..."

57. On August 25, 2020 at 10:37 AM Dulberg sent an email to Clinton and Williams stating:[4]

"... This is just a reminder. The following 3 items are to be shipped via UPS or Fedex, 2nd day delivery option, to my home at my expense.

1. The current case file - on a thumb drive
2. All communications with opposing counsel and any other party regarding my case - on a thumb drive
3. The paper Baudin case file from the underlying case - in a box

See my shipping address below:

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1 Exhibit 48-2020-08-20_0510 AM_SENT_Dulberg v Mast Motion to Withdraw.pdf (Page 1)
2 Exhibit 48-2020-08-20_0510 AM_SENT_Dulberg v Mast Motion to Withdraw.pdf (Page 1)
3 Exhibit 48-2020-08-20_0510 AM_SENT_Dulberg v Mast Motion to Withdraw.pdf (Page 1)
4 Exhibit 49-2020-08-25_1037 AM_SENT_Document Request.pdf

Paul Dulberg
4606 Hayden Ct.
McHenry IL. 60051

Please let me know how you need me to pay your firm for the shipping and the thumb drive. Please feel free to call me with any questions or concerns. ..."

58. On September 2, 2020 at 10:40 AM Ed Clinton sent an email to Dulberg stating:[1]

"Bauldin case file was sent to in several parts because the box was falling apart and it seemed more logical to spread it out. The tracking numbers are:
7714 1307 6317
7714 1295 8029
7714 1312 3496
7714 1242 1808
7714 1208 8509
Mary"

59. On September 8, 2020 at 9:24 AM Dulberg sent an email to Clinton stating:[2]

"... I received the packages from the tracking numbers you listed below.

They appear to be the paper Baudin case file from the underlying case.

I am still waiting on the tracking number Mary sent that should have the thumb drive with the current case file. ..."

60. On September 9, 2020 at 12:34 PM Dulberg sent an email to Mary Winch, Clinton and Williams stating:[3]

"... I received the thumb drive yesterday. ..."

61. On October 15, 2020, at 4:01 PM, Paul Dulberg sent an email to Williams stating:[4]

"... I know your off this case but I am overwhelmed and could use your help.

I need all of the final discovery documents we sent to opposing counsel through the case.

This includes all our final answers to interrogatories and document production sent as well as all supplementals requests etc....

Why?
I messed up a few weeks ago when you sent the thumb drive. It filled my hard drive and I couldn't get it all in the Mac and I had a computer crash. My machine froze up and I had to move or delete a lot of data. I tried to then to use my old 32 bit windows PC and move

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1 Exhibit 49a-2020-09-02_1041 AM_RECV_Document Request.pdf (Page 1)
2 Exhibit 49c-2020-09-08_0924 AM_SENT_Document Request.pdf (Page 1)
3 Exhibit 49d-2020-09-09_1234 PM_SENT_Thumb Drive.pdf
4 Exhibit 50-2020-10-15_1601 PM_SENT_PLEASE HELP WITH CASE FILE.pdf

the files to windows and that created more issues than I can count. I have spent weeks trying to sort things out. Bottom line, I think I'm suffering from information overload and moved so many things around to make room that I can't find anything anymore or if I do find it I'm not sure that it is the final version of what I am looking for.

I will never know your file system as well as you.

Please help me out with this

You can resend me the emails with the final discovery documents and interrogatories
Or
Send new emails with all the final discovery documents
Or
Send me the exact file names so I can do a search and find them.

I know I am asking a lot of you to help even though you withdrew and I am sorry I wasn't better prepared for that much data to come my way. ..."

62. On October 15, 2020, at 11:23 PM, Paul Dulberg sent an email to Williams stating:[1]

"... Have all the items in a folder named "Dulberg Documents to Be Produced 2020 June 25" been sent to opposing counsel already? ..."

63. On October 16, 2020 at 8:40 AM Williams sent an email to Dulberg stating:[2]

"Everything that was produced is in the file Dulberg Discovery Produced by Dulberg to OC. All the files in the 2020 June folde should have been produced over the summer. ..."

64. On Oct 16, 2020, at 10:38 AM, Paul Dulberg sent an email to Williams stating:[3]

"... It looks like everything in the "Dulberg Documents to Be Produced 2020 June 25" is in the "Dulberg Docs Produced by Dulberg to OC" with the exception of "Dulberg JCW Notes re Discovery 2020 June 26.docx", which is your notes, and the "Dulberg Paul's Notes on Deposition and handwritten notes 2020 July 1" which is nothing more than a color duplicate of the black and white PDFs produced in the "Dulberg 7893-8551 .pdf"

Is it safe for me to assume that opposing counsel has been given all documents with the exception of the privileged gooch emails? [Emphasis Added]

Also, I see in the "Dulberg JCW Notes re Discovery 2020 June 26.docx" that you were worried about the waiver issue for Gooch. I don't agree, I answered those questions in the deposition under an objection and certainly didn't waive privilege.

It appears the defense counsel is confused over when I should have known of an injury vs when I learned from an attorney that I had a case in an attempt to pry into privileged communications that cannot change the outcome for their stated goal of reopening the

1 Exhibit 50a-2020-10-16_0840 AM_RECV_PLEASE HELP WITH CASE FILE.pdf (Page 1)
2 Exhibit 50a-2020-10-16_0840 AM_RECV_PLEASE HELP WITH CASE FILE.pdf (Page 1)
3 Exhibit 50b-2020-10-16_1038 AM_SENT_PLEASE HELP WITH CASE FILE.pdf (Page 1)

statute of limitations and deposing Gooch and myself for a second time.

It seems to me to be simple math when calculating the statute of limitations

1. The malpractice happened between October 2013 and February 2014 in the underlying case
2. The earliest I could or should have known of the injury was December 12th, 2016 from the award in the underlying case
3. This case was filed on November 28, 2017
4. There is no conversation that could take place between myself and Gooch that could change the first two dates even in the slightest and the third date, the date we filed suit was the culmination of our work product in the current case, not the underlying case.

One more question, Where do I find all the final answers we sent to opposing counsel for the interrogatories and supplemental interrogatories? ..."

65. On October 16, 2020 at 10:44 AM Dulberg wrote an email with the subject "PLEASE HELP WITH CASE FILE" to Williams stating:[1]

"Oh, and just so you are aware, I may have to argue this on my own without counsel and I am going to do everything I can to see this case through to the end.
Continue to help me navigate your case file, perhaps correct me when I am wrong and I will make sure your lean gets satisfied out of the award.
Thank you all for what you have done thus far ..."

66. On October 16, 2020 at 12:45 PM Williams sent an email to Dulberg stating:[2]

"Paul:

You are safe in assuming that everything we possessed was produced with the exception of the privilege Gooch documents/emails. [Emphasis Added]

The file titled "Dulberg Discovery Produced to Def" contains all of the written discovery turned over to the opposing party, including, interrogatory answers, responses to request to produce, documents that were produced in response to the request to produce. ..."

One document was completely suppressed by Williams and never turned over to opposing counsel by the Clinton Firm: The Appellate Court slip ruling Tilschner v Spangler

67. On October 19, 2020 at 8:25 AM Paul Dulberg sent an email to Clinton and Williams stating:[3]

"Hi Julia and Ed,

I'm sure you noticed the amount of emails I have sent. I'm in a frantic state to find new counsel and simultaneously try to learn what I call "legalese" so I can reply to and argue

1 Exhibit 50c-2020-10-16_1044 AM_SENT_PLEASE HELP WITH CASE FILE.pdf
2 Exhibit 50d-2020-10-16_1245 PM_RECV_PLEASE HELP WITH CASE FILE.pdf
3 Exhibit 51-2020-10-19_0825 AM_SENT_Contingency.pdf

Flynns Motion on my own if need be and learn your file system.

Before I go give $10,000 on yet another attorney, whom I don't know, I wanted to give you an option since your already familiar with the case, know the case file and I do trust you and don't think it fair that you did all that work and may not get paid what you should if I end up hiring the wrong attorney.

In less than 3 months I will have enough cash in hand to fund this case and finish it 3x over. It will probably take less time but that is my worst case scenario as my family and I move to liquidate some assets and free up our capital rather than borrow from loan sharks

I am hoping that you would be interested in taking back representation of this case.

Rather than hire a new attorney, I can use the $10,000 to pay for you legal services over the next 3 months

This gives me 3 months to make the arrangements needed to have enough funding to go at this paying in full the whole way through.

If after 3 months I don't have the funds to finish this case, you can withdraw again.

I believe this would give both of us the best chances at recouping the money and time invested thus far.

Time is limited so please think about this and let me know in the next day or two."

68. On October 19, 2020 Williams sent an email to Dulberg stating:[1]

"... We will cannot accept your matter again.

As for the remainder of the emails that you sent, we provided you with the entire file. The documents are labeled. Anything in the folder that stated it was produced to OC—I provided the specific name in my email last week—those documents/written discovery answers were produced to OC. If it's not in that folder, it wasn't produced. There are several duplicates of documents—you should cross check it with that folder. **We did produce everything we could to OC with the exception of confidential communication between you and Gooch. I believe all the other relevant and requested documents were produced.** [Emphasis Added]

We did not respond to the July 2020 supplemental discovery that George Flynn issued to you. I sent the requests in an email to you, but they are also on the flash drive.

Again, everything is on the flash drive, so we recommend that you look there. We wish you the best of luck. ..."

69. From the time Flynn mentioned taking care of "dangling loose ends" to Williams (about 20 minutes after the end of the Mast deposition on June 25, 2020) to the time that Williams either resigned as Dulberg's counsel on July 27, 2020 or received a court order granting the Motion to Withdraw on September 10, 2020, Williams did no noticeable work other than the production of

1 Exhibit 51a-2020-10-19_0952 AM_RECV_Contingency.pdf

the more than 6000 documents she had been actively suppressing since May 30, 2019. Yet she continued to suppress one document: The Appellate Court slip ruling Tilschner v Spangler. She did no noticeable work to address either the Gooch communications nor did she object to turning them over in court.

70. Williams was in possession of the Gooch Thumbdrive[1] since around November 28, 2018 which is about 6 months before she first turned over 2598 pages of documents to opposing counsel on May 30, 2019. The excuse Williams gave Dulberg for sneaking the suppressed documents back into the documents turned over to opposing counsel was that she needed to "ensure that Gooch's entire file on the underlying case was sent" and she needed to ensure that "communications from your subsequent counsel in the underlying case" were also sent to Flynn.

71. Williams does not explain why Gooch's entire file (which she had in her possession since November, 2018) was finally being turned over on July 9, 2020 just 18 days before she resigned as Dulberg's attorney. Williams does not explain why "communications from your subsequent counsel in the underlying case" were being turned over on July 9, 2020 just 18 days before she resigned as Dulberg's attorney. If Williams did not intentionally suppress the email documents on May 30, 2019, Williams would not have had to disclose the same documents on July 9, 2020 (that she intentionally kept suppressed for almost 14 months).

72. Communication between Flynn and Williams shows that Williams performed actions on June 19, 2020 which led Flynn to believe there was a high probability Williams would resign as Dulberg's attorney (and Williams actually did resign as Dulberg's attorney on July 27, 2020). She released over 6000 pages of documents to Flynn on July 9, 2020, which is about 20 days after Flynn was led to believe there was a strong possibility she would be resigning shortly, and 18 days before she actually did resign. Williams released over 6000 pages of documents to the opposing party over 9 months after Williams stated in the November 4, 2019 court transcript: "So I think we have produced pretty much everything we have, but I can talk to counsel about the documents" and almost 14 months after Williams released 2598 pages of documents to the opposing counsel on May 30, 2019.

73. Williams and Clinton also created misleading work product in the electronic case file they gave to Dulberg and subsequent counsel in order to hide what were doing and to deceive Dulberg and any future attorney Dulberg may have concerning how and when documents were produced to Opposing Counsel. For example, the folder 'Dulberg Master File\Gooch Files'[2] contains other folders that were renamed to show how Williams should have produced Dulberg's documents to opposing counsel but did not. The proof given in this complaint and accompanying Visual Aids shows Williams did not produce Dulberg's documents in the way that is suggested in the folder 'Gooch Files' (but pretended to Dulberg that she did). The folder is not true work product. It is made to create an 'alibi' or 'decoy'. Another example of a 'decoy' folder is 'Dulberg Master File\ Dulberg Research'[3] which was created on May 28, 2019 just (before the May 30, 2019 document disclosure) as a way to hide the certified Appellate Court slip copy of Tilschner v Spangler.

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1 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive
2 Group Exhibits (showing key folders)/Exhibit folder 11-Dulberg Gooch File
3 Group Exhibits (showing key folders)/Exhibit folder 12-Dulberg Research

74. Each of the Visual Aids appear to show a series of ***intentional hoaxes*** that Williams and Clinton knowingly played on Dulberg. Williams and Clinton also appear to mock their own fully disabled client by repeatedly mis-typing his name as "Duhlburg" as can be seen in "Visual Aid 11 - Mocking client"[1]. This appears to be an inside joke at the Clinton Law office where their client appears as stupid. "Duh" Dulberg seems not to know how the more intelligent Williams and Clinton are secretly sabotaging his case.

CHAPTER 2: COLLABORATION WITH OPPOSING ATTORNEY TO BENEFIT THE DEFENDANTS AND SABOTAGE PLAINTIFF'S CASE

2A THE EXAMPLE OF BANKRUPTCY

2A1. Dulberg declared bankruptcy on November 26, 2014[2] while he was the plaintiff in PI case 12LA178.

2A2. The defendants, Thomas Popovich and Hans Mast (Dulberg's attorneys at the time Dulberg filed for bankruptcy) continued to represent Dulberg in the 22nd Judicial Circuit Court even though they knew:

(a) The case was under the automatic stay in The 7th Circuit United States Bankruptcy Court for the Northern District of Illinois, Western Division.

(b) Dulberg had no standing to pursue the case while the case was under an automatic stay in The 7th Circuit United States Bankruptcy Court for the Northern District of Illinois, Western Division.

(c) All acts in violation of the automatic stay are void.

2A3. As stated in **Re Enyeti**:

"It is well established in case law that acts taken in violation of the automatic stay imposed under section 362(a) of the Bankruptcy Code are deemed void ab initio and lack effect. See Middle Tenn. News Co., Inc. v. Charnel of Cincinnati, Inc., 250 F.3d 1077, 1082 (7th Cir. 2001) ("Actions taken in violation of an automatic stay ordinarily are void."); York Ctr. Park Dist. v. Krilich, 40 F.3d 205, 207 (7th Cir. 1994) (judgment issued against debtors without a modification of the automatic stay must be vacated); Matthews v. Rosene, 739 F.2d 249, 251 (7th Cir. 1984) (orders issued in violation of automatic stay provisions of Bankruptcy Code ordinarily are void); In re Benalcazar, 283 B.R. 514, (Bankr.N.D.Ill. 2002) (same); Garcia v. Phoenix Bond Indem. Co. (In re Garcia), 109 B.R. 335, 340 (N.D.Ill. 1989) ("[T]he fundamental importance of the automatic stay to the purposes sought to be accomplished by the Bankruptcy Code requires that acts in violation of the automatic stay be void, rather than voidable. Concluding that acts in violation of the automatic stay were merely voidable would have the effect of encouraging disrespect for the stay by increasing the possibility that violators of the automatic stay may profit from their disregard of the law, provided it goes undiscovered

1 Visual Aids/Visual Aid 11 - Mocking client.png
2 Exhibit A1-0_Docket Report_OCR.pdf

for a sufficient period of time."). See also Hood v. Hall, 321 Ill.App.3d 452, 254 Ill. Dec. 470, 747 N.E.2d 510, 512 (2001) ("There is no question that judgments entered in violation of the automatic stay in bankruptcy are void ab initio . . . and that void judgments may be attacked at any time."); Concrete Prod, Inc. v. Centex Homes, 308 Ill. App.3d 957, 242 Ill.Dec. 523, 721 N.E.2d 802, 804 (1999) ("[A]cts in violation of the section 362(a) automatic stay are void ab initio.")"

2A4. Williams and Clinton, as Dulberg's retained legal malpractice attorneys, must have known about the automatic stay and Dulberg's lack of standing but they never informed Dulberg of this. They must have known that the acts of Popovich and Mast can be viewed as an attempt to change the value of an asset in a Federal Bankruptcy Estate.

2A5. Williams and Clinton must have also known that all of Dulberg's attorneys (after Dulberg filed for bankruptcy on November 26, 2014, Popovich, Brad Balke and the Baudins) violated the automatic stay and represented Dulberg in the Illinois 22nd Judicial Circuit Court even though each must have known the court had no jurisdiction and that Dulberg had no standing as plaintiff in the PI case. Williams and Clinton must have known all 3 law firms pushed Dulberg to settle his case against Gagnon in violation of Federal Bankruptcy laws, and that these attempts can be viewed as efforts to change the value of an asset in a Federal Bankruptcy Estate.

2A6. Dulberg informed Williams to include information about Dulberg's November 26, 2014 bankruptcy in the SECOND AMENDED COMPLAINT. Dulberg informed Williams that the bankruptcy trustee forced him into a binding mediation agreement against his will.

2A7. On December 4, 2018 at 2:20 PM Dulberg sent an email to Williams stating:[1]

"Please find the two file attachments named working.pdf and comment on complaint.txt Comment on complaint.txt contains a color code explanation for what is in working.pdf. Also, I have attached the order in which the judge decided what was stricken along with the transcripts that will be needed to decipher the courts order. Please feel free to contact me with any and all questions you may have."

2A8. In the document "working.pdf" Dulberg edited paragraph 43 in red font to include:[2] [3]

"Dulberg, who was injured, disabled and unable to work with household bills stacking up, realized the medical bills and attorney fees would leave him with very little if anything and decided to file for bankruptcy protection. Mast then tried to get Dulberg to enter into a mediation with Gagnon with a $50,000 cap. At this point Dulberg severed the relationship with Mast."

Dulberg edited paragraph 44 to state:[4] [5]

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1 Exhibit A2-2018-12-04_1420 PM_SENT_2nd amended complaint draft_ATTACHMENTS.pdf (Page 1)
2 Exhibit C3-Working.pdf (Page 7)
3 Exhibit A2-2018-12-04_1420 PM_SENT_2nd amended complaint draft_ATTACHMENTS.pdf (Page 10)
4 Exhibit C3-Working.pdf (Page 7)
5 Exhibit A2-2018-12-04_1420 PM_SENT_2nd amended complaint draft_ATTACHMENTS.pdf (Page 10)

"In December of 2016, Dulberg was ordered by the Bankruptcy Trustee into a binding mediation related to his claims against Gagnon."

Dulberg edited paragraph 46 in red font to include:[1] [2]

"Due to the Binding Mediation Agreement into which the Bankruptcy Trustee ordered Dulberg, Dulberg could not collect more from Gagnon. The bankruptcy trustee took the money and paid Dulberg's debt in full (it was a 100% solvent bankruptcy)."

2A9. On Dec 5, 2018, at 10:33 AM, Julia Williams wrote:[3]

"... Attached please find the revised version of the second amended complaint. We will plan to file it tomorrow by morning. If you can, I request that you send further thoughts and edits by 5pm today. I have a deposition in the afternoon and cannot file it later in the day. I reviewed your comments and edits. Overall, many were accepted. There were some, particularly the language about the bankruptcy, that I thought were unnecessary and would simply muddy the waters for the judge.

In this case, we need to show that Mast/Popovich had a duty to advise you properly and protect your interest, they failed to do that by urging you to settle with the McGuires when you could have continued with the case against them and obtained a much better result, instead you settled and were not able to recover at least $300,000. The bankruptcy proceedings are necessary to this case. They will add color to the case and the information will definitely come out in the discovery process. That being said, I don't want to confuse the issues and the recovery by making allegations about the bankruptcy in the complaint. Further, I don't want to increase any burden of proof we may have by making allegations that are necessary to prove our case. ..."

Williams removed any mention of Dulberg's 2014 bankruptcy from the second amended complaint.[4] [5]

2A10. On May 30, 2019 Williams turned over "Dulberg Document Disclosure FINAL 2019 May 29.pdf"[6] in which the contents from the folder 'Gooch thembdrive\Dulberg UNDERLYING CASE DOCS\Files From Baudin's Office\Paul Dulberg - BK Docs'[7] appear in alphabetical order in the following bates number locations:

DUL 001079 ..... Discharge of debtor letter
DUL 001267-9 .... February 16, 2015 letter from Heeg to Mast (with no fax cover page)
DUL 001270 ..... Fax cover page from Heeg to Mast dated January 6, 2015

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1 Exhibit C3-Working.pdf (Page 7)
2 Exhibit A2-2018-12-04_1420 PM_SENT_2nd amended complaint draft_ATTACHMENTS.pdf (Page 10)
3 Exhibit A3-2018-12-05_1035 AM_RECV_Second Amended Complaint _ATTACHMENTS.pdf (Page 1)
4 Exhibit A4-Dulberg Second Amended Complaint REDLINED 2018 Dec 5.docx
5 Exhibit A5-Dulberg Second Amended Complaint 2018 Dec 6 2pm FINAL W EXH.pdf
6 Exhibit 5-Dulberg Document Disclosure FINAL 2019 May 29.pdf
7 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg UNDERLYING CASE DOCS/Files From Baudin's Office/Paul Dulberg - BK Docs

DUL 001671-2 .... 2 pages of a January 6, 2015 faxed message from Heeg to Mast
DUL 001844 ..... Meeting of creditors notice
DUL 001913 ..... Order dated October 31, 2016 issued by bankruptcy judge for bankruptcy trustee to enter into binding mediation

2A11. Dulberg informed Williams that Dulberg never agreed to enter into any Binding Mediation and he refused to sign any Binding Mediation Agreement. Williams was in possession of a proposed Binding Mediation Agreement which was unsigned by any party and failed to investigate and obtain the executed Binding Mediation Agreement.

2A12. Williams and Clinton, who had full access to the clerks file in 12LA178 and are professional Legal Malpractice Attorneys, could see all the activity that took place moving the PI case forward to a resolution in violation of the automatic stay. Williams and Clinton failed to investigate or obtain any of the underlying case 12LA178 Reports of Proceedings. In particular they failed to investigate the time from June 13, 2016 to August 10, 2016 in which the Baudins and Allstate attorney Reddington first proposed and then came to a full agreement and set a date for Binding Mediation in the Illinois 22nd Judicial Circuit Court. The Baudins and Reddington did this in violation of the automatic stay, while knowing that the Illinois 22nd Judicial Circuit Court had no jurisdiction over the PI case and while knowing Dulberg had no standing as plaintiff in the PI case.

Trustee Joseph Olsen was first appointed Trustee over Dulberg's bankruptcy estate on August 31, 2016 (weeks after Allstate attorney Reddington and the Baudins already came to a final agreement on binding mediation).

2A13. On October 31, 2016, almost 3 months after Allstate attorney Reddington and the Baudins finalized a Binding Mediation Agreement and set a hearing date, the following exchange took place in bankruptcy court:[1]

> "MR. OLSEN: Good morning, Your Honor. Joseph Olsen, trustee. This comes before the Court on two motions. One is to authorize the engagement of special counsel to pursue a personal injury litigation, I think it's in Lake County, involving a chainsaw accident of some sort. And then, presumably, if the Court grants that, the second one is to authorize the estate to enter into -- I'm not sure what you call it, but binding mediation. But there's a floor of $50,000, and there's a ceiling of $300,000.
>
> And I guess I've talked with his attorney. He seems very enthusiastic about it. There may be some issues about the debtor being a good witness or not, I guess. It had to do with a neighbor who asked him to help him out with a chainsaw, and then I guess the neighbor kind of cut off his arm, or almost cut off his arm right after that. There's some bitterness involved, understandably, I guess.
>
> But I don't do personal injury work at all, so I'm not sure how that all flows through to a jury, but he didn't seem to want to go through a jury process. He liked this process, so...
>
> THE COURT: Very well. Mr. Olsen, first of all, with regard to the application to employ

1 Exhibit A6-DULBERG 10-31-16-1.pdf

the Baudin law firm, it certainly appears to be in order and supported by affidavit. Their proposed fees are more consistent with at least what generally is the market than some of the fees you and I have seen in some other matters. One question for you: Have you seen the actual engagement agreement?

MR. OLSEN: I thought it was attached to my motion.

THE COURT: Okay.

MR. OLSEN: If it's not, it should have been. It's kind of an interesting -- actually, this is kind of a unique one. The debtor actually paid them money in advance, and then he's going to get a credit if they actually win, which I guess enures, now, to my benefit, but that's okay. And there's a proviso for one-third, except if we go to trial, then it's 40 percent. So these are getting more creative by the PI bar as we plod along here, I guess, but...

THE COURT: It's a bar that's generally pretty creative. And my apologies. I saw the affidavit, but you did have the agreement attached, and one was in front of the other. And the agreement is just as you describe it. It appears to be reasonable, and so I'll approve the application. Tell me about this binding mediation. It's almost an oxymoron, isn't it?

MR. OLSEN: Well, I guess the mediators don't know there's a floor and a ceiling. I'm not sure where that comes from, but that's -- yeah. And whatever number they come back at is the number we're able to settle at, except if it's a not guilty or a zero recovery, we get 50,000, but to come back at 3 million, we're capped at 300,000.

THE COURT: Interesting.

MR. OLSEN: A copy of the mediation agreement should also be attached to that motion.

THE COURT: And I do see that. That appears to be in order. It's one of those you wish them luck

MR. OLSEN: I don't want to micromanage his case.

THE COURT: But that, too, sounds reasonable. There's been no objection?

MR. OLSEN: Correct.

THE COURT: Very well. I will approve -- authorize, if you will, for you to enter into the binding mediation agreement, see where it takes you.

MR. OLSEN: Thanks, Your Honor."

2A14. In July, 2019 Dulberg asked Williams to subpoena bankruptcy documents and communications from bankruptcy trustees Heeg and Olsen. Williams told Dulberg that she could not subpoena Heeg's records because Heeg had retired[1] and the documents are no longer available to us. Dulberg was told by Williams that bankruptcy Trustee Olsen has responded to the subpoena "informally". Trustee Olsen did not include a certificate of compliance with his response to the subpoena and Williams never asked for one.

1 Exhibit A6a-2020-02-10_1518 PM_RECV_Dulberg v Mast et al Discovery and Court Order.pdf

2A15. On September 5, 2019 the following exchange took place in court:[1]

> "MR. FLYNN: Any date in November is fine with me, your Honor. I would like to have a resolution of the privilege issue, though. It sounds like the decision hasn't been made, so --
>
> MS. WILLIAMS: I think we're waiving privilege. I'll say it on the record, we're going to waive privilege.
>
> MR. FLYNN: Okay. THE COURT: Okay.
>
> MR. FLYNN: The only other issue that was raised -- I just reviewed the written discovery yesterday and you had (indiscernible) 201(k) that there was a bankruptcy that was mentioned kind of vaguely in one of the answers. It sounds or appears that either the bankruptcy judge or the trustee had enforced or required a mediation and a high-low agreement. To the extent that those documents are responsive to any of the requests -- and I'll have to go through them to see if they are. Otherwise I'll just issue a supplemental, but I think the bankruptcy file and communications with the trustee are probably responsive to our discovery, so I would just request that those be included in our --
>
> MS. WILLIAMS: I think we produced a number of the bankruptcy issues, but we can talk about it today and definitely try to work out -- there's definitely -- there was a bankruptcy. We're not trying to hide that bankruptcy, so. And the trustee did resolve -- there was an arbitration based on the trustee's recommendation in the bankruptcy for the individual."

2A16. On November 4, 2019 the following exchange took place in court:[2]

> "MR. FLYNN: So I think they are amending the discovery answers and possibly producing more documents. I'm not sure.
>
> THE COURT: Is that correct, counsel, not putting you on the spot, but is that an accurate representation?
>
> MS. WILLIAMS: Right. **So I think we have produced pretty much everything we have, but I can talk to counsel about the documents.**" [Emphasis Added]

2A17. On December 17, 2019 at 11:00 AM Williams sent an email to Flynn stating:[3]

> "... In preparation for our call today, **I am resending the all discovery as I don't think you received some of them the first time.** ..." [Emphasis Added]

The file "Dulberg BK Files Bates 2599"[4] consists of the contents of this file in alphabetical order:

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1 Exhibit A7a-2019-09-05_R 53-R 58_ROP_Vol_1_of_1_230421_1628_8FF9DDF1.pdf (Page 3 Line 21 through Page 5 Line 3)
2 Exhibit A8a-2019-11-04_R 59-R 63_ROP_Vol_1_of_1_230421_1628_8FF9DDF1.pdf (Page 3 Lines 10-24)
3 Exhibit 17-Dulberg case.pdf (Pages 3-4)
4 Exhibit 18-Dulberg BK Files Bates 2599 .pdf

Gooch Thumbdrive\Dulberg UNDERLYING CASE DOCS\Files From Baudin's Office\Paul Dulberg BK Docs[1]

On May 30, 2019 Williams already turned over all contents of the folder:

Gooch Thumbdrive\Dulberg UNDERLYING CASE DOCS\Files From Baudin's Office\Paul Dulberg BK Docs[2]

so there were no files in "Dulberg BK Files Bates 2599"[3] turned over on December 17, 2019 that were not already included in 'Dulberg Document Disclosure FINAL 2019 May 29.pdf'[4] (which was turned over on May 30, 2019). Williams must have known this because she created the original pdf and the files are in her working folder at:

Dulberg Master File\Dulberg Production JCW Working Folder\Dulberg JCW DRAFT To Be Produced[5] [6]

2A18. On January 29, 2020 at 3:50 PM Williams first notified Dulberg the documents that Williams provided to Flynn on December 17, 2019 were given to opposing counsel.[7]

2A19. On February 19, 2020 at 6:09 AM (which was the morning of Dulberg's deposition) Dulberg sent an email with the subject "Capped ADR agreement issue" to Julia C. Williams and Ed Clinton which stated:[8]

"Hi Julia and Ed,

Yesterday we talked about the bankruptcy court ordering the case into ADR with a cap on the amount that could be recovered.

This was an agreement between Allstate, the Baudins and the trustee that put the motion before the bankruptcy court.

I did some talking with at least 12 bankruptcy attorneys on those free legal advise forums last night

All said basically the same thing. This should not have been allowed without the owner of the case/asset, me, agreeing to it.

I was given this example which I believe best explains it.

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1 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg UNDERLYING CASE DOCS/Files From Baudin's Office/Paul Dulberg - BK Docs
2 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg UNDERLYING CASE DOCS/Files From Baudin's Office/Paul Dulberg - BK Docs
3 Exhibit 18-Dulberg BK Files Bates 2599 .pdf
4 Exhibit 5-Dulberg Document Disclosure FINAL 2019 May 29.pdf
5 Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Production JCW Working Folder/Dulberg JCW DRAFT To Be Produced
6 Group Exhibits (showing key folders)/Exhibit folder 3-Dulberg JCW DRAFT To Be Produced
7 Exhibit A9-2020-01-29_1550 PM_RECV-2_Discovery Documents _ATTACHMENTS.pdf (Page 1)
8 Exhibit A10-Capped ADR agreement issue.pdf

In chapter 7 bankruptcy
You go into Bankruptcy and the court orders your assets (like your home) to be auctioned off to pay your creditors which is legal
But they took it one step too far when they capped the amount
Since it's already going to auction its not fair to you, the actual owner of the asset or even the creditors, to cap the amount that can be recovered at auction
They are supposed to let the auction play out to recover what the highest bidder pays, not cap it.
Capping the highest bid at an auction makes no sense
The same goes for any recovery from any asset including a personal injury suit
I'm sorry this happen to you

Now that I know this, I'm not 100% here, but I think I understand why the trustee Joe Olsen hired the Baudins to represent him Any advise on this would be helpful ..."

2A20. Dulberg later filed complaint 2022L010905[1] naming bankruptcy Trustee Olsen as a defendant for breach of duty and contract fraud. The complaint also names the Baudins for legal malpractice and contract fraud. The filing was based on the later research and initiative of Dulberg's subsequent counsel, who obtained the October 31, 2016 bankruptcy court Report of Proceedings transcribed for the first time.

2A21. A reasonable person can conclude that when Williams informed Dulberg that she could not obtain any documents from bankruptcy Trustee Heeg since Heeg is retired[2], the claim was factually untrue. A reasonable person can also conclude that when Williams allowed Trustee Olsen to respond to the subpoena "informally", valuable information was hidden from Dulberg that he needed to know in his case against Mast and Popovich (and that Dulberg's later counsel had to discover through his own efforts and which is written into civil complaint 2022L010905[3] naming Bankruptcy Trustee Olsen and the Baudins as defendants).

A reasonable person can conclude that Williams intentionally suppressed the large majority of bankruptcy documents on May 30, 2019 and suppressed any mention of bankruptcy in the 2nd Amended Complaint to sabotage Dulberg's case against Popovich and Mast. By suppressing the subject of Dulberg's 11/26/2014 bankruptcy from the 2nd Amended Complaint and from "Dulberg Document Disclosure FINAL 2019 May 29.pdf"[4] given to opposing counsel on May 30, 2019, opposing counsel Flynn was able to avoid all the complex issues raised in civil complaint 2022L010905[5] such as:

(a) That Dulberg's signature was fraudulently placed on the Executed Binding Mediation Agreement executed on 12/8/2016.

(b) That Trustee Olsen misrepresented Dulberg's consent to the Bankruptcy Judge on 10/31/2016.

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1 Exhibit F5-Filed Complaint December 8 2022 DisplayFromAWS.pdf
2 Exhibit A6a-2020-02-10_1518 PM_RECV_Dulberg v Mast et al Discovery and Court Order.pdf (Page 1)
3 Exhibit F5-Filed Complaint December 8 2022 DisplayFromAWS.pdf
4 Exhibit 5-Dulberg Document Disclosure FINAL 2019 May 29.pdf
5 Exhibit F5-Filed Complaint December 8 2022 DisplayFromAWS.pdf

(c) That Popovich, Balke, Allstate, the Baudins and Trustee Olsen all knew Dulberg had no standing to pursue the case 12LA178 while the case was under an automatic stay.

(d) That Popovich[1], Allstate, Balke[2], the Baudins[3] and Trustee Olsen[4] all knew the case 12LA178 proceeded in the Circuit Court in violation of the automatic stay.

(e) That the Baudins by agreement with Allstate, in violation of the automatic stay, before the Baudins were approved to be hired as special counsel under Trustee Olsen on 10/31/2016, misrepresented Dulberg as agreeing to Binding Mediation in Circuit Court on 8/10/2016 and asked Associate Judge Meyer to delay the next status hearing to 12/12/2016 after the Binding Mediation was to take place on 12/8/2016.[5] [6] [7]

(f) That the Baudins and Allstate's acts in violation of the automatic stay, started laying the groundwork as early as 6/13/2016[8] and finally set the Binding Mediation date for 12/8/2016 on 8/10/2016 in the Circuit Court.[9] [10] This happened before Trustee Olsen was even appointed to the position on 8/31/2016[11] and before Trustee Olsen received permission from the Honorable Judge Thomas M. Lynch, to hire the Baudins as special counsel and give Trustee Olsen permission to enter into the proposed capped Binding Mediation Agreement on 10/31/2016.[12]

(g) That the Baudins filed their APPEARANCE as REGULAR COUNSEL in 12LA178 on 11/6/2015 in violation of the automatic stay.[13]

(h) That there is no APPEARANCE filed by the Baudin Defendants that is not VOID in case 12LA178.

(i) That the Baudin Defendants' failed to file an APPEARANCE to represent the bankruptcy estate in case 12LA178 after being hired as special counsel by Trustee Olsen.

(j) That Trustee Olsen received permission from the Bankruptcy court to enter into the proposed Binding Mediation Agreement and later made a choice and Trustee Olsen did not act and sign on the advice of his special counsel the Baudins.[14]

(k) That Trustee Olsen did not "pursue" and "exercise control" over the claim/asset and in

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1 Exhibit 18-Dulberg BK Files Bates 2599 .pdf (Pages 2-7, 15-18)
2 Exhibit 18-Dulberg BK Files Bates 2599 .pdf (Pages 8-9)
3 Exhibit A6b-Pages from Filed Bauding Motion to Dismiss April 25 2023 2022L010905.pdf
4 Exhibit A6b-Pages from Filed Bauding Motion to Dismiss April 25 2023 2022L010905.pdf
5 Exhibit F5-Filed Complaint December 8 2022 DisplayFromAWS.pdf Page 14-15 ¶46, (Page 70)
6 Exhibit F3-2016-08-10_CC-Civil - 12LA000178 - 3_3_2022 - - - REOP - - (4).pdf
7 Exhibit F2-2016-08-10_12LA178_ORDER-Continued to 12-12-2016 for Status of Binding Mediation-Motion for IME GRANTED-Other Motions Continued to 12-12-2016_Meyer.pdf
8 Exhibit F1-2016-06-13_CC-Civil - 12LA000178 - 2_24_2022 - - - REOP - -.pdf (Page 2 Lines 8-9, Page 3 Lines 12-16)
9 Exhibit F3-2016-08-10_CC-Civil - 12LA000178 - 3_3_2022 - - - REOP - - (4).pdf
10 Exhibit F2-2016-08-10_12LA178_ORDER-Continued to 12-12-2016 for Status of Binding Mediation-Motion for IME GRANTED-Other Motions Continued to 12-12-2016_Meyer.pdf
11 Exhibit A6c-25-0.pdf
12 Exhibit F5-Filed Complaint December 8 2022 DisplayFromAWS.pdf (Page 70-71)
13 Exhibit A6d-12LA000178--2015-11-06--APE_0083.pdf
14 Exhibit F5-Filed Complaint December 8 2022 DisplayFromAWS.pdf (Pages 71, 73, 75-80)

doing so Abandoned the asset and it reverted back to the DEBTOR.[1]

(l) The Baudin Defendants were approved and hired as Special Counsel for the Estate and in such a capacity had no standing to execute a Binding Mediation Agreement for the DEBTOR.[2]

(m) The only party with standing over abandoned assets is the DEBTOR.

(n) That there can be no agreement between Allstate and the Baudin Defendants acting as counsel for the bankruptcy estate to have the case dismissed with prejudice in the Circuit Court on 12/12/2016 since the Baudins failed to file any appearance anywhere that is not VOID and had no standing since they did not represent the DEBTOR.[3]

(o) Trustee Olsen and the Baudins collected the monies paid out by Allstate after ABANDONING the ASSET that then reverted back to the DEBTOR.[4]

The avoidance of every one of these issues raised in complaint 2022L010905 clearly benefits the defendants in that it limits Dulberg's possible recovery in the underlying case (12LA178) current case (17LA377) against Popovich and Mast to a $300,000 cap previously imposed by the bankruptcy trustee, Allstate and the Baudins. Once the issues raised in civil complaint 2022L010905 are taken into consideration, serious doubts involving genuine issues of material fact are raised concerning whether any such 'cap' can be considered binding or legal or was obtained fraudulently.[5]

The available evidence demonstrates that the 'cap' was created by the Baudins and by Allstate alone, in violation of the automatic stay, in a court which had no jurisdiction, while knowing that all actions under such conditions are legally void, and without Dulberg's knowledge or consent, close to 3 months before Olsen was appointed Trustee of the bankruptcy estate.

Williams and Clinton could have obtained all necessary court transcripts and common law records to know how and when the cap was actually created. Williams and Clinton failed to: Investigate, obtain certified responses to any subpoena, obtain an executed Binding Mediation Agreement, or hold any of those who violated the automatic stay accountable.

2B THE EXAMPLE OF SAUL FERRIS

2B1. On May 30, 2019 Williams suppressed 2 documents of email communication between Saul Ferris and Dulberg and 7 other documents of email communication mentioning Saul Ferris, packages of Dulberg's documents Saul Ferris had in his possession, and a missing pretrial settlement conference letter. The documents are:

Hans Mast2-54[6] – with Balke on bankruptcy and pre-trial conference

1 Exhibit F5-Filed Complaint December 8 2022 DisplayFromAWS.pdf (Pages 75-80)
2 Exhibit F5-Filed Complaint December 8 2022 DisplayFromAWS.pdf (Page 70)
3 Exhibit F5-Filed Complaint December 8 2022 DisplayFromAWS.pdf (Page 70)
4 Exhibit A6e-49-0.pdf
5 Exhibit F5-Filed Complaint December 8 2022 DisplayFromAWS.pdf
6 Exhibit B7-Hans Mast2-54.pdf

Hans Mast2-55[1] – with Balke on missing pre-trial settlement memo and Saul Ferris with a box of Dulberg's documents
Hans Mast2-56[2] – with Balke on missing pre-trial settlement memo and Saul Ferris with a box of Dulberg's documents
Hans Mast2-57[3] – with Balke on missing pre-trial settlement memo and Saul Ferris with a box of Dulberg's documents
Hans Mast2-62[4] – with Balke about April 9 pre-trial conference
Hans Mast2-63[5] – all communication with Balke on lean buyout and picking up the case file
Hans Mast2-65[6] – with Balke on missing pre-trial settlement memo and a box from Ferris
Hans Mast2-73[7] – with Ferris on declining case
Hans Mast2-78[8] – with Ferris on declining case

2B2. Williams had to suppress documents from 3 different sources in her possession since she was provided with at least 3 different complete versions of Dulberg's emails before May 29, 2019 (One on the Gooch Thumbdrive in the main folder "Dulberg UNDERLYING CASE DOCUMENTS"[9], one on the Gooch Thumbdrive in the main folder called "Dulberg Paul Dulberg Files From Client"[10], and one sent to Williams as email attachments[11]. Only one document of email communications mentioning Saul Ferris and a package of documents Ferris sent to Dulberg was included in the May 30, 2019 document disclosure: "Dulberg Document Disclosure FINAL 2019 May 29.pdf"[12]. It is DUL 001334 which is the file "Hans Mast2-64"[13].

2B3. Williams also suppressed a document sent to her from Dulberg as an email attachment called "rejection letters.pdf"[14]. Additionally, Williams suppressed two documents of declination letters from the Gooch thumbdrive[15] [16]. To do this Williams had to suppress declination letters from two different sources (one from the folder "Dulberg Paul Dulberg Files from Client"[17] on the Gooch Thumbdrive and one sent by Dulberg to Williams as an email attachment called "rejection letters.pdf"[18])

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1 Exhibit B7a-Hans Mast2-55.pdf
2 Exhibit B7b-Hans Mast2-56.pdf
3 Exhibit B7c-Hans Mast2-57.pdf
4 Exhibit 7c-Hans Mast2-62.pdf (Page 2)
5 Exhibit 7b-Hans Mast2-63.pdf
6 Exhibit B12-Hans Mast2-65.pdf
7 Exhibit B6-Hans Mast2-73.pdf
8 Exhibit B7d-Hans Mast2-78.pdf
9 Group Exhibits (showing key folders)/Exhibit folder 6-Paul Dulberg Emails, 422 pages total
10 Group Exhibits (showing key folders)/Exhibit folder 8-Emails, 844 pages total
11 Group Exhibits (showing key folders)/Exhibit folder 7-folders of emails sent to Williams as email attachments, 422 pages total
12 Exhibit 5-Dulberg Document Disclosure FINAL 2019 May 29.pdf (Page 1334)
13 Exhibit B7e-Hans Mast2-64.pdf
14 Exhibit B1-Rejection-Letters.pdf
15 Exhibit B2-Kupets & DeCaro Letter RE Case 3.5.15.pdf
16 Exhibit B3-Ferris, Thompson & Zweig Letter RE Case 3.4.15.pdf
17 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client
18 Exhibit B1-Rejection-Letters.pdf

2B4. On January 29, 2020 st 3:50 PM Williams asked Dulberg about Balke:[1]

> "...
> 2. I see that there are some emails with Brad Balke. See Bates Stamp Dulberg 1322-1323, 1334, 1319, 1321. It appears that Brad Balke obtained your legal file from Hans Mast, reviewed it, but did not represent you, and turned the file over to you. ***Is that correct? ...***"

On January 29, 2020 at 8:21 PM Dulberg responded from memory stating:[2]

> "... I pulled this from memory but believe I have documented most or all of this within the emails but I would need a few days to dig through and cite the documentation.
> You are partly correct and partly incorrect.
> Balke did get the legal file and did represent Dulberg for a very short while.
> Balke was outright fired by Dulberg.
> Balke did make the file available to Dulberg much quicker than Mast. Balke left the file for Dulberg to pick up at an attorney office who was named Donahue in McHenry. ..."

On January 30, 2020 at 10:26 AM, after searching through the records he had on Balke, Dulberg responded further by sending a few emails to Williams noting he had found email communications about Saul Ferris with Balke that were not in the bates numbered documents, stating:[3]

> "... This Morning I looked up when Brad Balke filed his appearance and I found the attached document I named Balke Appearance.pdf It was March 19, 2015.
> This is what was filed in the public record.
> This should have been in the Gooch files.
> Looking back, I never received the digital Gooch files that were turned over to your office. Confirmed in email dated April 18,2019. The Gooch files should have included the entire case file that Mast turned over to me and the addition of the Balke and Baudin files as well as all communication records, bankruptcy documents, disability records, etc...
> Gooch took 6+ months to get all those records scanned in and I never was able to confirm he actually scanned in all of them.
>
> On another note,
>
> I found this: 05-08-15_Hans Mast2-56.pdf which is also attached.
> You may have this as, Hans Mast2-56.pdf
> This was provided to you on or around 11/17/2018 when I sent you all the communications I had.
> I did not find this in any of the bates numbered documents.
> It shows that the file was sent back to Saul Ferris and that I picked it up and delivered it to the firm named Danahu and Walsh at the direction of Balke. ..."

Williams never addressed how Dulberg found communications which were not in the Bates

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1 Exhibit B4a-2020-01-29_1550 PM_RECV-1_Dulberg v Popovich et al Deposition dates _ATTACHMENTS.pdf
2 Exhibit B4b-2020-01-29_2021 PM_SENT_Dulberg v Popovich et al Deposition dates _ATTACHMENTS.pdf
3 Exhibit B4c-2020-01-30_1026 AM_SENT_Dulberg v Popovich et al Deposition dates _ATTACHMENTS.pdf

stamped documents (but should have been included).

On January 31, 2020 at 7:44 AM Dulberg sent another email to Williams about the documents he found (that were not bates stamped) stating:[1]

> "... Last night I was able to read the Emails around Saul Ferris and Brad Balke in context.
> It appears the email I sent yesterday which contained (Hans Mast2-56.pdf) showed me piking up the documents (defendants depositions and mailed correspondence) I had been given to read from Mast earlier.
> It was not the case file.
> The case was was obtained at later date.
> Thought it was important to clarify this. ..."

On January 31, 2020 at 1:30 PM Williams replied to only part of Dulberg's earlier emails (and avoided the part about documents missing bates stamps) by stating:[2]

> "... Thank you for the clarification.
>
> We have a duty to produce everything that is in your possession and control, thus if there are email attachments that were not produced, we should produce them if you have them.
>
> Also, it is likely an appropriate time to make a demand in this case.
>
> Given that the total award Gross Award of $660,000 with 15% comparative fault in the Gagnon matter for an award of $561,000,I believe that it would be hard to prove that if Gagnon and the McGuires were tried or arbitrated together, you would somehow get a larger award. I think there is a good argument to say that Gagnon and the McGuires would have been jointly liable for the award of $561,000. You recovered $300,000 from Gagnon, the remainder would have been paid by the McGuire's through their insurance. Thus, your damages for dismissing the McGuires is about $261,000 less the $5,000 you obtain from them for total damages of $256,000.
> Do you want me to make a demand of $256,000 from Defendants in this case? ..."

2B5. On Jan 31, 2020, at 12:45 PM, Julia Williams sent an email to opposing counsel Flynn stating:[3]

> "... I am writing regarding the outstanding discovery issues. I am producing further documents bates stamped 2639-2645.
>
> ...

1 Exhibit B4d-2020-01-31_0744 AM_SENT_Dulberg v Popovich et al Deposition dates .pdf
2 Exhibit B4e-2020-01-31_1330 PM_RECV_Dulberg v Popovich et al Deposition dates .pdf
3 Exhibit 20-Dulberg v Popovich et al.pdf (Page 78)

2. Brad Balke.

Brad Balke's appearance is attached as 2645. **This should resolve all of the current discovery issues that you presented to us. We will continue to supplement our discovery responses if more documents are discovered.** ..." [Emphasis Added]

The document "Dulberg Bates 2639 to 2645 2020 Jan 31.pdf"[1] consists of 6 pages and was attached to the email. "Dulberg Bates 2639 to 2645 2020 Jan 31.pdf"[2] contains one email document which is 'Hans Mast 2-56'[3].

2B6. On February 11, 2020 at 12:10 PM Dulberg sent an email to Williams and Clinton stating:[4] [5]

"...
Saul Ferris did not perform any legal services other than the free initial consultation to talk, read through the documents and review the case Dulberg had and decide if he would represent Dulberg.

Saul Ferris advised that Dulberg "attending the pretrial to at least see what kind of settlement offer is made." 03-06_12- 15_Hans Mast2-73.pdf

I know this would be a fishing expedition. Dulberg would like to see if Popovich and Mast asked Saul Ferris to send them Dulberg's only copies of the depositions and written letters Mast had sent to Dulberg through the Mail back to Popovich/Mast's office then Mail them back to Saul Ferris to give to Dulberg.

During the Saul Ferris-Popovich/Mast mailing debacle Dulberg was limited in the amount of time to he had to hire a new attorney by the court.

The delay in getting the Depositions and written correspondence delayed Dulberg 2 months from having anything to show any possible new attorney anything from the case.

Thus, Dulberg hired Brad Balke, the only Attorney willing to represent Dulberg without seeing any documentation from the case beforehand and meeting the courts order to find new counsel.

The following emails show the 2 month period that Dulberg did not have access to his own copies.

Attached as:

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1 Exhibit 21-Dulberg Bates 2639 to 2645 2020 Jan 31.pdf
2 Exhibit 21-Dulberg Bates 2639 to 2645 2020 Jan 31.pdf
3 Exhibit B7b-Hans Mast2-56.pdf
4 Exhibit B4-Dulberg v Mast et al Discovery and Court Order.pdf (Pages 23-34)
5 Exhibit B4f_2020-02-11_1210 PM_SENT_Dulberg v Mast et al Discovery and Court Order_ATTACHMENTS.pdf

03-06_12-15_Hans Mast2-73.pdf
03-06-15_Hans Mast2-78.pdf
03-06-15_Hans Mast2-79.pdf
03-20_24-15_Hans Mast2-64.pdf
03-20_25-15_Hans Mast2-63.pdf
03-20_30-15_Hans Mast2-62.pdf
03-20-15_Hans Mast2-65.pdf[1]
05-08_09-15_Hans Mast2-55.pdf
05-08_12-15_Hans Mast2-54.pdf
05-08-15_Hans Mast2-56.pdf
05-08-15_Hans Mast2-56.pdf
05-08-15_Hans Mast2-57.pdf
One of these emails is listed as: Dulberg 001334
..."

Dulberg gave Williams a list of 12 PDF documents and pointed out that only 1 is Bates stamped. Dulberg again produced the documents by attaching the 12 documents to the email even though these same documents were previously given to Williams long before the first document disclosure on May 30, 2019.
Williams avoids the obvious issue Dulberg pointed out: The fact that 11 PDF documents are not Bates stamped.

2B7. On March 6, 2020 Flynn sent an email to Williams stating:[2]

"... I write pursuant to 201(k).

At Mr. Dulberg's deposition, he testified at p. 38 that he met with attorney Saul Ferris, who would not take his case over from Popovich because "your decision to settle with the McGuire's was a mistake and we don't [sic] take it because of that." From lines 15-19 on the same page, Dulberg testified that Ferris said it in a letter, on the phone, and sent him an email. Dulberg's testimony at p. 95 also establishes that the communications with Ferris were prior to Popovich's withdrawal in March 2015.

These ommunications go directly to the issue of the discovery date of the alleged malpractice. I do not recall seeing an email or letter similar to what has been described. Please produce these communications, and perhaps we can avoid the necessity of combing through Mr. Dulberg's or Mr. Ferris' records to pinpoint the date of the phone call between the two.
..."

2B8. Williams acted as if she was not in possession of Saul Ferris emails, letters or other documents mentioning Saul Ferris when she communicated with Dulberg in late January and

1 Exhibit B12-Hans Mast2-65.pdf
2 Exhibit B5-Dulberg v Popovich-2.pdf

early February of 2020.[1] [2] [3] [4] [5]

2B9. On February 10, 2020 Williams acted as if she had never seen any documents concerning Saul Ferris and questioned Dulberg's purpose in subpoenaing documents from Saul Ferris.[6]

> "... What would be the purpose of the subpoena? What do you mean by "he sent copies of depositions and correspondence with Mast back to Mast?" Did he perform legal services? Did he provide advise to you? ..."

2B10. On February 11, 2020 Dulberg replied again referencing one of the suppressed documents:[7]

> "... Saul Ferris did not perform any legal services other than the free initial consultation to talk, read through the documents and review the case Dulberg had and decide if he would represent Dulberg.
>
> Saul Ferris advised that Dulberg "attending the pretrial to at least see what kind of settlement offer is made." 03- 06_12-15_Hans Mast2-73.pdf ..."

The suppressed emails describe how the package of documents and the missing letters were moved from the office of Saul Ferris and when and how Dulberg first received the package of documents back from the office of Saul Ferris 2 months later. It is simply not credible for Williams to claim she was not aware of who Saul Ferris was and to claim she was not aware of the fact that Ferris was in possession of a box with documents and at least one letter which opposing counsel Flynn was actively seeking and Williams was actively suppressing.

2B11. When the contents of the suppressed email documents are examined it becomes clear that the suppressed emails already contained the information that Flynn later pressured Dulberg to contradict. For example HansMast2-73[8] contains an email document sent on Mar 6, 2015 from Saul Ferris to Dulberg in which Ferris stated:

> "Hi Paul I decided not to accept your case primarily based upon you settling with the homeowners for 5 thousand. I have mailed your file back to you. I would suggest attending the pretrial to at least see what kind of settlement offer is made. Thanks for letting me review your case. Sorry I can't help you. Best, Saul"

And Dulberg answered on March 12, 2015 stating:[9]

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1 Exhibit B4a-2020-01-29_1550 PM_RECV-1_Dulberg v Popovich et al Deposition dates _ATTACHMENTS.pdf
2 Exhibit B4b-2020-01-29_2021 PM_SENT_Dulberg v Popovich et al Deposition dates _ATTACHMENTS.pdf
3 Exhibit B4c-2020-01-30_1026 AM_SENT_Dulberg v Popovich et al Deposition dates _ATTACHMENTS.pdf
4 Exhibit B4d-2020-01-31_0744 AM_SENT_Dulberg v Popovich et al Deposition dates .pdf
5 Exhibit B4e-2020-01-31_1330 PM_RECV_Dulberg v Popovich et al Deposition dates .pdf
6 Exhibit B4-Dulberg v Mast et al Discovery and Court Order.pdf (Page 18)
7 Exhibit B4-Dulberg v Mast et al Discovery and Court Order.pdf (Page 24)
8 Exhibit B6-Hans Mast2-73.pdf
9 Exhibit B6-Hans Mast2-73.pdf

"Hi Saul, Have you already mailed the documents or can they be picked up?"

In another suppressed email document HansMast2-54 Dulberg emails Balke on May 8, 2015 stating:[1]

"Hi Brad,
Yesterday Saul Ferris office called and said they just received back the packet they mistakenly sent to Hans Mast at Popovich law firm. In it is the pretrial settlement memo you wanted to see.
There is also the printed depositions of both the homeowners, the defendant and myself.
I picked these up this morning.
Let me know how to get these to you."

In suppressed email documents HansMast2-65[2], HansMast2-63[3], HansMast2-62[4] on March 20, 2015 Dulberg informed Balke:

"Hi Brad,
As we discussed, I was to receive via certified US Mail depositions and communications between Hans Mast and myself from Saul Ferris an attorney in Gurnee, IL. Saul Ferris number is (847) 263-7770
I called Saul Ferris office last week and was assured they were sent. I was told to give it another week.
I called Saul Ferris office again today to find out they were mailed to and signed for at 3416 W. Elm St. McHenry, IL. by someone named Anne Oupl on March 7th. This is Hans Mast office.
I called Hans office and apparently no one by that name works there and no one knows anything about receiving the certified mail.
I'm at a loss as to how these documents were sent to the wrong place and am a bit furious because it has the memo about the pre- trial settlement you wanted to see."

From these emails one can learn that Ferris and Dulberg probably met in or just before the first week of March, 2015 since Ferris declined to take the case on March 6, 2015[5] (they actually met on February 26, 2015[6]). One can learn that someone in the office of Saul Ferris sent Dulberg's box of documents to the law offices of Thomas J. Popovich where on March 7, 2015[7] someone at the law offices of Thomas J. Popovich signed for the box. The person that sent the box claimed that sending the box to the law offices of Thomas J. Popovich was an accident. We can learn that the office of Saul Ferris got the box back from the Law offices of Thomas J. Popovich on or around May 8, 2015[8] so Dulberg's box of documents inexplicably remained in the law offices of

1 Exhibit B7-Hans Mast2-54.pdf
2 Exhibit B12-Hans Mast2-65.pdf
3 Exhibit 7b-Hans Mast2-63.pdf
4 Exhibit 7c-Hans Mast2-62.pdf
5 Exhibit B6-Hans Mast2-73.pdf
6 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 11 Lines 3-5)
7 Exhibit B12-Hans Mast2-65.pdf
8 Exhibit B7c-Hans Mast2-57.pdf

Thomas J. Popovich for 2 months. We can learn that a pretrial settlement memo was with the box of documents.

If the email documents mentioning or involving Ferris were not suppressed by Williams, opposing counsel Flynn couldn't have made the following arguments in court. Flynn was pushing a partially forged letter which his own client Popovich was holding for 2 months as an authentic document which was sent directly from Ferris to Dulberg by mail.

2B12. Williams sent 2 emails containing the suppressed documents concerning Saul Ferris to opposing counsel and to Dulberg for the first time on July 9, 2020. The 2 emails contained over 6000 pages of documents[1] [2]. This was also 2 days after the Clinton firm drafted "Dulberg Draft Letter re case 2020 July 7 .docx"[3]. This document is a draft of an intent to withdraw letter that was finished and emailed to Dulberg on July 27, 2020 at 2:24 PM. that states:[4]

> "... Due to the coronavirus crisis and its impact on our firm, we are reevaluating al of our contingent fee cases. Your case is not moving toward resolution. Rather, there is significant litigation that will need to occur prior to any resolution of the case. We cannot continue to be involved in the prolonged litigation and thus believe you should seek out alternative counsel. ..."

An interesting fact about the draft "Dulberg Draft Letter re case 2020 July 7 .docx"[5] and the final letter emailed to Dulberg "Dulberg Client Letter 2020 July 27.pdf"[6] is where they are located within the Clinton Firms case file:

> Dulberg Master File/Dulberg Matter Ed Clinton/Dulberg Cicero France Barch Production Complete/Dulberg Draft Letter re case 2020 July 7 .docx[7]
>
> Dulberg Master File/Dulberg Matter Ed Clinton/Dulberg Cicero France Barch Production Complete/Dulberg Client Letter 2020 July 27.pdf[8]

The location of the Clinton Firm's intent to withdraw draft and final letter are found amongst documents that came from the McGuire's Attorney Ronald Barch's responsive documents to a subpoena. This suggests that these files were intentionally placed there to make them difficult to find and perhaps, with luck, hide them.

2B13. On September 7, 2022 Flynn claimed that Dulberg met with Ferris on December 31, 2014

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1 Exhibit 7f-2020-07-09_1144 AM_RECV_Fwd Dulberg v Popovich et al Documents_ATTACHMENTS.pdf
2 Exhibit 7g-2020-07-09_1147 AM_RECV_Fwd Dulberg v Popovich et al Documents_ATTACHMENTS.pdf
3 Exhibit 7d-Dulberg Draft Letter re case 2020 July 7 .docx
4 Exhibit 7e-2020-07-27_1424 PM_RECV_Dulberg v Popovich 2017 L 377_ATTACHMENTS.pdf
5 Exhibit 7d-Dulberg Draft Letter re case 2020 July 7 .docx
6 Exhibit 7e-2020-07-27_1424 PM_RECV_Dulberg v Popovich 2017 L 377_ATTACHMENTS.pdf
7 Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Matter Ed Clinton/Dulberg Cicero France Barch Production Complete/Dulberg Draft Letter re case 2020 July 7 .docx
8 Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Matter Ed Clinton/Dulberg Cicero France Barch Production Complete/Dulberg Client Letter 2020 July 27.pdf

and the Ferris declination letter proves it.[1] [2]

Flynn essentially claimed that Dulberg was withholding documents and that Dulberg is dishonest when saying statements such as:

> "MR. FLYNN: That's correct. This is produced -- again, late produced in discovery after the plaintiff's deposition. He should have produced this document years ago when he's placed the discovery of his malpractice at issue. So then he produces this letter. I don't want to have to take Saul Ferris's deposition, so I'm just asking, this is the letter that Mr. Dulberg produced and that it's a genuine copy of what he received in the mail?"[3]
>
> MR. FLYNN: And he's denying -- he denied the date. He then says it's a later time period between February 23rd and March 6th of 2015, which also coincided with the drafting of that letter, by the way. So he's changed the premise of No. 4, but sort of provided an answer --[4]
>
> "MR. FLYNN: No, Judge. I -- as you said, I think he's going to make the same denials and in my opinion play the same games he's been playing. So I'll take Mr. Ferris's deposition. I'll seek -- I'm requesting fees and costs in connection with the deposition because it shouldn't be necessary."[5]

Dulberg refused to admit that he met with Ferris on December 31, 2014[6]. Yet the suppressed emails such as Hans Mast2-73[7] HansMast2-65[8], HansMast2-63[9], HansMast2-62[10] contain information that strongly suggests the meeting between Ferris and Dulberg took place in the first week of March or the last week of February 2015. This is just as Dulberg had stated, and the meeting was confirmed to be on February 26, 2015[11] in the deposition of Saul Ferris.

2B14. Flynn claimed in the REQUEST FOR ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENT[12] and a MOTION TO DEEM FACTS ADMITTED[13] that Dulberg received the Ferris declination letter by U.S. mail at his home within 7 or 30 days and that the letter was sent directly from Ferris to Dulberg's home[14]. Flynn essentially claimed that Dulberg was being dishonest when he refused to admit receiving the letter at his home. Flynn then used the confusion created by Williams suppression of these documents to force a deposition of Saul

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1 Exhibit 7i-ferris letter forgery.png
2 Exhibit 35-DUL 006354-DUL 006687.pdf (Page 149)
3 Exhibit 7j-2021-09-07_Pages from ROP_Vol_1_of_1_230421_1628_8FF9DDF1-4.pdf (Page 7 Lines 7-15)
4 Exhibit 7j-2021-09-07_Pages from ROP_Vol_1_of_1_230421_1628_8FF9DDF1-4.pdf (Page 10 Lines 3-8)
5 Exhibit 7j-2021-09-07_Pages from ROP_Vol_1_of_1_230421_1628_8FF9DDF1-4.pdf (Page 11 Lines 12-17)
6 Exhibit 7i-ferris letter forgery.png
7 Exhibit B6-Hans Mast2-73.pdf
8 Exhibit B12-Hans Mast2-65.pdf
9 Exhibit 7b-Hans Mast2-63.pdf
10 Exhibit 7c-Hans Mast2-62.pdf
11 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 11 Lines 3-5)
12 Exhibit B9-2021-07-20_Pages from CLR_Vol_1_of_2_230421_1627_D4CDE198.pdf
13 Exhibit B9a-Pages from CLR_Vol_1_of_2_230421_1627_D4CDE198.pdf
14 Exhibit B9a-Pages from CLR_Vol_1_of_2_230421_1627_D4CDE198.pdf (Page 2)

Ferris.[1] Flynn accuses Dulberg essentially of hiding the document and abusing the discovery process Flynn did this while knowing all along that the letter was actually addressed to his own client's place of business[2]. Below are a few quotes from Flynn's erroneous arguments:[3]

> "... Dulberg's pattern and practice of abusing the discovery process with improper and incomplete responses is repeated in his latest filing ..."
>
> "... Defendants' Requests for Admissions simply intended to authenticate a March 4, 2015 letter purportedly drafted by attorney Saul Ferris, and establish when it was received by Dulberg. Dulberg finally produced said letter in discovery on June 7, 2021 with no explanation why it was not previously produced in this litigation ..."
>
> "... The attached Request for Admissions was an attempt at simply authenticating the copy of Ferris's letter, which again should have been produced years ago in this litigation but was not. Instead of acknowledging the authenticity of the copy of the letter, Dulberg's response is a muddled and evasive attempt at muddying the water, and should not be countenanced by this court. Dulberg's specious objections and attempt at explaining away the content of Ferris's letter is deserving of a sanction. ..."
>
> "... Perhaps the most egregious of Dulberg's violations, aside from his attempt at redefining common legal terms and their variations such as "genuine" and "authentic", is his denial of the genuineness of Exhibit A because he does not agree with the accuracy of the content, and because he is not in control of the author (see Response #1). A close second, is his failure to admit in No. 2 and No. 3 that he received the document from Ferris within 7 or within 30 days respectively, of the date affixed to the face of the letter. ..."
>
> "... Not only should those facts contained in the Request to Admit be admitted, but Defendants should not have to engage in "teeth pulling" discovery in order to simply authenticate a copy of a document which was inexplicably withheld in the first place. ..."

2B15. Flynn made a significant issue of Ferris in the July 19, 2021 and the September 7, 2021 court proceedings.

2B16. On July 19, 2021 the following exchange took place in court:[4]

> "MR. FLYNN: I suppose with respect to the summary judgment motion that I anticipate, Judge, there was one document that was produced in order to avoid a second deposition of Mr. Dulberg to authenticate this document, which is a letter from Attorney Thompson -- I'm sorry -- Attorney Ferris --
> that goes to the issue of the statute of limitations. If Mr. Talarico would stipulate to the authenticity of this March 4, 2015 letter on the record, I don't need to send a request to admit for --

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1 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf
2 Exhibit 7i-ferris letter forgery.png
3 Exhibit B9a-Pages from CLR_Vol_1_of_2_230421_1627_D4CDE198.pdf
4 Exhibit B8-2021-07-19_Pages from ROP_Vol_1_of_1_230421_1628_8FF9DDF1-5.pdf (Page 10 Lines 1-15)

THE COURT: Can you hear all that?

MR. TALARICO: I heard it, Judge, but I'm not familiar with that document. A request to admit would be welcome."

2B17. On July 20, 2021 Flynn filed a REQUEST FOR ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENT[1] with the following 4 requests:

1. Admit that Exhibit A attached hereto is a true, accurate, and genuine copy of a March 4, 2015 letter drafted by attorney Saul Ferris.
2. Admit that you received Exhibit A on or within 7 days of March 4, 2015.
3. Admit that you received Exhibit A on or within 30 days of March 4, 2015.
4. Admit that you met with Saul Ferris on or about December 31, 2014 with regard to your personal injury case.

2B18. The Saul Ferris declination letter[2] contains at least 2 factually incorrect statements. The letter describes the date of the Dulberg-Ferris meeting as December 31, 2014 when the meeting actually took place on February 26, 2015[3]. The letter also describes the date of Dulberg's "accident" as being January 24, 2013 when the chainsaw accident actually took place on June 28, 2011. (Dulberg's deposition in the underlying case against the McGuires and Gagnon took place on January 24, 2013.) Flynn tried to pressure Dulberg to admit to the authenticity of the Ferris declination letter that contained inaccurate information (and was either in the possession of the Law Offices of Thomas J. Popovich for two months or it was created/altered or forged by the Law Offices of Thomas J. Popovich). Flynn also tried to pressure Dulberg to admit Dulberg received the letter by U.S. mail (even though the address at the top of the letter is not Dulberg's residence). The address is that of Flynn's own client, the law office of Thomas J. Popovich. Dulberg refused to admit the assertions as true and pointed out the inaccurate information.[4]

2B19. On September 7, 2021 the following exchange took place in Court:[5]

"MR. FLYNN: Good morning, your Honor. George Flynn on behalf of defendant/movant. The basis is it's a motion to deem facts admitted. We were trying to authentic a document that was the subject of some discussion the last couple of times we appeared before your Honor. I filed the request to admit. We received objections that we believe are inappropriate and just moving for ruling on those objections and some other relief. The -- the response that they filed, essentially is a motion to strike based on the failure to conduct a 201(k) conference, which I don't think is required with respect to objections and a request to admit, which is a hybrid discovery and evidentiary tool. So with respect to the motion itself, I really have nothing to say more than what's in the motion. I'd be happy if the Court wanted to take it under advisement after it has an opportunity to

1 Exhibit B9-2021-07-20_Pages from CLR_Vol_1_of_2_230421_1627_D4CDE198.pdf
2 Exhibit 7i-ferris letter forgery.png
3 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 11 Lines 3-5)
4 Exhibit 7i-ferris letter forgery.png
5 Exhibit B10-2021-09-07_Pages from ROP_Vol_1_of_1_230421_1628_8FF9DDF1-2.pdf

review the attachments and the motion.

THE COURT: No, I won't take it under advisement. We'll go back to that in a minute. Mr. Talarico, do you have any case law that says a 201(k) conference is required before 216 -- or in a 216 situation?

MR. TALARICO: Yes, your Honor. Supreme Court Rule 201(a) typically says the request to admit --

THE COURT: Do you have any case law?

MR. TALARICO: No, I have no case law, your Honor.

THE COURT: Okay. Because I don't think it does. I think by its own -- by the language of the rule, it's 28 days. And in fact, I believe the rule requires that the request to admit facts explicitly disclosed if you're not -- if you don't respond in 28 days, the answers are deemed admitted. So there is no requirement to engage in a 201(k) conference to resolve differences because by its own language, it resolves itself. So let's get into the answers. Okay. Anything you want -- I see No. 1, they seem to be asking you to admit or deny the genuineness of the document that was attached?

MR. TALARICO: Correct, your Honor

THE COURT: And do you have any -- anything to say beyond what you've written in response?

MR. TALARICO: Your Honor, use of the words defendant put into his motion, request to admit, are subject to various interpretations. And he did not include the definition of the specific words that he was using, so I relied upon the Black's Law Dictionary for definition. And within that, we were -- we reviewed the fact of the document.

THE COURT: Okay.

MR. TALARICO: The document -- the document is not accurate. It's not true. It's none of the above. It has a wrong date of accident, the wrong date of meeting. It has a lot of inaccuracies on it, Judge.

THE COURT: Okay. I'm going to strike the implicit objection regarding what is genuine. That being said, I do have what appears to be an admission. Mr. Flynn?

MR. FLYNN: Yeah, Judge. I mean, it's -- I guess if it was an admission buried in these objections. But the entire document is muddled up with these various objections. I'm just asking if this is a true copy of the letter that his client received. I'm not asking if it's -- if information contained is true and accurate. If you read it, it's admit Exhibit A attached hereto is a true, accurate, and genuine copy of a March 4, 2015, letter drafted by Attorney Saul Ferris. He concluded with the content of the letter. That's not what I'm asking about.

MR. TALARICO: Your Honor, that is not in true -- truth is not within that document. That's what we're saying. Those are false statements.

THE COURT: And that's fine. But it is -- he doesn't need to lay a foundation for the document am I correct?

MR. TALARICO: No. But the question -- I'm sorry.

THE COURT: Are you -- are you admitting -- I'm assuming, Mr. Flynn, this is for purposes of a foundation? You're not asking him to admit the contents?

MR. FLYNN: That's correct. This is produced -- again, late produced in discovery after the plaintiff's deposition. He should have produced this document years ago when he's placed the discovery of his malpractice at issue. So then he produces this letter. I don't want to have to take Saul Ferris's deposition, so I'm just asking, this is the letter that Mr. Dulberg produced and that it's a genuine copy of what he received in the mail?

THE COURT: Okay. Mr. Talarico, yes or no?

MR. TALARICO: Judge, that is a genuine copy. We don't know -- when examined, Mr. Dulberg does not recall. And in the deposition, he said he did not recall when he received it or how he received it. That is left open.

THE COURT: Mr. Talarico, I asked you a yes or no question, not asking for an explanation, which is consistent with what request to admit facts require. So are you admitting to the foundation of this document or denying --

MR. TALARICO: Yes, your Honor.

THE COURT: Okay. Then we will proceed. That's deemed admitted for purposes of foundation. Next one -- Mr. Flynn, the next one at issue?

MR. FLYNN: Judge, there was 2 and 3, and I attempted to pin them down on when he received it. So I asked No. 2, if Mr. Dulberg received a copy of this letter within 7 days of the date dated. And then, the next one, I asked if he received it within 30 days of the date it was dated. He doesn't answer either of those.

THE COURT: Okay. Mr. Talarico?

MR. TALARICO: Judge, with all due respect, Mr. Dulberg answered as best he could. This was alleged to be sent by U.S. Mail. He has no idea. It was many years ago. So he answered as truthfully, as cooperatively as possible, that he has no independent recollection of when this letter was received. He did a search of his own records, as presumed, at my request. He has no envelope.

THE COURT: If -- what it boils down to from my perspective is I'm reading it as a denial. And actually, that subjects you to 219(c) fees if they have -- for those fees associated with the cost of proving it up. But I'm reading it as a denial. Can I -- do you have any problem with my reading it as a denial? Am I incorrect?

MR. TALARICO: No, your Honor, you're not.

THE COURT: Okay. Mr. Flynn, anything you want to add? My interpretation of all of that is a denial.

MR. FLYNN: If that's what the answer is, then he's denied that he received this letter within 30 days of the date that the lawyer put the -- stamped it. So yeah, if I need to prove it up by taking Mr. Dulberg's -- retaking Dulberg's deposition and then taking Saul

Ferris's deposition, and as I've indicated in the motion, I'm seeking fees and costs.

THE COURT: Yeah. I'm going to interpret 30 -- or I'm sorry -- 3 the same way. I interpret that as a denial and you just have to prove it up. Next one?

MR. FLYNN: The next one is just regarding the meeting that is referenced in the letter. Admit that you met with Saul Ferris upon or about December 31, 2014, with regard to your personal injury case.

THE COURT: Okay. I –

MR. FLYNN: And he's denying -- he denied the date. He then says it's a later time period between February 23rd and March 6th of 2015, which also coincided with the drafting of that letter, by the way. So he's changed the premise of No. 4, but sort of provided an answer --

THE COURT: I think that's a denial because of the way you phrase your question. Anything after denies that he met Saul Ferris on or about December 31, 2014, with regard to -- with regard to the personal injury case, everything after that is surplusage. So you have a denial. All right. Is there anything else?

MR. FLYNN: No. The relief will be requested now that these denials and improper objections were raised. I'm going to have to retake Mr. Dulberg's deposition at least on the subject matter of this letter and I'll probably have to take Mr. Ferris's deposition to prove-up the foundation for the letter as well.

THE COURT: Certainly --

MR. FLYNN: So I would ask for fees and costs

THE COURT: You have leave to depose Mr. Ferris. I'm not sure you need Mr. Dulberg's deposition -- I'm willing to listen -- because your deposition of Mr. Dulberg would merely result in him repeating --

MR. FLYNN: Raising the same denial, so --

THE COURT: I mean, he's on the record denied any recollection. So I don't think you need the deposition to get him to say that in the transcript because you've got it in the request to admit. And I'll hold him to that unless there's something else you think you need from the deposition.

MR. FLYNN: No, Judge. I -- as you said, I think he's going to make the same denials and in my opinion play the same games he's been playing. So I'll take Mr. Ferris's deposition. I'll seek -- I'm requesting fees and costs in connection with the deposition because it shouldn't be necessary.

THE COURT: Well, I think -- and unless there's a different issue with respect to the cost associated with that deposition, I think that's an issue that I would have to address after trial because my reference to 219(c) is when you have to expend money to prove-up a fact that they deny, then you are entitled to those fees, but -- so I couldn't award them yet because you haven't --

MR. FLYNN: Fair enough.

THE COURT: -- you haven't done it. And I can only do that after the fact because if you fail to prove it up, you're not entitled to those fees, obviously.

MR. FLYNN: Understood.

THE COURT: So is there anything else we need to do today?

MR. FLYNN: I don't think so, Judge. If I could just clarify the order that will read that No. 1 is admitted, 2, 3, and 4 are denied

THE COURT: Yes.

MR. FLYNN: That I have leave to depose Mr. Ferris."

2B20. On October 14, 2021 Saul Ferris was deposed by Flynn and the following exchanges took place:[1]

page 6:[2]

Flynn: "Okay. Have you reviewed some documents today to -- in preparation for the deposition today to refresh your recollection of the matter?"

Ferris: "You provided me with a letter, which I will authenticate as being my letter dated March 4, 2015, and then you asked me to -- if there was any documentation, such as my file, which I do not have. I purged a file after four years, and it has been six years. But I keep my calendar -- I've kept my calendar since I started vexing as a civilian, meaning I was in the military, initially, and got out in 1989, and I have a calendar for every client I've seen since."

page 8:[3]

Flynn: "And do you know when you met with Mr. Dulberg?"

Ferris: "Yes. It was on March 26th at 2:00 o'clock."

Flynn: Okay. And we'll talk about the entry in your diary in a few moments. The letter indicates that he consulted with your firm on December 31, 2014, in regards to his personal injury case. Do you know why the letter references a December 31, 2014, date?

Ferris: "I- I can't explain the discrepancy between my calendar and the date indicated. I -- I -- it was too long ago. I don't know why.

Flynn: Okay. Is it possible that Mr. Dulberg initially contacted your office on December 31, 2014, but you didn't actually meet with him until February or March?

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1 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf
2 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 6)
3 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 8)

Ferris: "No. I -- I didn't know this was an issue. Can you -- if you want, my -- my 2014 calendar is in my drawer. I can pull it out and look at December 31st.

Flynn: "If you have it handy."

Ferris: "This March date was another meeting. I do, if you give me about one minute."

Flynn: "Absolutely. Thank you."

Ferris: "So I have my 2014 calendar, and I'm looking at December -- well, all right. December 31st. Even though I'm -- well, that's -- that's New Year's Eve. Let me see. I normally would not meet with clients New Year's Eve, but let me see. And, in fact, there is no entry on December 31st, 2014. Oh, that's -- it's a typo."

page 9:[1]

Flynn: "Is Exhibit 2 a photocopy of the cover page of your 2015 calendar, along with a date from February of 2015?

Ferris: Correct.

Flynn: "Okay. There is some handwriting on the second page, and I don't want to get into the clients and confidential information. But is there an entry on Thursday, February 26th, relative to Paul Dulberg?

Ferris: "Yes."

Flynn: "And is this your handwriting?"

Ferris: "It indicates a meeting, yes."

Flynn: "Okay. It indicates a meeting, and I see a few numbers, 2:00 o'clock and 4:00 o'clock. Can you tell me what those mean?

Ferris: That signifies that the meeting was originally scheduled for 4:00 o'clock. And either myself or the potential client asked that it be moved up to 2:00 o'clock, so I drew in there it's 2:00 o'clock."

page 10:[2]

Flynn: "Okay. And next to the 4:00 o'clock entry, it says, Paul Dulberg. There's a dash, and then it says chain saw PI 6-28-11, dash. What does that mean?"

Ferris: "I oftentimes to distinguish cases try andsummarize them by the nature of the case. And chainsaw -- I put chain saw because the client had called me and said that he was injured by a chain saw, which is horrifying and very memorable. And the other reason why I remember it so well is because I -- I own a chain saw; and I have a two-and-a-half acre wooded lot, and I use my chain saw probably three, four times a month. So I'm intimately familiar with chain saws, and I was very interested in -- when this client

1 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 9)
2 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 10)

described my worst nightmare, which was getting injured by a chain saw. So I put chain saw to remind me what kind of case it was. And the 6-28-11 would be the date that the client indicated the incident happened. And, normally, I wouldn't put down the date of the incident in the client appointment number, but in 2015, that was past the -- the statute of limitations, which would be two years minimum in Illinois, generally speaking. And so that -- I -- I knew that the statute had run. The first question I asked the client was, Was suit filed? He said suit had been filed, and so -- but wanted to discharge his attorney. So I agreed to meet with him and discuss his case."

page 11:[1]

Flynn: "Okay. And you actually did meet with him on Thursday, February 26, 2015, correct?"

Ferris: "Yes."

page 14:[2]

Flynn: "Okay. Do you know when you drafted the letter and how you drafted it?"

page 15:[3]

Ferris: "So the -- because this is more or less a form letter, in -- in my opinion, the December 31st date was -- was a date relating to another client, and I just didn't change the date. But the reason why the date of letter March 4th makes sense in terms of when the potential client came in was on – on February 26th, so March 4th would have been about five days later. And when you have a potential statute of limitations issue, it's advisable to get your declination letter -- see, I stole your word already -- get your declination letter out sooner than later."

Flynn: "Okay. And there was a weekend in between the date of your meeting and the date that the letter was finalized, correct?

Ferris: "Correct."

Flynn: "Okay. And did this letter get mailed to Mr. Dulberg at the address listed on the top of the letter?"

Ferris: "To the best of my knowledge, yes."

Flynn: "Okay. And would that have just been sent by regular U.S. postal mail?

Ferris: "Correct. If it was certified mail, the letter would so indicate."

Flynn: "Okay. So this would -- this letter was sent, to the best of your knowledge, by U.S. Mail, First Class?"

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1 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 11)
2 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 14)
3 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 15)

page 16:[1]

Ferris: "Yes."

Flynn: "Okay. Do you have any reason to believe that Mr. Dulberg wouldn't have received this letter from you within seven days of March 4, 2015?"

Ferris: "That's a better question for the United States Postal Service than it is for me."

Flynn: "I don't have --"

Ferris: "I put it in the mail. And it was out of my hands."

Flynn: "Okay. And you're -- do you believe he would have received this, barring any mistakes with the post office, he would have received it, at least, within 30 days of March 4, 2015?"

Ferris: "I -- I can't speak to the processing time of the postal service. It's really not for me to say."

page 17:[2]

Flynn: "Have you ever had any issues with the U.S. Postal Service not delivering letters, as far as you know?"

Ferris: "Other than a letter being returned for the incorrect address, no."

Flynn: "And this letter was not returned for any reason, correct?"

Ferris: "To the best of my knowledge, no."

Flynn: "Okay."

Ferris: "I -- I would have put that in the file and had been concerned that my declination was not communicated with the potential client. I would have acted on that. So I -- I don't recall any of that happening."

page 18:[3]

Flynn: "What is your expectation as far as delivery time when you send any letter by U.S. Mail?"

Ferris: "Locally, two days. Could be as fast as one day."

Flynn: "Okay. What about within the State of Illinois?"

Ferris: "Two days, you know, statewide. ..."

page 19:[4]

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1 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 16)
2 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 17)
3 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 18)
4 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 19)

Talarico: "My name is Alphonse Talarico, and I represent the Plaintiff. And I want to go over some of the statements you've made in this deposition -- discovery deposition, just for clarifying. I'm looking at what has been submitted and marked as Exhibit 2, which appears to be your 2015 DayMinder. And I think you testified as to that; is that correct?"

Ferris: "Yes."

Talarico: "Okay. I only see the excerpts from one page, that's the February 26th, which was a Thursday. I believe it's marked as a Thursday. My independent calendar says it was a Thursday. So I'm not asking you if it was or not. I'm just going to assume based on your daily reminder and the -- and my bar association daily reminder. You noted that he -- you were contacted for a chain saw personal injury matter. And I believe you testified that the date he told you the accident took place was June 28th, 2011; is that correct?"

page 20:[1]

Ferris: "Yes."

page 21:[2]

Talarico: "Now, do you still retain the entire 2015 daily minder, if you would?"

Ferris: "Yes. I have it. I have it right here."

Talarico: "Do you -- are there other occasions in that 2015 daily minder where you had contact, where you wrote down a contact with Mr. Dulberg?"

Ferris: "I -- I did search the file to -- excuse me -- the calendar. And I see no other entries for Mr. Dulberg other than the entry which was provided. And I wasn't trying to -- I was trying to be somewhat cautious with regard to client confidentiality, which is why I cut off the page. And I did put another client's name on the same page, but that's public record. He was charged criminally, so I'm not worried about any ARDC on that. But, you know, I can -- I can just -- I can hold up, if you could see the -- the page behind it, and there's no entries for Mr. Dulberg."

page 22:[3]

Q. "... Let's move on to Exhibit 1. ... There is a date on that that says March 4, 2015. You believe -- you testified you believe that's the day that you drafted this letter? Did you actually -- I'm sorry. Let me -- what I'm trying to get to is, did you type the letter up? Or did you give it to -- maybe just do some type of dictation and have someone type it up for you?"

page 23:[4]

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1 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 20)
2 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 21)
3 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 22)
4 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 23)

Ferris: "I do have a secretary that types letters for me. I either dictated it or took the form, disengagement letter, and made hand changes to it, which the secretary would have changed, and then I signed it. But March 4th would have been the date that it went out in the mail."

Talarico: "Okay. Thank you. And you testified that you sent it by regular mail to Mr. Dulberg?"

Ferris: "Yes."

Talarico: "Okay. So if it was regular mail, which we can eliminate who signed for it -- and it was -- again, I just want to make sure I have the facts right, because I believe you testified that it never was returned to you. So your assumption was that it was properly delivered?"

Ferris: "I can only assume that."

Talarico: "Right. I understand that. Sure. But I guess the one question you can answer is it never was returned to you?"

Ferris: "Which it was not; that's correct."

Talarico: "Thank you. On Exhibit 1, sir, the accident referred to, it does not correspond with your daily reminder and with your recollection of the date he told you the accident took place. And you have no explanation as to what January 24th, 2013, had to do with Paul Dulberg?"

page 24:[1]

Ferris: "Oh, I don't think I was asked about that – that date but –"

Talarico: "I get to now ask you."

Ferris: "Yeah."

Talarico: "It says -- Exhibit 1 says, your accident of January 24, 2013. Is that correct? Is that what it says?"

Ferris: "That's what my letter says, yes."

Talarico: "And isn't it correct, sir, that Exhibit 1, your daily reminder, it has the date of accident – well, refer -- refers to 6-28 of 2011?"

Ferris: "Correct. So in my opinion, what happened was – this is a form letter. The disengagement or declination letter is a form letter to which I use over and over. And apparently, I made a mistake by indicating – well, I don't know what the accident date is. You gentlemen know when it was. So if the date's wrong, it's wrong, because it wasn't change on the form letter."

Talarico: "Isn't it true that the date of accident reported to you by Dulberg on your daily reminder, 6 – June 24 28th, 2011, that's what he told you?"

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1 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 24)

Ferris: "To the best of my recollection, correct."

page 25:[1]

Talarico: "And you testified that you believe the December 31st, 2014, date, as far as consulting, is a typo, and you have no entry in your 2014 daily reminder for December 13th -- 31st, I'm sorry -- New Year's Eve, which by the way, I checked it, the late bar association was even closed on that day, that you did not have a meeting with him on that day, on New Year's Eve?"

Ferris: "Correct."

Talarico: "Okay. In your letter, sir, which is Exhibit 1, I draw your attention to that. I believe the first sentence you speak to -- you speak to Mr. Dulberg capsulizing what his conversation was with you -- was about -- was about, it -- and that stated -- it states, your personal injury case. Is that correct?"

Ferris: "Yes."

Talarico: "But in your conversation with Mr. Flynn responding to his questions, you were talking about a statute of limitations. What statute of limitations were you talking about?"

Ferris: "My understanding of the statute of limitations is for personal injury, it's two years in the State of Illinois. I -- I don't even remember where this happened, if it was in McHenry or -- then it would have been Illinois, and a two-year statute would have applied."

page 26:[2]

Talarico: "Okay. So what I'm getting at is Mr. Dulberg talked to you about a personal injury matter; is that correct?"

Ferris: "Yes."

Talarico: "And the statute you're referring to is a personal injury statute in the State of Illinois, correct?"

Ferris: "Yes."

Talarico: "Your letter of Exhibit 1, the letter of March 4th, it says in the second to last sentence, I believe you should not have settled with the property owners for $5,000; is that correct?"

Ferris: "Yes."

"..."

Ferris: "...

---

1 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 25)
2 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 26)

page 27:[1]

> ... you know what, most disengagement letters are very generic. This is very unusual for me to comment on any specifics of the case. But I -- I was very sympathetic to this injury for reasons stated. And the gentleman was referred by a guy who did great work for me. And so I was trying to be as helpful as I possibly could by saying that."
>
> Talarico: "Okay. That brings us back to Exhibit 2. With all due respect, sir, the name David -- let me get back to Exhibit 2. On the sticky note you had -- you testified earlier today that you believe that it was someone who referred Mr. Dulberg to you. Do you recall the name of the defendant in the case that Mr. Dulberg brought to you and asked you to take over? Do you recall the name of the defendant?"
>
> Ferris: "No."
>
> Talarico: "Would you be surprised to know that his name was David?"
>
> Ferris: "That -- that could be the reason I wrote down David. You could be absolutely correct on that."

page 28:[2]

> Talarico: "Okay."
>
> Ferris: "Versus the referral source. I was -- I was guessing, basically."
>
> "..."
>
> Talarico: "Exhibit 1, your letter of March 4th, the last paragraph, the last sentence you state, We recommend that you attempt to settle the case at the upcoming pretrial conference with your current attorney; is that correct?"
>
> Ferris: "Yes."

page 29:[3]

> Talarico: "Okay. Could you -- could you enlighten us what -- what did you know about the pretrial conference, and then what did you know about his current attorney?"
>
> Ferris: "So the only way that I would have known that is by Mr. Dulberg telling me he had an upcoming pretrial conference. And so I do remember him telling me a pretrial conference was scheduled. But for whatever reason, he did not have confidence or faith in the job his current attorney was doing. But I -- I was encouraging him to get the case settled because there was questionable liability in my opinion."
>
> Talarico: "And at the time you wrote this letter, did you know what the pretrial offer from Mr. Gagoan was?"

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1 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 27)
2 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 28)
3 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 29)

Ferris: "No."

page 30:[1]

Talarico: "Okay. You testified today that you, personally-- no. Wait. I'll ask, did you testify today that you, personally, mailed this letter to Mr. Dulberg?"

Ferris: "Yes."

Talarico: "Okay. Calling your attention to Exhibit 1, you have Mr. Dulberg's address listed as 3416 West Elm Street in McHenry, Illinois 60050; is that correct?

Ferris: "Yes."

Talarico: "Do you know who lives at -- who -- who owns the property at 3416 West Elm Street in McHenry, Illinois 60050?"

Ferris: "I have no idea."

Talarico: "Would it surprise you if this was the address of the law firm that was currently representing Mr. Dulberg in the matter that he brought to you?"

Ferris: "It would surprise me."

Talarico: "Would it surprised you if this is the address of Tom Popovich's law firm at the time?"

Ferris: "It would, yeah."

Talarico: "So according to your testimony, you sent this letter to Mr. Popovich and not to Mr. Dulberg?"

Ferris: "I sent the letter to the address the potential client provided me. I don't make up addresses. So he provided me the address. I had no correspondence or anything from his attorney. I had no idea who his attorney was."

2B21. According to Saul Ferris deposition testimony[2], Ferris' personal notes on the Dulberg case listed the date of Dulberg's injury as June 28, 2011 (which is the correct date Dulberg was injured by Gagnon) but the declination letter[3] listed the date of the "accident" as January 24, 2013 (which is the date Dulberg was deposed in the underlying case against Gagnon and the McGuires[4]).

2B22. According to Saul Ferris deposition testimony[5], the date of the meeting between Dulberg and Ferris was February 26, 2015 but the declination letter[6] listed the date of the meeting as

1 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf (Page 30)
2 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf
3 Exhibit 7i-ferris letter forgery.png
4 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg UNDERLYING CASE DOCS/Files From Baudin's Office/Dep of Plaintiff/Dep of Paul Dulberg.pdf
5 Exhibit B11-SAUL FERRIS 101421 FULL indx PDFA.pdf
6 Exhibit 7i-ferris letter forgery.png

December 31, 2014. Ferris stated that "So the -- because this is more or less a form letter, in -- in my opinion, the December 31st date was -- was a date relating to another client, and I just didn't change the date." When Ferris showed his notebook during the deposition, the notes indicated that Ferris had no clients on December 31, 2014. Ferris also stated that he would not schedule a perspective client meeting on New Years Eve.

2B23. When Ferris was asked "So according to your testimony, you sent this letter to Mr. Popovich and not to Mr. Dulberg?", Ferris answered, "I sent the letter to the address the potential client provided me. I don't make up addresses. So he provided me the address. I had no correspondence or anything from his attorney. I had no idea who his attorney was."

2B24. It is not credible that Dulberg provided his own home address to Ferris incorrectly, accidentally mistaking his own home address (a place he has lived his whole life) with the address of the Law offices of his previous attorney. It is not credible for Flynn to have persisted in claiming that Dulberg received the letter from Saul Ferris by U.S. mail at Dulberg's home considering how the letter in question was with a package of documents which was inexplicably sent from the law office of Saul Ferris to the law offices of Thomas J. Popovich (and remained there for two months without Dulberg's knowledge or permission). It is not credible for Popovich or Mast to act as if they were not aware that a package of documents belonging to Dulberg was in their offices for 2 months and that the package of documents was apparently sent back to the Ferris law office without their knowledge. The email document HansMast2-65[1] (which was suppressed by Williams) was sent from Dulberg to Balke on March 20, 2015 and states:[2]

> "I called Saul Ferris office again today to find out they were mailed to and signed for at 3416 W. Elm St. McHenry, IL. by someone named Anne Oupl on March 7th. This is Hans Mast office. I called Hans office and apparently no one by that name works there and no one knows anything about receiving the certified mail. I'm at a loss as to how these documents were sent to the wrong place and am a bit furious because it has the memo about the pre- trial settlement you wanted to see."

2B25. The example of Saul Ferris shows how Flynn could not have accused Dulberg of being deceitful or evasive about his communication with Ferris unless the email documents involving or mentioning Ferris were suppressed by Williams.

2B26. It strains credulity to be asked to accept that the coordination between Flynn's accusations against Dulberg and the suppression of the email documents by Williams related to the same issues and proving Dulberg's claims to be true is just a coincidence. A reasonable person can conclude that Williams intentionally suppressed emails between Ferris and Dulberg and emails mentioning Saul Ferris, the movement of the box of Dulberg's documents in the possession of Ferris, and emails mentioning a missing settlement memo. A reasonable person can also conclude Williams did this to benefit the defendants. A reasonable person can conclude that if the documents mentioning Ferris were not suppressed by Williams, then the issues that Flynn later raised would have made no logical sense as they would have already been answered.

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1 Exhibit B12-Hans Mast2-65.pdf
2 Exhibit B12-Hans Mast2-65.pdf

2B27. The intentional suppression of documents mentioning Saul Ferris by Williams created an unnecessary mystery around when Ferris met with Dulberg, what they discussed, the packet of Dulberg's documents that was inexplicably sent to the law offices of Thomas J. Popovich by Ferris, and the Ferris declination letter. Flynn then used this unnecessary mystery to attempt to coerce Dulberg to admit (as verified fact) receiving a letter in the U.S. mail at his home that contained factually incorrect information and that was actually addressed to the Law Offices of Thomas J. Popovich (and in the possession of Popovich for about 2 months without Dulberg knowing where the package was).

2C THE EXAMPLE OF TILSCHNER V SPANGLER

2C1. Detailed written instructions were given by Dulberg to Williams on at least six different occasions concerning Tilschner v Spangler and a meeting which took place on November 20, 2013 between Dulberg and Mast. Dulberg sent Williams a certified slip copy of Tilschner v Spangler as part 1 of a set of 3 emails with attachments that were named "IndependantContractor-CaseLaw1_Mast.pdf" and "IndependantContractor-CaseLaw2_Mast.pdf" and "IndependantContractor-CaseLaw3_Mast.pdf" which Mast gave Dulberg at a meeting on November 20, 2013. Williams separated the certified slip copy of Tilschner v Spangler from the other two attachments, stored them in 2 separate places, and renamed all three downloaded files. **Williams never turned over the slip certified copy of Tilschner v Spangler to opposing counsel and never informed Dulberg of that fact.** The process is shown in detail in 'Visual Aid 4 – Tilschner v Spangler hoax'[1].

2C2. On October 10, 2018 at 5:34 PM, two days before their first meeting, the file "second_amended_complaint_comments.txt"[2] was emailed[3] by Dulberg to Williams in a folder called "Duberg_complaint"[4]. The document "second_amended_complaint_comments.txt" states:

> "MAST told DULBERG at a meeting in which DULBERG was trying to decide whether to accept the MCGUIRE's offer of $5,000 that because the restatement of torts 318 is not applicable in Illinois, DULBERG had no case against the MCGUIRES and that the MCGUIRES did not have to offer any settlement at all. DULBERG asked MAST to cite case law that shows why the MCGUIRES were not at least partially liable for DULBERG'S injury, and MAST cited Tilscher v Spangler, a case which confirms that restatement of torts 318 is not applicable in Illinois. But note the claim of MCGUIRE'S liability given above relies on restatement of torts 343 or a general neglegence claim. It is completely independent of restatement of torts 318. At the same meeting MAST also informed DULBERG that the MCGUIRES made an offer of $5,000 to be nice (they did not have to offer anything) and if DULBERG did not accept the offer it would be withdrawn and the MCGUIRES will ask for summary judgement. MAST informed DULBERG that the presiding judge would grant the MCGUIRES a summary judgement dismissing the case against them, leaving DULBERG with no settlement at all from the

1 Visual Aids/Visual Aid 4 - Tilschner hoax.png
2 Exhibit C1-second_amended_complaint_comments.txt
3 Exhibit C1a_2018-10-10_1734 PM_SENT_Legal Malpractice Case_ATTACHMENTS.pdf
4 Group Exhibits (showing key folders)/Exhibit folder 13-Duberg_complaint/second_amended_complaint_comments.txt

MCGUIRES."

2C3. On October 19, 2018 a PDF file was created by Clinton or Williams in "Dulberg Master File" concerning the Tilschner case.[1]

2C4. On December 4, 2018 at 2:20 PM, two days before the Second Amended Complaint at Law was filed, a file called "working.pdf"[2] was sent attached to an email[3] to Williams. Dulberg's comments are in colored font. In the document "working.pdf"[4] Dulberg states in item 50-k on page 9 in red font:

> "The necessary facts are: MAST told DULBERG and another family member at a meeting in which DULBERG was trying to decide whether to accept the MCGUIRE's offer of $5,000 that because the restatement of torts 318 is not applicable in Illinois, DULBERG had no case against the MCGUIRES and that the MCGUIRES did not have to offer any settlement at all. DULBERG asked MAST to cite case law that shows why the MCGUIRES were not at least partially liable for DULBERG'S injury, and MAST cited Tilscher v Spangler, a case which confirms that restatement of torts 318 is not applicable in Illinois. At the same meeting MAST also informed DULBERG that the MCGUIRES made an offer of $5,000 to be nice (they did not have to offer anything) and if DULBERG did not accept the offer it would be withdrawn and the MCGUIRES will ask for summary judgement. MAST informed DULBERG that the presiding judge would grant the MCGUIRES a summary judgement dismissing the case against them, leaving DULBERG with no settlement at all from the MCGUIRES. Mast, "The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills."

2C5. On April 18, 2019 at 10:38 AM, Dulberg sent 3 emails in series with attachments to Williams, subject: "318 Cases from December meeting 1 of 3"[5], "318 Cases from December meeting 2 of 3"[6] and "318 Cases from December meeting 3 of 3"[7]. The first email attachment was named "IndependantContractor-CaseLaw1_Mast.pdf"[8] and contained the certified slip copy of the case Tilschner v Spangler. The second attachment was named "IndependantContractor-CaseLaw2_Mast.pdf"[9] and contained the case Choi. The third attachment was named "IndependantContractor-CaseLaw3_Mast.pdf"[10] and contained the case Lajato.

2C6. Williams received the 3 emails, downloaded the attachments, renamed them, and stored the first attachment in one folder, and stored the second and third attachments in a different folder. What Williams did with the files after she received them is shown in 'Visual Aid 4 -

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1 Exhibit C2-Tilschner download by Clinton on 10-19-2018.png
2 Exhibit C3-Working.pdf
3 Exhibit C3a-2018-12-04_1420 PM_SENT_2nd amended complaint draft_ATTACHMENTS.pdf
4 Exhibit C3-Working.pdf
5 Exhibit C0d-2019-04-18_1038 AM_SENT-3_318 Cases from December meeting 1 of 3_ATTACHMENTS.pdf
6 Exhibit C0e-2019-04-18_1038 AM_SENT-4_318 Cases from December meeting 2 of 3_ATTACHMENTS.pdf
7 Exhibit C0f-2019-04-18_1038 AM_SENT-5_318 Cases from December meeting 3 of 3_ATTACHMENTS.pdf
8 Exhibit C0a-IndependantContractor-CaseLaw1_Mast.pdf
9 Exhibit C0b-IndependantContractor-CaseLaw2_Mast.pdf
10 Exhibit C0c-IndependantContractor-CaseLaw3_Mast.pdf

Tilschner v Spangler hoax'[1]. The certified slip copy of Tilschner v Spangler was never turned over to opposing counsel and was never given a bates stamp. Williams never informed Dulberg of this.

2C7. On July 8, 2019 at 11:06 AM, one week after Dulberg received the Popovich Document Disclosure from Williams, Dulberg sent an email[2] to Williams with an attached folder called "To_Julia"[3]. The folder contained a document called "timeline_of_mcguire_settlement.txt"[4]. The document 'timeline_of_mcguire_settlement.txt' under the November 20, 2013 timeline entry states:

> "Dulberg agrees to have another meeting with Mast in his office. (memo of meeting: pop 3)
>
> Dulberg brings his brother Thomas Kost with him. Before the meeting Dulberg asks Mast to show examples of case laws which demonstrate that McGuires are not partially responsible for the chainsaw accident. (email: folder 2013 11, file Mast2-201)
>
> In the meeting Mast uses the example of Tilschner vs Spangler. He claims that the McGuires are not responsible because Restatement of Torts 318 is not applicable in Illinois.
>
> He also claims that the accident was not forseeable by the McGuires and they had no control over Gagnon's actions.
>
> Mast also gave Dulberg a packet of other examples of case law. (ddd 204) (ddd 301)?
>
> Thomas Kost kept a rough set of notes during the meeting. (ddd 1217)
>
> Mast claims that if Dulberg doesn't accept the $5,000 the McGuires will simply file a motion to get out of the case for free.
>
> Mast said the McGuires do not have to offer anything and are offering $5,000 to be nice."

2C8. On June 18, 2020 at 9:24 AM, one week before the Mast deposition, Dulberg sent an email[5] to Williams a file called "questions_for_mast.txt"[6]. The June 18, 2020 version of 'questions_for_mast.txt' contain questions presented by Dulberg and his brother, Thomas Kost, in 9 different categories which are clearly listed at the beginning of the document. These sets of questions were a more developed version of a file by the same name sent to Williams on July 8, 2019. Questions in each category are carefully written in the order that Dulberg wanted Williams to ask Mast during the deposition.

One of the 9 categories is named "ABOUT THE NOVEMBER 20th, 2013 MEETING IN MAST'S OFFICE". It contained 23 carefully chosen questions that Dulberg wanted Williams to

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1 Visual Aids/Visual Aid 4 - Tilschner hoax.png
2 Exhibit C7a-2019-07-08_1106 AM_SENT_Fwd Forward to Julia_ATTACHMENTS.pdf
3 Group Exhibits (showing key folders)/Exhibit folder 14-To_Julia
4 Exhibit C7-timeline_of_mcguire_settlement.txt
5 Exhibit C8a-2020-06-18_0924 AM_SENT_Mast deposition_ATTACHMENTS.pdf
6 Exhibit C8-questions_for_mast.txt

ask Mast concerning the November 20, 2013 meeting during Mast's deposition.

The document 'questions_for_mast.txt' states:

> "ABOUT THE NOVEMBER 20th, 2013 MEETING IN MAST'S OFFICE
>
> who was at the November 20th meeting? (Answer: Paul Dulberg, Hans Mast, Thomas Kost)
>
> who called for the meeting?
>
> what was the purpose of the November 4 meeting?
>
> What were the main topics discussed?
>
> Was the $7,500 offer made on october 22 discussed at the November 20th meeting?
>
> Were any decisions made at this meeting?
>
> Did Dulberg agree to accept the $5,000 counter-offer made by Barch on November 18 at the meeting?
>
> What were his grounds for disagreeing with the $5,000 counter-offer if it was Dulberg himself that initiated an offer of $7,500 on October 22nd?
>
> Did you point out to him that there is only a $2,500 difference in between the offer and the counter-offer?
>
> Did you suggest that he reply by offering to accept less than $7,500 but more than $5,000, like, for example, $6000?
>
> Was there any attempt to make another counter-offer for any amount higher than $5,000 but lower than $7,500? Why not?
>
> Did you hand Dulberg documents of case laws at the meeting of November 20, 2013?
>
> What was the purpose of providing him with documents of case laws?
>
> What case laws were in those documents?
>
> Did you discuss cases at the meeting?
>
> Which cases were discussed?
>
> What were you trying to explain to Dulberg by discussing those cases?
>
> Why did you choose those cases to use as examples?
>
> In what way were those cases applicable to the situation with the McGuires?
>
> At the meeting did you say something about how the restatement of torts 318 doesn't apply in illinois and that fact affects the case against the McGuires?
>
> Can you explain how the restatement of torts 318 affected Dulberg's case against the McGuires?

Did you cite the case of Tilschner vs Spangler to DUlberg during the November 20th meeting?

Why? How was the Tilschner vs Spangler case similar to what happened to Dulberg at the McGuires?"

2C9. On June 18, 2020 at 9:32 AM opposing counsel Flynn sent an email to Williams stating:[1]

"... Please let me know when you can about your plan for exhibits. I will assume that I do not need to print or bring anything with me unless you advise otherwise."

2C10. On June 19 2020 at 2:35 PM, six days before the deposition of Mast, Flynn sent an email to Williams stating:[2]

"Julia: I just received your notice of attorney lien. Will you still be taking the dep next week?

My experience with receiving liens at this stage of litigation(in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for Mast's dep. ..."

Williams never replied to the attorney lien portion of this email and there is no such communication of Williams sending the attorney lien to Flynn in "Dulberg Master File"[3]. However, a draft letter of resignation was created on July 7, 2020 and Ed Clinton sent the letter to Dulberg on July 27, 2020.

2C11. On June 23, 2020 at 10:22 AM Brittney Brown bbrown@uslegalsupport.com sent an email to Williams, Subject U.S. Legal Support - Confirmation of Scheduling - Job No. 923267 with this file attached:

CFM923267.PDF[4]

The attached file CFM923267.PDF is not in the Clinton case file.

2C12. On June 23, 2020 at 11:32 AM (juliawilliams@clintonlaw.net) sent an email to Brittney Brown (bbrown@uslegalsupport.com) and provided a personal email address for contact that is not associated with the Clinton Law Firm stating:[5]

"This deposition is moving forward as scheduled. My cell is 312-508-3376. If you have issues, you can also reach me on my personal email address at Julia.c.floyd@gmail.com"

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1 Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Emails 2020 August 19/US Legal Support Confirmation of Scheduling Job No 923267.pdf
2 Exhibit 22-Dulberg -2.pdf (Page 1)
3 Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File
4 Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Emails 2020 August 19/US Legal Support Confirmation of Scheduling Job No 923267-2.pdf (Page 1)
5 Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Emails 2020 August 19/US Legal Support Confirmation of Scheduling Job No 923267-2.pdf (Page 2)

2C13. On June 24, 2020 at 12:50 PM Flynn emailed Williams stating:[1]

> "Thanks Julia. I also received the additional exhibit you may use. See you tomorrow."

2C14. On June 24, 2020 at 1:56 AM, one day before the Mast deposition, Dulberg emailed[2] Williams a file called "2020-06-23_updated_timeline_of_mcguire_settlement.txt"[3] since Williams explicitly asked Dulberg to prepare it for her using a different way to refer to documents using Bates numbers.

2C15. On June 25, 2020 Hans Mast was deposed. For the deposition of Hans Mast, Williams inexplicably placed 2 exact copies of the Lajato case and a copy of Choi in PDF file named:

> "Dulberg Mast Dep Exh 12 Legal Research .pdf"[4].

Dulberg Mast Dep Exh 12 Legal Research .pdf is corrupt and only found in the following 2 locations in the Clinton case file:

> Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Matter Ed Clinton/Dulberg Mast Dep Exhibits FINAL 2020 June 25/Dulberg Mast Exh/Dulberg Mast Dep Exh 12 Legal Research .pdf
>
> Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Matter Ed Clinton/Dulberg Mast Dep Exhibits/Dulberg Mast Dep Exh 12 Legal Research .pdf

2C16. At the deposition, Williams did not ask Mast any of the questions that Dulberg had instructed her to ask.

2C17. During the Mast deposition Williams uploaded "exhibit 12" and neither Mast nor Flynn could see "exhibit 12" as the following exchange demonstrates:[5]

> Williams: "Okay, I'm uploading Dulberg Mast Dep Exhibit 12.· This is titled, "Legal Research."· And this is hard because there's -- it's 27 pages.· Some ·of them have Bates numbers, but some of them are black on the bottom, so I think the Bates numbers didn't -- didn't take, but it's roughly -- looks like roughly 204, maybe 205, Dulberg204, 205 through roughly Dulberg00304 -- Actually, I'm sorry, these aren't going to be continuous.· But do you have that packet of legal research in front of you? It appears to be copies out of a -- copies of case law out of the Northeastern Digest.
>
> Mast: "I just have the one case here."
>
> Williams; "Just one case?· Which -- What's the case title?

---

1 Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Emails 2020 August 19/Scheduled Paul Dulberg v Law Offices of Thomas Popovich et al Job 923268 Hans Mast 20200625 1000 AM CDT.pdf (Page 13)

2 Exhibit C9a-2020-06-24_0156 AM_SENT_Bates numbers added to timeline of McGuire settlement_ATTACHMENTS.pdf

3 Exhibit C9-2020-06-23_updated_timeline_of_mcguire_settlement.txt

4 Exhibit C10-Dulberg Mast Dep Exh 12 Legal Research .pdf

5 Exhibit C15-Hans Mast 062520 FULL.pdf (Page 49 Lines 20-24 and Page 50 Lines 1-13)

Mast: "The first one, it's L A J A T O."

Williams: "Okay.· Do you -- Did you copy this case law?"

Mast: "I don't know."

2C18. Williams never provided the court reporter Barbara G. Smith with a usable, viewable, uncorrupted, error free "Exhibit 12" during the deposition or at any time afterward that matches what Mast described it as in his deposition. Nor did Flynn make available to the court reporter the partial printouts of the exhibits he had in his possession and gave to Mast to use during the deposition.

2C19. Later the court reporter Barbara G Smith was subpoenaed for her records of the Mast deposition. In her response she provided the audio file of the deposition.[1]

2C20. The Court Reporter, Barbara G Smith's handwritten notes on Exhibit 12 state:

"#12[2] 1-22 blank 23-27 only"[3] [4]

"Choi -is- Commonwealth Edison is only case I have in #12 download
Witness said he only has Lajato case in his #12"[5]

2C21. Dulberg and his subsequent counsel, Alphonse Talarico, grew suspicious of how Williams could have forgotten all about Tilschner v Spangler when preparing exhibit 12 for Mast's deposition considering the number of times she was told about it in writing.

2C22. On August 2, 2022 Dulberg subpoenaed Clinton[6] and Williams[7] for documents and communication connected to the preparation and treatment of exhibit 12 before, during and after Mast's deposition.

2C23. On September 29, 2022 Williams responded for both Clinton and herself.[8]

2C24. On October 28, Clinton responded for himself.[9]

2C25. On October 28, Julia Williams responded for herself.[10]

---

1 Group Exhibits (showing key folders)/Exhibit folder 17-Barbara G Smith Subpoena Responsive Thumbdrive/mast.wav
2 Group Exhibits (showing key folders)/Exhibit folder 17-Barbara G Smith Subpoena Responsive Thumbdrive/Mast 6-25-20/Dulberg Mast Dep Exh 12 Legal Research .pdf
3 Group Exhibits (showing key folders)/Exhibit folder 17-Barbara G Smith Subpoena Responsive Thumbdrive/HPSCANS/job papers 0002.pdf (Page 1)
4 Group Exhibits (showing key folders)/Exhibit folder 17-Barbara G Smith Subpoena Responsive Thumbdrive/Mast 6-25-20/Dulberg Mast Dep Exh 12 Legal Research .pdf
5 Group Exhibits (showing key folders)/Exhibit folder 17-Barbara G Smith Subpoena Responsive Thumbdrive/HPSCANS/job papers0001.pdf (Page 6)
6 Exhibit K22-July 17 2023 Requested Subpoena served on Clinton .pdf
7 Exhibit K21-July 17 2023 Requested Subpoena served on Julia C. Williams.pdf
8 Exhibit K23-9-29-22_July 17 2023 Response for both by Williams only.pdf
9 Exhibit K24-10-28-2022_July 17 2023 Response to Subpoena served on Clinton .pdf
10 Exhibit K25-10-28-2022_July 17 2023 Amended Response by Williams only.pdf

2C26. On November 04, 2022 Williams was asked about "exhibit 12" in court. After 4 different subpoena responses related to exhibit 12 over the previous 3 months, and after being informed by Dulberg at least 6 different times in writing about the importance of Tilschner v Spangler, Williams claimed to not know the contents of exhibit 12. The following exchange took place in court:[1]

> "MS. WILLIAMS: ... So sometime after the deposition, we -- we did provide the exhibit that was utilized in the deposition to the court reporter, and at that time they marked it and sent it back to everyone.
>
> THE COURT: Okay. What was Exhibit 12 again?
>
> MS. WILLIAMS: It was a series of cases. I don't know that -- I just can't recall what all was asked about it, but I know there were -- it was -- it was --
>
> THE COURT: All right. These would have --
>
> MS. WILLIAMS: -- copies of case law.
>
> THE COURT: All right.
>
> MR. FLYNN: They were photocopies of the old books, Judge, cases that were contained in Mast's file.
>
> THE COURT: Okay.
>
> MR. FLYNN: And he was -- you know, they have -- they're, obviously, not complete because they -- placed on a printer, appeared like we used to do in the old days.
>
> MR. TALARICO: Yes. Was the Tilsner case included in -- in the blank Exhibit 12 you sent to U.S. Legal, Barbara Schmidt? And was -- when you discussed with Mr. Flynn the failure of his -- or Mr. Mast's internet, didn't he say, I can't see these, I can only see their first one (indiscernible), which was the Lagano (phonetic) case? And wasn't there continued discussion by Mr. Flynn that he didn't -- he didn't produce all of the documents you sent on -- in hardcopy because he wanted to save paper?
>
> MS. WILLIAMS: So that's -- I guess that's a lot of questions. So what --
>
> MR. TALARICO: It is.
>
> MS. WILLIAMS: What -- what -- I cannot recall what cases were included and weren't included at this point. There -- there was an e-mail to Mr. Flynn with the exhibit that is attached that I believe was produced in the subpoena. So whatever that exhibit was is -- is what I would have used. So I know there was, like, a Laravo case or -- I remember the first case was like Laravo or Lavajo, L-A-V-A-J-O, or something like that. But right now, off the top of my head, I don't remember what other cases were included.
>
> MR. TALARICO: I'm talking about -- Judge, if I might, please? Excuse me. I'm sorry, Ms. Williams. There was -- what the reporter had was blank. What Mr. Flynn's client said was, I see the Lagano (phonetic) one. So the Exhibit 12 that was sent, like, a week

1 Exhibit C11-2022-11-04 17LA377 Report of Proceedings.pdf (Page 17 Line 4 through Page 20 Line 1)

or two after the deposition had Lagano, Troy, and the same exact Lagano case, and it did not have the Tilsner case involved, and the Tilsner case was very important. So it was an exact duplication of one case and a second case. But this is -- Judge, it's not just the Exhibit 12. The entire deposition --

THE COURT: Well, are you asking a question about Exhibit 12? Because if we're done asking questions, I'm gonna let her go.

MR. TALARICO: Okay. Yep. I'm done."

2C27. It is not credible that Williams made the claim to the court that she cannot recall the contents of "exhibit 12" when she stated, "It was a series of cases. I don't know that -- I just can't recall what all was asked about it, but I know there were -- it was -- it was --" " -- copies of case law." and when asked by Dulberg's current attorney she claimed, "What -- what -- I cannot recall what cases were included and weren't included at this point." When Williams states "... at this point" she was implying that her dealings with exhibit 12 were so long ago that "at this point" she can no longer recall what they were. But Williams prepared 4 different responses to a subpoena which centered on exhibit 12 within the previous 3 months and Williams was then appearing in court to address outstanding issues with the subpoena and around exhibit 12, including a motion to compel.

2C28. Of interest is that more than 2 years after the Hans Mast Deposition, opposing counsel Flynn was the only person in the November 4, 2022 court record attempting to give a detailed description to the contents of "exhibit 12" while Williams, the only person who prepared "exhibit 12", and fresh from producing 4 responses to a subpoena centering on the subject of "exhibit 12", could not recall the contents of "exhibit 12" when asked "at this point" because her dealings with exhibit 12 were assumably 'so long ago'.

The example of the hiding of the certified slip copy of Tilschner v Spangler shows the **extreme degree** to which Williams and Clinton will go to suppress key evidence which was in the possession of their permanently disabled client.

2C29. On November 30, 2022 Flynn filed DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2nd AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST which contains the following point ¶12:[1]

"12) Of concern is a statement on page 19 of Dulberg's motion in which he argues that Mast had insisted that the decision in the Tilschner v. Spangler case was the reason Dulberg would not prevail in the underlying case against the McGuire's. The statement is inexplicably made "on information and belief." This is unacceptable. Dulberg has made no such disclosure in fact discovery (now closed) about this very specific discussion between Mast and himself regarding the Tilschner case. If Dulberg believes he has disclosed it, he should be required to identify where in his answers and amended answers to discovery or his deposition he has identified such discussion with this amount of

1 Exhibit C16-2022-11-30_Flynn Answer to Motion to Strike Mast Deposition.pdf (¶12 on Page 4)

specificity. Defendants submit that no such disclosure exists."

2C30. A reasonable person can conclude that Williams intentionally suppressed Tilschner v Spangler. A reasonable person can also conclude that Williams suppressed Tilschner v Spangler to benefit to the defendants over Dulberg and to sabotage Dulberg's case against Popovich and Mast. The suppression of Tilschner v Spangler helps the defense deny that Mast ever discussed the Tilschner case with Dulberg and helps Mast deny that Tilschner v Spangler and the Restatement of Torts 318 was the legal theory Mast gave Dulberg as to why the McGuires were not responsible in any way for his injury on their property.

2D THE EXAMPLE OF BRAD BALKE

2D1. On March 19, 2015 Dulberg retained Brad Balke as attorney. Balke, in violation of the automatic stay, represented Dulberg in the 22nd Judicial Circuit Court which had no jurisdiction even though Balke must have known Dulberg had no standing as plaintiff in PI case 12LA178.

2D2. On May 13, 2015 Balke attempted to get Dulberg to accept a $50,000 offer from Allstate in the 22nd Judicial Circuit Court in violation of the automatic stay.[1] Dulberg refused and fired Balke on June 12, 2015.[2]

2D3. Williams suppressed about 40 documents of email communication which were in her possession from 3 different sources between Balke and Dulberg from the May 30, 2019 document disclosure. The suppressed email documents and the subjects of the documents are:

Hans Mast2-14 .... with Balke on picking up electronic file and paper file
Hans Mast2-15 .... with Balke on picking up electronic file and paper file
Hans Mast2-16 .... with Balke on picking up electronic file and paper file
Hans Mast2-17 .... with Balke on picking up electronic file and paper file
Hans Mast2-18 .... with Balke on picking up electronic file and paper file
Hans Mast2-19 .... with Balke on picking up electronic file and paper file
Hans Mast2-21 .... with Balke on lean buyout and picking up case file
Hans Mast2-24 .... with Balke on lean buyout
Hans Mast2-29 .... with Balke on lean buyout
Hans Mast2-32 .... with Balke about Balke and Mast leans buyout in exchange for case file
Hans Mast2-33 .... with Balke about Balke and Mast leans buyout in exchange for case file
Hans Mast2-34 .... with Balke about Balke and Mast leans buyout in exchange for case file
Hans Mast2-35 .... with Balke about Balke and Mast leans buyout in exchange for case file
Hans Mast2-36 .... with Balke about Balke and Mast leans buyout in exchange for case file
Hans Mast2-37 .... with Balke about anticipated Randall Baudin phone call
Hans Mast2-38 .... with Balke about anticipated Randall Baudin phone call
Hans Mast2-39 .... with Balke about case being not winnable and signing release for $50,000

1 Exhibit D0a-2015-04-10_12LA178_CASE MANAGEMENT ORDER-Settlement Conference is set for 5-13-2015_Meyer.pdf
2 Exhibit 20b-2015-06-12_12LA178_ORDER-Balke Withdrawl Granted for Breakdown in Attorney Client Relationship - Balke shall disburse settlement to Dulberg who will hold funds - Dulberg has till 7-10-2015 to File Appearance - Continued to 7-10-2015_Meyer.pdf

Hans Mast2-40 .... with Balke about case being not winnable and signing release for $50,000
Hans Mast2-41 .... with Balke about case being not winnable and signing release for $50,000
Hans Mast2-42 .... email empty of content message
Hans Mast2-43 .... with Balke long message about why Dulberg rejects Balke's advice
Hans Mast2-44 .... With Balke, Balke is trying to get him to sign a release for $50,000
Hans Mast2-45 .... With Balke, Balke is trying to get him to sign a release for $50,000
Hans Mast2-46 .... With Balke, Balke is trying to get him to sign a release for $50,000
Hans Mast2-47 .... With Balke, Balke is trying to get him to sign a release for $50,000
Hans Mast2-48 .... with Balke long message about why Dulberg rejects Balke's advice
Hans Mast2-49 .... with Balke long message about why Dulberg rejects Balke's advice
Hans Mast2-50 .... with Balke on bankruptcy questions
Hans Mast2-51 .... with Balke on bankruptcy questions
Hans Mast2-52 .... with Balke on bankruptcy and Gagnon's insurance
Hans Mast2-53 .... email from DUlberg to Dulberg with message for Balke on bankruptcy
Hans Mast2-54 .... with Balke on bankruptcy and pre-trial conference
Hans Mast2-55 .... with Balke on missing pre-trial settlement memo and Saul Ferris with a box of Dulberg's documents
Hans Mast2-56 .... with Balke on missing pre-trial settlement memo and Saul Ferris with a box of Dulberg's documents
Hans Mast2-57 .... with Balke on missing pre-trial settlement memo and Saul Ferris with a box of Dulberg's documents
Hans Mast2-58 with Balke on signing settlement check and deposit
Hans Mast2-59 with Balke on settlement conference canceled
Hans Mast2-60 with Balke about April 9 pre-trial conference
Hans Mast2-61 with Balke about April 9 pre-trial conference
Hans Mast2-62 with Balke about April 9 pre-trial conference
Hans Mast2-63 with Balke on lean buyout and picking up the case file
Hans Mast2-65[1] with Balke on missing pre-trial settlement memo and a box from Ferris

Only one document of email communications between Balke and Dulberg appears in "Dulberg Document Disclosure FINAL 2019 May 29.pdf". It is DUL 001334 which is the file "Hans Mast2-64".

Williams also suppressed about 6 other documents mentioning Balke from the May 30, 2019 document disclosure.

2D4. On December 17, 2019 at 11:00 AM Williams sent an email to Flynn stating:

> "In preparation for our call today, I am resending the all discovery as I don't think you received some of them the first time."

The email had 9 files attached.

The email had the following bates numbered documents attached and a verification statement

1 Exhibit B12-Hans Mast2-65.pdf

signed by Dulberg:[1]

> "Dulberg BK Files Bates 2599"[2]
> "Bates 2620"[3]
> "Dulberg Document Disclosure FINAL 2019 May 29.pdf"[4]

2D5. On December 17, 2019 at 6:30 PM Williams sent an email to Flynn stating:

> "... Brad Balky. His name appears in some of the documents. You requested that we identify when he represented Mr. Dulberg and in what capacity. If he did represent Mr. Dulberg for any period, we will produce any records related to that that are in Mr. Dulberg's possession and control."[5]

2D6. On Jan 29, 2020, at 2:16 PM, Julia WIlliams wrote an email to Flynn stating:

> "...Brad Blake is an attorney and there are some emails from him in the discovery. I do not see that he represented Dulberg but I will verify with my client."[6]

2D7. On January 29, 2020 at 3:50 PM Williams asked Dulberg about Balke stating:

> "... I see that there are some emails with Brad Balke. See Bates Stamp Dulberg 1322-1323, 1334, 1319, 1321. It appears that Brad Balke obtained your legal file from Hans Mast, reviewed it, but did not represent you, and turned the file over to you. ***Is that correct?*** ..."[7]

2D8. On January 30, 2020 at 10:26 AM Dulberg responded by sending an email to Williams stating:

> "Morning Julia, This Morning I looked up when Brad Balke filed his appearance and I found the attached document I named Balke Appearance.pdf It was March 19, 2015.
> This is what was filed in the public record.
> This should have been in the Gooch files.
> Looking back, I never received the digital Gooch files that were turned over to your office. Confirmed in email dated April 18,2019.
> The Gooch files should have included the entire case file that Mast turned over to me and the addition of the Balke and Baudin files as well as all communication records, bankruptcy documents, disability records, etc...
> Gooch took 6+ months to get all those records scanned in and I never was able to confirm he actually scanned in all of them.

---

1 Exhibit 17-Dulberg case.pdf (Pages 3-4)
2 Exhibit 18-Dulberg BK Files Bates 2599 .pdf
3 Exhibit 19-Dulberg Bates 2620.pdf
4 Exhibit 5-Dulberg Document Disclosure FINAL 2019 May 29.pdf
5 Exhibit 20-Dulberg v Popovich et al.pdf (Page 1)
6 Exhibit 20-Dulberg v Popovich et al.pdf (Page 26)
7 Exhibit D0b-2020-01-29_1550 PM_RECV-1_Dulberg v Popovich et al Deposition dates _ATTACHMENTS.pdf

On another note, I found this: 05-08-15_Hans Mast2-56.pdf which is also attached.
You may have this as, Hans Mast2-56.pdf
This was provided to you on or around 11/17/2018 when I sent you all the communications I had.
I did not find this in any of the bates numbered documents.
It shows that the file was sent back to Saul Ferris and that I picked it up and delivered it to the firm named Danahu and Walsh at the direction of Balke."[1]

2D9. On Jan 31, 2020, at 12:45 PM, Julia WIlliams <juliawilliams@clintonlaw.net> wrote:

"I am writing regarding the outstanding discovery issues. I am producing further documents bates stamped 2639-2645.

...

2. Brad Balke.

Brad Balke's appearance is attached as 2645. This should resolve all of the current discovery issues that you presented to us. We will continue to supplement our discovery responses if more documents are discovered."

The document "Dulberg Bates 2639 to 2645 2020 Jan 31.pdf" consists of 6 pages and was attached to the email.[2]

While Williams is hiding around 40 email documents with Balke, she acts as if turning over Balke's appearance (a document which was available to both Williams and Flynn as part of the Common Law Record of the underlying case) "resolves all issues" with Balke. This is classic gas-lighting in action.

2D10. Williams was in possession of complete and well-ordered copies of Dulberg's emails from three different sources before May 29, 2019 (One on the Gooch thumbdrive in the main folder "Dulberg UNDERLYING CASE DOCUMENTS", one on the Gooch thumb drive in the main folder "Dulberg Paul Dulberg Files From Client" and one sent to Williams as an email attachment). Williams received a fourth complete copy of emails in a format which was different from the first three sources in a folder called "Lawyers Emails by Date", sent to Williams as an email attachment in a folder called "To_Julia" on July 8, 2019.

2D11. Williams acted as if she was not in possession of the Balke emails and was not aware of who Brad Balke was when she communicated with Opposing Counsel and with Dulberg. Considering the large number of documents involving Balke that were intentionally suppressed by Williams from the May 30, 2019 document disclosure, it is simply not credible for Williams to claim that she was not aware of who Brad Balke was.

2D12. Inexplicably, Flynn and Popovich also claimed to not know who Balke was on December 17, 2019, even though the suppressed email communication demonstrates that Mast and Balke have done business together in the past on friendly terms. Considering that the suppressed

1 Exhibit D0c-2020-01-30_1026 AM_SENT_Dulberg v Popovich et al Deposition dates _ATTACHMENTS.pdf
2 Exhibit 20-Dulberg v Popovich et al.pdf (Page 68)

documents involving Balke contained clear evidence that Mast knew who Balke was and had dealt with Balke in the past, it is simply not credible for Flynn, Mast or Popovich to claim they do not know who Brad Balke is.

2D13. By suppressing about 40 documents of email communication between Balke and Dulberg and at least 6 other documents mentioning Balke, Williams created an artificial mystery around Balke that was entirely unnecessary.

2D14. On July 2, 2020 DEFENDANTS, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION TO PLAINTIFF

> "2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.
>
> 3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom."[1]

2D15. On July 9, 2020 Williams turned over more than 6000 pages of documents to opposing counsel. This included around 40 email communications between Balke and Dulberg which were being turned over for the first time.

2D16. On February 10, 2021 Flynn states in court:

> MR. FLYNN: I'm a little confused, Judge. There is no pending 619 motion. That was ruled upon years ago. This is simply a motion to compel and, you know, again, looking back, I didn't attach every discovery answer that Mr. Dulberg provided because there were many and there were issues with signature pages throughout written discovery. But here, the overarching supplemental request, Exhibit E, I believe it is, that was served on July 2 has not been answered. It's not been objected to. It's untimely at this point, and, again, it's clear that the discovery of the malpractice and damages has been placed at issue. So we're entitled to explore that discovery.[2]

In summary judgment motion Popovich and Mast stated:

> "Brad Balke substituted for Dulberg on March 19, 2015 when Popovich withdrew. (Exhibit E, p.35). Dulberg asked hundreds of lawyers to take over his case when Popovich withdrew, but none accepted. (Exhibit, E, P.36). Dulberg fired Bulke prior to

1 Exhibit D1-2020-07-02_1211 PM_RECV_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377_ATTACHMENTS.pdf (Page 6-7)

2 Exhibit D0d-Pages from ROP_Vol_1_of_1_230421_1628_8FF9DDF1-3.pdf (Page 5 Lines 13-24, Page 6 Line 1)

the binding arbitration, and he was then represented by the Baudin Law Firm. While Brad Bulke handled the case, Balke never gave him an opinion as to the liability of the McGuires and whether the prior settlement was appropriate. (Exhibit E, p.42)."[1]

"Here defendants painstakingly attempted to seek discovery as to how Popovich allegedly breached the standard of care, and when and how Dulberg became aware of any damages. Dulberg's discovery responses and deposition testimony were repeatedly evasive. See Dulberg testimony, Exhibit D, pages 106 to 141. This behavior continued and caused the need for a motion to compel (See Group Exhibit J, Motion to Compel, Motion to Suppliment Motion to Compel, and July 19, 2021 transcript from hearing). Moreover, Dulberg's dissatisfaction with Popovich's representation surfaced much earlier and he even threatened in writing to sue Mast as early as February 22, 2015. Dulberg, no "babe in the woods" when it comes to experience with litigation retention, met with "hundreds" of attrorneys and had opportunity after opportunity to investigate and inquire as to whither Popovich breached the standard of care and caused him any dmage in connection with the case (incuding procesution of the case against Gagnon and McGuires). The many cases cited above establish the Plaintiff's duty to inquire, and here Dulberg had the tools, the information, and opportunity to inquire. His contrived late discovery of his claims and damages should not be countenanced by this court. He was clearly questioning whether he should agree to accept the McGuires' offer, and he deliberated on it extensively. Nothing prevented him from seeking a second opinion. Likewise, nothing prevented him from inquiring from Mr Bulke or the Baudin firm whether his injury was wrongfully caused. Summary Judgement must be entered as his claims are barred by the two-year statute of limitations."[2]

2D17. A reasonable person can conclude that Williams suppressed the documents and emails mentioning Balke to benefit the defendants. Williams intentionally created a mystery around Dulberg's relationship to Balke that was entirely unnecessary. Both Flynn and Williams pretended to not know who Balke was. The suppression of documents on the communications between Balke and Dulberg and other documents mentioning Balke (from 4 different sources presented in different formats) creates the appearance that Dulberg was hiding documents from the defense about Balke, and therefore creates the appearance that Dulberg has something to hide about his relationship to Balke and what they discussed together.

2D18. A reasonable person can also conclude that Clinton and Williams, while retained as Dulberg's legal malpractice attorneys, intentionally avoided informing Dulberg that Balke was acting in violation of federal bankruptcy laws by appearing in the 22nd Judicial Circuit Court (which has no jurisdiction over the PI case), representing Dulberg (who has no standing as plaintiff), and in attempting to get Dulberg to accept $50,000 to settle the PI case with Gagnon without the knowledge or consent of the bankruptcy trustee or the bankruptcy judge.

2E THE EXAMPLE OF SUPPLEMENTAL DISCOVERY REQUEST FOR DOCUMENT PRODUCTION FILED ON JULY 2, 2020

1 Exhibit D0e-Pages from CLR_Vol_2_of_2_230421_1627_22D90D40.pdf (Page 5)
2 Exhibit D0e-Pages from CLR_Vol_2_of_2_230421_1627_22D90D40.pdf (Page 14)

2E1. On July 2, 2020 Flynn filed a Supplemental Request for Production of Documents.[1]

2E2. On July 2, 2020, at 12:10 PM Williams sent a forwarded email to Dulberg stating:

> "Opposing Counsel has tendered a supplemental request for production. Please review. A response is due by July 30, 2020. You can begin gathering responsive documents. Some of the document may be subject to attorney-client privilege. Best Regards,"[2]

2E3. Most of the documents Dulberg would need to gather to answer the supplemental production request were still being suppressed by Williams and were released by Williams for the first time one week later on July 9, 2020 hidden behind thousands of pages of previously released documents. The more than 6000 pages of documents contained all the previously suppressed emails of Balke, Saul Ferris, the letter from Saul Ferris to Dulberg among other suppressed documents.

Williams is 'flooding' Dulberg with an overwhelming number of documents and sneaking all but one of the documents that were previously suppressed into the flood, behind thousands of pages of useless material. Williams intentionally kept suppressing the certified slip ruling on Tilschner v Spangler.

2E4. On July 27, 2020 at 2:24 PM Ed Clinton sent an email to Dulberg stating:[3]

> "Dear Paul, Please see the attached letter. Best Regards"

In the attached letter Clinton and Williams resigned as Dulberg's counsel.[4]

2E5. On July 30, 2020 at 10:21 AM Williams sent an email to Dulberg stating:

> "These document requests are due today. We have obtained a 28 day extension so the responses are now due August 27, 2020. We anticipate filing our motion to withdraw. Thus, you will need your new counsel to respond or prepare your own response. Best Regards"[5]

2E6. On July 30, 2020 at 1:50 PM Dulberg sent an email to Williams stating:

> "Thank you for getting this extended. I'm pulling from memory here because I had a a Dr's appointment today and am away from my desk I just took your July 2 email and reviewed it. I didn't collect the documents because I thought I had already turned over all the gooch files and emails to you and I thought we waived privilege for Boudin and

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1 Exhibit E1-2020-07-02_1211 PM_RECV_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377_ATTACHMENTS.pdf (Page 6-8)
2 Exhibit E1-2020-07-02_1211 PM_RECV_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377_ATTACHMENTS.pdf (Page 1)
3 Exhibit 44-Dulberg v Popovich 2017 L 377.pdf (Page 1)
4 Exhibit 7h-Dulberg Client Letter 2020 July 27.pdf
5 Exhibit E2-Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf (Page 11)

you have all of that as well. I suppose other than the last request asking for "documents" relating to a conversation between Baudin and myself when we were leaving the ADR the rest of this would be contingent on Judge Meyers decision of the objections over Gooch questioning that were raised during my deposition. I'm still not sure how I'm supposed to have documents from a verbal conversation with Baudin. I will look at all this again when I get home."[1]

2E7. On August 18, 2020 at 2:13 PM Flynn sent an email to Williams stating:

"This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k). I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated. I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved). The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020. Please feel free to contact me if you would like to discuss this matter."[2]

2E8. On August 18, 2020 at 2:42 PM Williams sent an email to Dulberg stating:

"We previously obtained an extension info time to respond to document discovery in your case—see below—to August 27. Opposing counsel is insisting on the August 27 response date. As we are withdrawing, it is likely more appropriate for your new counsel to respond to the discovery. lternatively, you could seek more time when the matter is before the Judge on Sept 10. Best Regards,"[3]

2E9. On August 18, 2020 at 2:49 PM Dulberg sent an email to Williams stating:

"Please remind me,

Was this the emails and communications with Gooch that they are after or something else?"[4]

2E10. On August 18, 2020 at 2:56 PM Williams sent an email to Dulberg stating:

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1 Exhibit E2-Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf (Page 13)
2 Exhibit E2-Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf (Page 31)
3 Exhibit E2-Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf (Page 34)
4 Exhibit E2-Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf (Page 37)

"The requests are attached again here so you can see what they are seeking. Again, they were issued on July 2, 2020. We sent them to you that same day. They were originally due on July 30, 2020. We obtained an extension to August 27, 2020. Best regards,"[1]

2E11. On August 18, 2020 at 3:11 PM Dulberg sent an email to Williams stating:

"Thanks again for resending those requests from George Flynn. At this point I will not be meeting their deadline of August 27th until I have new council and/or the Judge rules that I must divulge communications with my attorney Gooch from the current case. I'm not an attorney but I believe its common knowledge that what George Flynn is asking for is wrong and strikes at the heart of attorney/client privilege. Kindly let Mr Flynn know he will not be receiving those answers or files until I have new counsel or the Judge rules on our objection at my deposition and orders me to turn over privileged communications."[2]

2E12. On October 16, 2020 Dulberg sent an email to Williams with the subject "PLEASE HELP WITH CASE FILE" stating:

"Oh, and just so you are aware, I may have to argue this on my own without counsel and I am going to do everything I can to see this case through to the end. Continue to help me navigate your case file, perhaps correct me when I am wrong and I will make sure your lean gets satisfied out of the award. Thank you all for what you have done thus far"[3]

2E13. On Oct 19, 2020 Dulberg sent an email to Williams stating:

Hi Julia and Ed, I'm sure you noticed the amount of emails I have sent. I'm in a frantic state to find new counsel and simultaneously try to learn what I call "legalese" so I can reply to and argue Flynns Motion on my own if need be and learn your file system. Before I go give $10,000 on yet another attorney, whom I don't know, I wanted to give you an option since your already familiar with the case, know the case file and I do trust you and don't think it fair that you did all that work and may not get paid what you should if I end up hiring the wrong attorney. In less than 3 months I will have enough cash in hand to fund this case and finish it 3x over. It will probably take less time but that is my worst case scenario as my family and I move to liquidate some assets and free up our capital rather than borrow from loan sharks I am hoping that you would be interested in taking back representation of this case. Rather than hire a new attorney, I can use the $10,000 to pay for you legal services over the next 3 months This gives me 3 months to make the arrangements needed to have enough funding to go at this paying in full the whole way through. If after 3 months I don't have the funds to finish this case, you can withdraw again. I believe this would give both of us the best chances at recouping the money and time invested thus far. Time is limited so please think about this and let me

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1 Exhibit E2-Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf (Page 41)
2 Exhibit E2-Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf (Page 45)
3 Exhibit 50-2020-10-16_1044 AM_SENT_PLEASE HELP WITH CASE FILE.pdf (Page 1)

know in the next day or two."[1]

2E14. On October 19, 2020 at 9:52 AM Williams sent an email to Dulberg stating:

"We will cannot accept your matter again. As for the remainder of the emails that you sent, we provided you with the entire file. The documents are labeled. Anything in the folder that stated it was produced to OC—I provided the specific name in my email last week—those documents/written discovery answers were produced to OC. If it's not in that folder, it wasn't produced. There are several duplicates of documents—you should cross check it with that folder. We did produce everything we could to OC with the exception of confidential communication between you and Gooch. I believe all the other relevant and requested documents were produced. We did not respond to the July 2020 supplemental discovery that George Flynn issued to you. I sent the requests in an email to you, but they are also on the flash drive.

Again, everything is on the flash drive, so we recommend that you look there. We wish you the best of luck."[2]

2E15. The following exchanges took place on April 1, 2021 in court:[3]

THE COURT: All right. For the record, this is Dulberg versus Mast. And, plaintiff's counsel, if you could identify yourself.

MR. TALARICO: Your Honor, good morning. Mr. Flynn. My name is Alphonse Talarico. I represent the plaintiff, Paul Dulberg.

THE COURT: Okay. And for the defense?

MR. FLYNN: Attorney George Flynn, F-l-y-n-n. And, Judge, and, counsel, I would like to extend my apologies for the calendaring issue last week.

THE COURT: It happens. But let's -- where are we? Because I -- yeah, bring me up to date with where you are.

MR. FLYNN: Generally, Judge, the -- Okay. So the court ordered the plaintiff to produce certain documents that were withheld. That has been done. We have I think a continued issue with respect to interrogatory answers from the -- Hans Mast interrogatories served in July of 2019, and then the improper and vague answer, responses, to the production request where the plaintiff has just simply identified Bate's documents 1 through 8,708 relative to the discovery of the alleged malpractice.

THE COURT: Yeah, I looked at the answers, those answers, and I believe those are nonresponsive. Merely identifying all the records is not a direct response to your request, so I'm going to direct plaintiff to provide a supplemental response to those requests. Mr. Talarico, you have something to say?

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1 Exhibit 52-2020-10-19_0952 AM_RECV_Contingency.pdf
2 Exhibit 52-2020-10-19_0952 AM_RECV_Contingency.pdf
3 Exhibits/Exhibit E15_2021-04-01_Pages from ROP_Vol_1_of_1_230421_1628_8FF9DDF1.pdf Page 2 Line 1 through Page 12 Line 20

MR. TALARICO: Yes, Judge, actually, I do. Those 8,707 prior documents that had been submitted, according to the information I have, between Mr. Flynn and the Clinton Law Firm, the previous law firm, were under the initial request to produce. The answers that I have from the Clinton Law Firm indicate the wording that the documents will be produced and then there is no objection between Flynn -- Mr. Flynn and the Clinton Law Firm. There's no -- and I have no way of researching how the relationship between the first set of answers that covered document 1 through 8707 have been done. I -- that's why I said that that will be unreasonable and an expense and I have to go back to each document and see how it responded.

Mr. Flynn, as far as I've seen, had not objected to those answers, so to do that would force me to review close to 9,000 documents to see which were responsive -- 9,000 -- 8,707 that have already been turned over and, in addition to that, on February 10th,

Judge, the last hearing date on this matter, you focused and ordered us to focus our response to the time Mr. Dulberg knew or should have known, and the only documents that at that time hadn't been turned over to Mr. Flynn would be six hundred something odd documents, communications between the second -- the Gooch law firm and Mr. Dulberg. Those I reviewed and submitted the one that responded to what -- to what the court indicated the communications in December of --

THE COURT: Before we get into that -- because I think that issue's resolved. Before we get into that, why are you -- I guess I'm not following. You're saying that it's -- giving him specific responses to his discovery requests is overly burdensome on you at this point?

MR. TALARICO: Right, to go back and review 8,700 documents that had been turned over in the past --

THE COURT: Well, who should?

MR. TALARICO: Excuse me?

THE COURT: Well, who's burden is that to provide the accurate answer?

MR. TALARICO: Judge, those were responded to. They were supplied to Mr. Flynn in the past in response to requests to produce.

THE COURT: He may have -- I accept he has every single relevant document, but you can't just say in response to a discovery request find it yourself, it's in these thousands of pages of documents. You got to tell him where it is. So --

MR. TALARICO: I understand -- I'm sorry, Judge.

THE COURT: The bottom line, your answer has to be one that you can be pinned down on for purposes of impeachment, and your answers are -- don't permit that. So if you're going to respond, you've got to give him a direct response to a direct question, and you didn't do that. You've given him -- you said here's everything we have, find it yourself. And that is nonresponsive.

MR. TALARICO: Judge, with all due respect, again, the -- this was -- what I'm reflecting

on is these are the documents that were submitted to Mr. Flynn by the Clinton Law Firm with no objection.

THE COURT: But I have a motion to compel that -- I mean -- so I think --

MR. FLYNN: And that's not accurate, Judge. There have been multiple 201(k) conferences and it was a long, unusual production in response to the interrogatories in the case as it was.

THE COURT: Regardless, I am ordering compliance and you must give specific responses to each of the requests, and you can't just say it's somewhere in these 8,000 plus pages. How long is it going to take you to do that?

MR. TALARICO: Judge, if I could have 60 days to cover 9,000 -- close to 9,000 documents.

THE COURT: Sure, I'll give you 60 days, because, yeah, that is a lot of -- those are a lot of documents, so I'll put this out 60 days. Mr. Flynn, is there anything else we need to address at this time?

MR. FLYNN: Well, the supplemental production response, again, is a nonresponsive production response. The question is, is there a document in that 8,000 pages. We don't think there is, but Dulberg testified both ways essentially, whether there was a December 16, 2016, written communication with Tom Gooch that provided him with the basis for the tolling of the statute of limitations. If there is none, then the response should say there is none, not see 8,000 documents and maybe it's in them.

THE COURT: I agree. Mr. Talarico, --

MR. FLYNN: And with respect to the --

THE COURT: Well, hang on. Mr. Talarico, I'm not going to tell you how to respond, but if there is no such document, -- I did take note of the fact that I saw none in the documents I reviewed -- if there is no such document, then just say there is no such document.

MR. TALARICO: With all due respect, I think I did answer that question. There was one document and I turned it over to Mr. Flynn. The only document between Gooch and the plaintiff in December of 2016, one document turned over, without objection, without a privilege log.

THE COURT: Mr. Flynn? You're being told that all documents responsive to that request have been turned over. And I agree that at least in the documents I was asked to review, there was nothing that corresponded with the December 2016 date that we initially were discussing, but --

MR. FLYNN: It should be a pretty simple process then and it should be in writing. Then I can attach it to my summary judgment motion, which I know is not a surprise to anyone. The same goes with respect to the interrogatory answers. Dulberg admitted in his deposition that he didn't respond completely to interrogatory number one, in particular, from Hans Mast.

So that is also part of this motion to compel. Again, that one is a little different. It says identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach and when and how you became aware of the breach. He didn't answer it.

THE COURT: Okay. Mr. Talarico? And I'm going to move on to everybody else and then come back to you -- in fact, I'll come back to you guys. I'll let -- let me get rid of everyone else and we'll resume this in a moment.

(Whereupon, the above-entitled cause was passed and subsequently recalled.)

THE COURT: That brings us back to Dulberg. What I'm doing right now is looking up -- I want to go to the interrogatory. Mr. Flynn, while I'm looking for -- it's interrogatory number one; am I correct?

MR. FLYNN: Correct.

THE COURT: All right. I'm looking in your motion to compel and since nothing is marked, I've got to page through these one at a time, so while I'm doing that, rather than just staring at me, why don't you tell me what the interrogatory says.

MR. FLYNN: Sure. It says identify and describe each and every way that Popovich or Mast breached a duty of care to you, the date of the breach, and when and how you became aware of the breach.

THE COURT: Okay. And what was the response?

MR. FLYNN: Between October of 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires.

THE COURT: Okay.

MR. FLYNN: Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment. Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon. So that says nothing specifically about a breach, the date of the breach or when and how he became aware of it.

THE COURT: Well, it doesn't -- no, it doesn't tell you the date. Mr. Talarico, do you have a response on that?

MR. TALARICO: No, Your Honor, it doesn't say specifically the date of the breach.

THE COURT: All right. And --

MR. FLYNN: And we were forwarded the discovery. Again, this goes back to the Gooch -- whether it be a verbal or written communication on December 16, 2016.

MR. TALARICO: Mr. Flynn, verbal -- I don't know where I could get verbal responses. I've gone over everything and I -- Judge, I have in total 90 emails between the two, between Mr. Gooch and Mister -- and the plaintiff, and I would be willing to turn over

every one of them. That's the written -- that's what I have.

MR. FLYNN: I just want to know what the basis is for the discovery of the malpractice, and if there isn't anything other than a verbal discussion with Tom Gooch in his office, that's fine; but it just needs to specify that. And I think that's been the ruling with this.

THE COURT: And I think --

MR. FLYNN: And that's what the testimony seems to reflect.

THE COURT: I -- I think the answer -- and I certainly don't know, but based upon what I understand already, I think the answer points to that December 2016 date addressed in the production response, but I don't know and I -- my concern is making sure it is clear from

the answer to interrogatory that is in fact what we're talking about. If there's another date, fine, but it has to be disclosed. I don't know about -- I'm not sure how he responds to the date of the breaches because I -- I do think that that's an incredibly broad question because it --

MR. FLYNN: I understand that.

THE COURT: -- in essence, it's every day after the resolution of the initial claim, and you do have a date for that, at least by way of a settlement or order. So, Mr. Talarico, can you supplement that answer with the date of discovery?

MR. TALARICO: I will do my best, Judge. I will.

THE COURT: Okay. Mr. Flynn, the next one?

MR. FLYNN: You know, generally I think that's it, Judge. It's the supplemental production response and then these interrogatories, so what I would ask that the order reflect, that the specific answers need to be made and that the objections in the supplemental production response be overruled. I think the objection is undue burden on each of them --

THE COURT: Yeah, and to the extent that there are objections to the burdensome nature, those are overruled. I recognize that it is a burden, but you got to -- somebody's got to do it, and it is your claim, it is your burden. But I will give you 60 days in which to complete that.

Mr. Talarico, anything you want to add?

MR. TALARICO: No, Judge.

THE COURT: So why don't we -- 60 days is June 1st. Let's assume -- and I'm going to -- I won't assume compliance prior to June 1st, but if we come back on June 14th, that's a Monday, Mr. Flynn, do you think you would be able to give me your comments on compliance by then?

MR. FLYNN: If I have a response and, say, amended interrogatory answers and amended supplemental responses by June 1?

THE COURT: Yeah.

MR. FLYNN: Yes, sure.

THE COURT: Okay. So I will direct a supplemental answer to interrogatory number one. I'll direct amended answers to the production request, and all due by June 1st.

2E16. On June 14, 2021 the following exchange took place in court:[1]

What's going on with the case? What -- we are here for discovery compliance.

MR. TALARICO: Yes, your Honor. Well, I believe we have complied to your order completely.

THE COURT: Okay.

MR. TALARICO: We have filed and served all the proper documents, searched all -- whatever, close to 9,500 documents and responded appropriately.

A reasonable person can conclude that Williams intentionally suppressed documents mentioning the subjects of Brad Balke, Bankruptcy, Saul Ferris, the Saul Ferris declination letter and the Baudins that the opposing counsel was actively seeking from May 30, 2019 until July 9, 2020 and then, just before Williams resigned, Williams "flooded" Dulberg with over 6000 documents, leaving Dulberg to answer the supplemental document discovery request on his own or with a new attorney being presented with a massive trove of documents to look through and perhaps only 28 days to do it. A reasonable person can conclude that this was done to intentionally confuse and overwhelm Dulberg and any new attorney he may retain to benefit the defendants and sabotage Dulberg's case against Popovich and Mast.

2F THE EXAMPLE OF THE BAUDINS

2F1. The Baudins were retained[2] on September 22, 2015 by Dulberg to represent Dulberg in his PI lawsuit against David Gagnon, after Dulberg fired Brad Balke.

2F2. Just like Balke, the Baudins, in violation of the automatic stay, represented Dulberg in the 22nd Judicial Circuit Court (which had no jurisdiction over the PI case) even though the Baudins must have known Dulberg had no standing as plaintiff in PI case 12LA178.

2F3. Williams suppressed all emails between the Baudins and Dulberg from the document disclosure to opposing counsel on May 30, 2019 except bates number "Dulberg 001308" (which is a notice of the binding mediation award). Williams also suppressed documents on the relationship of the Baudins to the bankruptcy estate.

2F4. Dulberg later discovered that Clinton and Williams failed to inform him of the ways which the defendants Popovich and Mast, Balke and later the Baudins (and Allstate and bankruptcy Trustee Olsen) acted in violation of Federal Bankruptcy Laws.

2F5. On June 13, 2016, in violation of the automatic stay, in the Circuit Court Allstate attorney

1 2021-06-14_17LA377_Report of Proceeding_TALARICO_Judy A Carlson.pdf
2 Exhibit 53-2015-Baudin_FeeAgreement.pdf

Reddington stated that she and the Baudins are considering this case as a possible ADR candidate without Dulberg's knowledge or permission. The Baudins were representing Dulberg in the 22nd Judicial Circuit Court without Dulberg having standing as plaintiff, the case under automatic stay and without being hired as special counsel or receiving leave from the 7th Circuit United States Bankruptcy Court for the Northern District of Illinois, Western Division. Allstate attorney Reddington stated in the 22nd Judicial Circuit Court, "I have four motions up this morning. Plaintiff's attorney and I are working on the case to see if it's a possible ADR candidate. He asked that we get our motions entered and continued. They're for an IME." Allstate attorney Reddington also said, "And honestly, if I get a decision sooner, that -- well, I don't know if this is a case we -- we probably wouldn't be able to enter a dismissal order if we went to ADR until after the ADR was done."

On June 13, 2016 the following exchange took place in the 22nd Judicial Circuit Court:[1]

> THE COURT: Dulberg versus Gagnon?
>
> (Whereupon the afore-captioned cause was recalled.)
>
> SPEAKER: Judge, I'm here on Dulberg versus
>
> Gagnon.
>
> THE COURT: Yeah.
>
> SPEAKER: I have four motions up this morning. Plaintiff's attorney and I are working on the case to see if it's a possible ADR candidate. He asked that we get our motions entered and continued. They're for an IME.
>
> THE COURT: Okay.
>
> SPEAKER: They're to continue the trial, they're to bar one of his witnesses, and they're to compel his expert.
>
> THE COURT: Okay.
>
> SPEAKER: For a dep. Randy Baudin and I have been talking all last week. And I said, What do you want to do about today? He's working with a client who's on his third attorney, so.
>
> THE COURT: I had an extensive pretrial, so.
>
> SPEAKER: Yes. And I'm new to it, but I'm like, Okay, we're going to, you know, get it ready for trial if that's what we're going to do.
>
> THE COURT: When did Mr. Baudin want to come back?
>
> SPEAKER: He didn't say. But I know, like myself, he's going to a volleyball tournament with his daughters in Florida.
>
> THE COURT: Okay.

1 Exhibit 58-2016-06-13_CC-Civil - 12LA000178 - 2_24_2022 - - - REOP - -.pdf

SPEAKER: At the end of the month.

THE COURT: So --

SPEAKER: I don't want to --

THE COURT: We'll get into July. Why don't we go 30 days. What's a day that works for you?

SPEAKER: And honestly, if I get a decision sooner, that -- well, I don't know if this is a case we -- we probably wouldn't be able to enter a dismissal order if we went to ADR until after the ADR was done.

THE COURT: Yeah.

SPEAKER: Based on the history. I am gone the first week of July. So after that, I am here July 11th.

THE COURT: Let's come back July 11th.

SPEAKER: Are you comfortable with leaving the trial date until that time?

THE COURT: Yeah.

SPEAKER: Because the trial date's out in September.

THE COURT: Yeah.

SPEAKER: Okay. All right.

THE COURT: It's not like it's extra work for me.

SPEAKER: Well, I just -- you know, for purposes of your calendar.

THE COURT: You're -- you're the number one case, so everybody else will be happy if you go away.

SPEAKER: I'm sure they will. Okay. Thank you, Judge.

THE COURT: All right. Thank you.

2F6. On July 11, 2016 the following exchange took place in the 22nd Judicial Circuit Court:[1]

THE COURT: Dulberg. Do we have -- When do you want to come back?

UNIDENTIFIED SPEAKER: We're entering continuing the motions, is that what we're doing?

THE COURT: Yes.

UNIDENTIFIED SPEAKER: Okay. When's your next available date, Judge?

THE COURT: For a hearing?

UNIDENTIFIED SPEAKER: Yes.

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1 Exhibit 54-CC-Civil - 12LA000178 - 3_2_2022 - - - REOP - - (1).pdf

UNIDENTIFIED SPEAKER: Or a brief.

THE COURT: Are we briefed? Has it been briefed?

UNIDENTIFIED SPEAKER: No. They're just motions that I presented as emergencies and then we continued them pending discussions.

THE COURT: Well, when -- if it goes into mediation, the motions become moot. Or do we have to address them regardless? I don't know what they are.

UNIDENTIFIED SPEAKER: I think the type of mediation we would do, it would be moot because --

UNIDENTIFIED SPEAKER: Yeah, other than, possibly, an IME. But, you know, we can certainly work -- we've worked well together so far, so we could certainly see if we can work things out.

THE COURT: Speaking generally, I'd probably grant an IME. I haven't seen your motion, though, so I don't know. I mean, I could put this over to July 21st, and that should give you enough time to decide what you want to do with mediation.

UNIDENTIFIED SPEAKER: I can be here.

THE COURT: Okay. All right. And that will be just at 9:00 o'clock for presentation of the motion, and then we'll figure out what we're going to do.

UNIDENTIFIED SPEAKER: Thank you for your time.

UNIDENTIFIED SPEAKER: Thank you. Appreciate it.

2F7. On July 21, 2016 the following exchange took place in 22nd Judicial Circuit Court:[1]

APPEARANCES:

THE BAUDIN LAW GROUP LTD., by: MS. KELLY N. BAUDIN, on behalf of the Plaintiff;

LAW OFFICE OF STEVEN A. LIHOSIT, by: MS. SHOSHAN E. REDDINGTON, on behalf of the Defendant David Gagnon.

MS. BAUDIN: Kelly Baudin on behalf of the plaintiff. Mr. Dulberg is present and approaching.

MS. REDDINGTON: Good morning, Judge. Shoshan Reddington for the defendant.

THE COURT: Good morning.

MS. REDDINGTON: We talked last night. We've got some things agreed to, so I would like to just give us a moment to discuss that and step back up.

THE COURT: Okay. I will pass.

MS. BAUDIN: Thank you.

1 Exhibit 55-CC-Civil - 12LA000178 - 3_2_2022 - - - REOP - - (2).pdf

MS. REDDINGTON: Thank you.

THE COURT: All right. Thank you.

(Whereupon, the above-entitled cause was passed and subsequently recalled.)

MS. BAUDIN: Okay, Judge. As you know, we had previously been discussing binding mediation. We came to a semi-agreement, --

THE COURT: Okay.

MS. BAUDIN: -- but we would like probably two weeks to just see if we can figure out the details and see if we can reach an agreement on how that is going to proceed. So I think we're looking at an August 4th date for that.

THE COURT: Can't do August 4th --

MS. BAUDIN: Oh, okay. I just was looking at two weeks, Your Honor.

THE COURT: -- because that's when I'm not here.

MS. BAUDIN: Oh, I see on the calendar. I apologize.

THE COURT: Any day after that.

MS. REDDINGTON: The following week, anything?

MS. BAUDIN: Grab my -- Let's say either the 8th or the 10th are probably the best.

THE COURT: Either's fine?

MS. REDDINGTON: My calendar's currently crashed on my -- so I can't answer that, but --

MS. BAUDIN: Why don't we do the 10th, just so it's --

THE COURT: Is there a date you know you're going to be here?

MS. REDDINGTON: No.

THE COURT: Okay.

MS. REDDINGTON: Judge, and I have several motions, and what I'd like to do is get the trial stricken which is on 9/- --

MS. BAUDIN: 27th I believe or 22nd?

MS. REDDINGTON: -- the 26th, and then to set it for the status instead on the 8/10, and then I also had a motion on an IME. I'm a little stymied right now because my claim rep is out this week and there's a couple of issues that I can't answer for counsel, but if we do get the agreement in place, what we'd like to do is do the mediation and then come back for a status to dismiss it once the mediation is done, if that's agreeable.

THE COURT: First off, with respect to the motion to strike the trial date, any objection?

MS. BAUDIN: No.

THE COURT: All right. I will -- I will strike the trial date for September 26, as well as the pretrial date of the 23rd.

MS. REDDINGTON: Okay.

THE COURT: I will enter and continue your other motions until we're certain what's going to happen.

MS. REDDINGTON: Okay.

THE COURT: The removal of the trial date pretty much means we can do anything.

MS. REDDINGTON: Takes care of that. Okay. And hopefully we'll come back with everything in place and then we'll just even set a date and then get a status for after that date to be able to come back and say it's done; we're willing to dismiss with prejudice because mediation's binding and it's done.

THE COURT: All right. However you want to do it, it is fine.

MS. REDDINGTON: Thank you.

THE COURT: All right. Take care.

MS. BAUDIN: Thank you

2F8. On August 10, 2016, in violation of the automatic stay, the Baudins and Reddington moved to enter into binding mediation on August 10, 2016, The date of the Binding Mediation hearing was already set for December 8, 2016 by the time the following exchange took place on August 10, 2016 in the Circuit Court:[1]

MS. REDDINGTON: Number one, Dulberg vs. Gagnon. Shoshan Reddington for the defendant. We have (indiscernible) scheduled for 12-8.

THE COURT: Okay.

MS. REDDINGTON: We'd like to have a status date after that date.

THE COURT: What date works for you? You said December 8?

MS. REDDINGTON: December 8.

THE COURT: Okay. How about the following Monday, the 12th? Or do you want to go out further? The 16th, Friday?

On August 10, 2016, in violation of the automatic stay, Judge Meyer of the 22nd Circuit Court entered an 'Agreed Order'[2] that stated "This case is continued on Motion of 'by agreement' to 12/12, 2016 at 9:00am for Status on binding Mediation.". The order also stated "Defendants appear by attorney Reddington". Reddington represented Allstate. The Baudins were not present.

1 Exhibit 56-CC-Civil - 12LA000178 - 3_3_2022 - - - REOP - - (4).pdf, (Page 2 Lines 2-10)
2 Exhibit 57-12LA000178--2016-08-10--ORD_0097.pdf

2F9. Allstate and the Baudins misrepresented Dulberg's wishes to the 22nd Judicial Circuit Court (which has no jurisdiction over the PI case) and claimed they had an agreement to enter into binding mediation on August 10, 2016. Judge Meyer entered the order and pushed the next status date to December 12, 2016, which is 4 days after the scheduled binding mediation date of December 8, 2016. All this was done while the case was under automatic stay and Baudins client Dulberg had no standing in the case.

2F10. On December 8, 2022 Dulberg filed a complaint 2022L010905[1] against the Baudins for legal malpractice and contract fraud based on the later research and initiative of Dulberg's subsequent counsel. A reasonable person can conclude that Williams intentionally suppressed documents which clarified Baudins relationship to the bankruptcy estate for the same reason that she suppressed other documents on the bankruptcy: to avoid all the complex issues which arise in civil complaint 2022L010905.

(a) That Dulberg's signature was fraudulently placed on the Executed Binding Mediation Agreement executed 4 days earlier on December 8, 2016.

(b) That Trustee Olsen misrepresented Dulberg's consent to the Bankruptcy Judge on October 31, 2016.

(c) That Allstate, the Baudins and Trustee Olsen knew Dulberg had no standing to pursue the case 12LA178 while the case was under an automatic stay.

(d) That Allstate, the Baudins and Trustee Olsen all knew the case 12LA178 proceeded in the Circuit Court in violation of the automatic stay.

(e) That the Baudins by agreement with Allstate, in violation of the automatic stay, before the Baudins were approved to be hired as special counsel under Trustee Olsen, misrepresented Dulberg as agreeing to Binding Mediation in Circuit Court on August 10, 2016 and asked Associate Judge Meyer to delay the next status hearing to December 12, 2016 after the binding mediation was to take place on December 8, 2016.

(f) That the Baudins' and Allstate's acts in violation of the automatic stay, started laying the groundwork as early as June 16, 2016 and finally set the binding mediation date for December 8, 2016 on August 10, 2016 in the Circuit Court. This happened before Trustee Olsen was even appointed to the position on August 31, 2016 and before Trustee Olsen received permission from the Honorable Judge Thomas M. Lynch, to hire the Baudins as special counsel and permission to enter into the proposed capped Binding Mediation Agreement on October 31, 2016.

(g) That the Baudins filed their APPEARANCE as REGULAR COUNSEL in 12LA178 on 11/6/2015 in violation of the automatic stay.

(h) That there is no APPEARANCE filed by the Baudin Defendants that is not VOID in case 12LA178.

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1 Exhibit F5-Filed Complaint December 8 2022 DisplayFromAWS.pdf

(i) That the Baudin Defendants' failed to file an APPEARANCE to represent the bankruptcy estate in case 12LA178 after being hired as special counsel by Trustee Olsen.

(j) That Trustee Olsen received permission from the Bankruptcy court to enter into the proposed Binding Mediation Agreement and later made a choice and Trustee Olsen did not act and sign on the advice of his special counsel the Baudins.

(k) That Trustee Olsen did not "pursue" and "exercise control "over the claim/asset and in doing so Abandoned the asset and it reverted back to the DEBTOR.

(l) The Baudin Defendants were approved and hired as Special Counsel for the Estate and in such a capacity had no standing to execute a Binding Mediation Agreement for the DEBTOR.

(m) The only party with standing over abandoned assets is now the DEBTOR.

(n) That there can be no agreement between Allstate and the Baudin Defendants acting as counsel for the bankruptcy estate to have the case dismissed with prejudice in the circuit court on December 12, 2016 since the Baudins failed to file any appearance anywhere that is not VOID and had no standing since they did not represent the DEBTOR.

(o) Trustee Olsen and the Baudins collected the monies paid out by Allstate after ABANDONING the ASSET that then reverted back to the DEBTOR.

Dulberg clearly did not know any of this fraud took place when he was awarded $660,000 in the capped Binding Mediation but Allstate, Trustee Olsen and the Baudins must have known. At that time Dulberg believed that the Bankruptcy Judge forced the case into a capped Binding Mediation without Dulberg's consent because that is what the Baudins told Dulberg. Dulberg stating "Yeah, you two did good, real good, and I thank both of you sincerely. I just can't help it, what I see here is a gift of $261,000 given to those responsible for my injuries." just after learning of the capped Binding Mediation Award and that cannot be interpreted as Dulberg knowing about the fraudulent concealment listed as (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) at that time. He was not happy about not being able to collect all that he was awarded, but that does not mean he knew or could have known about the fraudulent concealment listed as (a) through (o) (from paragraph 24).

A reasonable person can conclude that this benefits the defendants in that it caps Dulberg's possible recovery from Popovich and Mast to $300,000 without questioning the legal validity of how any 'cap' came to be part of any binding mediation agreement or without questioning the legal validity of the binding mediation agreement as a whole.

2F11. As Dulberg's retained legal malpractice attorney at the time, Williams knew or should have known that the Baudins committed legal malpractice against Dulberg for how they handled the binding mediation agreement and how they handled the Bankruptcy Estate. It is noteworthy that Williams never at any time advised Dulberg that either the Baudins or Bankruptcy Trustee Olsen did anything wrong or breached any duty of care they owed to Dulberg or to the

Bankruptcy estate in which Dulberg was a beneficiary. As Dulberg's retained legal malpractice attorney at the time, Williams effectively shielded the Baudins and Trustee Olsen and both the bankruptcy and binding mediation processes from any scrutiny for their actions described in the legal malpractice and contract fraud complaint 2022L010905.

What the example of bankruptcy and the example of the Baudins show clearly is that Clinton and Williams repeatedly gas-lighted their fully disabled client in order to protect fellow attorneys who were previously gas-lighting the same fully disabled client.

2G THE DEFENDANT GAGNON, FFECTIVELY ADMITTING NEGLIGENCE FOR DULBERG'S INJURY

2G1. On February 1, 2013 Ron Barch filed CROSS-CLAIM FOR CONTRIBUTION AGAINTS CO-DEFENDANT DAVID GAGNON[1]. In the cross-claim the McGuires state as follows:

> 7. At the time and place alleged, notwithstanding his aforementioned duty, Defendant David Gagnon was then and there guilty of one or more of the following negligent acts and/or omissions:
>
> a. Caused or permitted a chainsaw to make contact with Plaintiffs right arm;
>
> b. Failed to operate said chainsaw in a safe and reasonable manner so as to avoid injuring Plaintiff's right arm;
>
> c. Failed to maintain a reasonable and safe distance between the chainsaw he was operating and Plaintiff's right arm;
>
> d. Failed to properly instruct Plaintiff prior to approaching him with an operating chainsaw;
>
> c. Failed to properly warn Plaintiff prior to approaching him with an operating chainsaw;
>
> f. Failed to maintain the chainsaw in the idle or off position when he knew or should have known that Plaintiff was close enough to sustain injury from direct contact with the subject chainsaw;
>
> g. Failed to maintain a proper lookout for Plaintiff while operating the subject chainsaw;
>
> h. Failed to maintain proper control over an operating chainsaw;
>
> i. Was otherwise negligent in the operation and control of the subject chainsaw.
>
> 8. That the injuries alleged by Plaintiff PAUL DULBERG, if any, were the direct and proximate result of negligence on the part of Defendant David Gagnon.

1 Exhibit G1-2013-02-01_12LA178_CROSS CLAIM FOR CONTRIBUTION AGAINST CODEFENDANT DAVID GAGNON_CERTIFICATE OF SERVICE_Barch-McGuires copy-OCR.pdf

2G2. Gagnon's attorney Accardo has never filed an answer on behalf of Gagnon.

2G3. On February 1, 2013 the McGuires filed DEFENDANTS' AFFIRMATIVE DEFENSE[1] in which they stated:

> 1. That on the date and the place alleged in the Plaintiffs Complaint, the Plaintiff, PAUL DULBERG, was guilty of negligence by failing to exercise due care and caution for his own safety in that he:
>
> b. Failed to use due care and caution as he assisted Defendant David Gagnon during the trimming and cutting of trees and branches when he knew and appreciated the dangers associated with chainsaw usage.
>
> c. Was inattentive and unobservant to surrounding conditions and dangers as he assisted Defendant David Gagnon during the trimming and cutting of trees and branches.
>
> d. Notwithstanding a reasonable opportunity to do so, failed to maintain a safe distance between himself and an operating chainsaw.
>
> e. Was otherwise careless and negligent as will be demonstrated by the evidence at trial.
>
> 2. That by reason of the aforesaid negligence of the Plaintiff, PAUL DULBERG, and as a direct and proximate result thereof, the Plaintiff sustained the damages claimed."

2G4. Of February 6, 2013 Mast filed an ANSWER TO AFFIRMATIVE DEFENSE[2] on behalf of Dulberg which denied each of these allegations.

2G5. David Gagnon or his attorney has never filed an answer to these allegations in the cross-claim for contribution. By not filing an answer to a cross-claim for contribution Gagnon effectively admitted to each of charges (a), (b), (c), (d), (e), (f), (g), (h) and (i).

2G6. In addition, Gagnon never answered the interrogatory questions Popovich and Mast sent to the Allstate attorney Accardo in October, 2012.

2G7. As Dulberg's attorneys at that time Popovich and Mast knew Gagnon never filed an answer to the cross-claim. As Dulberg's subsequent attorneys in his personal injury case, both Brad Balke and the Baudins also knew Gagnon never filed an answer to the cross-claim. Dulberg's first legal malpractice attorney, Gooch, also knew Gagnon never filed an answer to the cross-claim. Clinton and Williams also knew Gagnon never filed an answer to the cross-claim.

2G8. Clinton and Williams knew or should have known that Mast and Popovich must have known about the cross-claim filed by the McGuires against Gagnon and unanswered by Gagnon

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1 Exhibit G2-2013-02-01_12LA178_DEFENDANTS ANSWER_DEFENDANTS AFFIRMATIVE DEFENSE_ CERTIFICATE OF SERVICE_Barch-McGuires copy-OCR.pdf

2 Exhibit G3-2013-02-06_12LA178_PLAINTIFFS REPLY TO DEFENDANTS BILL AND CAROLYN MCGUIRES AFFIRMATIVE DEFENSE_Mast-Dulberg copy-OCR.pdf

since early March, 2013. This was not mentioned in the complaint.

2G9. Clinton and Williams knew or should have known that the Baudins also knew or should have known about the cross-claim filed by the McGuires against Gagnon and unanswered by Gagnon since they first began to represent Dulberg in October, 2015. This was not mentioned in the complaint.

2H BARCH DOCUMENT AVAILABILITY BEFORE DULBERG'S DEPOSITION

In this section the way Clinton and Williams can delay their client's request for a subpoena of documents for over 8 months and they way the documents finally appear the day after Dulberg's deposition shows some classic gas-lighting techniques of a permanently disabled client.

2H1. On July 8, 2019 at 11:06 AM, about one week after Dulberg received the Popovich Document Disclosure from Williams, Dulberg sent an email[1] to Williams with an attached folder called "To_Julia"[2]. In the folder there was a file called "_READ_ME.txt"[3]. The text stated:

> "timeline_of_mcguire_settement.txt
>
> This gives you a rough timeline of events leading to Paul accepting a $5,000 settlement from the McGuires. Since we were never able to see (pop 192) until now, we never understood the details of how Mast tricked Paul into such a small settlement. The fact that Mast initiated the settlement process through (pop 192) without Paul's knowledge or permission is proof that this case is about more than Mast's negligence. It is about willful intent or malicious intent to deceive his client.
>
> Of course you will need convincing proof that (pop 192) was initiated without Paul's knowledge. We have that proof. As I fill in the timeline more and more, the evidence will be stronger and stronger."

2H2. This is when Dulberg first became aware of a document of a $7,500 offer made by Mast to opposing counsel Ron Barch on Dulberg's behalf to settle the claim against the McGuires.

2H3. Shortly after sending the folder Dulberg asked Williams by phone to subpoena the records of Ron Barch. Dulberg wanted to know if the October 22, 2013 document in which Mast offers to settle the claim against the McGuires for $7,500 was authentic. But he needed the Barch communications to verify the authenticity of the document.

2H4. On October 10, 2019 at 2:01 PM Dulberg sent an email to Williams stating:

> "3. Did we supoena the Attorney Barch with Auto-owners insurance for his communications with the Popovich Firm concerning the Dulberg case? If yes, have we recieved any of these documents? If no, when will we be asking for these documents?
>
> 4. Have we supoenad Attorneys Mr Accardo & Ms Reddington with Allstate Insurance

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1 Exhibit C7a-2019-07-08_1106 AM_SENT_Fwd Forward to Julia_ATTACHMENTS.pdf
2 Group Exhibits (showing key folders)/Exhibit folder 14-To_Julia
3 Exhibit H1-_READ_ME.txt

for their communications with the Popovich Firm concerning the Dulberg casr? If yes, have we recieved any of these documents? If no, when will we be asking for these documents?

5. Have we supoenad the Bankruptcy Trustees Heeg and (I need to look up the names in the Bkruptcy docs) for their communications with the Popovich Firm concerning the value of the Dulberg case/asset?

If yes, have we recieved any of these documents? If no, when will we be asking for these documents?"[1]

2H5. On October 21, 2019 at 1:40 PM (Subject: Discovery and status update) Williams sent an email to Dulberg stating:

"Subpoenas: Mary is working on the issuing various subpoenas. She will send copies to you. There is nothing further for you to do on this at this time."[2]

2H6. On October 24, 2019 at 10:53 AM Clinton sent an email to Dulberg stating:

"Provided are copies of the Subpoenas which were mailed out today. Ed"

"Good morning.
ARached are copies of the following subpoenas regarding the above referenced case:
1. Perry Accardo, Law Office of Gerard Gregoire
2. Law Office of Steven A. Lihosit
3. Joseph Olsen at Yalden, Olsen & WilleRe
4. Cicero France Barch & Alexander PC
Ed"[3]

2H7. On November 22, 2019 4:21 PM Ed Clinton sent an email to Chantel Bielskis stating:

"Chantal,The 14 day extension you requested is fine"[4]

2H8. On December 10, 2019 at 4:48:56 PM CST Chantel Bielskis wrote to Ed Clinton stating:

"Hello Ed – I am working on your subpoena for records. Is it safe to assume you have the entire court file or are you asking me to produce all of the pleadings I have as well?"[5]

2H9. On December 11, 2019 Chantal Beilskis sent an email to WIlliams stating;

"As I mentioned to Ed, I propose providing a list of all the treatment facilities from which we received records/bills per subpoena (either ours or Attorney Accardo's) instead."

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1 Exhibit H2-2019-10-10_1401 PM_SENT_Dulberg Case.pdf
2 Exhibit H3-2019-10-21_1340 PM_RECV_Discovery and status update_ATTACHMENTS.pdf
3 Exhibit H4-2019-10-24_1053 AM_RECV_FW Dulberg v Popovich et al Kane County Case No 17 LA 377_ ATTACHMENTS.pdf
4 Exhibit H7-RE Dulberg AOIC Claim No 13277911.pdf (Page 3)
5 Exhibit H7-RE Dulberg AOIC Claim No 13277911.pdf (Page 2)

Beilskis also stated, "Lastly, I propose sending a list of the deposition transcripts along with the corresponding reporter's info."[1]

2H10. On December 23, 2019 at 3:51 PM Chantal Bielskis sent an email to Williams stating:

"Dear Julia: In follow-up to my email below and in response to your firm's subpoena for records, please see, attached, copies of the non-privileged correspondence from my file."[2]

2H11. On December 23, 2019 at 3:55 PM Williams sent an email to opposing counsel Flynn stating;

"Dear George, Please the below response form Cicero's office re our subpoena. Best Regards, Julia Williams"[3]

2H12. On Dec 23, 2019, at 3:59 PM, Chantel Bielskis sent an email to Williams stating;

"You are welcome. Attached, please find one of the Exhibits from the Gagnon dep as well as photos of the injury. Unfortunately, I will not be able to get the remaining documents scanned in and over to you until after the 1st of the year. I apologize for the delay. Sincerely, Chantel R. Bielskis"[4]

2H13. On December 23, 2019 4:32 PM Williams sent an email to Chantal Beilskis stating;

"Thanks Chantel. No need to apologize for the delay. Enjoy your holidays!
Best Regards, Julia Williams"[5]

2H14. On Feb 12, 2020, at 12:26 PM, Dulberg emailed Williams stating:

"Due to the significants of the October 22, 2013 letter between Mast/Popovich and Ronald Barch/Auto-Owners I feel that the documents and communications between Mast and Barch are essential to have prior to any depositions. When can we get them?"[6]

2H15. On Feb 12, 2020, at 1:29 PM, WIlliams emailed Dulberg stating:

"We can move Hans Mast and Tom Popovich to the end of March. Defense counsel will not agree to move your deposition and would file a motion to compel. At this stage, I think it makes sense for you to go ahead and sit for your deposition on Feb. 19 at 1pm; we will prepare on Feb. 18 at our office at 1pm. For Feb. 19, I propose we meet here, at our office at 12:30 and walk to Karbal together."[7]

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1 Exhibit H7-RE Dulberg AOIC Claim No 13277911.pdf (Page 1)
2 Exhibit H7-RE Dulberg AOIC Claim No 13277911.pdf (Page 4)
3 Exhibit H7-RE Dulberg AOIC Claim No 13277911.pdf (Page 14)
4 Exhibit H7-RE Dulberg AOIC Claim No 13277911.pdf (Page 20)
5 Exhibit H7-RE Dulberg AOIC Claim No 13277911.pdf (Page 26)
6 Exhibit H5a-2020-02-12_1226 PM_SENT_Barch Documents.pdf
7 Exhibit H5b-2020-02-12_1329 PM_RECV_Barch Documents_ATTACHMENTS.pdf

2H16. On Feb 12, 2020, at 5:28 PM, Dulberg emailed Williams stating:

> "How did we get fixed, forced or locked in on a date to give my deposition before we have finished document discovery of the Barch communications? Determining relevance of documents not yet gathered or analyzed on a central issue to our case isn't solely up to the defense to decide. It is not fair to us to have to walk into a discovery deposition without seeing the all the documents first whether or not the defense thinks those documents are relevant to my deposition. We will determine if the Barch documents are relevant to my deposition or not after seeing what is in them. It is also not fair to push Mast and Popovich depositions a month further out on the calendar if the defense is going to try and compel me to testify now. This serves no purpose other than buying the defense more time to formulate responses to what is discovered in my deposition. The dates of the depositions should stay as close together as logistically possible if we want the truth and not some formulated fiction of it.
>
> Let them file the motion to compel. I believe the Judge would agree that we should be able to analyze the Barch records and keep the depositions as close together as possible to get to the truth. I believe it is within our rights to see all documents before any depositions begin When can we expect to see the Barch communications and documents and how long will we have to analyze them before depositions begin?"[1]

2H17. On Feb 12, 2020, at 6:42 PM, Dulberg emailed Williams stating:

> "Perhaps we should file a motion to compel Ronald Barch and Auto-Owners Insurance to turn over all communications and document records with Hans Mast and the Popovich law firm as soon as possible. My thought is if we get those documents now and have a few days to digest them maybe we can keep the deposition dates as they are scheduled."[2]

2H18. On Feb 12, 2020, at 8:12 PM, Ed Clinton sent an email to Dulberg stating:

> "Is there a reason you are reluctant to be deposed? Ed"[3]

2H19. On Feb 13, 2020 at 7:18 AM, Dulberg emailed Clinton stating:

> "Is the October 22, 2013 letter an actual communication between Mast and Barch or is it a strategy or trick? It is essential to verify this from the Barch documents to determine if the letter is a fact or not. It is also important to limit the time between depositions. This is my only reluctance."[4]

2H20. On February 13, 2020 at 11:52 AM Ed Clinton sent an email to Dulberg stating:

> "Just remember that you cannot win a case during your deposition.
> Testify from your own personal knowledge.

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1 Exhibit H5c-2020-02-12_1728 PM_SENT_Barch Documents.pdf
2 Exhibit H5d-2020-02-12_1842 PM_SENT_Barch Documents.pdf
3 Exhibit H5e-2020-02-12_2012 PM_RECV_Barch Documents.pdf
4 Exhibit H5f-2020-02-13_0718 AM_SENT_Barch Documents.pdf

I highly doubt that you can testify (or that you should testify) about a letter somebody else wrote, which may or may not be genuine. Stick to what you know - what you saw and what you observed.
Please focus on getting the deposition done and making a demand."[1]

2H21. On Feb 13, 2020 at 1:29 PM, Dulberg sent an email to Williams and Clinton stating:

"As of July 2019, I now know about the October 22, 2013, $7500 offer Mast made to Barch without my knowledge. We need to confirm this letter is real by acquiring the Barch firms documents and communications with Mast by compelling them if necessary. I have been asking for the Barch communications and documents since last July Why hasn't Barch turned over those communications and documents? Do we need to be concerned that Barch feels those documents may implicate himself somehow or has he made a backroom deal of some sort with Mast/Popovich? The only reluctance that I have is the amount of time Mast and Popovich will have to both read and formulate a strategy before being deposed themselves. I have learned the hard way not to trust these two gentlemen (Mast & Popovich) and have cause for concern or we wouldn't be here. In the underlying case, after reading Caroline McGuires deposition it became obvious to both myself and Mast that she had read my deposition prior to her being deposed. Caroline McGuire described my description of the chainsaw incident. After I realized that Caroline McGuire had information that she would not otherwise have had or possibly known before being deposed I learned to never let that happen again. It is not fair that the defense witnesses get to read my testimony/deposition before giving their own estimony/ deposition. Even if the defense witnesses don't read my deposition directly I'm positive they will be briefed by their counsel on the key points they need to address. Given enough time they (Mast & Popovich) will develop an alternative fictional half truth as a strategy. Fictional half truths is exactly what Mast and Popovich did to me when they lied and bullied me into settling with the McGuires.

These two gentlemen (Mast and Popovich) have a proven track record of deceiving and lying to me so why would I believe documents they turn over without confirming them by getting those records from Barch? If we need to postpone Mast and Popovich's depositions by a month because we haven't received the Barch communications then it seems only fair that my deposition is also postponed.

I don't know if Mast turned over all the communications and documents with Barch or not, the only way to find out is to see what Barch has, who knows what else those documents will show?

Believe me, I wish to get this over with as soon as possible but limiting the time both Mast and Popovich have to prepare after reading my deposition is more important and having the Barch communications before deposing Mast and Popovich is essential. If I could wave a magic wand and get the Barch documents and everyone deposed today I would do it in a heart beat. There is more than just the Barch documents that would be ideal to show the 2-1/2 years of deception, lies and abuse perpetuated by Mast and

1 Exhibit H5g-2020-02-13_1152 AM_RECV_Barch Documents.pdf

Popovich on me, their client, but those other documents and communications are not at the core of our case. The Barch firms communications and documents are at the core of our case and must be obtained. I'm sorry if I hurt anyone feelings because I don't want to give Mast and Popovich over a month to pour through my deposition before answering questions but this is too important to care about their feelings."[1]

2H22. On February 13, 2020 at 5:04 PM Clinton sent an emai to Dulberg stating:[2]

"We need to know if you are going to do your deposition on Wednesday next week.
Second, I admit I don't understand your reluctance to be deposed. It does not make sense to me. We need to resolve this quickly . We need to get this case moving. I'm concerned we are not on the same page.
We believe Mast was negligent but we don't think those communications (that you were not a party to) are relevant to your testimony.
I'm much more concerned that this case is not moving along appropriately - there is no demand and no one will pay you until you are deposed"

2H23. On February 19, 2020, the day of Dulberg's deposition, at 1:18 PM Chantal Bielskis sent an email to Williams stating;

"Hello Julia – Attached, please see the letter going out to your firm today regarding my subpoena response. Please let me know if you need anything further regarding the subpoena. Also, if possible, I would appreciate you letting me know when this case is resolved. Have a good day. Sincerely, Chantel R. Bielskis"[3]

Attached letter states:

"Dear Mr. Clinton and Ms. Williams:

In follow-up to our prior communications regarding the above-referenced case, please find, enclosed, one DVD containing my firm's response to your records subpoena. Please note that, for the sake of completeness and convenience, the DVD contains all of the documents previously sent via email as well as the remaining documents I am producing.

Regarding the medical records and bills in my possession, due to the volume, I have included a list of the facilities from which we have records/bills and identified the source of the records (for example, Complex Legal Services).

I have included a similar list of the deposition transcripts in my possession along with the relevant court reporters so that you may order same if you wish.

Finally, I do have in my possession a copy of the MT 3500 Operator's Instruction Manual. However, due to the physical nature of the document, producing a copy would require sending it to an outside copying service. If you would like me to do so at your

1 Exhibit H5h-2020-02-13_1330 PM_SENT_Barch Documents.pdf
2 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-13_1704 PM_RECV_Barch Documents.pdf
3 Exhibit H7-RE Dulberg AOIC Claim No 13277911.pdf (Page 31)

firm's expense, please let me know.

If you have any questions concerning this, do not hesitate to contact me."[1]

2H24. On March 4, 2020 at 11:34 AM Williams sent an email to Dulberg stating:

"Attached are the documents we received in response to our subpoena to Cicero, France, and Alexander P.C., the successor to Mr. Ronald Barch's former firm, Cicero, France, Barch & Alexander PC."[2]

2H25. It is noteworthy that:

a) When Williams received subpoena documents from Bieilski on December 23, 2019, she sent a copy to opposing counsel Flynn **within 4 minutes**. Dulberg was asking his own attorneys for the same documents and he did not receive them until March, 4, 2020, **more than 104 days** after Williams gave them to opposing counsel and more than 2 weeks after Dulberg's deposition was already over.

b) In the exchange between Williams and Bielskis, on December 23, 2019, Beilskis stated, "I will not be able to get the remaining documents scanned in and over to you until after the 1st of the year." Williams answered, "No need to apologize for the delay. Enjoy your holidays". **Around 59 days later** (and hours after Dulberg's deposition), Beilskis apparently sent the final documents to Williams. And **more than 2 weeks** after receiving the subpoenaed documents, Williams sent them to Dulberg. Dulberg was asking Williams and Clinton for the documents the since July, 2019 (when Dulberg first discovered the $7,500.00 offer Mast made to Barch on October 22, 2013 without Dulberg's consent).

2H26. Dulberg has never received any DVD from Clinton or Williams that was mentioned in the letter[3] attached to the February 19, 2020 email.[4]

2I THE EXAMPLE OF WEAKENED VERIFICATION PAGES OF DISCOVERY PRODUCTION

2I1. On January 30, 2020 3:34 PM Williams sent an email to Opposing Counsel Flynn stating:

"Please find attached the updated 214 affidavit. We will continue to supplement records as required under the rule."[5]

2I2. On January 30, 2020 at 3:50 PM Opposing Counsel Flynn sent an email to Williams stating:

"I appreciate you forwarding the affidavit. The issue with it is that it is general, is not dated, and does not identify the instrument it is referencing (nor is it attached to the

1 Exhibit H7a-01ltr.Clinton.Law.Firm.2.19.20.pdf
2 Exhibit H8-2020-03-04_1134 AM_RECV_Dulberg v Mast Cicero France Barch Production_ATTACHMENTS.pdf
3 Exhibit H7a-01ltr.Clinton.Law.Firm.2.19.20.pdf
4 Exhibit H7-RE Dulberg AOIC Claim No 13277911.pdf (Page 31)
5 Exhibit 20-Dulberg v Popovich et al.pdf (Page 29)

referenced instrument). I would prefer that it be attached to whatever document is referencing, should it need to be marked as an exhibit at a deposition, for example. My apologies, I am not trying to create additional work here, but it could become a bit unwieldy if I had to attach a discovery response, a general undated 214 affidavit, and an email from you explaining the document that it is intended to support, all as an exhibit. Please also let me know where we stand on the email attachments that were not previously produced. The "PDF" icon which shows in the subject lines of the emails, suggests that they would have still been in Mr. Dulberg's possession when he produced the emails. Could you also please call me regarding our tentative February 3 inspection? I have a conflict that I may not be able to clear."[1]

2I3. On January 30, 2020 at 3:59 PM Williams sent an email to Opposing Counsel Flynn stating:

"Attached is the RTP answer with the verification in the document. I hope this will work."[2]

2I4. On January 31, 2020 at 11:21 AM Williams sent an email to Opposing Counsel Flynn stating:

"I will give you buzz later today (we are getting new phones right now)."[3]

2I5. On January 31, 2020 at 11:23 AM Opposing Counsel Flynn sent an email to Williams stating:

"Fair enough. Thanks Julia. I will be in the office until I leave for court around 2:30 p.m."[4]

2I6. Williams replied that she would call Flynn later in the day on January 31, 2020, and this is the last evidence of any communication between Williams and Flynn about any verification of document production. Even after Williams produced over 6000 documents almost 6 months later on July 9, 2020 neither Flynn or Williams mention of any need for any verification statement.

2I7. On February 10, 2021 Flynn claimed in court that:

"there were issues with signature pages throughout written discovery."[5]

2J Clinton and Williams efforts to place an upper cap on the value of Dulberg's legal malpractice case 17LA377

2J1. On July 8, 2019 at 11:06 AM, about one week after Dulberg received the Popovich Document Disclosure from Williams, Dulberg sent an email[6] to Williams with an attached folder

1 Exhibit 20-Dulberg v Popovich et al.pdf (Page 33)
2 Exhibit 20-Dulberg v Popovich et al.pdf (Page 38)
3 Exhibit 20-Dulberg v Popovich et al.pdf (Page 51)
4 Exhibit 20-Dulberg v Popovich et al.pdf (Page 59)
5 Exhibit D0d-Pages from ROP_Vol_1_of_1_230421_1628_8FF9DDF1-3.pdf (Page 5)
6 Exhibit C7a-2019-07-08_1106 AM_SENT_Fwd Forward to Julia_ATTACHMENTS.pdf

called "To_Julia"[1]. In the folder there was a file called "_READ_ME.txt"[2]. The text stated:

> "timeline_of_mcguire_settement.txt
>
> This gives you a rough timeline of events leading to Paul accepting a $5,000 settlement from the McGuires. Since we were never able to see (pop 192) until now, we never understood the details of how Mast tricked Paul into such a small settlement. The fact that Mast initiated the settlement process through (pop 192) without Paul's knowledge or permission is proof that this case is about more than Mast's negligence. It is about willful intent or malicious intent to deceive his client.
>
> Of course you will need convincing proof that (pop 192) was initiated without Paul's knowledge. We have that proof. As I fill in the timeline more and more, the evidence will be stronger and stronger."

2J2. On January 31, 2020 at 1:30 PM Julia C. Williams (using jwilliams@williamslawchicago.com) sent an email to Dulberg stating:[3]

> "Also, it is likely an appropriate time to make a demand in this case.
> Given that the total award Gross Award of $660,000 with 15% comparative fault in the Gagnon matter for an award of $561,000, I believe that it would be hard to prove that if Gagnon and the McGuires were tried or arbitrated together, you would somehow get a larger award. I think there is a good argument to say that Gagnon and the McGuires would have been jointly liable for the award of $561,000. You recovered $300,000 from Gagnon, the remainder would have been paid by the McGuire's through their insurance. Thus, your damages for dismissing the McGuires is about $261,000 less the $5,000 you obtain from them for total damages of $256,000. Do you want me to make a demand of $256,000 from Defendants in this case?"

2J3. On February 1, 2020 at 2:16 PM Dulberg sent an email to To: Julia C. Williams (at jwilliams@williamslawchicago.com) stating:[4]

> "I have a few concerns on the demand. If we use the ADR award as you outlined: I had to pay new attorneys to take the case and they wouldn't do it for the regular 1/3 contingency fee.
>
> 1. I had to pay the Baudin's 40% plus I paid all costs up front and out of pocket.
>
> On this I have to go back and find exactly how much I paid for things like Dr Lanford's expert opinion before giving you the total costs I paid. I will need a few days to dig all that up and we may get a more accurate number from Baudin. I believe that we are all responsible for the likely and probable consequences of our actions.

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1 Group Exhibits (showing key folders)/Exhibit folder 14-To_Julia
2 Exhibit H1-_READ_ME.txt
3 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-01-31_1330 PM_RECV_Dulberg v Popovich et al Deposition dates .pdf
4 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-01_1416 PM_SENT_Dulberg v Popovich et al Deposition dates .pdf

On that note:

But not for Popovich/Masts actions:

1. I would not have filed for Bankruptcy and had to pay the costs associated with it nor suffered the credit consequences.

2. The Bankruptcy Judge and trustee wouldn't have had the authority to order the suit be settled by ADR

3. This case most likely would have gone before a jury.

4. I know from the only comprehensive study done in the nation by a university in California that jury's typically give judgements 10x that of an ADR award. This study compared nearly identical cases across a large spectrum of suits that went the two different routes over many years. Now assuming the university findings are correct, 660,000 x 10 = 6,600,000

5. Gagnon's and McGuires assets could not have paid for a Jury award anywhere close to 6,600,000 but collectively their insurance and assets together at the time would be worth somewhere between 900,000 and 1,200,000. We can get their exact worth at that time from an asset check that I am willing to pay for.

6. I would have received between 900,000 and 1,200,000 which is a considerable step up from the ADR award of 660,000 even if the jury award was 8x less than that study done in California found to be the norm.

7. I understand that going this route may take longer and require risking a jury to decide the issues and amount, if any, the McGuires and Gagnons would have been liable for. Is this risk worth adding a possible 240,000 to 540,000? This we need to talk about before we limit ourselves by sending the demand letter. Please feel free to weigh in and let me know what I am missing or got dead wrong"

2J4. On February 13, 2020 at 2:38 PM Dulberg sent an email to Clinton and Williams stating:[1]

"I did not address the demand portion of your email. We should have the entire Popovich policy before moving forward on this. Popovich only supplied the declaration pages in the document disclosure. Are we not entitled to see the entire policy?"

2J5. On February 13, 2020 at 3:25 PM Dulberg sent an email to Clinton and Williams stating:[2]

"Hi Ed, On the demand portion it would also be helpful to get the McGuires insurance policy from Barch. William McGuire said his limits were 300,000 in his Interrogatory but that is just his word. The actual policy from the McGuires would be helpful before writing a demand letter Can we get that with the rest of the Mast/Barch Communications

1 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-13_1438 PM_SENT_Barch Documents.pdf

2 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-13_1525 PM_SENT_Barch Documents.pdf

and documents?

While we are at it, it would also be helpful to have the Gagnon asset check that the Baudins did as well as getting a McGuire asset check done. I don't see it in the documents, did the Baudins include the Gagnon asset check they performed with the Case file?

FYI - Baudins asked for 1.2 million at the ADR and I believe that was based on the Gagnon asset check and his insurance limits of 300,000 as well as my injuries and lost wages. We could not ask for monies based on permeant disability because that was determined the following year by social security."

2J6. On February 13, 2020 at 5:04 PM Clinton sent an emai to Dulberg stating:[1]

"We need to know if you are going to do your deposition on Wednesday next week.
Second, I admit I don't understand your reluctance to be deposed. It does not make sense to me. We need to resolve this quickly . We need to get this case moving. I'm concerned we are not on the same page.
We believe Mast was negligent but we don't think those communications (that you were not a party to) are relevant to your testimony.
I'm much more concerned that this case is not moving along appropriately - there is no demand and no one will pay you until you are deposed"

2J7. On February 14, 2020 at 4:13 PM Dulberg sent an email to Clinton and Williams stating:[2]

"You said work on the demand so today I spent all day trying to draft a demand letter. I have no idea what I'm doing
I have attached it as Demand Draft - in process.txt
It's not even close to being finished and I'm not sure if I'm even on the right track
Please review it and let me know where I need to fix it."

2J8. On Feb 13, 2020, at 5:26 PM, Dulberg sent an email to Clinton and Williams stating:[3]

"I think we are talking past each other here because this is complex and we discussing different topics. You are correct, there is nothing wrong with me giving my deposition on Wednesday. Yes, I will give my deposition next week on Wednesday.
On the Mast Deposition topic: I definitely want to see Barch documents before Mast is deposed. If this is possible, we are in agreement and on the same page."

2J9. On February 14, 2020 at 5:32 PM Clinton sent an email to Dulberg stating:[4]

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1 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-13_1704 PM_RECV_Barch Documents.pdf
2 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-14_1613 PM_SENT_Barch Documents_ATTACHMENTS.pdf
3 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-14_1613 PM_SENT_Barch Documents_ATTACHMENTS.pdf
4 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-14_1732 PM_RECV_Barch Documents.pdf

"We will rewrite it. We need a number so can start negotiating."

2J10. On February 14, 2020 at 5:40 PM Dulberg sent an emil to Clinton and Williams stating:[1]

"A number is tough.
In that Demand draft I was already at 3.2 in todays dollars but considering future inflated dollars, off the top of my head I would say 10x what the ADR awarded but I think what you're asking is what number would they give not to have to go through a trial. Let me ask you, in your experience what kind of number will make them really think about it? This will give me a starting point."

2J11. On February 14, 2020 at 6:11 PM Dulberg sent an email to Clinton and Williams stating:[2]

"Should I hire an expert to come up with the number?"

2J12. On February 14, 2020 at 6:32 PM Dulberg sent an email to Clinton and Williams stating:[3]

"Sorry for all the emails in a row but I have too many questions
How does this demand then negotiation work?
Is it true that even if they agree to some arbitrary number don't we still need to prove the McGuires and Gagnons could pay for it or is that the case only if it goes to trial?"

2J13. "On February 14, 2020 at 7:39 PM Dulberg sent an email to Clinton and Williams stating:[4]

"I haven't heard back so I'm assuming you just want a number.
If you need a number to start negotiating from start at 6,600,000 - 300,000 that was already paid from the ADR award. Thats 6,300,000.
Let's see where they come in at.
Thats the number from everything I've researched over the past 9 years that a jury today would award in the underlying case.
I hope that these are for settlement purposes only because I have no intention of limiting any possible recovery"

2J14. On February 15, 2020 at 9:45 AM Clinton sent an email to Dulberg stating:[5]

"I was thinking more like $350,000."

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1 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-14_1740 PM_SENT_Barch Documents.pdf
2 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-14_1811 PM_SENT_Barch Documents.pdf
3 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-14_1832 PM_SENT_Barch Documents.pdf
4 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-14_1939 PM_SENT_Barch Documents.pdf
5 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-15_0945 AM_RECV_Barch Documents.pdf

2J15. On February 15, 2020 at 12:36 PM Dulberg sent an email to Clinton and Williams stating:[1]

"Sorry but No.
That's less than the balance left from ADR award of 660,000
The balance left from ADR is 360,000 if we choose to enforce the ADR award and not retry the underlying case.
November 26, 2018, $5.5 million settlement on behalf of a man who was severely injured on his motorcycle in McHenry County, Illinois
Please follow my logic here...I believe a jury would have awarded between 5.5 and 6.6 million in the underlying case and still will be very close to that today.
I believe the most I could have actually collected from a jury award from the defendants insurance policies and their assets is 1.2 million.
Since Mast Never did an asset check or pulled the insurance policy limits on the Gagnons or McGuires, they have no idea what the defendants could actually pay.
For all the defense knows, the McGuires and Gagnons could have been carrying 1 million in additional insurance coverage each plus their assets.
My thought is offer them 2.25 million to settle now or our demand amount goes up 500,000 each time I'm asked to try and settle.
Put on a good poker face and let them know we will retry both the underlying case and the malpractice case in front of a jury and see where the chips fall.
r2.25 million and rising is my number"

2J16. On February 19, 2020 at 7:34 AM Dulberg sent an email to Clinton and Williams stating:[2]

"Yesterday we talked about lost wages being high, last night I remembered part of a conversation with Randy Baudin talking to me a bit about wages
He talked about averaging wages over many years to get an average
He also wanted to know what the benefits that went with those wages were worth.
I had a nice benefit package at Intermatic
I told randy when applying for home loans Intermatic had reported my wages with benefits at 80k per year
They also reported that same number to an attorney I had in the motor vehicle accident back I think somewhere around 2003 (I have to go back and find the exact year that happened)
I think this may be part of the equation he used but I cannot be sure"

2J17. On February 19, 2020 at 8:17 AM Dulberg sent an email to Clinton and Williams stating:[3]

"On this same subject I'm trying to remember some of the benefits I had with Intermatic
The main things I remember are

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1 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-15_1236 PM_SENT_Barch Documents.pdf
2 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-19_0734 AM_SENT_Lost wages issue .pdf
3 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-19_0817 AM_SENT_Lost wages issue .pdf

Five million in life insurance policy
One million in health insurance
And a ton of other stuff that I'd need to go back and dig up if I still have it
Don't know if any of this matters but I wanted to get this to you as I remember it"

2J18. On February 21, 2020 at 9:43 AM Dulberg sent an email to Clinton and Williams stating:[1]

"I have been doing my homework.
I believe that my case does not fill all five prerequisites required before a court can invoke judicial estoppel
I did not take two positions that are factually inconsistent because I initially disclosed the suit as an asset to the bankruptcy court and maintained that position throughout all judicial proceedings five prerequisites required before a court can invoke judicial estoppel:
the party must
(1) take two positions;
(2) that are factually inconsistent;
(3) in separate judicial or quasi-judicial administrative proceedings;
(4) intending for the trier of fact to accept the truth of the facts alleged; and
(5) have succeeded in the first proceeding and received some benefit from it.
A statement under oath was not, however, a requirement for applying judicial estoppel.
The only prerequisites I believe can be perceived as being met here is (3,4,5) and that was with the Gagnon at the ADR not the McGuires since they had been removed previously.
I do not believe that Flynn can win a judicial estoppel motion limiting the amount we can recover since only three of the five prerequisites may have been met and that those three prerequisites is questionable at best.
Please advise and let me know if I am in error."

2J19. On February 21, 2020 at 9:54 AM Dulberg sent an email to Clinton and Williams stating:[2]

"I should include that the Bankruptcy trustee (Olsen) was also made aware of the impending malpractice suit as soon as Gooch determined I had a valid case and I remember Olsen stated something very close to this, the bankruptcy was already solvent and that I would be receiving 100% of anything acquired by the malpractice suit so he had no interest in it"

2J20. On February 21, 2020 at 10:54 AM Clinton sent an email to Dulberg stating:[3]

"At most your demand could be $261,000 based on the arbitration award.
You cannot get around that award in this case.

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1 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-21_0943 AM_SENT_judicial estoppel.pdf
2 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-21_0954 AM_SENT_judicial estoppel.pdf
3 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-21_1054 AM_RECV_Barch Documents.pdf

You are stuck with it
Ed Clinton, Jr."

2J21. On February 21, 2020 at 11:06 AM Dulberg sent an email to Clinton and Williams stating:[1]

"Please don't take this as confrontative, perhaps I just don't understand.
If judicial estoppel doesn't apply because I have never taken two different positions that are that are factually inconsistent in separate judicial or quasi-judicial administrative proceedings what's left that binds us to the adr award for the demand.
Please see the emails sent today
Subject: judicial estoppel and Re: judicial estoppel"

2J22. On February 21, 2020 at 5:30 PM Dulberg sent an email to Clinton and Williams stating:[2]

"2 quick points
What is the probability the defense will take the $261,000 right now if we demand it?
I need to understand exactly how judicial estoppel applies to my case considering the 5 requirements needed to invoke judicial estoppel don't come close to aligning to our case."

2J23. On February 21, 2020 at 5:41 PM Willimas sent an email to Dulberg stating:[3]

"Ed is not talking about judicial estoppel. The doctrine is collateral estoppel, when an issue has been litigated and cannot be relitigated. Here is a link to a Minnesota article that explains it well. Minnesota law and Illinois law are similar on this issue. But feel free to do your own research on Illinois law.

https://mitchellhamline.edu/minnesota-administrative-procedure/12-1-res-judicata-and-collateral-estoppel/

Julia Williams"

2J24. On February 21, 2020 at 5:44 PM Dulberg sent an email to Clinton and Williams stating:[4]

Thank you for the correct terminology
I will do some reading on it
When is Masts deposition and when will we get together before it?

2J25. On February 21, 2020 at 6:49 PM Dulberg sent an email to Clinton and Williams stating:[5]

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1 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-21_1106 AM_SENT_Barch Documents.pdf
2 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-21_1730 PM_SENT_Barch Documents.pdf
3 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-21_1741 PM_RECV_Barch Documents.pdf
4 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-21_1744 PM_SENT_Barch Documents.pdf
5 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-21_1849 PM_

Here is my first draft as a counter argument to Collateral Estoppel
Collatertal Estoppel
The countervailing and generally successful argument, is that the defendant attorneys Mast and Popovich had their hands in the McGuire settlement, which would not have taken place except for mistakes made by the attorneys Mast and Popovich. The McGuire settlement removed the McGuires from the chance to litigate with Dulberg at the ADR and could have changed the outcome. Particularly the amount of the award.
The countervailing and generally successful argument is that the attorneys Mast-Popovich had their hand in the dismissal of the McGuires, which would not have taken place except for mistakes made by the attorneys Mast-Popovich in the October 22, 2013 letter to Barch without Dulberg's knowledge or consent followed by the next 3 months of false and misleading information given to Dulberg by Mast-Popovich as documented in the emailed communications.

The attorneys Mast-Popovich also had their hands in the false and misleading amounts of insurance available from the remaining defendant Gagnon which was told to Dulberg after the dismissal of the McGuires and played the only hand in the plaintiff Dulberg deciding to file for bankruptcy after Mast-Popovich first telling Dulberg that he would be able to recover everything from Gagnon prior to the dismissal of the McGuires, it is documented in emails that Mast-Popovich was recommending different bankruptcy attorneys to Dulberg as a coarse of action, the Dulberg bankruptcy would not havehappened but for the attorneys Mast-Popovich false and misleading statements about what if any possible recovery was available to Dulberg.
The underlying litigation at the ADR Binding Mediation which was brought about by the bankruptcy court would not have happened but for Mast-Popovich hands in the false and misleading information they gave to dulberg which sealed Dulberg's decision to file for bankruptcy.
Bottom Line: Dulberg hired and trusted Mast-Popovich as 20 year veterans in personal injury liability and as 20 year veterans as officers of the court to be honest with him and Mast-Popovich violated and abused that trust as document in the email correspondence which shows Mast-Popovich hands in every part of the underlying case except for the litigation at the ADR. Because Mast-Popovich have their well documented dirty hands in all decisions in the underlying cases up until they withdrew as council, they breached their duty of care for Dulberg and caused the most likely coarse of events in the underlying case to be litigated in a manner that was not in the best interests for their client Dulberg well before Mast-Popovich withdrew from it.

2J26. On February 22, 2020 at 7:37 AM Dulberg sent an email to Clinton and Williams stating:[1]

"Assuming for a moment that if we have to litigate this in front of a judge or jury and eventually we do become limited by collateral estoppel what changed from the email below asking $350,000 in the demand to $261,000 now?"

SENT_Barch Documents.pdf
1 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-22_0737 AM_ SENT_Barch Documents.pdf

2J27. On February 22, 2020 at 9:37 AM Dulberg sent an email to Clinton and Williams stating:[1]

> The findings of fact would change from the original litigation to include Dulberg's permanent disability as a result of the accident rather than the narrower determination that Dulberg was only severely impaired used in the previous adjudication.
>
> Not withstanding my first draft to the counter arguments made in the previous email please take a look at the requirements to invoke collateral estoppel in Illinois and How they don't align to our current attempt to relitigate the underlying case
>
> collateral estoppel
>
> Illinois requirements for the application of the collateral estoppel doctrine are:
>
> (1) the issue decided in the prior adjudication is identical with the one presented in the suit in question;
>
> (2) there was a final judgment on the merits in the prior adjudication;
>
> (3) the party against whom estoppel is asserted was a party or in privy with a party to the prior adjudication.
>
> "In other words, collateral estoppel or issue preclusion prevents relitigation of an issue between the same parties or their privies in any future lawsuit based on a different claim."
>
> Collateral estoppel applies to questions of law and findings of fact.
>
> 1. the issue decided in the prior adjudication is identical with the one presented in the suit in question; The determination of Dulberg's injuries resulting in permanent disability vs sever impairment makes the issues decided in the prior adjudication vastly different from the issues that would be adjudicated in the present suit.
>
> 2. there was a final judgment on the merits in the prior adjudication
> The merits used in the prior adjudication could not be the same as the current adjudication. Dulberg was not determined to be permanently disabled from his injuries in the prior adjudication but rather, more narrowly only severely impaired, which makes the merits used in final judgement in the prior adjudication different from the current adjudication.
>
> 3. the party against whom estoppel is asserted was a party or in privy with a party to the prior adjudicatioI'll accept that this requirement is met
> "In other words, collateral estoppel or issue preclusion prevents relitigation of an issue between the same parties or their privies in any future lawsuit based on a different claim."
>
> The claim of negligence is not different but rather the same. The relitigation of the same claim would bring back Parties that were wrongly removed in the prior litigation and bring to light the merits that were not part of the original litigation or Judgement which are the real damages of the permanent disability Dulberg suffered
> Collateral estoppel applies to questions of law and findings of fact.

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1 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-22_0937 AM_SENT_Barch Documents.pdf

The findings of fact would change from the original litigation to include Dulberg's permanent disability as a result of the accident rather than the narrower determination that Dulberg was only severely impaired used in the previous adjudication.
Only 1 of the 3 requirements are met for collateral estoppel to be invoked upon Dulberg

2J28. On February 22, 2020 at 11:03 AM Dulberg sent an email to Clinton and Williams stating:[1]

Also on the topic of the Bankruptcy court ordering the binding mediation.
I have just found out that Dulberg owned the asset and Dulberg alone had final say on whether the asset would be subject to binding mediation. In other words "the client owns the case".
The bankruptcy court was in error and assumed absolute control over an asset that was beyond the courts power to do by ordering it into Binding mediation with high and low limits.
Second this with Dulberg's refusal to sign the ADR agreement and we can have that whole process undone. It does not matter that Dulberg was present at the ADR. What Matters is, did the client sign the agreement?
The Bankruptcy Court should have waited for the case to be resolved then collected the proceeds from the recovery and distributed them to the creditors accordingly.
If need be, I think I can file an appeal on the Bankruptcy's courts decision to prematurely dissolve the asset by court ordered Binding Mediation based on powers not granted to the bankruptcy court and interfering with the clients control over the direction of the suit.

2J29. On February 23, 2020 at 9:27 AM Dulberg sent an email to Clinton and Williams stating:[2]

To: Ed Clinton ed@clintonlaw.net

"On this demand letter, I'd rather the larger number you suggested of 350,000 over 261,000 but trust you to decide which number we have to put in it."

2J30. On March 3, 2020 at 3:50 PM Clinton sent an email to Dulberg stating:[3]

I'd like to make a demand to at least gain information - are they going to offer anything or not?
$350,000 is obviously better.
Do I have your approval to make that demand?
Ed

2J31. On March 3, 2020 at 3:53 PM Dulberg sent an email to CLinton and Williams stating:[4]

1 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-22_1103 AM_SENT_Barch Documents.pdf
2 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-02-23_0927 AM_SENT_Barch Documents.pdf
3 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-03-03_1550 PM_RECV_Barch Documents.pdf
4 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-03-03_1553 PM_

"Yes you have my permission as long as it is for settlement purposes only and does not bind us later down the road."

2J32. On July 29, 2020 at 1:56 PM Dulberg sent an email to Clinton and Williams stating:[1]

"I would like to ask a few questions before your departure from the case so I can better address some of the issues with possible new counsel.
The list below is not complete but it's a good start to issues I believe are still outstanding.
Outstanding questions on open issues for Clinton firm before departure:

1. Did you send a demand letter? If so, did we receive a response and may I get copies the demand letter and the response?

2. What happened with the objections raised during Dulberg's deposition when Dulberg was questioned about conversations with Dulberg's former counsel Gooch? Did you get a ruling or does that still need to be argued before judge Meyer?

3. Similar to the last question, Have the objections in the Mast deposition been worked out or ruled on by judge Meyer?

4. Did you find out who Gooch was using for an expert witness and did you contact any possible expert witnesses? If so, may I get a copy of their reports and contact information?

5. After you withdraw from this case would you be interested in some sort of limited scope representation or unbundled legal services type of role until I find new counsel and get them up to speed?

Again, Thank you so very much for your help with this case"

2J33. On July 30, 2020 at 9:06 AM Williams sent an email to Dulberg stating:[2]

"Per your email request, here is the demand sent to Mr. Flynn. We did not receive a formal response, other than it was passed along to the client as you see below. I did discuss the demand with Mr. Flynn. He indicated that his client would not accept such a large demand. He indicated that his client would be more inclined to accept a smaller demand, more in the $10,000-$20,000 range, but did not give a specific number and did not make any formal counter-offer."

2K UNEXPLAINABLE TECHNICAL DIFFICULTIES DURING THE DEPOSITION OF HANS MAST AND AFTER

2K-1. On April 30, 2020 at 11:13 AM Flynn emailed Williams stating:[3]

SENT_Barch Documents.pdf

1 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-07-29_1356 PM_SENT_Need clarification on outstanding issues before your departure.pdf

2 Group Exhibits (showing key folders)/Exhibit folder 24-Emails_Clinton Firm-Dulberg/2020-07-30_0906 AM_RECV_Fwd Settlement DemandDulberg v Mast_ATTACHMENTS.pdf

3 Exhibit K2-Dulberg v Popovich-3.pdf (Page 1)

"... The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.

Otherwise, perhaps we can get a live deposition on the books for some time in June. If so, I would suggest the 2nd half of June. ..."

2K-2. On May 4, 2020 at 11:37 AM Williams replied to Flynn stating:[1]

"... I would prefer to do an in-person deposition given that the client will likely want to be present and that may present some issues with a video deposition. That being said, I don't want to hold this up indefinitely.

Let's plan for the end of June. If the "stay at home" orders get extended again, we will reconsider the "in person" v "remote" deposition. ..."

2K-3. On May 4, 2020 at 11:37 AM Williams emailed Flynn stating:[2]

"... Made an executive decision on this one. I thought that if Paul wants to be present, and I am sure he will, it will be easier to communicate with him in person as opposed to a video dep. ..."

2K-4. On May 4, 2020 at 11:43 AM Flynn emailed Williams stating:[3]

"... Sounds like a plan. ..."

2K-5. On May 29, 2020 at 4:37 PM Williams emailed Flynn stating:[4]

"... I anticipate this will be a video deposition, despite things opening back up, I think it is the safest route for everyone and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option. Details to come on that. ..."

It appears that Williams does an 'about face' on her earlier "executive decision" to wait for an in person deposition, has read and understands the supreme court rules on remote depositions and will "take advantage" of those rules.

2K-6. On June 18, 2020 at 9:32 AM opposing counsel Flynn sent an email to Williams stating:[5]

"... Please let me know when you can about your plan for exhibits. I will assume that I do not need to print or bring anything with me unless you advise otherwise."

2K-7. On June 19 2020 at 2:35 PM, six days before the deposition of Mast, Flynn sent an

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1 Exhibit K2-Dulberg v Popovich-3.pdf (Page 2)
2 Exhibit K2-Dulberg v Popovich-3.pdf (Page 4)
3 Exhibit K2-Dulberg v Popovich-3.pdf (Page 6)
4 Exhibit K2-Dulberg v Popovich-3.pdf (Page 8)
5 Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Emails 2020 August 19/US Legal Support Confirmation of Scheduling Job No 923267.pdf

email to Williams stating:[1]

> "Julia: I just received your notice of attorney lien. Will you still be taking the dep next week?
>
> My experience with receiving liens at this stage of litigation(in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for Mast's dep. ..."

Flynn is correct, Williams and Clinton are preparing to withdraw and have no intention of representing Dulberg in litigating this case any further.

2K-8. On June 19, 2020 at 2:54 PM Williams emails Flynn and states:[2]

> "... We are still on. This will be the first remote deposition that I have taken so I am still working on figuring out the exhibits. I believe that I can upload them to the US Legal system and then share them during the deposition. But, if not, I will be sure to have them to you no later than Tuesday by 5pm. ..."

2K-9. June 23, 2020 at 4:25 PM Williams Emails Flynn stating:[3]

> "... I am attaching the deposition exhibits that I may use on Thursday. I don't believe there will be any additions between now and then, but if there are they will minor and I will do my best to send them ahead of time. Obviously, I may not use all of these.
>
> I have not used US Legal or done any remote depositions so you will have to forgive any errors. My understanding is that in the video conferencing system I will be able to upload the document in Pdf or other format (I am only using PDFs), then you and the court reporter will be able to download it. The court reporter will label the exhibits and include them in the transcript after the deposition is complete. You are not required to print any of the documents—unless of course you would like to do that.
>
> I did my best to label the exhibits in the number order that I believe I will use them. That being said, things change in depositions and they may have to be renumbered. In an effort to not make it super confusing, I used descriptive names as well. ..."

It appears from the email that Williams sent Flynn 23 proposed exhibits in this email. There is no evidence that she did the same for the court reporter. Williams has already set herself up for violating the Supreme Court rule and the deposition is still days away.

2K-10. On June 24, 2020 at 12:50 PM Flynn emailed Williams stating:[4]

> "Thanks Julia. I also received the additional exhibit you may use. See you tomorrow."

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1 Exhibit K3-Dulberg -2.pdf (Page 1)
2 Exhibit 22-Dulberg -2.pdf (Page 2)
3 Exhibit K4-Dulberg v Popovich Firm et al Mast Deposition Exhibits.pdf (Page 1)
4 Exhibit K11-US Legal Support Confirmation of Scheduling Job No 923267-2.pdf (Page 13)

(After several exhaustive searches, Dulberg cannot locate any file containing the email where Williams sends Flynn this "additional exhibit" in the Clinton case file.

Possibly sent to Flynn using "Julia.c.floyd@gmail.com"?[1])

Could this possible backchannel email address be why Mr Flynn announced himself as "George Floyd" in open court on February 25, 2019 and later harrassed the court reporter to change the transcript to read "George Flynn"?[2]

The court reporter did not sign the certification page of the transcript that now reads "George Flynn"[3] even after being reminded and asked to do so twice.[4]

2K-11. Flynn preprinted some of the proposed exhibits and only portions of the larger exhibits to save paper, Most having the wrong exhibit number from what will be used in the deposition.

2K-12. The court reporter was recording from a remote location and was not in the room with Williams or the deponent Mast and manages to capture a bizarre episode of alleged wifi connection problems (mostly off the record) without any actual break in the audio like we would expect from someone who lost their connection to the Internet during a zoom meeting.

2K-13. From the beginning of the deposition Williams was uploading the exhibits she was referencing but Mast was in his email attachments viewing the proposed exhibits Flynn forwarded to him (and was ignoring the exhibits uploaded by Williams).

2K-14. Early into the deposition Mast and Flynn claimed a wifi outage occurred and Mast couldn't view the proposed exhibits in Masts email anymore. Both claimed that they got booted from the office wifi. They also claimed they had audio but no video on zoom.

2K-15. Flynn then claimed he figured out how to log back in to the zoom meeting using Flynn's cellular hot spot to reconnect.

2K-16. Once logged back into the zoom meeting using Flynn's cellular hot spot, Mast then claimed he couldn't see his emails or proposed exhibits on those same computers and devices that were now connceted over the cellular hot spot.

2K-17. Rather than use the files uploaded by Williams on zoom, Mast then turned to Flynn's incomplete printed portions of the proposed exhibits (which are mostly marked with old exhibit numbers that do not match the exhibit numbers being assigned as Williams uploaded them, causing constant confusion over what is actually being viewed by the deponent).

2K-18. Williams then attempted to email an exhibit and sets up "screen sharing" with the exhibit. This was done because Mast and Flynn claimed they couldn't find the exhibit in the

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1 Exhibit K11-US Legal Support Confirmation of Scheduling Job No 923267-2.pdf
2 Exhibit K6-2019-02-25_Pages from ROP_Vol_1_of_1_230421_1628_8FF9DDF1-4.pdf (Page 2 Line 3 and Page 7 Line 3)
3 Exhibit K6-2019-02-25_Pages from ROP_Vol_1_of_1_230421_1628_8FF9DDF1-4.pdf (Page 10)
4 Exhibit K7-In Re Dulberg v Popovich et al.pdf (Page 1 and 3)

partially printed proposed exhibits (and apparently Mast and Flynn refused to use the uploaded Exhibits feature that are readily available through zoom.

(After several exhaustive searches Dulberg can find no emails sent by Williams during the deposition in the Clinton case file. Possibly sent to Mast using "Julia.c.floyd@gmail.com"?[1])

2K-19. Mast later claimed he had the proposed exhibits on his computer and told Williams she doesn't need to keep uploading them (but makes no reference to his email or wifi working).

2K-20. Williams seemed to go along with all this, rather than simply instruct Mast to use the exhibits she was uploading (to comply with the Supreme Court rules for remote depositions) or cancel the deposition and reschedule it (due to Mast and Flynn's equipment failures).

2K-21. The following excerpts from the deposition transcript[2] and mast.wav[3] file and are just a few examples of the confusion these alleged technical difficulties/equipment failures created:

Page 17 Lines 8-10[4]

> MAST: Yeah. What I'm going off are an email I got with all the exhibits attached, so I'm not -- that's what I'm looking at.

Page 22 Lines 2-20:[5]

> MAST: Oh, uh, I think -- It just kicked me off.
>
> MR. FLYNN: I got disconnected, too. It's the Wi-Fi.
>
> BY MS. WILLIAMS:
>
> WILLIAMS: Okay, we'll just wait a minute here.
>
> MAST: I can hear you. I just can't see you.
>
> WILLIAMS: We'll wait a minute until you can get your video back on.
>
> MR. FLYNN: Julia, we think the Wi-Fi may have dropped here in the office.
>
> WILLIAMS: Okay. Well, let's just give it a minute and see.
>
> MR. FLYNN: Okay.
>
> (Whereupon, a break was taken.)

[A bizarre off the record audio is recorded by the court reporter about the alleged wifi Internet outage/equipment failure at: mast.wav 22:50 - 36:40[6]]

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1 Exhibit K11-US Legal Support Confirmation of Scheduling Job No 923267-2.pdf
2 Exhibit C15-Hans Mast 062520 FULL.pdf
3 Exhibit K5-mast.wav
4 Exhibit C15-Hans Mast 062520 FULL.pdf (Page 17 Lines 8-10)
5 Exhibit C15-Hans Mast 062520 FULL.pdf (Page 22 Lines 2-20)
6 Exhibit K5-mast.wav (22:50 - 36:40)

WILLIAMS: Okay. I think we're back on the record. Barb, are you doing all right?

THE REPORTER: Yes....

Page 26 Lines 5-17[1]

WILLIAMS: Okay. I just uploaded Dulberg Mast Exhibit 4 and it says letter -- it's "Letter Re Settlement," and that should be -- still be Exhibit 4 that was emailed around to Counsel so that you would have it. And it is labeled POP192 and POP193. Do you recognize those documents?

MAST: Wait. I think the Internet, maybe because we were having problems, is the Internet went down, so now my exhibits aren't pulling up. Can you try it again? Do you have that, George?

MR. FLYNN: Yeah, here's the hard copy.

MAST: I'll look at the hard copy, so what are you asking?

Page 28 Lines 20-24 and Page 29 Lines 1-18:[2]

WILLIAMS: Okay, and here in this email it looks like you started this email chain to Paul on October 25, 2013. Do you see that?

MAST: It looks like there's a couple emails here. There's several pages. You just mean the first page?

WILLIAMS: I think -- It should only be, I believe it's only one page and it looks like --

MAST: Oh, these aren't part of it? Just one page?

WILLIAMS: The document that I have is just one page. Are we looking at the same thing?

MAST: Okay.

WILLIAMS: It's POP00195 on the bottom.

MAST: Yeah, he had a couple other pages on it, but okay.

WILLIAMS: Okay. I just want to make sure that I didn't -- Okay. And on the bottom there of the first sheet, if you have several, I've only published one sheet for the purposes of this deposition, it states, "Friday, October 25, 2013," do you see that?

MAST: Where does it say that?

WILLIAMS: So about halfway down the page it looks like it says, "Original message from Paul"?

MAST: Yeah.

---

1 Exhibit C15-Hans Mast 062520 FULL.pdf (Page 26 Lines 5-17)
2 Exhibit C15-Hans Mast 062520 FULL.pdf (Page 28 Lines 20-24 and Page 29 Lines 1-18)

Page 31 Lines 10-24:[1]

WILLIAMS: Okay. So I'm going to upload another file here.

MAST: Yeah, our Internet is down. That's why I can't bring these up.

WILLIAMS: Okay.

FLYNN: Julia, just so you know, I've got hard copies of the majority of the exhibits you sent with the exception of the larger files, like the insurance policy and the dep transcripts.

WILLIAMS: Okay. Okay, great.

FLYNN: I've got some of the deposition transcripts, but I didn't want to waste a lot of paper and ink at home.

[Audio mast.wav 50:07-50:17: "I've got portions of some ..."[2]]

WILLIAMS: Okay. I think we'll be -- For the most part, I think we'll be fine and we'll

Page 32 Lines 1-24:[3]

deal with it if and when we get to that point.

WILLIAMS: Okay. So the document that I'm looking at now is another email on the -- it's now titled Exhibit 6. I don't think it was entitled Exhibit 6 in what I sent to George, but it's an email that the first date on the email is November 4, 2013, and the last date on the email is November 5, 2013 email chain and it's -- at the bottom it's stamped Dulberg001531.

MAST: What exhibit is it?

WILLIAMS: I think it might have been 5-A to George. It's now Exhibit 6 for the purposes of this deposition.

MAST: Yeah, that wasn't part of the download then. Do you have --

FLYNN: Yeah, I don't think that was included.

MAST: What's the Bates stamp or what's the stamp?

WILLIAMS: The Bates stamp is Dulberg001531.

MAST: Yeah, I don't recall --

FLYNN: I don't recall seeing a 5-A on the download. I think it just went straight from

Page 33 Lines 1-24:[4]

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1 Exhibit C15-Hans Mast 062520 FULL.pdf (Page 31 Lines 10-24)
2 Exhibit K5-mast.wav (50:07-50:17)
3 Exhibit C15-Hans Mast 062520 FULL.pdf (Page 32 Lines 1-24)
4 Exhibit C15-Hans Mast 062520 FULL.pdf (Page 33 Lines 1-24)

5 to 6.

WILLIAMS: Okay, let me see if I can do something else. I'm going to try to share my screen. I don't know if I'm going to be able to do it. So bear with me. Okay. I can't -- I can't share the screen. Can I email -- George, can you pull up an email if I email it to you?

FLYNN: I should be able to eventually.

WILLIAMS: Okay, let me see if that will --

MAST: Let me run to the washroom real quick while you guys do --

WILLIAMS: We'll take a quick break, that's fine, we'll try to work this out. If anybody else needs a break, obviously take a break now.

(Whereupon, a break was taken)

[Audio mast.wav 52:25-55:54[1]]

BY MS. WILLIAMS:

WILLIAMS: Okay, back on the record. This is the Exhibit 6 for the deposition and it's marked at the bottom Dulberg001531 and it's an email chain between Paul Dulberg and Hans Mast dated November 4th through about November 5th, is that accurate, Hans?

Page 34 Lines 16-18:[2]

MR. FLYNN: Julia, now I recall, this is a separate exhibit you sent a little bit later than the original download, so I did have this.

Page 35 Lines 5-19:[3]

WILLIAMS: Okay. Okay, I'm going to stop screen sharing. Okay. I'm going to upload another file. This is Deposition Exhibit 7. George, you probably had it as Exhibit 6, but for the purposes of this deposition right now it's going to be 7 and it's an email chain dated --

MAST: I have these on the computer. You don't need to, unless you want to, but I'm just saying I have these on the computer.

WILLIAMS: Okay, but Barb needs them, so that's why I keep uploading them, otherwise she doesn't have them. Okay. So Exhibit 7, and it's POP00181 and POP00182, and it's two pages of an email chain, November 15th, looks like on the second page it starts November 15th and ends November 19th, is that accurate?

2K-22. The issue of what Mast is looking at for an exhibit (compared to what Williams is

1 Exhibit K5-mast.wav (52:25-55:54)
2 Exhibit C15-Hans Mast 062520 FULL.pdf (Page 34 Lines 16-18)
3 Exhibit C15-Hans Mast 062520 FULL.pdf (Page 35 Lines 5-19)

uploading as an exhibit just for the court reporter) is a problem throughout the entire deposition.

2K-23. Mast and Flynn claimed they became disconnected from wifi causing them to not be able to see the proposed deposition exhibits and had to reconnect to the Internet and zoom over a cell phone hot spot, yet they were still being recorded by the court reporter the whole time. The audio caught by the court reporter (when they were off the record trying to reconnect to the wifi and zoom) is not possible as it was described by Flynn. The court reporter was recording from a remote location via zoom. Flynn and Mast allegedly were completely disconnected and had to log back in to the zoom meeting (all while claiming the sound was working but not the video).

2K-24. Williams failed to ask obvious question like, " How is it that I can hear you if you're disconnected and logging back in?"

2K-25. Williams failed to instruct Flynn and Mast to use the exhibits she was uploading (in accordance with the Supreme Court rules for remote depositions).

2K-26. Williams failed to cancel the deposition and reschedule due to alleged wifi equipment failures and moving forward, as she did, is a clear violation of the Supreme Court rule.

2K-27. Williams then uploaded "exhibit 12" and neither Mast nor Flynn could see "exhibit 12" as the following exchange demonstrates:[1]

> Williams: "Okay, I'm uploading Dulberg Mast Dep Exhibit 12.· This is titled, "Legal Research."· And this is hard because there's -- it's 27 pages.· Some ·of them have Bates numbers, but some of them are black on the bottom, so I think the Bates numbers didn't -- didn't take, but it's roughly -- looks like roughly 204, maybe 205, Dulberg204, 205 through roughly Dulberg00304 -- Actually, I'm sorry, these aren't going to be continuous.· But do you have that packet of legal research in front of you? It appears to be copies out of a -- copies of case law out of the Northeastern Digest.
>
> Mast: "I just have the one case here."
>
> Williams; "Just one case?· Which -- What's the case title?
>
> Mast: "The first one, it's L A J A T O."
>
> Williams: "Okay.· Do you -- Did you copy this case law?"
>
> Mast: "I don't know."

2K-28. Williams never provided the court reporter Barbara G. Smith with a usable, viewable, uncorrupted, error free "Exhibit 12" during the deposition or at any time afterward that matches what Mast described it as in his deposition.

2K-29. Flynn did not make available to the court reporter the partial printouts of portions of the proposed exhibits he had in his possession and gave to Mast to use during the deposition.

2K-30. Flynn also did not make available to the court reporter Mast's emails or computer

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1 Exhibit C15-Hans Mast 062520 FULL.pdf (Page 49 Lines 20-24 and Page 50 Lines 1-13)

files where Mast was looking at the proposed exhibits some of the time.

2K-31. Later, after Clinton and Williams withrew, the court reporter Barbara G Smith was subpoenaed for her records of the Mast deposition and responded providing everything she had.[1]

2K-32. The document "Dulberg Mast Dep Exh 12 Legal Research .pdf" has a fundamental flaw and is corrupt[2] when opened with Adobe Acrobat DC. (Anyone who has Adobe Acrobat DC can confirm the issue exists by simply opening the file, see the error code, and browse through the blank pages.) This file does appear to open normally in some 3rd party PDF readers but it is obvious from the record and Barbara G Smiths notes that none of the parties looking at exhibit 12 were looking at the same parts of exhibit 12 and were not on any 3rd party PDF readers that could display the whole exhibit 12.

2K-33. Dulberg intended the sources of the corrupted file, "Dulberg Mast Dep Exh 12 Legal Research .pdf" to be from 3 emails sent in series to Williams On April 18, 2019 at 10:38 AM.[3] The source emails subject lines were "318 Cases from December meeting 1 of 3"[4], "318 Cases from December meeting 2 of 3"[5] and "318 Cases from December meeting 3 of 3"[6]. The attached files to these emails were "IndependantContractor-CaseLaw1_Mast.pdf"[7], "IndependantContractor-CaseLaw2_Mast.pdf"[8] and "IndependantContractor-CaseLaw3_Mast.pdf"[9] and are not corrupt. (Anyone who has Adobe Acrobat DC can confirm this by simply opening the files.) None of these source files are stored in the Clinton Case file with the original names. None of the emails Dulberg sent Williams with the attachments are in the Clinton case file. Dulberg did mistakenly call the November 20 meeting "December meeting" or "December 2013 meeting" in the emails.

2K-34. Williams successfully incorporated both the Choy "IndependantContractor-CaseLaw2_Mast.pdf" and Lajato "IndependantContractor-CaseLaw3_Mast.pdf" cases into the Bates stamped documents and turned them over to opposing counsel without any issues of errors or file corruption. But Williams never bates stamped nor turned over to opposing counsel the certified slip ruling of Tilschner v Spangler "IndependantContractor-CaseLaw1_Mast.pdf", it was downloaded, renamed (Tilschner v. Spangler et al 2-10-0111 Opinion 2011 May 6.pdf[10]) and stored in the Clinton case file at:

> Dulberg Master File/Dulberg Research/Tilschner v. Spangler et al 2-10-0111 Opinion 2011 May 6.pdf[11]

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1 Group Exhibits (showing key folders)/Exhibit folder 17-Barbara G Smith Subpoena Responsive Thumbdrive
2 Exhibit C10a-Screenshotof error code in Adobe Acrobat DC-Exhibit 12.png
3 Group Exhibits (showing key folders)/Exhibit Folder 21-Source of 318 Cases
4 Exhibit K13-2019-04-18_1038 AM_SENT-3_318 Cases from December meeting 1 of 3_ATTACHMENTS.pdf
5 Exhibit K14-2019-04-18_1038 AM_SENT-4_318 Cases from December meeting 2 of 3_ATTACHMENTS.pdf
6 Exhibit K15-2019-04-18_1038 AM_SENT-5_318 Cases from December meeting 3 of 3_ATTACHMENTS.pdf
7 Exhibit C0a-IndependantContractor-CaseLaw1_Mast.pdf
8 Exhibit C0b-IndependantContractor-CaseLaw2_Mast.pdf
9 Exhibit C0c-IndependantContractor-CaseLaw3_Mast.pdf
10 Exhibit K16-Tilschner v. Spangler et al 2-10-0111 Opinion 2011 May 6.pdf
11 Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Research/Tilschner v. Spangler et al 2-10-0111 Opinion 2011 May 6.pdf

It is worthy to note that Williams named exhibit 12 using the terms "Legal Research" in the file name ("Dulberg Mast Dep Exh 12 Legal Research .pdf") and placed the certified slip ruling of Tilschner in a file named "Dulberg Research".

It is also worthy to note that the Clinton firm did their own research on Tilschner and saved a PDF from Find Law in Dulberg Master File/Dulberg Matter Ed Clinton/Dulberg Research TILSCHNER v. SPANGLER | FindLaw.pdf[1] on 10/19/2020.

2K-35. It is more likely than not that the corrupt file "Dulberg Mast Dep Exh 12 Legal Research .pdf" was intended to create confusion or a distraction to make it seem like a there was a "technical issue" with the wifi or the file was corrupted as to why Tilschner was not part of exhibit 12 for the deposition. Dulberg has the Preview app that Williams used to create exhibit 12 and the bates stamped documents it was pulled from and has never been able to recreate the same error in the file.

It is more likely than not that the "file corruption" in exhibit 12 was done intentionally to hide the fact that Tilschner was intentionally suppressed by Clinton and Williams to benefit the defense (in order to hide the one case of the three case laws Mast gave Dulberg for changing their legal opinion as to the McGuire liability in the underlying case. Why, because Tilschner is a case that both Mast and Popovich took to the Appellate Court, possessed a certified slip ruling and could not get away with the generic answers Mast gave Williams about exhibit 12 in his deposition). After all, the certified slip ruling for Tilschner v Spangler remained the only (known) document separated, suppressed and never Bates stamped or released by Williams and Clinton. On top of that the Clinton firm did not keep copies of the emails Dulberg sent them with all 3 318 cases, Tilschner, Lajato, Choi.

2K-36. Williams knowingly violated the Supreme Court rules for remote depositions and this deposition should have been void and redone (but Williams was already planning on leaving the case prior to the deposition and wasn't about to let Dulberg and his new counsel have a fair stab at Mast in a deposition.).

2K-37. On June 25, 2020 at 12:31 PM, about 20 minutes after the deposition of Mast, Flynn sent an email to Williams stating:[2]

> "... Just wanted to write while it is fresh in my mind, but I'd like to close the dangling issues from your client's deposition, including the production of communications with Mr. Gooch in view of the "discovery rule" issues. Please advise ..."

2K-38. On June 26, 2020 12:13 PM Williams sent an email to Flynn stating:[3]

> "... Thank you for the follow up. I am working on the production today. Are you around on Monday—can we chat then? ..."

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1 Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Matter Ed Clinton/Dulberg Research TILSCHNER v. SPANGLER | FindLaw.pdf

2 Exhibit 23-Dulberg -3.pdf (Page 1)

3 Exhibit 23-Dulberg -3.pdf (Page 2)

2K-39. Williams never worked on any production of communications with Mr Gooch and she did not address the Dulberg deposition objection issue in court. Instead, she sent Dulberg Flynn's "DEFENDANTS, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION TO PLAINTIFF" telling Dulberg to start collecting the privileged Gooch Communications she already had in her posession since November 17, 2018[1]. Instead Williams produced over 6000 pages of intentionally suppressed documents that were not related to Gooch in any noticeable way and then resigned as Dulberg's attorney.

2K-40. On July 2, 2020 Barbara G Smith emailed Williams stating:[2]

> "Hi Ms. Williams - This is Barb Smith, the court reporter from US Legal that was present at the dep of Hans Mast on 6-25-20. I am currently working on the transcript and while preparing the exhibits I noticed that Exhibit No. 12, which is the 27 pages of legal research, did not download completely. The Exhibit 12 that I have has blank pages 1-22 and only pages 23-27 have print on them. I just wanted to let you know and check if you wanted to resend or if that's how No. 12 is supposed to be."

In handwritten notes it states:

> "7-2-20 Called 7-6-20 left message"
>
> "7-7 submitted job and emailed Noelle about it"
>
> "Williams responded 7-2-20 but the text space was blank."

(After several exhaustive searches Dulberg cannot locate a single email in the Clinton case file between Barbara G Smith and Williams.)

(Possibly sent to "Julia.c.floyd@gmail.com"[3]?)

As noted "Williams responded 7-2-20 but the text space was blank." was this 'blank' email intended to be funny because of the 'blank' exhibit 12?

2K-41. On July 2, 2020 at 12:11 PM Williams emails Dulberg Flynn's filing: of "DEFENDANTS, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION TO PLAINTIFF" stating in the email:[4]

> "... Opposing Counsel has tendered a supplemental request for production. Please review. A response is due by July 30, 2020.
>
> You can begin gathering responsive documents.

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1 Group Exhibits (showing key folders)/Exhibit Folder 20-Gooch communications sent to Williams
2 Exhibit K9-job papers0001.pdf (Page 3)
3 Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Emails 2020 August 19/US Legal Support Confirmation of Scheduling Job No 923267-2.pdf (Page 2)
4 Exhibit E1-2020-07-02_1211 PM_RECV_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377_ATTACHMENTS.pdf (Page 1)

Some of the document may be subject to attorney-client privilege. ..."

2K-42. On July 7, 2020 at 10:58 AM Williams and the Clinton Firm drafted a resignation letter named:[1]

"Dulberg Draft Letter re case 2020 July 7 .docx"

and place it in a folder in their case file for Ed Clintons copy of the documents Barch produced in response to a subpoena named:[2]

"Dulberg Cicero France Barch Production Complete"

2K-43. On July 7, 2020, 09:32 PM Barbara G Smith emailed Noelle stating:[3] [4]

"... One of the exhibits, #12, was downloaded during the Zoom session. It's 27 pages and when Ifirst looked at it I noticed that pages 1-22 were blank. I emailed Julia Williams, our client, on 7-2 about this. She responded and the message section of her email was blank. I waited for another email but received none. On 7-6 I called and left her a message and have not received a response. I did note all of this information in the email that I sent the job with. ..."

Barbara G Smith certified and submited the transcript and it's exhibits to Noelle Kappes with US Legal Support for distribution to the parties noting issues with Exhibit 12. Exhibit 12 is missing from the final output.[5] [6]

2K-44. On July 9, 2020 at 11:44 AM Williams sent an email to Dulberg stating:[7]

"... More documents were sent to George Flynn today to ensure that Gooch's entire file on the underlying case was sent as well as communications from your subsequent counsel in the underlying case.

There are two emails. This is the first with three files attached. ..."

Attached files:

'Dulberg 2650-7892.pdf'[8]
'Dulberg 7893-8551.pdf'[9]

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1 Exhibit 7d-Dulberg Draft Letter re case 2020 July 7 .docx
2 Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Matter Ed Clinton/Dulberg Cicero France Barch Production Complete/Dulberg Draft Letter re case 2020 July 7 .docx
3 Exhibit K9-job papers0001.pdf (Page 4)
4 Exhibit K9-job papers0001.pdf (Page 4)
5 Exhibit K30-job papers 0002.pdf
6 Exhibit K9-job papers0001.pdf (Page 4)
7 Exhibit C0i-2020-07-09_1144 AM_RECV_Fwd Dulberg v Popovich et al Documents_ATTACHMENTS.pdf
8 Exhibit 27-Dulberg 2650-7892.pdf
9 Exhibit 28-Dulberg 7893-8551 .pdf

'Dulberg 8552-8708.pdf'[1]

2K-45. On July 9, 2020 at 11:47 AM Williams sent an email to Dulberg stating:[2]

"... This is the second email I sent to George with the fourth and final file. ..."

Attached files:

'Dulberg 2650-7892.pdf'[3]

Any reasonable person receiving these emails with over 6,000 documents would need weeks to digest what is happening here and would assume somewhere in here Williams is replying to Flynns "DEFENDANTS, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION TO PLAINTIFF" since Williams has been in posession of the Gooch emails since November 17, 2018[4], However thats not what is happening here, Williams is releasing Documents she intentionally suppressed since May 30, 2019 without Dulberg's knowledge.

2K-46. On Jul 10, 2020, at 10:46 AM Williams sent an email to Flynn stating:[5]

"... I believe there may have been three, but simply because the first email took forever to send as the documents attached were so large. The first contained all four of the files. The second contained three files and the third contained one file. There are only four files total—so the emails are duplicative as originally I did not believe the first email would send. Thus, you should have these four files:

1. Dulberg Stamped 2646-2649
2. Dulberg 2650-7892
3. Dulberg 7893-8551
4. Dulberg 8552-8708.

Please let me know if you did not receive all of the documents. ..."

Williams is 'flooding' Dulberg with an overwhelming number of documents and sneaking all but one of the documents that were previously suppressed into the flood, behind thousands of pages of useless material. Williams continues to suppress one document: the Appellate Court slip ruling Tilschner v Spangler.

None of the 6000+ pages of documents have anything to do with the Gooch Communications. Williams doesn't provide and Flynn doesn't ask for a certification/verification page signed by Dulberg.

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1 Exhibit 29-Dulberg 8552-8708.pdf
2 Exhibit C0j-2020-07-09_1147 AM_RECV_Fwd Dulberg v Popovich et al Documents_ATTACHMENTS.pdf
3 Exhibit 27-Dulberg 2650-7892.pdf
4 Group Exhibits (showing key folders)/Exhibit Folder 20-Gooch communications sent to Williams
5 Exhibit 25b-Dulberg v Popovich et al Documents-2.pdf (page 7)

2K-47. On July 10, 2020 at 2:03 PM witranscripts@uslegalsupport.com emailed Williams links to download the Mast deposition and exhibits. Exhibit 12 is missing.[1]

2K-48. On July 10, 2020 at 2:57 PM Williams emails Dulberg the Mast deposition stating:[2]

Attachment:

> Dulberg Hans Mast deposition transcript Legal Mal 2020 June 25.zip [3]

Rather than forward Dulberg the links to download the files directly from US Legal Support, Williams takes time to Download each file and compress the deposition and all the exhibits into a single zip file. This was probably done so Dulberg wouldn't have to go in and download each file one by one with the visual cue from the list sent by witranscripts@uslegalsupport.com (where it would have become immediately apparent to anyone downloading the files one by one that Exhibit 12 is missing.)

2K-49. On July 13, 2020 at 8:37 PM Noelle Kappes nkappes@uslegalsupport.com emailed Williams stating:[4]

> "... The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow? ..."

2K-50. On July 14, 2020 at 9:40 AM Williams emails Kappes stating:[5]

> "I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here."

Perhaps Williams is showing her sense of humor since she replied to Barbara's email about blank pages as exhibit 12 with a blank email.[6] Is this an inside joke? (Because Barbara and Noelle don't seem to be in on it.)

2K-51. Williams provided the deposition Scheduling Manager Noelle Kappes with the corrupted copy of exhibit 12 no earlier then July 14, 2020 (more than 2 weeks after the Mast deposition). The corrupted copy of "exhibit 12" provided to Noelle Kappes on July 14, 2020 contained 2 exact copies of Lajato and a copy of Choi. It did not contain Tilschner v Spangler even though Williams had been instructed by Dulberg in writing to include it on at least six different occasions.

Attached is the same corrupted file Williams uploaded during the Mast Deposition:

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1 Exhibit K17-Paul Dulberg v Law Offices of Thomas Popovich et al.pdf
2 Exhibit C0k-2020-07-10_1457 PM_RECV_Dulberg v Popovich et al Mast Deposition_ATTACHMENTS.pdf
3 Group Exhibits (showing key folders)/Exhibit folder 18-2020-07-10_1457 PM_RECV_Dulberg v Popovich et al Mast Deposition/Dulberg Hans Mast deposition transcript Legal Mal 2020 June 25.zip
4 Exhibit K8-US Legal Support Confirmation of Scheduling Job No 923267-3.pdf (Page 1)
5 Exhibit K8-US Legal Support Confirmation of Scheduling Job No 923267-3.pdf (Page 1)
6 Exhibit K9-job papers0001.pdf (Page 3)

Dulberg Mast Dep Exh 12 Legal Research .pdf[1]

2K-52. On July 14, 2020 at 10:30 AM Barbara G Smith has handwritten notes on a copy of Williams July 14, 2020 email to Kappes with handwritten notes stating:[2]

"put this x in folder on desktop & renamed bad file 12-A-this is the new 12"[3]

"Still couldn't read 1-22"

"There was a problem reading this document"

"Called Noelle - 10:30-7-14- She will have William look at it or email Williams"

2K-53. On July 14, 2020 at 11:13 AM wtolliver@uslegalsupport.com emailed[4] Williams and Flynn a link to download "Exhibit 12" now named "EX 0012 Hans Mast 062520.pdf"[5]

EX 0012 Hans Mast 062520.pdf has an exhibit sticker that misspelled the defendants name "Hans Mast" as "Hans Mist" and did not match the exhibit tags placed on by the court reporter Barbara G. Smith.[6] [7] [8] [9] [10] [11] [12]

Of Special note is the differences found within the meta-data in the two different files:

"EX 0012 Hans Mast 062520.pdf"

Size: 27.4 MB

Date: July 14, 2020

Title: Dulberg Mast Dep Exh 12 Legal Research (1).pdf

Authors: wtolliver

Version: 1.4

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1 Exhibit C10-Dulberg Mast Dep Exh 12 Legal Research .pdf
2 Exhibit K9-job papers0001.pdf (Page 1)
3 Exhibit K18-Dulberg Mast Dep Exh 12-A Legal Research.pdf
4 Exhibit K19-Exhibit 12 Paul Dulberg v Law Offices of Thomas Popovich et al Deposition of Hans Mast 6252020.pdf
5 Exhibit C10-EX 0012 Hans Mast 062520.pdf
6 Group Exhibits (showing key folders)/Exhibit folder 19-From OMNI Document Experts/2022-07-07_Hans Mist Exhibit 12/Hans Mast Exhibit 12 Deposition June 25 2020 by Omni CHARTS Stickers . TALARICO. .pdf
7 Group Exhibits (showing key folders)/Exhibit folder 19-From OMNI Document Experts/2022-07-10_Written report on Exhibit 12 Tag/1. REPORT page 1 Talarico.pdf
8 Group Exhibits (showing key folders)/Exhibit folder 19-From OMNI Document Experts/2022-07-10_Written report on Exhibit 12 Tag/2. REPORT page 2-3 Talarico.pdf
9 Group Exhibits (showing key folders)/Exhibit folder 19-From OMNI Document Experts/2022-07-10_Written report on Exhibit 12 Tag/3. CHARTS labels . .pdf
10 Group Exhibits (showing key folders)/Exhibit folder 19-From OMNI Document Experts/2022-07-10_Written report on Exhibit 12 Tag/4. K1 to K11 and K13 to K15. K12 is identified as Q1.pdf
11 Group Exhibits (showing key folders)/Exhibit folder 19-From OMNI Document Experts/2022-07-10_Written report on Exhibit 12 Tag/5. Q1 in its entirety . pages 1 to 13.pdf
12 Group Exhibits (showing key folders)/Exhibit folder 19-From OMNI Document Experts/2022-07-10_Written report on Exhibit 12 Tag/5. Q1 in its entirety . 27 pages.pdf

Content Creator: PScript5.dll Version 5.2.2

Encoding software: Acrobat Distiller 10.1.16 (Windows)

vs the original file:

"Dulberg Mast Dep Exh 12 Legal Research .pdf"

Size 35.1 MB

Date: June 19, 2020

Title: -

Authors: -

Version: 1.3

Content Creator: Preview

Encoding software: macOS Version 10.15.4 (Build 19E287) Quartz PDFContext, AppendMode 1.1

The meta-data clearly shows wtolliver as the author using a Microsoft Windows Operating system and Adobe Acrobat Distiller to create the 27.4 MB file on July 14, 2020 Verses the original meta-data that clearly shows there is no author recorded, using a Macintosh Operating System and a program called Preview to create the 35.1 MB file on June 19, 2020.

All the other exhibits certified by the court reporter Barbara G. Smith and made available through downloadable links via email by US Legal Solutions on July 10, 2020 may have the names of the files changed, a very minor file size increase due to the tag being added but the meta-data is the same as the original files Williams uploaded on June 25, 2020 during the deposition.

wtolliver changes the file considerably (35.1 MB to 27.2 MB), adds a misspelled exhibit stamp that is a poor forgery of the tags provided by the court reporter, becomes it's author and releases it 14 minutes before Noelle Kappes acknowledges it's received to Williams.

2K-54. On July 14, 2020 at 11:17 AM Williams emailed/passed this forgery as authentic to Dulberg stating:[1]

"Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was blank."

A reasonable person can conclude that if the Court Reporter received a blank "Exhibit 12", then defendant Mast also received the same blank "Exhibit 12" uploaded by Williams during the deposition.

1 Exhibit K20-2020-07-14_1117 AM_RECV_Fwd Exhibit 12 Paul Dulberg v Law Offices of Thomas Popovich et al Deposition of Hans Mast 6252020_ATTACHMENTS.pdf

Is Williams sending the court reporter a blank email in response to a blank exhibit? Is this Williams inside joke (that Barbara & Noelle were not in on)? This "hoax" caused the exhibit to never be certified or possessed by the court reporter.[1]

It should also be noted that Williams gave "Exhibit 12" to (and received from) persons other than the Court Reporter. She then passed it on as if it was certified and authentic knowing full well that the Exhibit 12 she was passing on to Dulberg did not Match what Mast had to review in the deposition.

2K-55. On July 14, 2020 at 11:27 AM Noelle Kappes nkappes@uslegalsupport.com replies to Williams emailing Exhibit 12 stating:[2]

"Received, thank you."

2K-56. Neither wtolliver, Noelle Kappes, Williams or Flynn ever sent Barbara G Smith a copy of the file wtolliver created.[3]

2K-57. Neither Noelle Kappes nor wtolliver are the Officer administering the oath nor the licensed short hand reporter hired for tagging, certifying, storing and releasing the exhibits in this case, Barbara G Smith is and Barbara G Smith never received a viewable copy of exhibit 12 that does not have an error.[4]

2K-58. The file wtolliver created and Flynn & Williams are passing on as an exhibit does not match what the deponent Mast had at the deposition and is a forgery. Mast claimed he could only see one Lajato case on the exhibit he was looking at, Barbara G Smith could only see the Choi case in what she was given and wtolliver created an exhibit with two Lajato cases and a Choi case.

2K-59. On July 27, 2020 at 2:24 PM Ed Clinton sent an email to Dulberg stating:[5]

"Dear Paul, Please see the attached letter. Best Regards"

In the attached letter[6] Clinton and Williams resigned as Dulberg's counsel while still suppressing the certified slip ruling on Tilschner v Spangler and never informing Dulberg the document hasn't been bates numbered or used in Exhibit 12. This resignation acts as another deterrent to Dulberg's eventual discovery that Williams forever suppressed the certified Tilschner slip ruling by diverting Dulberg's attention to a more pressing matter, the hunt to find new counsel fast during the height of the COVID 19 pandemic when most attorneys are not personally meeting with new clients.

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1 Exhibit K9-job papers0001.pdf (Page 3)
2 Exhibit K8-US Legal Support Confirmation of Scheduling Job No 923267-3.pdf (Page 3)
3 Group Exhibits (showing key folders)/Exhibit folder 17-Barbara G Smith Subpoena Responsive Thumbdrive/ Mast 6-25-20
4 Group Exhibits (showing key folders)/Exhibit folder 17-Barbara G Smith Subpoena Responsive Thumbdrive/ Mast 6-25-20
5 Exhibit 44-Dulberg v Popovich 2017 L 377.pdf (Page 1)
6 Exhibit 7h-Dulberg Client Letter 2020 July 27.pdf

2K-60. Dulberg and his subsequent counsel, Alphonse Talarico, grew suspicious of how Williams could have forgotten all about Tilschner v Spangler when preparing exhibit 12 for Mast's deposition considering the number of times she was told about it in writing.

2K-61. Dulberg and his subsequent counsel, Alphonse Talarico, grew suspicious of how Williams could have forgotten all about Tilschner v Spangler when preparing exhibit 12 for Mast's deposition considering the number of times she was told about it in writing.

2K-62. On August 2, 2022 Dulberg subpoenaed Clinton[1] and Williams[2] for documents and communication connected to the preparation and treatment of exhibit 12 before, during and after Mast's deposition.

2K-63. On September 29, 2022 Williams responded for both Clinton and herself.[3]

2K-64. On October 28, Clinton responded for himself.[4]

2K-65. On October 28, Julia Williams responded for herself.[5]

2K-66. On November 04, 2022 Williams was asked about "exhibit 12" in court. After 4 different subpoena responses related to exhibit 12 over the previous 3 months, and after being informed by Dulberg at least 6 different times in writing about the importance of Tilschner v Spangler, Williams claimed to not know the contents of exhibit 12. The following exchange took place in court:[6]

> "MS. WILLIAMS: ... So sometime after the deposition, we -- we did provide the exhibit that was utilized in the deposition to the court reporter, and at that time they marked it and sent it back to everyone.
>
> THE COURT: Okay. What was Exhibit 12 again?
>
> MS. WILLIAMS: It was a series of cases. I don't know that -- I just can't recall what all was asked about it, but I know there were -- it was -- it was --
>
> THE COURT: All right. These would have --
>
> MS. WILLIAMS: -- copies of case law.
>
> THE COURT: All right.
>
> MR. FLYNN: They were photocopies of the old books, Judge, cases that were contained in Mast's file.
>
> THE COURT: Okay.
>
> MR. FLYNN: And he was -- you know, they have -- they're, obviously, not complete

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1 Exhibit K22-July 17 2023 Requested Subpoena served on Clinton .pdf
2 Exhibit K21-July 17 2023 Requested Subpoena served on Julia C. Williams.pdf
3 Exhibit K23-9-29-22_July 17 2023 Response for both by Williams only.pdf
4 Exhibit K24-10-28-2022_July 17 2023 Response to Subpoena served on Clinton .pdf
5 Exhibit K25-10-28-2022_July 17 2023 Amended Response by Williams only.pdf
6 Exhibit C11-2022-11-04 17LA377 Report of Proceedings.pdf (Page 17 Line 4 through Page 20 Line 1)

because they -- placed on a printer, appeared like we used to do in the old days.

MR. TALARICO: Yes. Was the Tilsner case included in -- in the blank Exhibit 12 you sent to U.S. Legal, Barbara Schmidt? And was -- when you discussed with Mr. Flynn the failure of his -- or Mr. Mast's internet, didn't he say, I can't see these, I can only see their first one (indiscernible), which was the Lagano (phonetic) case? And wasn't there continued discussion by Mr. Flynn that he didn't -- he didn't produce all of the documents you sent on -- in hardcopy because he wanted to save paper?

MS. WILLIAMS: So that's -- I guess that's a lot of questions. So what --

MR. TALARICO: It is.

MS. WILLIAMS: What -- what -- I cannot recall what cases were included and weren't included at this point. There -- there was an e-mail to Mr. Flynn with the exhibit that is attached that I believe was produced in the subpoena. So whatever that exhibit was is -- is what I would have used. So I know there was, like, a Laravo case or -- I remember the first case was like Laravo or Lavajo, L-A-V-A-J-O, or something like that. But right now, off the top of my head, I don't remember what other cases were included.

MR. TALARICO: I'm talking about -- Judge, if I might, please? Excuse me. I'm sorry, Ms. Williams. There was -- what the reporter had was blank. What Mr. Flynn's client said was, I see the Lagano (phonetic) one. So the Exhibit 12 that was sent, like, a week or two after the deposition had Lagano, Troy, and the same exact Lagano case, and it did not have the Tilsner case involved, and the Tilsner case was very important. So it was an exact duplication of one case and a second case. But this is -- Judge, it's not just the Exhibit 12. The entire deposition --

THE COURT: Well, are you asking a question about Exhibit 12? Because if we're done asking questions, I'm gonna let her go.

MR. TALARICO: Okay. Yep. I'm done."

2K-67. It is not credible that Williams made the claim to the court that she cannot recall the contents of "exhibit 12" when she stated, "It was a series of cases. I don't know that -- I just can't recall what all was asked about it, but I know there were -- it was -- it was --" " -- copies of case law." and when asked by Dulberg's current attorney she claimed, "What -- what -- I cannot recall what cases were included and weren't included at this point." When Williams states "... at this point" she was implying that her dealings with exhibit 12 were so long ago that "at this point" she can no longer recall what they were. But Williams prepared 4 different responses to a subpoena which centered on exhibit 12 within the previous 3 months and Williams was then appearing in court to address outstanding issues with the subpoena and around exhibit 12, including a motion to compel.

2K-68. Of interest is that more than 2 years after the Hans Mast Deposition, opposing counsel Flynn was the only person in the November 4, 2022 court record attempting to give a detailed description to the contents of "exhibit 12" while Williams, the only person who prepared "exhibit 12", and fresh from producing 4 responses to a subpoena centering on the subject of "exhibit 12", could not recall the contents of "exhibit 12" when asked "at this point" because her dealings

with exhibit 12 were assumably 'so long ago'.

The example of the hiding of the certified slip copy of Tilschner v Spangler shows the **extreme degree** to which Williams and Clinton will go to suppress key evidence which was in the possession of their permanently disabled client.

2K-69. On November 30, 2022 Flynn filed DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2nd AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST which contains the following point ¶12:[1]

> "12) Of concern is a statement on page 19 of Dulberg's motion in which he argues that Mast had insisted that the decision in the Tilschner v. Spangler case was the reason Dulberg would not prevail in the underlying case against the McGuire's. The statement is inexplicably made "on information and belief." This is unacceptable. Dulberg has made no such disclosure in fact discovery (now closed) about this very specific discussion between Mast and himself regarding the Tilschner case. If Dulberg believes he has disclosed it, he should be required to identify where in his answers and amended answers to discovery or his deposition he has identified such discussion with this amount of specificity. Defendants submit that no such disclosure exists."

2K-70. A reasonable person can conclude that Williams intentionally suppressed Tilschner v Spangler. A reasonable person can also conclude that Williams suppressed Tilschner v Spangler to benefit to the defendants over Dulberg and to sabotage Dulberg's case against Popovich and Mast. The suppression of Tilschner v Spangler helps the defense deny that Mast ever discussed the Tilschner case with Dulberg and helps Mast deny that Tilschner v Spangler and the Restatement of Torts 318 was the legal theory Mast gave Dulberg as to why the McGuires were not responsible in any way for his injury on their property.

2K-71. On December 5, 2022, the following dialogue transpired in the Circuit Court:[2]

> THE COURT: What's the date of your summary judgment?
>
> MR. FLYNN: It's -- the plaintiff's response is due on December 28. The motion was originally filed way back on September 15. So it's -- we have had an extensive amount of time.
>
> THE COURT: I won't be hearing the summary judgment. So --
>
> MR. FLYNN: Yeah. I understood there was some comments being made before I left about your Honor's handling the case or --
>
> THE COURT: Well, after 13 years, they have decided this is the worst place for me. So I'm being moved to traffic, and then, Judge Berg is taking over January 1. So it's -- I don't know what's going to happen with the scheduling of your summary judgment

1 Exhibit C16-2022-11-30_Flynn Answer to Motion to Strike Mast Deposition.pdf (¶12 on Page 4)

2 Exhibit K31-2022-12-05_ROP_Pages from ROP_Vol_1_of_1_230421_1628_8FF9DDF1-10.pdf (Page 13 Lines 8-24 and Page 14 Line 1)

because he's going to be combining his small claims call with a law division jury, and I -- I question the practicality of that but that's not my -- that's not my call.

2K-72. On February 1, 2023 Dulberg lost at Summary Judgement in front of Judge Berg, formerly a small claims Judge.

2K-73. On March 1, 2023 Dulberg sent for a records request for case 12LA326.[1]

2K-74. On March 2, 2023 Dulberg received the case file 12LA326 from the clerk.[2]

2K-75. In the file Associate Judge Thomas A. Meyer recused himself from 12LA326 because Mr Meyer is a personal friend of Thomas J. Popovich.[3] [4]

2L OTHER WAYS CLINTON AND WILLIAMS ATTEMPTED TO SABOTAGE PLAINTIFF'S CASE

2L34. In addition to the examples listed in which a reasonable person could claim there is evidence that documents suppressed by Williams have benefited or could benefit the defendants in the future, Clinton and Williams are Legal Malpractice Attorneys' and knew or should have known the following:

2L35. Clinton and Williams knew or should have known that THOMAS J. POPOVICH individually should have been named as a defendant.

2L36. Clinton and Williams knew or should have known that the suppressed Tilschner v Spangler document was the slip copy of the original certified appeals court decision on Tilschner v Spangler and therefore a very unique document.

2L37. There was a witness at the key November 20, 2013 meeting between Mast and Dulberg in which Mast changed his legal opinion and explained his legal theory as to why the McGuires were not liable for Dulberg's injury where the witness took notes of main subjects of the meeting. Williams misidentified the witness of the November 20, 2013 meeting as "a friend" during the deposition even though she had a teleconference with Dulberg and his brother Thomas Kost (the witness) just 5 days earlier and the same person was present at the first meeting Dulberg had with Clinton and Williams. The notes of the witness consist of the 6 phrases:

"forseeable duty"
"negligent"
"statement of torts sect 318 not applicable in Illinois"
"agent vs contractor"

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1 Group Exhibits (showing key folders)/Exhibit folder 23-Records request 12LA326/2023-03-01_1035_Records request for case 12LA326_SENT/2023-03-01_1035_Records request for case 12LA326_SENT.pdf
2 Group Exhibits (showing key folders)/Exhibit folder 23-Records request 12LA326/2023-03-02_1402_Records request for case 12LA326_RECV/2023-03-02_1402_Records request for case 12LA326_RECV.pdf
3 Exhibits/2012LA000326--2012-10-19--ORDREA_0004.pdf
4 Group Exhibits (showing key folders)/Exhibit folder 23-Records request 12LA326/2023-03-02_1402_Records request for case 12LA326_RECV/Attachments/2012LA000326/2012LA000326--2012-10-19--ORDREA_0004.pdf

"level of control"
"Kajawa"

2L38. Williams and Clinton made no use of a witness of the November 20, 2013 meeting or their notes. Williams never inquired into what the witnesses of the November 4 and November 20, 2013 meetings saw and heard.

2L39. Williams never inquired as to why Mast called the November 20, 2013 meeting.

2L40. Williams never inquired as to why Mast called the November 4, 2013 meeting.

2L41. Williams was in possession of evidence which shows the $7,500 October 22 offer made on Dulberg's behalf was not in Baudins' or Gooch's possession, it wasn't in their case files, and they most probably didn't know the secrete offer was ever made. Williams was instructed in writing by Dulberg exactly where to look to find this evidence and the significance of this evidence. Williams never made use of this evidence.

2L42. Williams knew or should have known the $7,500 offer was not discussed at the November 20th meeting and that a witness at the meeting can confirm this but she never made use of this.

2L43. Williams knew or should have known that it is not possible for Mast to explain why he called the November 20th meeting or what was discussed if Dulberg already agreed to $7,500 nearly one month before on October 22nd but she did not make use of this.

2L44. Williams knew or should have known that Mast's story was absurd on its face in that he was claiming that Dulberg made a $7,500 offer to the McGuires to settle the case on October 22, yet Mast repeatedly informed Dulberg from November 20 onward that Dulberg has only 2 options: To accept a $5,000 offer or receive nothing. The story is logically incoherent and not credible on a very simple level.

Chapter 3: COMPARISON BETWEEN LEGAL MALPRACTICE ATTORNEY GOOCH AND LEGAL MALPRACTICE ATTORNEYS CLINTON AND WILLIAMS

3-1. Dulberg's experiences with his second legal malpractice attorneys, the Clinton Law Firm, are described in detail in 'ARDC Complaint against Edward X. Clinton and Julia Williams'. Chapter 1 of the complaint against Clinton and Williams describes and maps a massive system of document and information suppression which Clinton and Williams used against Dulberg. Chapter 2 of the same document shows at least 10 different ways the system of document and information suppression was used to sabotage Dulberg's case. 5 of the ways are:

2-A Bankruptcy and origin of the $300,000 cap and the "high-low" agreement.
2-B Saul Ferris documents
2-C Tilschner v Spangler
2-D Balke
2-F Baudins

3-2. Dulberg did not meet with Clinton and Williams before October 12, 2018, yet Dulberg's

previous legal malpractice attorney, Thomas Gooch, was suppressing information on each of these 5 subject matters long before the Clinton Law Firm was retained by Dulberg. In addition, Gooch misspelled Dulberg's name "Duhlberg", just like Clinton and Williams did later, and Defendant Popovich and Mast did earlier.

ON BANKRUPTCY

3-3. Previous to Clinton and Williams, legal malpractice attorney Thomas Gooch ignored anything related to Dulberg's bankruptcy, including: (1) how Balke acted in violation of the automatic stay, (2) how the Baudins acted in violation of the automatic stay, (3) how Popovich and Mast acted in violation of the automatic stay, (4) how Dulberg entered the binding mediation process, and (5) how the $300,000 cap was placed on any binding mediation award. By avoiding the subject of Dulberg's November 2014 bankruptcy, or by mentioning bankruptcy as little as possible, both Gooch and later Clinton and Williams ignored:

(a) That Dulberg's signature was fraudulently placed on the Executed Binding Mediation Agreement executed on December 8, 2016.

(b) That Trustee Olsen misrepresented Dulberg's consent to the Bankruptcy Judge on October 31, 2016.

(c) That Allstate, the Baudins and Trustee Olsen knew Dulberg had no standing to pursue the case 12LA178 while the case was under an automatic stay.

(d) That Allstate, the Baudins and Trustee Olsen all knew the case 12LA178 proceeded in the Circuit Court in violation of the automatic stay.

(e) That the Baudins by agreement with Allstate, in violation of the automatic stay, before the Baudins were approved to be hired as special counsel under Trustee Olsen, misrepresented Dulberg as agreeing to Binding Mediation in Circuit Court on August 10, 2016 and asked Associate Judge Meyer to delay the next status hearing to December 12, 2016 after the binding mediation was to take place on December 8, 2016.

(f) That the Baudins' and Allstate's acts in violation of the automatic stay, started laying the groundwork as early as June 16, 2016 and finally set the binding mediation date for December 8, 2016 on August 10, 2016 in the Circuit Court. This happened before Trustee Olsen was even appointed to the position on August 31, 2016 and before Trustee Olsen received permission from the Honorable Judge Thomas M. Lynch, to hire the Baudins as special counsel and permission to enter into the proposed capped Binding Mediation Agreement on October 31, 2016.

(g) That the Baudins filed their APPEARANCE as REGULAR COUNSEL in 12LA178 on 11/6/2015 in violation of the automatic stay.

(h) That there is no APPEARANCE filed by the Baudin Defendants that is not VOID in case 12LA178.

(i) That the Baudin Defendants' failed to file an APPEARANCE to represent the

bankruptcy estate in case 12LA178 after being hired as special counsel by Trustee Olsen.

(j) That Trustee Olsen received permission from the Bankruptcy court to enter into the proposed Binding Mediation Agreement and later made a choice and Trustee Olsen did not act and sign on the advice of his special counsel the Baudins.

(k) That Trustee Olsen did not "pursue" and "exercise control "over the claim/asset and in doing so Abandoned the asset and it reverted back to the DEBTOR.

(l) The Baudin Defendants were approved and hired as Special Counsel for the Estate and in such a capacity had no standing to execute a Binding Mediation Agreement for the DEBTOR.

(m) The only party with standing over abandoned assets is now the DEBTOR.

(n) That there can be no agreement between Allstate and the Baudin Defendants acting as counsel for the bankruptcy estate to have the case dismissed with prejudice in the circuit court on December 12, 2016 since the Baudins failed to file any appearance anywhere that is not VOID and had no standing since they did not represent the DEBTOR.

(o) Trustee Olsen and the Baudins collected the monies paid out by Allstate after ABANDONING the ASSET that then reverted back to the DEBTOR.

These are a lot of messy, complicated issues that could all be avoided by avoiding any mention of 'bankruptcy', which is exactly what Gooch, and later Clinton and Williams did.

GOOCH ON THE BAUDINS AND BALKE

3-4. In "ARDC Complaint against Clinton and Williams", in both Chapter 1 and Chapter 2, Sections D and E it has been shown that Clinton and Williams suppressed about 40 email documents involving Brad Balke and all email documents of the Baudins. This is consistent with the suppression of the subject of bankruptcy, since both the Baudins and Balke acted in violation of the automatic stay.

3-5. Before Clinton and Williams acted, Gooch also suppressed all mention of violations of the automatic stay by Mast and Popovich, Balke, and the Baudins, as well as all mention of bankruptcy, from the COMPLAINT[1] and the AMENDED COMPLAINT[2].

GOOCH ON TILSCHNER V SPANGLER

3-6. How Clinton and Williams suppressed documents and information of Tilschner v Spangler has already been described in detail in 'ARDC Complaint of Clinton and Williams', Chapter 2, Section C and is shown in 'Visual Aid 5- …". As Explained, Williams was given explicit written instructions on at least 6 different occasions about the importance of Tilschner v Spangler. The

1 Exhibit 3-5-17LA000377--2017-11-28--COA_0002.pdf
2 Exhibit 3-5a-17LA000377--2018-06-07--COAA_0021.pdf

Example of Tilshner v Spangler, Chapter 2, section C demonstrates the extreme degree to which Williams has gone to suppress Tilschner v Spangler and then to deny any knowledge or memory of Tilschner v Spangler.

3-7. Like Clinton and Williams, Gooch was also told about the importance of Tilschner v Spangler at his first meeting with Dulberg. Dulberg brought a certified slip copy of Tilschner v Spangler[1] (that Mast had given to Dulberg in his office) to Dulberg's first meeting with Gooch and Dulberg handed the document to Gooch. Gooch looked at it, gave it back to Dulberg and told Dulberg he didn't need the document because he just pulled up the Tilschner v Spangler decision on in his computer.

3-8. Gooch never mentioned Tilschner v Spangler when crafting both the COMPLAINT[2] and AMENDED COMPLAINT[3]. In fact, about 5 years later (on November 30, 2022) when Dulberg did mention Tilschner v Spangler in DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2nd AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST, the defendants answered this way:

> 12) Of concern is a statement on page 19 of Dulberg's motion in which he argues that Mast had insisted that the decision in the Tilschner v. Spangler case was the reason Dulberg would not prevail in the underlying case against the McGuire's. The statement is inexplicably made "on information and belief." This is unacceptable. Dulberg has made no such disclosure in fact discovery (now closed) about this very specific discussion between Mast and himself regarding the Tilschner case. If Dulberg believes he has disclosed it, he should be required to identify where in his answers and amended answers to discovery or his deposition he has identified such discussion with this amount of specificity. Defendants submit that no such disclosure exists.[4]

3-9. Dulberg first met Gooch on December 16, 2016[5] and informed Gooch of the importance of Tilschner v Spangler. Dulberg also informed Gooch about the importance of Tilschner v Spangler in the letter[6] which offended Gooch and led to Gooch's firing on October 8, 2018[7]. Dulberg sent the same letter to Clinton and Williams as an email[8] attachment and discussed the letter and the importance of Tilschner v Spangler with Clinton and Williams at their first meeting. As has been explained in detail in Chapter 3, Section C Williams was given explicit instructions about the importance of Tilschner v Spangler at least 6 different times.

3-10. Yet on November 30, 2022, the defendants made the claims in ¶ 12[9] of DEFENDANTS

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1 Exhibit C0d-2019-04-18_1038 AM_SENT-3_318 Cases from December meeting 1 of 3_ATTACHMENTS.pdf
2 Exhibit 3-5-17LA000377--2017-11-28--COA_0002.pdf
3 Exhibit 3-5a-17LA000377--2018-06-07--COAA_0021.pdf
4 Exhibit C16-2022-11-30_Flynn Answer to Motion to Strike Mast Deposition.pdf (Page 4)
5 Exhibit 2A-2018-11-17_1247 PM_SENT_Supporting Documents_ATTACHMENTS.pdf (Page 6-9)
6 Exhibit C1-second_amended_complaint_comments.txt
7 Exhibit 2A-2018-11-17_1247 PM_SENT_Supporting Documents_ATTACHMENTS.pdf (Page 10-11)
8 Exhibit C1a_2018-10-10_1734 PM_SENT_Legal Malpractice Case_ATTACHMENTS.pdf (Page 234-242)
9 Exhibit C16-2022-11-30_Flynn Answer to Motion to Strike Mast Deposition.pdf Page 4

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2nd AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST and a few weeks earlier, on November 4, 2022, Julia Williams inexplicably stated in court "I cannot recall what cases were included and weren't included at this point."[1] as if its been years, when if fact Williams responded to the subpoena about "Exhibit 12" four times since August 2, 2022. Williams responded to the subpoena on September 1, 2022, September 9, 2022, October 2, 2022, and October 5, 2022. Williams was then Ordered to appear before the Judge over the exhibit. It is just not credible that Williams would not know the contents of an exhibit she created, used in a deposition, recently was issued a subpoena over and gave four responses to, the last of which was less than a month before her statement in court, then had to go through the process and preparation for her appearance in court over the same exhibit and still doesn't know what was in the exhibit.

3-11. For these reasons the example of Tilschner v Spangler shows the extreme degree to which both Gooch, Clinton and Williams went to not allow any mention of Tilschner v Spangler to appear in the 17LA377 common law record or 17LA377 records of proceedings for over 6 years.

3-12. This is a pretty straight-forward and very well documented case of the suppression of key evidence of ones own permanently disabled client by 2 successive legal malpractice attorneys.

ON SAUL FERRIS DOCUMENTS

3-13. The Saul Ferris Declination letter is located in Gooch's case file at:

> Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Misc/Kupets & DeCaro Letter RE Case 3.5.15.pdf[2]

3-14. A different letter by the law firm Kupits and DeCaro is located in Gooch's case file at:

> Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Misc/Ferris, Thompson & Zweig Letter RE Case 3.4.15.pdf[3]

3-15. The names of the two files were inexplicably switched in Gooch's case file on the Gooch Thumbdrive. We could not find any other files on the entire Gooch Thumbdrive which had their file names switched.

3-16. In ARDC Complaint against Clinton and Williams, Chapter 2, Section B explains how:

a) Williams suppressed emails between Ferris and Dulberg and emails mentioning Ferris

b) Williams acted to Dulberg as if she did not know who Ferris was and who Balke was

c) Suppressed information that showed the actual Ferris declination letter was in the

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1 Exhibit C11-2022-11-04 17LA377 Report of Proceedings.pdf (Page 18 Lines 21-23)

2 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Misc/Kupets & DeCaro Letter RE Case 3.5.15.pdf

3 Group Exhibits (showing key folders)/Exhibit folder 1-Gooch Thumbdrive/Dulberg Paul Dulberg Files From Client/Misc/Ferris, Thompson & Zweig Letter RE Case 3.4.15.pdf

possession of Popovich and Mast for almost 2 months while Popovich and Mast actively denied it was in their office

d) Opposing counsel Flynn filed an RFA to get Dulberg to admit that the letter was sent to his home directly from the office of Ferris

e) Opposing counsel Flynn then deposed Ferris and had Ferris claim his law office sent the letter directly to Dulberg through first class mail.

f) The address at the top of the letter was that of the law office of Thomas Popovich, and Flynn must have known this the entire time.

3-17. Just one of the suppressed email documents would have contradicted a number of claims Flynn was trying to make. For example, on March 20, 2015 3:49 PM Dulberg sent an email to Balke with the Subject "Missing Depositions and pre-trial settlement brief" stating:

> "Hi Brad, As we discussed, I was to receive via certified US Mail depositions and communications between Hans Mast and myself from Saul Ferris an attorney in Gurnee, IL. Saul Ferris number is (847) 263-7770 I called Saul Ferris office last week and was assured they were sent. I was told to give it another week. I called Saul Ferris office again today to find out they were mailed to and signed for at 3416 W. Elm St. McHenry, IL. by someone named Anne Oupl on March 7th. This is Hans Mast office. I called Hans office and apparently no one by that name works there and no one knows anything about receiving the certified mail. I'm at a loss as to how these documents were sent to the wrong place and am a bit furious because it has the memo about the pre-trial settlement you wanted to see."[1]

3-18. The packages with the Ferris declination letter and the pretrial settlement memo remained in the law office of Popovich for almost 2 months, yet opposing counsel Flynn was pressuring Dulberg to admit he received the letter directly from Ferris at his home by first class mail.

1 Exhibit 7a-Hans Mast2-65.pdf

3-19. TABLE 1 compares the actions of Gooch and Clinton/Williams toward each of these 5 subject matters.

TABLE 1

	GOOCH	CLINTON & WILLIAMS
BANKRUPTCY	Never mentioned Dulberg's bankruptcy in Complaint or Amended Complaint	Removed all mention of Dulberg's bankruptcy from Second Amended Complaint. (described in 'ARDC Complaint against Clinton and Williams', section 2-A)
SAUL FERRIS	In 'Gooch Thimbdrive' the Ferris declination letter was misnamed and switched with 'Kupets and DeCaro' declination letter	Suppressed all but 1 email document mentioning Ferris. Pretended to not know who Ferris was. Suppressed Ferris declination letter (described in 'ARDC Complaint against Clinton and Williams', section 2-B)
TILSCHNER v SPANGLER	Was in possession of certified slip copy of Tilschner v Spangler at first meeting. Gave it back to Dulberg saying he does not need it because he already downloaded it. Never mentioned Tilschner v Spangler in Complaint or Amended Complaint. Nothing on Tilschner v Spangler in 'Gooch Thumbdrive'.	Hid certified slip copy of Tilschner v Spangler and went to extreme lengths to deny they knew anything about the Tilschner v Spangler case. (described in 'ARDC Complaint against Clinton and Williams', section 2-C)
BALKE	Never mentioned Balke: a) Contracted with Dulberg even though he knew Dulberg had no standing as plaintiff in the case. b) Agreed to take case to trial. c) Represented Dulberg in 22nd Judicial Circuit Court even though the automatic stay was in place. d) Did not enter into any agreement with Bankruptcy trustee who he knew has standing as plaintiff in the case. e) Knew or should have known that Gagnon already effectively admitted to negligence. f) Only discernible work done in 22nd Judicial Circuit Court was to try to get Dulberg to agree to Allstate settlement for $50,000 or less.	Hid around 40 documents of email communication between Balke and Dulberg. Claimed to not know who Balke was Never mentioned Balke: a) Contracted with Dulberg even though he knew Dulberg had no standing as plaintiff in the case. b) Agreed to take case to trial. c) Represented Dulberg in 22nd Judicial Circuit Court even though the automatic stay was in place. d) Did not enter into any agreement with Bankruptcy trustee who he knew had standing as plaintiff in the case. e) Knew or should have known that Gagnon already effectively admitted to negligence. f) Only discernible work done in 22nd Judicial Circuit Court was to try to get Dulberg to agree to Allstate settlement for $50,000 or less. (described in 'ARDC Complaint against Clinton and Williams', section 2-D).
BAUDINS	Never mentioned the Baudins: a) Contracted with Dulberg even though they knew Dulberg had no standing as plaintiff in the case. b) Agreed to take case to trial. c) Represented Dulberg in 22nd Judicial Circuit Court even though the automatic stay was in place. d) Did not enter into any agreement with Bankruptcy trustee who they knew had standing as plaintiff in the case until 10/31/2016. e) Knew or should have known that Gagnon already effectively admitted to negligence. f) Only discernible work done in 22nd Judicial Circuit Court was to try to get Dulberg to enter into Binding Mediation with Allstate with a $300,000 cap.	Never mentioned the Baudins: a) Contracted with Dulberg even though they knew Dulberg had no standing as plaintiff in the case. b) Agreed to take case to trial when contracting. c) Represented Dulberg in 22nd Judicial Circuit Court even though the automatic stay was in place. d) Did not enter into any agreement with Bankruptcy trustee who they knew has standing as plaintiff in the case until 10/31/2016. e) Knew or should have known that Gagnon already effectively admitted to negligence. f) Only discernible work done in 22nd Judicial Circuit Court was to try to get Dulberg to enter into Binding Mediation with Allstate settlement with a $300,000 cap. (described in 'ARDC Complaint against Clinton and Williams', section 2-E)

3-20. The actions of Clinton, Williams and Gooch (all legal malpractice attorneys) can be better understood as a part of a larger pattern of successive attorneys committing fraud on the same

(fully disabled) client. Table 2 below compares strategies and methods used by 5 consecutive law firms retained by Dulberg.

TABLE 2

ATTORNEY	STRATEGY	METHODS
Popovich & Mast Personal Injury Case	Plaintiff's attorney intentionally weakens or sabotages plaintiff's case	Destruction and concealment of evidence Forged signatures Staged depositions (depositions with no actual court reporter present) Knew defendant Gagnon already admitted negligence for Dulberg's injury Worked in violation of federal bankruptcy court automatic stay to force a settlement against client's wishes Represented a client when they knew client had no standing as plaintiff in court Tried to put a cap of $50,000 on the remaining case (ARDC Complaint against them will be submitted)
Balke Personal Injury Case	Plaintiff's attorney intentionally weakens or sabotages plaintiff's case	Knew defendant Gagnon already admitted negligence for Dulberg's injury Worked in violation of federal bankruptcy court automatic stay to force a settlement against client's wishes Represented client when they knew client had no standing as plaintiff in court Tried to put a cap of $50,000 on the remaining case (ARDC Complaint against him will be submitted)
The Baudins Personal Injury Case	Plaintiff's attorney intentionally weakens or sabotages plaintiff's case	Forgery Knew defendant Gagnon already admitted negligence for Dulberg's injury Worked in violation of federal bankruptcy court automatic stay to force a settlement against client's wishes Represented client when they knew client had no standing as plaintiff in court Placed a cap of $300,000 on the remaining case (ARDC Complaint against them will be submitted)
Gooch Legal Malpractice Case	Plaintiff's attorney intentionally weakens or sabotages plaintiff's case	Said he would file lawsuit in 7 days but actually filed more than 11 months later Gooch law office did not even scan client's files into digital form for 6 months Knew defendant Gagnon already admitted negligence for Dulberg's injury Suppression of information on bankruptcy, Baudin and Popovich negligence Filed 2 complaints which intentionally included a 'trap door' to allow defendants to get out of the case on 2-619 and 2-615 summary judgment (ARDC Complaint against him will be submitted)
Clinton & Williams Legal Malpractice Case	Plaintiff's attorney intentionally weakens or sabotages plaintiff's case	Massive and sophisticated suppression of key evidence and information during pleadings and discovery document disclosure process Knew defendant Gagnon already admitted negligence for Dulberg's injury [Described in detail in this Complaint]

3-21. What immediately stands out (in red font) is that all successive attorneys to the same (fully disabled) client used the same overall strategy: To intentionally weaken or sabotage their own client's case. All three personal injury attorneys retained by Dulberg acted in violation of the automatic stay. They continued to appear in the 22nd Judicial Circuit Court (which had no jurisdiction) claiming to represent Dulberg (who had no standing as plaintiff). All 3 PI attorneys made efforts (in orange font) to place a cap on the remaining case without having any authority from the Bankruptcy Court to do so. Both legal malpractice attorneys suppressed all information of how all 3 PI law firms violated federal bankruptcy laws (in blue font) from Dulberg and from the complaints.

3-22. Another feature that stands out (in green font) is that all five law firms (3 personal injury law firms and 2 legal malpractice law firms) knew or could easily discover that the personal injury defendant (who was operating the chainsaw that injured Dulberg) Gagnon effectively admitted negligence for Dulberg's injury as of early March, 2013. None of the 5 law firms ever informed Dulberg of this. The original defendant and operator of the chainsaw, Gagnon, admitted to being negligent:

about 10 months before Dulberg was coerced into settling with the owners of the property (the McGuires) on which the accident occurred and for whom Gagnon was working.

about 21 months before Dulberg declared bankruptcy.

about 39 months before any binding mediation agreement with Gagnon was mentioned.

about 40 months before any cap was placed on any binding mediation award from Gagnon.

3-23. There was no reason for any of these activities to take place if the defendant who operated the chainsaw already admitted to being negligent.

3-24. Gooch targeted the same subject matters of information that were later targeted by Clinton and Williams. In short, the Gooch methods of document and information suppression were seamlessly aligned with the more sophisticated system of document and information suppression of Clinton and Williams and targeted the same key subject matters to weaken and sabotage the valid claims of their own (permanently disabled) client.

EVIDENCE OF SECRET COMMUNICATION BETWEEN NETWORKS OF ATTORNEYS TO SYSTEMATICALLY DEFRAUD A (PERMANENTLY DISABLED) CLIENT

3-25. What reveals Gooch as working as part of a network of attorneys is that:

a) He acted in a way that protected all 3 personal injury law firms from facing any consequences for their fraudulent actions at the expense of his own client.

b) His subject matters of information suppression formed a seamless match with those of Clinton and Williams.

3-26. What reveals the 3 personal injury attorneys as working as part of a network of colluding attorneys is that:

a) All 3 PI law firms violated the federal bankruptcy automatic stay with a casualness and sense of impunity that is quite shocking. They each acted in a larger Court environment in which each attorney who violated the automatic stay seemed to have no fear of being detected or called out by any other attorney.

b) All 3 PI attorneys were in possession of an effective admission of negligence against the person (Gagnon) who was operating the chainsaw that injured Dulberg, yet none of them acted on the admission for their own client's benefit.

c) All 3 PI attorneys knew Gagnon never answered any interrogatory questions yet none of them objected.

d) All 3 PI attorneys acted to place an upper limit on the PI case 12LA178 (in violation of the automatic stay) and to coerce Dulberg to accept the upper limit crafted by opposing counsel.

3-27. On the contrary, it strains credulity to claim these alignments of similar actions by different law firms, one after another, are all mere coincidences, and that these different law firms were acting independently of one another. Such a claim, though expected from those caught in the act of collective fraud against a permanently disabled person, is simply not plausible.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION
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Paul Dulberg
By email: paul_dulberg@comcast.net

Chicago
November 6, 2023

Re: Edward X. Clinton No. 2023IN02517
Julia C. Williams No. 2023IN02518

Dear Mr. Dulberg:

Attached is a link of Edward Clinton's and Julia Williams' response to your complaint, submitted by the attorneys' counsel, Chi Zhang.

https://app.box.com/s/hxow9tu20qjer62aqgew5u0iuc2p5kza

If you believe the response is inaccurate or if you wish to comment or provide additional information, please write to me within fourteen days. You may submit comments or additional information by email to cklimas@iardc.org. If you send more information by regular mail, please do not staple or bind your correspondence and do not use exhibit tabs.

We will evaluate the matter and advise you of our decision. Again, thank you for your cooperation.

Very truly yours,

/s/ *Roona Shah*

Roona Shah
Senior Counsel
ARDC Intake Division -Chicago

RS:ck

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November 1, 2023

VIA EMAIL
rshah@iardc.org
CONFIDENTIAL PURSUANT TO SCR 766

Ms. Roona N. Shah
Senior Counsel
ARDC Intake Division
130 East Randolph Street, Suite 1500
Chicago, IL 60601-6219

Re:	Edward X. Clinton	Julia Christine Williams
	in relation to	in relation to
	Paul Dulberg	Paul Dulberg
	No. 23 IN 2517	No. 23 IN 2518

Dear Ms. Shah:

We are counsel to Edward Clinton and Julia Williams in the above-captioned investigations initiated by Paul Dulberg. We hereby submit this joint response to the Administrator's inquiries on behalf of Mr. Clinton and Ms. Williams. We appreciate your professional courtesy in granting us an extension for this response, as well as your agreement to submit a consolidated response.

Paul Dulberg's Complaint

Paul Dulberg submitted identical requests for investigations against Mr. Clinton and Ms. Williams, who are, respectively, principal of, and of counsel to, the Clinton Law Firm ("CLF"). The gravamen of Mr. Dulberg's grievance, as we understand it, is that Ms. Williams and Mr. Clinton allegedly suppressed the release of discovery documents during its representation of Mr. Dulberg and attempted to undermine and destroy his

claims in a case that was filed in 2017. Notably, CLF's representation of Mr. Dulberg ceased in 2020.

Mr. Dulberg request for investigation included a lengthy narrative, including what he refers to as "scalable vector graphics", as apparent support his incredible allegations, which are patently false. None of the myriad quotes and supposed "evidence" support Mr. Dulberg's charges. CLF was retained to represent Mr. Dulberg in a pending legal malpractice case, prosecuted the case for a time, then withdrew. To the extent that Mr. Dulberg is alleging that any Illinois Rules of Professional Conduct were violated by Mr. Clinton and Ms. Wiliams during the time they represented Mr. Dulberg, none were.

Edward Clinton's Background

Edward Clinton graduated *cum laude* from Harvard Law School and has been licensed to practice law in Illinois since 1991. After serving as a law clerk for the Honorable Michael Kane in the Seventh Circuit Court of Appeals, Mr. Clinton spent the next several years working for two large Chicago law firms before joining his father's law firm, the Clinton Law Firm, in 1997. Throughout his legal career, Mr. Clinton has practiced extensively in commercial litigation and formation of business entities. He also represents both plaintiffs and defendants in all manners of legal malpractice claims, as well as lawyers before the Attorney Registration and Disciplinary Commission.

In addition to his extensive litigation practice, Mr. Clinton also serves as an expert witness in legal malpractice claims. He has written extensively on the subjects of securities regulation, consumer fraud and trial practice. He is a member of the American Bar Association's Section of Litigation, Trial Practice, Pretrial Practice, and Commercial Litigation Committee, a member of the Seventh Circuit Bar Association, and a member of the Association of Professional Responsibility Lawyers. In 32 years of practice, Mr. Clinton has never been subject to professional discipline.

Julia Williams's Background

Julia Williams graduated from the University of Maine School of Law and has been licensed to practice law in Illinois since 2008 and focuses her practice on business, consumer, and commercial litigation in federal and state courts. Ms. Williams' experience also encompasses class action litigation, legal malpractice, and attorney fees disputes.

She has utilized her legal education and expertise to provide broader access to justice, volunteering for Chicago Volunteer Legal Services where she represented low-income clients in probate matters. She was a Co-Chair of the Chicago Bar Association

Young Lawyers Division Public Outreach Committee, and a Co-Chair of the Women's Bar Association of Illinois Community Outreach Committee. In addition to her role as of counsel to CLF, Ms. Williams also owns and operates a solo practice, Williams Law, LLC. She has practiced for 15 years without incident.

Response to Mr. Dulberg's Allegations

The Clinton Law Firm represented Paul Dulberg in a legal malpractice claim from November 8, 2018, to September 10, 2020, in a case then-pending in the Circuit Court for the 22nd Judicial Circuit, McHenry County. The matter is docketed as *Dulberg v. the Law Office of Popovich, P.C. and Hans Mast*, 2017 LA 377. Mr. Dulberg's claim for legal malpractice arises from an underlying personal injury case in which Mr. Dulberg was the plaintiff. Mr. Dulberg was injured in a chainsaw accident while on the property of one of his neighbors, Caroline and William McGuire, whose son, David Gagnon, was operating a chainsaw to cut down a tree. Mr. Gagnon lost control of the chainsaw and struck Mr. Dulberg, who suffered permanent injury to one of his arms. He filed a personal injury claim in 2012 against the McGuires and Mr. Gagnon in the Circuit Court for the 22nd Judicial Circuit, McHenry County, docketed as *Dulberg v. Gagnon et al.*, 2012 LA 178. The complaint for the personal injury matter is attached herein as **Exhibit 1**. Mr. Dulberg's settled his claim with the McGuires for $5,000, and was awarded a gross amount of $660,000 in his claim against Mr. Gagnon after binding mediation in December 2016. Mr. Dulberg collected $300,000 from the insurance company and was unable to collect from Mr. Gagnon personally.

Mr. Dulberg subsequently sued his attorneys in the personal injury matter, Thomas Popovich and Hans Mast, alleging that they should not have recommended settlement and claimed that the settlement amount was insufficient. He further alleged that Messrs. Popovich and Mast failed to properly investigate his claims, failed to apply relevant case law, and failed to determine an appropriate strategy for recovery. Mr. Dulberg retained Thomas Gooch of The Gooch Firm, who filed on behalf of Mr. Dulberg the initial complaint for legal malpractice on November 28, 2017 (**Exhibit 2**), followed by a first amended complaint. (**Exhibit 3**)

On October 30, 2018, Mr. Dulberg retained CLF to represent him in his claim against his former attorneys on a contingency fee basis and paid CLF a refundable retainer of $5,000 to cover initial costs. A copy of that retainer agreement is attached as **Exhibit 4**. CLF substituted its appearance for Mr. Gooch and, on December 6, 2028, filed on behalf of Mr. Dulberg a second amended complaint. (**Exhibit 5**) At the time of CLF's involvement, the legal malpractice matter was still in discovery, and much of CLF's

efforts during its representation of Mr. Dulberg was focused on discovery: it issued and responded to written discovery requests, took and defended depositions of fact witnesses, and address issues concerning privilege.

The defendants' primary defense was that Mr. Dulberg's legal malpractice claims were barred by the applicable two-year statute of limitations. As such, the issue of when Mr. Dulberg discovered his claims became relevant in the litigation. Mr. Dulberg claimed that he did not discover the injury until consulting with Mr. Gooch in December 2016. Thus, his communications with Mr. Gooch became relevant to the litigation. CLF was concerned about preserving confidentiality and work product privileges surrounding the strategies that were discussed prior to CLF's involvement in the case, and asserted those privileges on behalf of Mr. Dulberg during his deposition.

On August 18, 2020, CLF filed its motion to withdraw from the legal malpractice matter. On September 10, 2020, the court granted CLF's motion to withdraw (**Exhibit 6**), and its representation of Mr. Dulberg reached a conclusion. CLF chose to withdraw after reassessing the merits of Mr. Dulberg's claim and the defenses raised by the defendants. CLF's withdrawal was accomplished without material adverse effect on Mr. Dulberg and was consistent with Rule 1.16 of the IRPC. On November 24, 2020, CLF refunded Mr. Dulberg the balance of his retainer, which was used to cover costs, in the amount of $3,197.43. (**Exhibit 7**)

Shortly after CLF withdrew its appearance, Mr. Dulberg retained new counsel, Alphonse Talarico. (**Exhibit 8**) The case continued to be litigated for over a year. On February 1, 2023, the court entered an order granting the defendants' motion for summary judgment, dismissing the case with prejudice. The court's order is attached as **Exhibit 9**. Upon information and belief, defendants raised, and ultimately prevailed, on the argument that Mr. Dulberg's legal malpractice claim was barred by the statute of limitations based upon when he knew or should have known of his alleged injury. (See **Exhibit 10,** Motion for Summary Judgment) CLF is not aware of whether the privileges it asserted was maintained, waived, or addressed by the court subsequent to its withdrawal. Mr. Dulberg has appealed the decision to the Second District Appellate Court. (**Exhibit 11**) That appeal is currently pending.

Conclusion

During the time the Clinton Law Firm represented Paul Dulberg, they did so with the competence and diligence required of attorneys in Illinois. It betrays common sense that a law firm, as Mr. Dulberg alleges, would intentionally jeopardize its own client's

cause of action, especially when its own recovery was contingent upon any recovery it obtains on behalf of its client. Mr. Dulberg's request for investigation against Edward Clinton and Julia Williams lacks merit on its face and his charges are not supported by evidence. We trust that the information provided in this response is sufficient for the Administrator to close this investigation without further action.

Although we believe this matter should be closed, we stand ready to comply with any further requests for information the Administrator may have.

Very truly yours,
HINSHAW & CULBERTSON LLP

/s/Katherine G. Schnake
Kate Schnake

KS/CMZ
Enclosures

COPY
FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs. No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 204 ON
7/18 20 12, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
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CONFERENCE IN COURTROOM ON
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DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry. County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20 That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	No.:

AFFIDAVIT

I, HANS A. MAST, being first duly sworn on oath, depose and state as follows:

1. That I am one of the attorneys responsible for the prosecution of the above-entitled case.

2. That on behalf Plaintiff, PAUL DULBERG, I am hereby requesting money damages in an amount not to exceed $50,000.00, together with the costs of this action, against each of the above-named Defendants.

FURTHER, Affiant sayeth naught.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
ARDC No. 06203684

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

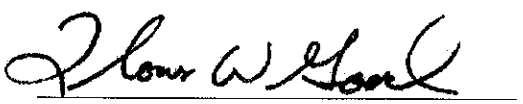
j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,



Thomas W. Gooch, III

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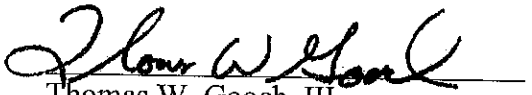
PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.



Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT

ALL-STATE LEGAL®

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COPY
FILED
MAY 15 2012
KATHERINE M. KELPE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

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Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

ALL-STATE LEGAL®
PLAINTIFF'S EXHIBIT
B

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 204 ON 9/18 20 12, AT 2 AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON 20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT C
ALL-STATE LEGAL®

Waukegan Office
210 North Martin Luther King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P/S	75,000.
L/N/L	75,000.

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT

D

ALL-STATE LEGAL®

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111166062
17LA000377
06/07/2018
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendant.	)	No. 17 LA 377

FIRST AMENDED COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his First Amended Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the same area.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike and cut DULBERG's arm. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants properly filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. Also MAST incorrectly informed DULBERG that the insurance policy limit for the Gagnon was only $100,000.00, when in reality the policy was $300,000.00.

14. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST began urging DULBERG to settle the matter against William McGuire and Caroline McGuire for $5,000.00.

15. On November 18, 2013, MAST wrote two emails to DULBERG urging DULBERG to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

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16. Similarly, on November 20, 2013 MAST emailed DULBERG urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.)**

17. On or around December 2013 or January 2014, MAST met with DULBERG and other family members and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told DULBERG that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

18. DULBERG, having no choice in the matter, reluctantly agreed with MAST to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit D.**

19. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled

20. After accepting the $5,000 settlement, DULBERG wrote MAST an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.)**

21. MAST and POPOVICH continued to represent DULBERG into 2015 and continuously assured him that his case was being handled properly.

22. On February 22, 2015, as to any chance of settling the remainder of his case against Gagnon MAST wrote to DULBERG that, "There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only

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alternative is to take the case to trial and I am not interested in doing that." (See Email attached as **Exhibit F.**)

23. MAST and POPOVICH represented DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship due to a claimed failure of communication. MAST and POPOVICH withdrew from the representation of DULBERG.

24. Thereafter, DULBERG retained other attorneys and proceeded to a Court ordered binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. However, due to the settlement with the McGuires, DULBERG was only able to collect $300,000.00 based upon the insurance policy available. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit G.**

25. The McGuires were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuires were well able to pay all, or a portion of the binding mediation award had they still remained parties.

26. DULBERG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

27. Until the time of the mediation award, DULBERG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuires would only complicate the case.

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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

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f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails. into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;

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n) Failed to retain a liability expert to prove DULBERG's damages;

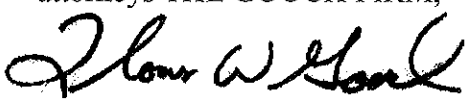
o) Were otherwise negligent in their representation of DULBERG.

32. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBERG to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

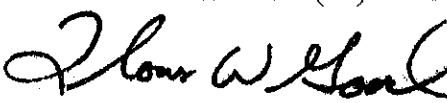
Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,



Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.



Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~___~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
tabbies
A

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COPY
FILED
MAY 15 2012
KATHERINE M. KEEFE, McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 204 ON 11/18 2012, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____ 20__ AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
B

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevent times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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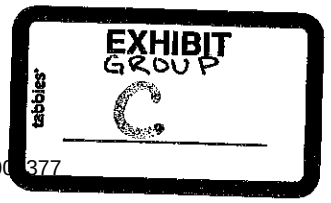
From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
tabbies
D

Waukegan Office
210 North Martin Luther King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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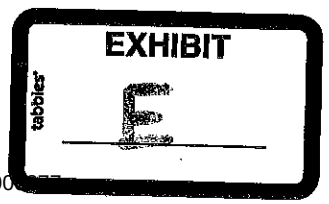
From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI



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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

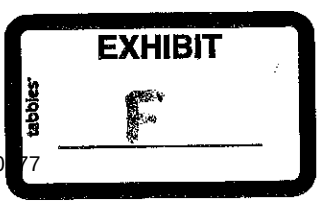
The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.



ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

EXHIBIT 6 tabbies

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The Clinton Law Firm, LLC
111 West Washington, Suite 1437
Chicago, IL 60602
(312) 357-1515
FAX (312) 201-0737
ed@clintonlaw.net

October 30, 2018

Paul Dulberg
4606 Hayden Ct.
McHenry, IL 60051
847-497-4250
paul_dulberg@comcast.net

Re: **Legal Malpractice Claim Against**

Dear Mr. Dulberg:

This will confirm that you have asked us to represent you in connection with your breach of fiduciary duty lawsuit against Law Offices of Thomas Popovich, PC and Hans Mast, which was filed in the Twenty Second Judicial Circuit, McHenry County, Illinois, Case No. 17 LA 377, and is currently pending there.

In accordance with Firm policy, the purpose of this letter is to set forth our understanding as to the terms upon which we have been retained.

MUTUAL RESPONSIBILITIES

We will provide the legal services that, in our professional judgment, are appropriate for this matter and in accordance with applicable legal and ethical standards. You agree that you will be reasonably available to confer with us upon request, will provide us with such documents and information relating to the matter, will disclose all facts and circumstances that may bear upon our handling of the matter, will promptly pay our bills for costs incurred in accordance with the terms of this letter, and will otherwise assist our efforts as we reasonably request.

SCOPE OF REPRESENTATION

We are confident that our services in this matter will prove beneficial and we hope that you will seek our assistance with other matters in the future. However, our present agreement to provide legal services is limited to the matter, identified above, for which we have been engaged.

DETERMINATION OF FEE

It is agreed that we will handle this matter on a contingency basis. Our firm will be entitled to one-third of any recovery whether from settlement or judgment.

You will also be responsible for paying our out-of-pocket costs incurred during the pendency of the case. These costs can include court fees, reporter fees, and copying costs. We do not expect this expenses to be extraordinary, but if we expect a costly expense, we will notify you and may require you to pay the vendor directly.

Our firm requests a retainer of $5,000 in order to cover the initial costs in this case. We will not begin work until this letter is signed and the retainer fee is received.

TERMINATION

We anticipate a long and mutually satisfactory relationship. However, you have the right to terminate our engagement at any time by giving us written notice of termination. We also have the right, subject to our responsibilities under applicable ethical rules, to terminate our engagement by giving you written notice if you fail to cooperate with us or to pay our bills for costs incurred when due or if we determine that continuing to represent you would be unethical, impractical or improper. If our relationship is terminated by either of us, you will remain obligated to pay us in full for our past services under principles of *quantum meruit* and for costs and expenses in accordance with the terms of this letter.

NO GUARANTEE OF OUTCOME

We do not guarantee any outcome in the litigation. Any views expressed as to the possible ruling are our opinions only.

AGREEMENT APPLICABLE UNTIL CHANGED IN WRITING

This agreement will apply to this matter only. If you wish to obtain our assistance with another matter, we will prepare a written engagement agreement for that matter.

DISPUTE RESOLUTION

You agree that this agreement is governed by the substantive law of the State of Illinois.

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof,

including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Chicago, Illinois before one arbitrator. Additionally, any claim against the Clinton Law Firm or any of its attorneys is subject to arbitration. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. By agreeing to arbitration, you agree to waive your right to a jury trial and your right to appeal.

Please review this letter carefully and raise and discuss with me any questions which you may have. If this letter accurately reflects your understanding of our attorney-client relationship, please indicate your approval and acceptance by dating and signing this letter and returning it to me. You may also have another lawyer review this agreement.

If you have any questions, do not hesitate to contact me.

Sincerely,

Edward X. Clinton, Jr.

APPROVED AND ACCEPTED:

Paul Dulberg

10/30/2018
Date

** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendant.	)	No. 17 LA 377

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing

Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

__/s/ Julia C. Williams_____
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
tabbies
A

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA00

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FILED
MAY 15 2012
KATHERINE M. KEEPE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 204 ON 11-28 2012, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____ 20__, AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
B

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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Page 15 of 19

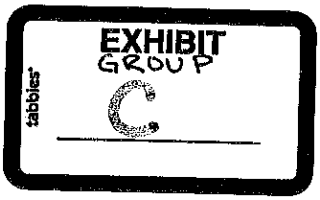
From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #1711111745[illegible] Case #17LA000377

GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000377

c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

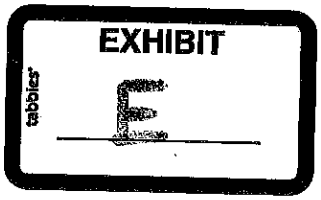
From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI



From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

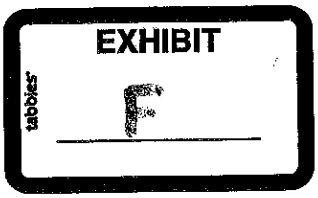
The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.



ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (If applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

EXHIBIT tabbies G

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

FILED
McHenry County, Illinois
SEP 10 2020
KATHERINE M. KEEFE
Clerk of the Circuit Court

GEN. NO. 17 LA 377

☐ Jury ☐ Non-Jury

Pulbers

VS.

Popovich

Date: 9-10-20 Plaintiff's Attorney Julia Williams Defendant's Attorney George Flynn

ORDER

This matter coming to be heard on the Clinton Law firms motion to withdraw as counsel for Plaintiff, it is ordered:

1) The Clinton Law Firms motion to withdraw is granted.

2) Plaintiff Paul Pulbers must file an appearance with 21 days, or an attorney must appear on his behalf with 21 days.

3) Status on October 7, 2020 at ~~9:00 a.m.~~ 8:45 AM (AM)

Prepared by: George Flynn

Attorney for: Popovich

Attorney Registration No.: 6239349 Judge:

The Clinton Law Firm
111 W. Washington, Suite 1437
Chicago, Illinois 60602
Telephone: 312-357-1515
Facsimile: 312-201-0737

Edward X. Clinton
eclinton@me.com

Edward X. Clinton, Jr.
ed@clintonlaw.net

November 24, 2020

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

Re: Refund of the balance of your retainer fee paid

Dear Paul:

Attached is check #1147 made payable to you for $3,197.43. This represents the balance in our Client Trust Account of the retainer fee you paid to The Clinton Law Firm LLC.

We wish you the best.

Very truly yours,

Edward X. Clinton, Jr.

EXC/mjw

** FILED ** Env: 10893447
McHenry County, Illinois
17LA000377
Date: 10/23/2020 4:21 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY

Paul Dulberg

vs.

The Law Offices of Thomas J. Popovich, P.C. and Hans Mast

Case Number 17LA000377

APPEARANCE

I HEREBY ENTER THE APPEARANCE OF

Paul Dulberg

(Insert the name of the party for whom you are entering your appearance)

AND MY OWN AS

- ☐ REGULAR COUNSEL
- ☐ SPECIAL & LIMITED APPEARANCE
- ☐ PRO-SE
- ☑ ADDITIONAL COUNSEL
- ☐ GUARDIAN AD LITEM
- ☐ TRIAL COUNSEL
- ☐ SUBSTITUTE COUNSEL
- ☐ COUNSEL IN FORCIBLE ENTRY
- ☐ APPELLATE COUNSEL
- ☐ COURT APPOINTED COUNSEL

AND AS (HIS) (HER) (THEIR) COUNSEL IN THE ABOVE ENTITLED CASE.

SIGNED _____
(Signature of Attorney filing appearance)

Name Alphonse A. Talarico

Alphonse A. Talarico
Printed Name

ARDC Number 6184530

Attorney for Paul Dulberg

Address 707 Skokie Blvd. Suite 600

City, State Zip Northbrook, Illinois 60062

Phone (312) 808-1410

Email contact@lawofficeofalphonsetalarico.com

CC-APP1 (Revised 07-01-2018)

Received 10-26-2020 08:17 AM / Circuit Clerk Accepted on 10-26-2020 08:20 AM / Transaction #10893447 / Case #17LA000377

CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT #12

FILED
McHenry County, Illinois
FEB 1 - 2023
KATHERINE M. KEEFE
Clerk of the Circuit Court

STATE OF ILLINOIS
COUNTY OF MCHENRY } **SS**

GEN. NO. 17LA377

☒ **Jury** ☐ **Non-Jury**

Paul Dulberg

vs.

Popovich and Mast

Date 2-1-23 **Plaintiff's Attorney** Alphonse Talarico **Defendant's Attorney** George K. Flynn

ORDER

This matter coming to be heard on Popovich and Mast's Motion for Summary Judgment, it is hereby ordered:

1) Defendants' Motion for Summary Judgment is granted, for the reasons stated on the record. The 2 year statute of limitations lapsed before the filing of Plaintiff's complaint. Judgment for defendants entered and the case is dismissed with prejudice.

Prepared by: George K. Flynn

Attorney for: Defendants

Attorney Registration No.: 6239349 **Judge** _____

** FILED ** Env: 19526335
McHenry County, Illinois
2017LA000377
Date: 9/16/2022 2:53 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION/MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast ("Mast") (sometimes collectively "Popovich") by and through their attorneys Karbal, Cohen, Economou, Silk, & Dunne, LLC, pursuant to 735 ILCS 5/2-1005, submit this Motion/Memorandum in Support of their Motion for Summary Judgment, and state as follows:

I. INTRODUCTION

Plaintiff Paul Dulberg ("Dulberg") was allegedly injured on June 28, 2011 when he was assisting a friend, David Gagnon ("Gagnon"), trim a tree with a chainsaw in the backyard of a home owned by Dulberg's neighbors, Bill and Carolyn McGuire ("The McGuires"). Gagnon, who is Carolyn McGuire's son, and Dulberg were both over the age of 40 at the time of the accident. Dulberg retained defendant Popovich to prosecute a personal injury lawsuit against Gagnon and the McGuires. Defendant Hans Mast was the primary handling attorney. Eventually, in Mast's legal opinion, the case against the property owners was weak because the evidence showed they did not control the work. Mast recommended Dulberg accept the McGuires' settlement offer. Dulberg deliberated and accepted the McGuires' offer in January 2014. Thus

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McGuires were dismissed from the lawsuit in January 2014, and Dulberg continued to prosecute the case against Gagnon.

Popovich and Mast withdrew from representing Dulberg on March 13, 2015. Dulberg later settled with Gagnon, and waited until November 28, 2017 to sue Popovich and Mast. In an unavailing attempt to excuse the late filing of his lawsuit, Dulberg alleges that he did not become aware of a claim against defendants until he sought a legal opinion in December of 2016. He has never been able to explain what legal opinion he received or how it caused him to "discover" his claim and damages, or why he still waited almost another year after December 2016 to file his lawsuit. Summary judgment must be entered because Dulberg's claims are barred by the two-year statute of limitations for Illinois legal malpractice claims under 735 ILCS 13/214.3(b).

II. STATEMENT OF CLAIM

The following facts can be gleaned from the Complaint (Exhibit A), Amended Complaint (Exhibit B) and Second Amended Complaint (Exhibit C).[1] [2]

On or about June 28, 2011, Dulberg was involved in an accident while assisting David Gagnon in the cutting down of a tree on the McGuire property. Exhibit A, ¶6. Gagnon lost control of the chainsaw he was using causing it to strike Dulberg. Exhibit A, ¶7. In May 2012, Dulberg retained the Law Offices of Thomas J. Popovich. Exhibit A, ¶8. In late 2013 or early 2014, Mast met with Dulberg and agreed with Mast to accept $5,000, releasing William and Caroline McGuire. Exhibit A, ¶13. Mast and Popovich continued to represent Dulberg through March of 2015. Exhibit A, ¶14. Thereafter, Dulberg retained other attorneys and proceeded to a binding

[1] The Complaint and Amended Complaint were filed by The Gooch Firm and signed by attorney Thomas W. Gooch, III.

[2] Dulberg denied the material allegations contained in Popovich's Affirmative Defenses, including its Second Affirmative Defense based on the two-year statute of limitation. (Dulberg Answer to Affirmative Defenses, Exhibit D).

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mediation where he received an award. Exhibit A, ¶16. Dulberg alleges that following the execution of the mediation agreement and final mediation award, he realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. Following the mediation Dulberg was advised to seek an independent opinion from an attorney handling malpractice matters, and received that opinion on or about December 16, 2016. Exhibit A, ¶20.

In his First Amended Complaint, Dulberg modified his "discovery" allegations and alleged "it was not until the mediation in December 2016, based on the expert's opinion that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000 on an "all or nothing" basis. Exhibit B, ¶29. In ¶30 he reiterates that "Dulberg was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016." Exhibit B, ¶30.

Dulberg's first substitute counsel in this case filed a Second Amended Complaint, further modifying the allegations. It is alleged that "after accepting a $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating that "I trust your judgment." Exhibit C, ¶48. He further alleges in ¶55 of Ex. C that "only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable." Exhibit C, ¶55. He also alleges that following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information that Mast and Popovich had given Dulberg was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. Exhibit C, ¶56. He alleged that it was not until the mediation in December 2016 based on the expert's opinions that Dulberg retained for the mediation that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and

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coercing him to accept a settlement for $5,000 on an "all or nothing" basis. Exhibit C, ¶57. Dulberg's allegations of Popovich' breaches of the standard of care are contained in Exhibit C, ¶58 as follows:

> 58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:
>
> a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;
>
> b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;
>
> c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance company would pay close to that;
>
> d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;
>
> e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the[sic] all the claims against both the McGuires and Gagnon in order to obtain a full recovery;
>
> f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

III. UNDISPUTED MATERIAL FACTS

A. Paul Dulberg Testimony

Dulberg has hired a personal injury attorney in 2002 and has hired a corporate lawyer in the past. (Dulberg Deposition, Exhibit E, pp.8, 9). He was injured on June 28, 2011 while assisting David Gagnon with a chainsaw cutting up some branches after they were removed from a tree. (Exhibit E, pp.12, 13). He hired Popovich to sue Gagnon and Bill and Carolyn McGuire in connection with his June 28, 2011 injury. (Exhibit E, pp. 9, 30). Hans Mast was the primary handling attorney. (Exhibit E, p. 30). Brad Balke substituted for Dulberg on March 19, 2015 when Popovich withdrew. (Exhibit E, p. 35). Dulberg asked hundreds of lawyers to take over his case when Popovich withdrew, but none accepted. (Exhibit, E, p. 36). Dulberg fired Balke prior to the binding arbitration, and he was then represented by the Baudin Law Firm. While Brad Balke handled the case, Balke never gave him an opinion as to the liability of the McGuires and whether the prior settlement was appropriate. (Exhibit E, p. 42). At some point, Dulberg hired The Daley Disability Law Firm to assist him with a Social Security disability claim. A criminal lawyer represented him in a guilty plea for drug possession in 1990. (Exhibit E, pp.34-35) (Exhibit E, p. 43). At some point during the case, it was Hans Mast's opinion that the McGuires did not have liability because they did not control the work David Gagnon was doing. (Exhibit E, pp. 50, 51). Mr. McGuire was inside the house for 45 minutes before the accident happened. (Exhibit E, pp. 51, 52).

On November 18, 2013, Mast emailed Dulberg and relayed a $5,000 settlement offer from the McGuires. (Exhibit E, p.52). Mast suggested that the $5,000 offer be accepted. Dulberg testified that at one point, "Mast defined what an independent contractor is and he said that David was an independent contractor and the McGuires weren't liable because they had hired somebody

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outside even though it's their own son, he is an adult, outside to do the work and that they weren't responsible." (Exhibit E, p.55). Dulberg believed that Mast was relying on his honest legal opinion at the time. (Exhibit E, p.59). Dulberg did not accept the settlement offer on November 8, 2013. Dulberg met with Mast on November 20, 2013. (Exhibit E, p.61). Then Dulberg reviewed the depositions of the McGuires and David Gagnon before he accepted the offer. (Exhibit E, p.63). Eventually Dulberg told Mast that he would agree to accept the $5,000 settlement offer from the McGuires, just before Christmas in December of 2013. (Exhibit E, p.66) Dulberg received a letter with a settlement release from Mast on January 29, 2014 and signed it and sent it back. (Exhibit E, p.69). From December 25 until he received the settlement release, he contacted Mast again to discuss whether it would be appropriate to let the McGuires out for $5,000. (Exhibit E, p.70). Dulberg did not talk to any other lawyers and there was nothing preventing him from seeking a second opinion from some other lawyer at the time. (Exhibit E, p.71). Dulberg emailed Mast with a question about the release on January 29, 2014, and then put a stamp on the envelope with the executed release, put it in his mailbox, put the flag up, and waited for the mailman. (Exhibit E, pp. 71, 72). Mast did not force him to take the settlement. (Exhibit E, p.73).

The case continued against Gagnon through discovery and some of Dulberg's doctors were deposed. (Exhibit E, pp. 78, 79). Dulberg told Mast "First, I'm sorry that I'm not a better witness to prove David cut me with a chainsaw." Dulberg already started looking for new lawyers in the summer of 2014. Mast thought the case against David Gagnon was difficult. (Exhibit E, p.81). Mast told Dulberg that he did not make a good witness at his deposition. (Exhibit E, p.82). Dulberg and Gagnon were the only people who witnessed the accident. (Exhibit E, p.83). There were differences between the factual testimony provided by Gagnon and Dulberg in the underlying

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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case. (Exhibit E, p.83). His relationship with Mast was deteriorating over the fall and winter of 2015, even long before that. (Exhibit E, p.86). On February 22, 2015, Dulberg wrote in an email to Mast "Now I'm left wondering… how hard it is to sue an attorney?" (Exhibit F). When asked what the reference to suing an attorney meant he replied:

A. That was me being angry.

Q. With Hans?

A. Yes. I was seeing red.

Q. You're suggesting that you may sue him?

A. Yeah. I didn't know that I could. I'm wondering about it.

Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?

A. Yes.

Q. You, ultimately, sued him for legal malpractice, right?

A. Yes.

On February 22, 2015, Mast wrote in an email to Dulberg "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case." (Exhibit E, p.91). Mast speculated that seven out of ten times he would lose the case outright. (Exhibit E, p.92). Dulberg filed for bankruptcy. He was ordered by the bankruptcy trustee to participate in binding mediation on December 8, 2016. (Exhibit E, p.96). Dulberg admitted that the allegation in his complaint regarding Popovich being involved with the high/low agreement in the mediation was a mistake. (Exhibit E, p.103). Dulberg testified that it was Baudin that advised him to seek an independent opinion from an attorney handling legal malpractice matters. (Exhibit E, p.108). The lawyer he received the legal opinion on December 16, 2016 was Thomas Gooch, the drafter of the Complaint in this case. (Exhibit E, p.108). It was confirmed by Gooch on December 16,

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2016 that Dulberg had a valid case against Popovich. (Exhibit E, p.113). He did not file a lawsuit until nearly a year later because "Thomas Gooch had some health issues and that his wife had some health issues. It took a while." (Exhibit E, p.114). Dulberg agreed that the legal opinion he received on December 16, 2016 was responsive to Interrogatory No. 1 from Dulberg's answers to Mast's Interrogatories. (Exhibit E, pp.125, 126). The legal opinion Dulberg received from Gooch was verbal. (Exhibit E, p.130). Gooch simply stated, "You have a case here. You have a valid case." (Exhibit E, p.130). When asked did he tell you exactly what they did wrong in connection with your – their representation of you, Dulberg replied "He probably did. I'm not recalling it right now. I'm pulling a blank." (Exhibit E, p.131).

Dulberg was questioned further: "Other than you have a case, what did Gooch say to you?" Dulberg responded, "He said they definitely committed malpractice." When asked whether Gooch ever put this in writing, Dulberg replied, "I think he backed it up by filing a suit. That's documented." (Exhibit E, p.136). Dulberg was asked, "As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to the McGuires' liability? Answer: They were definitely liable. He tried to say that – like Popovich and Mast were first – or second year lawyers and that they may have made a mistake here." (Ex. E, pp.139-140).

B. <u>Hans Mast Testimony</u>

Mast graduated from Kent Law School in 1991 and has been admitted to practice law in Illinois since 1991. (Mast Deposition, Exhibit G, p.10). He joined the Popovich firm in 2001 and worked there for approximately 18 years. (Exhibit G, p.12). He testified that every time he met with Dulberg: "Every time we met, we talked about this because this was the subject at the time with the McGuires and the testimony of the McGuires, given Paul' testimony, given the lack of

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any evidence that they were controlling any work or even knew what Paul was doing, I felt it was a big, high risk at moving forward on that claim." (Exhibit G, p.43). Mast thought Paul's case was going to be very difficult to prove based on the testimony of everybody, credibility issues, and the lack of evidence to support and prove. (Exhibit G, p.77). Gagon's testimony regarding the facts surrounding the accident differed from Paul Dulberg's version of the facts. (Exhibit G, p.77). Mast took that difference in testimony into account in his evaluation and his analysis of the case. (Exhibit G, p.77). Mast also took into account Paul Dulberg's poor performance as a witness at his discovery deposition. Mast's analysis and evaluation of the case hinged in part on whether the McGuires controlled the method of the use of the chainsaw. Mast testified that the McGuires were inside the house and not paying attention to what was going on outside at the time of the accident. (Exhibit G, p.78). Mast's recommendation or suggestion that Dulberg settle the case for $5,000 against the McGuires was based on his analysis of the entire case, including the risks and benefits of going forward and potentially losing the case at trial. (Exhibit G, pp.78,79). Based on his professional judgment, Mast suggested that Dulberg attempt to settle the matter as opposed to taking it to trial against the McGuires. (Exhibit G, p.79).

IV. LEGAL STANDARD

The purpose of summary judgment is not to try a question of fact but to determine whether there is a genuine issue of material fact. *N. Ill. Emergency Physicians v. Landau, Omahana, & Kopka, Ltd.*, 216 Ill. 2d 294, 305 (2005). Summary judgment is proper if, when viewed in the light most favorable to the nonmovant, the pleadings, depositions, admissions, and affidavits on record establish that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Id.* A defendant moving for summary judgment may meet the initial burden of production by either affirmatively showing that some element of the case must be resolved in

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defendant's favor, or by showing the absence of evidence supporting the plaintiff's position on one or more elements of the cause of action. *Hutchcraft v. Independent Mechanical Industries, Inc.*, 312 Ill App. 3d 351, 355 (4th Dist.,2000). The plaintiff is not required to prove his case at the summary judgment stage; in order to survive a motion for summary judgment, he must present a factual basis that would arguably entitle him to a judgment. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002).

V. ARGUMENT

Dulberg's legal malpractice claim against Popovich is time barred by the two (2) year statute of limitations set forth in 735 ILCS 5/2-614.3.

735 ILCS 5/13-214.3(b) reads as follows:

> (b) An action for damages based on tort, contract or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services [...] must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.

735 ILCS 5/13-214.3(b).

While Popovich denies breaching any standard of care or proximately causing Dulberg any damages, assuming *arguendo* there was malpractice, Dulberg knew or should have known of his injury and that it was wrongfully caused when Popovich withdrew. In the alternative, Dulberg should have investigated any potential claims when he questioned the appropriateness of settling with the McGuires.

In his various pleadings, Dulberg alleged that Popovich concealed his malpractice and coerced him to settle with the McGuires, but his own testimony does not bear out any such concealment. He also attempts to plead that he did not discover the malpractice and his injury until December 12, 2016, but his anticipatory pleading is not supported by his own testimony. Under any analysis, Dulberg knew or should have known of the alleged malpractice

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and his injury by the time Popovich withdrew. Dulberg fails to meet his burden of proving a discovery date that would toll the limitations period.

To state a cause of action for legal malpractice, the plaintiff must allege facts to establish (1) the defendant attorney owed the plaintiff client a duty of due care arising from an attorney-client relationship, (2) the attorney breached that duty, (3) the client suffered an injury in the form of actual damages, and (4) the actual damages resulted as a proximate cause of the breach." *Nelson v. Quarles & Grady*, 2013 IL App (1st) 123122 at [*P28], citing *Fox v. Seiden*, 382 Ill. App. 3d 288, 294 (1st Dist. 2008). A legal malpractice suit is by its nature dependent upon a predicate lawsuit. *Claire Associates v. Pontikes*, 151 Ill. App. 3d 116, 122 (1st Dist. 1986). Thus, a legal malpractice claim presents a "case within a case." *Id.* "[N]o malpractice exists unless counsel's negligence has resulted in the loss of an underlying cause of action, or the loss of a meritorious defense if the attorney was defending in the underlying suit."

The two-year statute of limitations for legal malpractice under 735 ILCS 5/13-214.3(b) incorporates the discovery rule which delays commencement of the statute of limitations until the plaintiff knows or reasonably should have known of the injury or that it may have been wrongfully caused. *Scheinblum v. Schain Banks Kenny & Schwartz, Ltd.*, 2021 IL App. (1st) 200798 at [*P24], quoting *Dancor International, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666 (1st Dist. 1997). Under this rule, the statute of limitations begins to run when the injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Scheinblum* at [*P24] citing *Janousek v. Katten Muchin Rosenman LLP*, 2015 IL App (1st) 142989. Under the discovery rule, "a statute of limitations may run despite the lack of actual knowledge of negligent conduct." *SK Partners I, LP*, 408 Ill. App. 3d at 130 (1st Dist. 2011). A "person knows or reasonably should know an injury is 'wrongfully caused' when

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he or she possesses sufficient information concerning an injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct had occurred." *Janousek* at [*p13]. Under Illinois law, the burden is on the injured party to inquire further as to the existence of a cause of action. "When a plaintiff uses the discovery rule to delay the commencement of the statute of limitations, the burden is on the plaintiff to prove the date of discovery." *Dancor* at 673. Identification of one wrongful cause of the plaintiff's injuries initiates his limitations period as to all other causes. *Carlson v. Fish*, 2015 IL App (1st) 140526 at ¶39.

In *Blue Water Partners, Inc. v. Mason*, 2012 IL App (1st) 102165, the Appellate Court again had the occasion to examine the discovery rule under the two-year legal malpractice statute of limitations. The court ruled that the statute of limitations begins to run when the purportedly injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Blue Water Partners* at [*P51]. In that case, the court found little dispute that the plaintiff acted on its obligation to inquire further on possible wrongful conduct when consulting with an attorney about potential claims, albeit the Plaintiff lacked diligence in filing the suit.

In the recent Illinois Supreme Court case *Suburban Real Estate Servs. v. Carlson*, 2022 IL 126935, the court distinguished between transactional malpractice and legal malpractice arising out of litigation. The court explained that when the attorney's negligence arises out of underlying litigation, no injury exists, and therefore no actionable claim arises, unless and until the attorney's negligence results in a loss of the underlying cause of action. The court explained that in "this type of legal malpractice claim, commonly referred to as a 'case within a case,' the allegation is that the client suffered a monetary loss and but for the attorney's negligence the client would have recovered in the underlying litigation." *Suburban Real Estate* at [*P19] and [citing *Tri-G, Inc. v. Burke,*

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Bosselman & Weaver, 222 Ill. 2d 218 (2006). In *Fox v. Seiden*, 382 Ill. App. 3d 288 (1st Dist. 2008), the appellate court analyzed the requirement of actual damages and held that where malpractice was alleged in the prosecution of a case, the entry of judgment in that underlying case, as opposed to the payment of judgment, is sufficient to establish the element of damages in order to state a legal malpractice claim. *Fox* at 297, 299. Here, the settlement with the McGuires was executed by January 29, 2014, and they were dismissed with prejudice in January 2014. (Dismissal Order, Exhibit H).

On its face, Dulberg's legal malpractice complaint is time barred. He bears the burden of proving a date of discovery that can salvage his claim, but Dulberg has not and can never meet that burden. Dulberg's deposition testimony and pleadings are vague and inconsistent with respect to how Popovich breached the standard of care, and when and how he became aware that his injury was wrongfully caused. As discussed, Dulberg's own testimony refutes many of his allegations of concealment, undue influence and coercion.

Dulberg has fiddled with his "discovery" allegations, going back and forth as to when and how he became aware of his malpractice claim and damages. First, he plead that he sought a **legal opinion,** and received that opinion on December 16, 2016. The legal opinion was supplied by the same attorney who filed his first two pleadings in this case. Then he changed his pleading and theory and attempted to rely on discovery by virtue of the report of a "chainsaw expert" he read in connection with the December 2016 mediation. However, he actually received the opinion (Exhibit I) in July 2016 but "you don't catch everything the first time you read it." (Exhibit D, p.141). Notably the report from Dr. Lanford is dated much earlier, February 27, 2016 and was addressed to Dulberg's then attorney, Randy Baudin.

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Here defendants painstakingly attempted to seek discovery as to how Popovich allegedly breached the standard of care, and when and how Dulberg became aware of any damages. Dulberg's discovery responses and deposition testimony were repeatedly evasive. See Dulberg testimony, Exhibit D, pages 106 to 141. This behavior continued and caused the need for a motion to compel (See Group Exhibit J, Motion to Compel, Motion to Supplement Motion to Compel, and July 19, 2021 transcript from hearing).

Moreover, Dulberg's dissatisfaction with Popovich's representation surfaced much earlier, and he even threatened in writing to sue Mast as early as February 22, 2015. Dulberg, no "babe in the woods" when it comes to experience with litigation retention, met with "hundreds" of attorneys and had opportunity after opportunity to investigate and inquire as to whether Popovich breached the standard of care and caused him any damage in connection with the case (including prosecution of the case against Gagnon and the McGuires). The many cases cited above establish the Plaintiff's duty to inquire, and here Dulberg had the tools, the information, and opportunity to inquire. His contrived late discovery of his claims and damages should not be countenanced by this court. He was clearly questioning whether he should agree to accept the McGuires' offer, and he deliberated on it extensively. Nothing prevented him from seeking a second opinion. Likewise, nothing prevented him from inquiring of Mr. Balke or the Baudin firm whether his injury was wrongfully caused. Summary Judgment must be entered as his claims are barred by the two-year statute of limitations.

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VI. CONCLUSION

Wherefore, Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, pray that the motion for summary judgment be granted, that summary judgment be entered in its favor and against Plaintiff, and for any other relief that this court deems just and appropriate.

Dated: September 15, 2022

Respectfully submitted,

KARBAL, COHEN, ECONOMOU SILK & DUNNE, LLC

By: */s/ George K. Flynn*
George K. Flynn (ARDC #6239349)

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018 AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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EXHIBIT A

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gaguon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

ALL STATE LEGAL®
PLAINTIFF'S EXHIBIT

COPY
MAY 15 2012
KATHERINE M. KAUPE, McHENRY CITY, CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT B
ALL-STATE LEGAL®

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 9/18 20 12, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON 20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
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Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kohlak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT C
ALL-STATE LEGAL

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

ALL-STATE LEGAL

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendant.	)	No. 17 LA 377

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111166062
17LA000377
06/07/2018
McHenry County, Illinois
22nd Judicial Circuit
****

FIRST AMENDED COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his First Amended Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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EXHIBIT B

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the same area.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike and cut DULBERG's arm. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A.**

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants properly filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. Also MAST incorrectly informed DULBERG that the insurance policy limit for the Gagnon was only $100,000.00, when in reality the policy was $300,000.00.

14. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST began urging DULBERG to settle the matter against William McGuire and Caroline McGuire for $5,000.00.

15. On November 18, 2013, MAST wrote two emails to DULBERG urging DULBERG to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

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16. Similarly, on November 20, 2013 MAST emailed DULBERG urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.)**

17. On or around December 2013 or January 2014, MAST met with DULBERG and other family members and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told DULBERG that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

18. DULBERG, having no choice in the matter, reluctantly agreed with MAST to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit D**.

19. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled

20. After accepting the $5,000 settlement, DULBERG wrote MAST an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.)**

21. MAST and POPOVICH continued to represent DULBERG into 2015 and continuously assured him that his case was being handled properly.

22. On February 22, 2015, as to any chance of settling the remainder of his case against Gagnon MAST wrote to DULBERG that, "There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only

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alternative is to take the case to trial and I am not interested in doing that." (See Email attached as **Exhibit F.**)

23. MAST and POPOVICH represented DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship due to a claimed failure of communication. MAST and POPOVICH withdrew from the representation of DULBERG.

24. Thereafter, DULBERG retained other attorneys and proceeded to a Court ordered binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. However, due to the settlement with the McGuires, DULBERG was only able to collect $300,000.00 based upon the insurance policy available. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit G.**

25. The McGuires were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuires were well able to pay all, or a portion of the binding mediation award had they still remained parties.

26. DULBERG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

27. Until the time of the mediation award, DULBERG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuires would only complicate the case.

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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

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f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails. into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;

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n) Failed to retain a liability expert to prove DULBERG's damages;

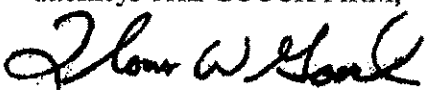
o) Were otherwise negligent in their representation of DULBERG.

32. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBERG to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,



Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.



Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~40~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
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A

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COPY FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 206 ON
11-28-2012, AT 9:00 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ON
20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

EXHIBIT
Deposition

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of its Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06209684

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogo
James P. Tutaj
Robert J. Lumbre
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI

EXHIBIT
tabbies
5

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.

EXHIBIT
tabbies
F

ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

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** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendant.	)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

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15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

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27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

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44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

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53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing

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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

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Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~40~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
A

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CORY
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 11/18/2022, AT 2:00 PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____, 20__, AT ____ AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
Exhibit

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06209684

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Shelia today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ---- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kohnak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
sticker D

Waukegan Offices
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No: 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

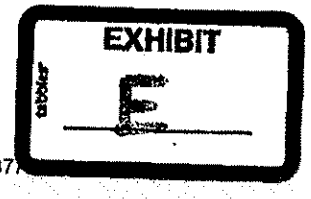
From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
> > ---- Original Message ----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
> > Subject: McGuire settlement
> > Here is a copy of the first page.
> > It has check boxes and one of the check boxes says;
> > I am not eligible to receive SSI or SSDI.
> > Another says;
> > I am not receiving SSI or SSDI.
> > As you know, I have applied for SSDI and SSI



From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.

EXHIBIT
F

ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

EXHIBIT

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Pamela Walker

From: McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
Sent: Monday, December 10, 2018 1:37 PM
To: George K. Flynn; Pamela Walker
Subject: 17LA000377 - 2 Documents Filed

17LA000377

DULBERG, PAUL VS MAST, HANS, ET AL

Doc Type	**COAA**
Description	**COMPLAINT - AMENDED**
Date Filed	**12/6/2018**
Image Link	View Document Image

Doc Type	**NOTF**
Description	**NOTICE - FILING**
Date Filed	**12/6/2018**
Image Link	View Document Image

NOTE: E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

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** FILED ** Env: 4610589
McHenry County, Illinois
17LA000377
Date: 4/8/2019 3:52 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

PAUL DULBERG'S ANSWERS TO DEFENDANTS' AFFIRMATIIVE DEFENSES

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, answers Paul Dulberg's Affirmative Defenses as follows:

AFFIRMATIVE DEFENSES
FIRST AFFIRMATIVE DEFENSE: CONTRIBUTION NEGLIGENCE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiffs own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

EXHIBIT D

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3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

SECOND AFFIRMATIVE DEFENSE
STATUTE OF LIMITATIONS

1. In Plaintiffs Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiffv. David Gagnon, et al., Defendants,* Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2, subparts a-d.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

4. Accordingly, this matter is time-barred.

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ANSWER: Plaintiff denies the allegations of this Paragraph #4.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

AFFIRMATIVE DEFENSES
THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause ofDulberg's damages.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

Respectfully submitted,

By: /s/ Julia C. Williams

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 Washington Street, Suite 2400
Chicago, IL 6002
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

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IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

The deposition of PAUL DULBERG, called for examination, taken pursuant to the provisions of the Code of Civil Procedure and the rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Realtime Reporter of said state, at 150 South Wacker Drive, Chicago, Illinois, February 19, 2020, at the approximate hour of 1:00 p.m.

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PRESENT:

THE CLINTON LAW FIRM,
111 West Washington Street, Suite 1437,
Chicago, Illinois 60602,
312-357-1515, by:
MS. JULIA C. WILLIAMS,
juliawilliams@clintonlaw.net,
appeared on behalf of the Plaintiff;

KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC,
150 South Wacker Drive, Suite 1700,
Chicago, Illinois 60606,
312-431-3700, by:
MR. GEORGE K. FLYNN,
gflynn@karballaw.com,
appeared on behalf of the Defendants.

REPORTED BY: Karen Pileggi, CSR, RPR, RMR, CRR,
CSR License No. 84-3404

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(WHEREUPON, the witness was duly sworn.)

PAUL DULBERG,

called as the plaintiff herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FLYNN:

Q. Let the record reflect that this is the discovery deposition of Paul Dulberg taken by agreement of the parties and pursuant to notice.

This deposition is being taken pursuant to the Rules of the Illinois Supreme Court, the Illinois Code of Civil Procedure and any applicable local rules in McHenry County.

Sir, could you state your name and spell your last name for the record.

A. Palm Dulberg, D-u-l-b-e-r-g.

Q. What is your address?

A. 4606 Hayden Court, McHenry, Illinois 60051.

Q. How long have you lived there?

A. Forty-nine years.

Q. Who do you live there with now?

A. Mike McArtor.

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Q. Did your mother live there at some point throughout the history of this case?

A. Yes.

Q. I'm just going to go over a few rules for the deposition. I know you've testified at least one time in a deposition before because you testified in the underlying personal injury case, correct?

A. Correct.

Q. Have you testified in any other depositions before?

A. No.

Q. I'll just remind you of a few rules that I'm sure you were aware of back then when you gave your deposition.

The court reporter is here to take down everything that you and I say. She can only take down one at a time so I'd ask that before you answer a question, let me finish the entire question. Okay?

A. Yes.

Q. I'll try to do the same. I'll try to let you respond before I ask a follow-up question.

You just nodded your head. That's

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another good point to make. She can't take down nods of the head, shrugs of the shoulders or other hand gestures. Your answers need to be verbal.

From time to time we forget those rules and I may just point to the court reporter as a reminder, if that's okay.

A. Yes.

Q. If you need to take a break at any time, feel free to stop me. I just ask that it's not while a question is pending that has not been answered. Fair enough?

A. I'll try to do that.

Q. If you've answered a question, I will assume you understood it. Okay?

A. Yes.

Q. I was asking you about your mother. She lived at the house during the pendency of the underlying case?

A. Yes.

Q. Is she still alive?

A. Yes.

MS. WILLIAMS: Can we define "underlying case"?

BY MR. FLYNN:

Q. The underlying case is a personal injury

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case that you filed against Bill and Caroline McGuire and David Gagnon.

A. That sounds correct.

Q. We'll get into the dates of the filing a little bit later. We'll call that, generally, the underlying case.

Your mother lived at the house at that time?

A. Yes.

Q. Did she own the house?

A. No.

Q. Do you own the house currently?

A. Yes.

Q. Does anyone else own the house?

A. No.

Q. How long have you owned it?

A. I think I first purchased it off my parents in '97, '98, something like that.

Q. Did you hire a lawyer in connection with that transaction?

A. No.

Q. Were your parents represented by a lawyer?

A. No.

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Q. The building, as I understand it, is a duplex; is that right?

A. No.

Q. Were there two apartments in the building at one time?

A. No.

Q. Was there a point in time where you and your mother lived in one half of the house and Mike McArtor lived in the other half?

A. Yes.

Q. How was that arrangement with respect to the location of the living spaces, if you can describe it?

A. It has a walkout basement. He had the downstairs with an exit out the back. We had the upstairs with an exit out the front.

Q. Have you ever been convicted of a crime of fraud, dishonesty or deceit?

A. No.

Q. Besides the hiring of the Popovich firm in connection with the underlying personal injury case, up to that point in time had you ever had an occasion to hire a lawyer?

A. I did during a traffic accident, and I

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don't remember the year.

Q. Were you injured in about 2002? Does that sound right?

A. Roughly.

Q. Who did you hire?

A. I might get the name wrong because it's been a long time. I think it was Weiss and Michling and something else. It was a lawyer right outside the courthouse in Woodstock.

Q. A McHenry County lawyer?

A. Yeah.

Q. It was a personal injury case?

A. Yeah. It was a car accident.

Q. Did you file a lawsuit in that case?

A. I don't think we needed to.

Q. You just filed an insurance claim?

A. They did, yes.

Q. You settled it?

A. Yes.

Q. Any other occasions to hire a lawyer between that time and the time you hired the Popovich firm?

A. May I consult for a minute because I'm not sure how to answer that.

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Q. Why don't you just tell me why you can't answer it.
A. Because I've hired lawyers, but they were for the company that I had. That's different.
Q. I'm asking general questions about any interaction you've had with hiring lawyers. Any experience you've had with hiring lawyers.
A. I had a corporate lawyer. My mom and dad hired a lawyer for me when I was a kid. It was something. And myself, just the corporate lawyer, the car accident lawyer and the Popovich firm.
Q. Have you ever been married?
A. No.
Q. So you never hired a divorce lawyer. Good. How old are you now?
A. Forty-nine.
Q. The underlying case arose out of an injury that occurred on June 28, 2011, correct?
A. That sounds correct.
Q. How old were you at that time?
A. Forty-one.
Q. Besides the underlying lawsuit against the McGuires and Mr. Gagnon, had you ever filed any other lawsuit up until that point in time?

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A. No.
Q. Have you filed any lawsuits since that time besides the lawsuit against Popovich and Mast?
A. No.
Q. Do you have any military experience?
A. Yes.
Q. Please tell me about that.
A. Army National Guard. Illinois Army National Guard.
Q. How long have you been in the National Guard?
A. I'm not currently in it.
Q. When were you, from when to when?
A. I may not get the year correct. '88 or '89 to '92 or '93, somewhere in there.
Q. What was your highest rank when you were discharged from the National Guard?
A. When I was discharged?
Q. Correct.
A. I don't know. I've gotten moved up and moved down. I don't know where I ended up.
Q. How was it that you were discharged?
A. Less than honorable.
Q. What was the cause?

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A. I missed morning call, roll call. If you're not there, you're AWOL.
Q. Absent without leave?
A. Yes.
Q. What is the highest level of education that you've attained?
A. I do not have a degree. Two years of college.
Q. You graduated from high school?
A. Yes.
Q. Was that in Johnsburg in 1988?
A. Yes.
Q. Did you know Mr. Gagnon from Johnsburg High School?
A. Not from high school but just after high school.
Q. Just coincidentally you attended the same high school?
A. He was three years older than I was. I didn't know who he was until after high school.
Q. You had some education after high school but did not receive a degree, correct?
A. Correct.
Q. Where did you study?

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A. I had a couple classes at McHenry County College and McMurray College.
Q. What did you study?
A. The first two years. The basics.
Q. General studies?
A. Yeah. I did a criminal justice course. I did a macro/microeconomics. I did psychology, sociology. The normal stuff.
Q. How did you meet David Gagnon?
A. Through a mutual friend.
Q. When was that?
A. I want to say, roughly, 1990.
Q. Was your home located somewhere fairly close to his parents' home or his mom and stepdad's home?
A. Two streets away.
Q. That's where you were injured on June 28, 2011, was at David Gagnon's mom's house and his stepdad's house?
A. Yes.
Q. And their name is McGuire?
A. Yes.
Q. Generally speaking, you were injured assisting David with a chainsaw trying to cut down a

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tree?
A. He was cutting a branch.
Q. Cutting branches off a tree, correct?
A. Cutting up the branches after they were off the tree.
Q. Could you tell me a little bit about your work history. Do you have any licenses or certifications?
A. I'm certified to run printing presses. Or at least I was.
Q. You worked for Sharp Printing, Inc. from '91 to 2011; is that right?
A. Ninety-one? No. I would say 1999.
Q. Did you own that corporation?
A. Yes. Well, partner. I was a partner. I didn't own like...
Q. It was an Illinois corporation?
A. Yes.
Q. Were you –
A. A stockholder.
Q. Let me just finish my question so she can take us down.
You were a stockholder in Sharp Printing, Inc.?

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A. Yes.
Q. Who else were the stockholders?
A. Mike McArtor and Scott Dulberg and at that time it was Herbert Dulberg.
Q. What does that mean? Do you mean Scott's name was Herbert?
A. No. Scott Dulberg was an owner and Herbert Dulberg was an owner. Three different Dulbergs: me, my brother, my dad.
Q. And Mike McArtor?
A. Yes.
Q. There were four owners at what time?
A. Until my dad died and then it went to three.
Q. Was that business incorporated?
A. Yes.
Q. Did a lawyer assist the corporation with setting up the corporation?
A. Yes.
Q. When did that happen?
A. 1999.
Q. Did you hire the lawyer yourself?
A. All three of us did. All four of us. Sorry.

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Q. What was the name of that attorney?
A. McAndrews, and I don't remember the rest of it. It was McAndrews in McHenry. I can get you the rest of that information.
Q. They are based in Crystal Lake, Illinois?
A. It used to be in McHenry when we did that.
Q. Patrick McAndrews, he was also identified as the registered agent of that corporation?
A. Yes.
Q. It was voluntarily dissolved on April 8, 2011; is that right?
A. That's what the Secretary of State's Office has, yes.
Q. Is that your understanding as well?
A. I was corrected. My partners – I was corrected. It was actually after the accident. How it got to end up with that date, I'm not sure.
Q. What was corrected, exactly?
A. Well, do you want me to – Mike read my deposition and he said, "You got that wrong." I said, "What do you mean?" because I answered it twice in that deposition.
I was thinking that Juskie happened

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before the accident. Sharp Printing wasn't actually dissolved until after the accident when we decided to sell off the equipment and end it all. That's the honest truth.
Q. I will represent to you that the Illinois Secretary of State's Website as of today shows that the company was involuntarily dissolved on April 8, 2011. So it's your testimony that that is not true?
A. I don't know how they come up with that.
Q. Why don't we break it down and start with why the corporation was involuntarily dissolved. Do you know that?
A. Involuntarily? I don't know. It may be that I was late on paying the corporate licensing thing, which we just pay a fine and did it. We didn't renew it because we decided to end it.
We had a ten-year thing, I think, on it. I may be wrong. I've got to go back and look at the records.
Q. Is it possible that the corporation was actually involuntarily dissolved by the Illinois Secretary of State on April 8, 2011?
A. Sure.
Q. Did Sharp Printing, Inc. file corporate

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tax returns while it was a going concern?
A. We had a problem the couple of years before the accident because I was not up in Illinois and I usually did that with the lawyer and the accountant and things got screwed up while I was taking care of a loved one who was dying down in Florida.
Q. Did the corporation ever file tax returns?
A. Oh, yes.
Q. When did they file?
A. Quarterly and annually.
Q. Until what year?
A. Roughly somewhere in 2008. I was missing things because I was not here. I know we missed a few.
Q. I believe you testified in your underlying deposition that Sharp Printing, Inc. was not dissolved as a result of your June 28, 2011 chainsaw accident, correct?
A. Yes, I did. I stood corrected by my partners.
Q. So is it your testimony that the corporation was dissolved because of your personal

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injury?
A. I don't know how to answer that without going back and looking at records.
Q. Was the company winding down up until about the time you were hurt?
A. The company books got screwed up when I was down in Florida and I was back up in Illinois in 2010 getting back on my feet and I was going to pick things back up, get everything paid up, the fines and everything.
Q. Who were you taking care of in Florida?
A. My grandmother.
Q. You were gone from when until when?
A. I want to say from the mid to end of 2007 until somewhere in the beginning of 2010.
Q. Was anyone running Sharp Printing during that period of time?
A. Mike McArtor.
Q. Did Sharp Printing have any customers for that three-year period?
A. Yes, they did.
Q. How many?
A. I'm not sure, without looking at the books.

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Q. Can you estimate what the yearly revenues were for Sharp Printing in the year 2007?
A. In 2007? I'd have to look at the books, to be honest with you.
Q. Was it more than $5,000?
A. Yes.
Q. Was it more than $100,000?
A. No.
Q. Was it more than $20,000?
A. Yes.
Q. Same line of questioning with respect to 2008. Do you know what the revenues were for Sharp Printing in '08?
A. Are you asking me what we reported or what we made and put into accounts for equipment?
Q. I'm asking you about revenues.
A. Total sales?
Q. Total revenues.
A. In two thousand...?
Q. 2008.
A. I'd have to go back and look.
Q. Can you estimate what they were?
A. No, because I wasn't there.
Q. Do you know how many customers the

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company had in 2008?
A. We had a few, I know that. I don't know how many. Mike was handling it and it got messed up.
Q. What types of customers did Sharp Printing have in 2007 and 2008?
A. What kind of customers?
Q. Right. What did you do?
A. We printed on t-shirts. We printed on CDs. We printed on anything that wasn't wet. We printed on glass, all different stuff.
Q. Were there any full-time employees of Sharp Printing in '07 and '08?
A. In '07 and '08, no.
Q. Just the owners?
A. Just the owners.
Q. Did all the owners operate the business?
A. Yes.
Q. Including your brother?
A. Yes.
Q. What were the yearly revenues of Sharp Printing in 2009?
A. I don't know.
Q. What about 2010, do you know?

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A. No.
Q. When did Sharp Printing start selling its equipment?
A. I put up the ad in August. I think August. I might be off by a month or two. August of 2011.
Q. Did you sell any equipment prior to August 2011?
A. No.
Q. What type of equipment did Sharp Printing, Inc. have or own?
A. Mostly textile screen printing equipment, but we had other screen printing stuff too. Paper.
Q. Where was the equipment located?
A. My home.
Q. Did you require a license to conduct this business out of your home?
A. We had what was called a temporary -- we're in a rural area so we didn't have to have that.
Q. In any event, you didn't have a license, correct?
A. We had a license to do business there, yes.

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Q. In that location?
A. Yes.
Q. Did customers ever come to the shop?
A. Yes.
Q. Do you recall how many customers the business had in 2010?
A. Not in 2010.
Q. Was it more than five?
A. Yes.
Q. Was it more than 100?
A. It might be around that. I don't know, specifically.
Q. In 2010 you may have had 100 customers that you did t-shirt screen prints for?
A. Possibly. I'm not saying that is the number, but it's possible.
Q. Did Sharp Printing have any customers in 2011?
A. Mike was finishing up one customer's thing in the spring of 2011, yes. We don't -- I'll give you -- we don't typically get much work between January 1st and the first warm days of Spring. We sell t-shirts and not a lot of people buy during that period. They just don't.

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Q. You did not earn a salary from Sharp Printing, correct?
A. No.
Q. You did not earn an hourly wage, correct?
A. No.
Q. I think your interrogatory answers indicate you didn't take a profit or a draw, correct?
A. Correct.
Q. How much, if any, money did you earn from Sharp Printing in 2011?
A. Can I ask how to define that? In 2011 I didn't pull any.
Q. Did you earn any income whatsoever from Sharp Printing in 2010?
A. I don't think so.
Q. You were down in Florida for '07 to 2010?
A. Sometime in early 2010, yes.
Q. Did you earn any income from Sharp Printing from 2007 to 2010?
A. No.
Q. Were you working in Florida?
A. No.
Q. Is it fair to say you were unemployed

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from 2007 to 2010?
A. Yes. I was not officially collecting unemployment.
Q. You weren't an employee of any business or working for any individual, correct?
A. I did do some work for Mark. I did some traveling back and forth from Florida to Illinois back and forth during that time. When I was up here, I did do some work for Juskie Printing. Not much, though.
Q. What is Juskie Printing?
A. Juskie Printing is another one that I had listed as an employer in the underlying case.
Q. What are they?
A. Another print broker.
Q. Where are they located?
A. I don't know the exact address, but it's off of Chicago Avenue off of 355 going south.
MS. WILLIAMS: I think he's asking what city.
BY THE WITNESS:
A. I don't know how the cities break up down there.
BY MR. FLYNN:
Q. Somewhere in the western suburbs of

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Chicago?
A. Yes.
Q. How long did you have a relationship with Juskie Printing?
A. Since the early 2000s.
Q. What type of printing did Juskie do?
A. Offset, mostly.
Q. What does that mean?
A. Prints on paper.
Q. Did you have a set schedule at any time working for Juskie?
A. I don't know what you mean by "a set schedule."
Q. Did you have a particular number of hours per week?
A. No. The jobs I got were project based.
Q. How many projects did you have from 2007 to 2011 for Juskie?
A. Probably a few hundred quick little things, yeah. At least.
Q. Do you know what you earned from working at Juskie in 2007?
A. Not without looking at the returns, I don't know offhand.

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Q. How often were you in the Chicago area in 2007?
A. I didn't leave here until, I want to say, August or September of '07.
Q. And then thereafter?
A. I was not back that year.
Q. You didn't work for Juskie in 2008, correct?
A. I might have done some stuff.
Q. You're not sure?
A. I'd have to go back and look.
Q. Were you in Florida?
A. Part of the time, yeah.
Q. How often did you come back and forth between –
A. About every three months I tried to get back up here.
Q. For how long?
A. Sometimes a few weeks. Sometimes a month.
Q. Did you come back and work or did you take care of other things?
A. If I'd let Mark know I was back, "I've got something for you or I don't."

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Q. Who is Mark?
A. Mark owns Juskie Printing.
Q. I think your interrogatory answers indicated from 1999 through 2006 you were employed in a barter situation; is that right?
A. With Mark, yes.
Q. What does that mean, exactly?
A. Well, he would owe me money and he would give me printing equipment instead of cash.
Q. He owed you money for working for him?
A. Well, he owed both Sharp Printing and me, personally, money. They are two different things. But he would just pay by saying, hey, I've got this or I've got this paper cutter or this or that. It was a barter.
Q. So you worked for him from 1999 to 2006 but did not earn any income in the traditional sense?
A. No money changed hands.
Q. He gave you things to pay you for projects?
A. Correct.
Q. You gave a deposition in the underlying case on January 24, 2013. Does that sound right?

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A. If it says it on there, yes.
Q. You took an oath that day?
A. Yes.
Q. You told the truth?
A. I tried to, to the best of my knowledge, on that day, yes.
Q. You told the truth in response to all of the questions that day, correct?
A. I tried to, yes.
Q. You testified you were last employed prior to the accident in May of 2011?
A. That would be with Juskie, yes.
Q. It's accurate –
A. Actually, I wasn't employed. I was a 1099 so I was self-employment.
Q. When in May did you stop working for Juskie, whether it be as an employee or an independent contractor?
A. I believe it was the end of May.
Q. Then from the beginning of June until your accident on June 28, 2011, you were not employed; is that an accurate statement?
A. Correct.
Q. You were not even acting as an

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independent contractor for any business from that period of time, correct?
A. Not during that month, no.
Q. Your deposition testimony from 2013 is typed up on 175 pages. I don't intend to go back over each of those details.
A. Okay.
Q. It's fair to say you were injured, your arm was injured on June 28, 2011, correct?
A. Correct.
Q. Which arm was that?
A. My right arm.
Q. As a result of the injury, you hired the Popovich law firm to explore a recovery in the case?
A. I hired them to represent me, yes.
Q. You hired them to represent you and file a lawsuit against David Gagnon who was operating the chainsaw that injured you, correct?
A. He was one of them, yes.
Q. I'm asking you if you hired him to –
listen to the question, please.
David Gagnon was operating the chainsaw, correct?
A. Correct.

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Q. No one else was operating the chainsaw?
A. Correct.
Q. You also hired Popovich to sue Bill and Caroline McGuire, correct?
A. Correct.
Q. They were the land owners where your accident occurred?
A. They did own the land, yes.
Q. The accident occurred at their house, correct?
A. Correct.
Q. This was in the backyard, so to speak?
A. Yes.
Q. Hans Mast was the primary handling attorney at the Popovich firm for your case?
A. That's who I met with, yes.
Q. Did any other lawyer communicate with you while Popovich was handling your case?
A. The lady who sat in on my deposition. Ms. Freeman I think it is. I'm not sure about that.
Q. Generally speaking, Hans Mast, though, was the primary handling attorney?
A. Yes.
Q. Before you hired the Popovich firm in May

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of 2012, is that the correct time period?
A. I don't think so. I don't think they filed it until then, but I might be wrong. I'd have to go back and look.
Q. Was there a retainer agreement executed in May 2012?
A. I don't think I paid a retainer.
Q. Did you execute an attorney engagement agreement in May 2012?
A. I believe it was much earlier than that.
Q. You only executed one engagement letter or engagement agreement with Popovich, correct?
A. Yeah.
Q. Before you executed or came to an arrangement with Popovich, had you talked to any other lawyers about investigating –
A. One.
Q. Let me finish the question.
– investigating or filing the lawsuit?
A. Yes.
Q. Who was that?
A. I went back to the same firm that handled the car accident for me years earlier.
Q. What was the name of that firm?

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A. They changed names when I went back there. It was Weiss – I have to go back through paperwork and get you the actual name.
Q. They are known as a personal injury firm; is that right?
A. Yes.
Q. Why did you not hire them to take your case?
A. The man who handled my case previously with the car accident was no longer with the firm and they said go find somebody else.
Q. I'm not sure what one has to do with the other.
A. I don't either. I just said okay and I went and found somebody else.
Q. Did you meet with an attorney at that firm?
A. Yes.
Q. Did you tell them what happened with your incident?
A. Yes.
Q. They told you that they did not want to take the case; is that right?
A. Yes.

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Q. They declined the case?
A. They declined the case.
Q. Did they tell you why they declined the case?
A. No.
Q. You next went to the Popovich firm?
A. Yes.
Q. They took the case?
A. Yes.
Q. They, ultimately, filed a lawsuit against Gagnon and the McGuires on May 15, 2012; is that right?
A. Yes.
Q. You reviewed the lawsuit and approved it, correct?
A. I didn't – I never got anything to review.
Q. Did you ever read the lawsuit?
A. No. I was never given any paperwork.
Q. Back to the incorporation of Sharp. What interaction did you have with corporate lawyers when they were first retained?
A. McAndrews?
Q. Correct.

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A. What relationship?
Q. What experience did you have with McAndrews when you first retained them?
A. He was good.
Q. How often did you meet with him or speak to him?
A. Once a year.
Q. Did he file corporate returns or other documents for the company?
A. No. I had to file them. He just made sure they were all done right, I believe.
Q. Have you ever had occasion to hire a criminal lawyer?
A. I did in 1990. My mom and dad had to hire one. Not me.
Q. Did you hire a criminal lawyer for your mom and dad?
A. No. They hired one for me.
Q. Who was that?
A. Give me a second. You're digging back far in my memory. Driscoll was the last name.
Q. This was a McHenry County-based criminal lawyer?
A. No. Des Plaines.

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Q. What was the general nature of the reason for the need for a lawyer?
A. Drug possession.
Q. Were you convicted of it?
A. Yes. I pled guilty.
Q. That was a Cook County case, then?
A. No. It was a McHenry County case.
Q. The lawyer was in Des Plaines, though?
A. Yes.
Q. But he represented you in McHenry County in criminal court?
A. Yes.
Q. Throughout the case you met with the lawyer?
A. A few times.
Q. While Popovich represented you in the underlying personal injury case, did you ever communicate with any other lawyers about your case?
A. At the end, yes.
Q. Popovich withdrew sometime in March 2015?
A. Correct.
Q. And Brad Balke entered his appearance on March 19, 2015. Does that sound correct?
A. That is correct.

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Q. Popovich also withdrew that day, right?
A. I don't know if it was on the same day. I'd have to look at the paperwork.
Q. Besides Mr. Balke, had you talked to any other lawyers towards the end of the relationship with Popovich?
A. Yes.
Q. How many?
A. Hundreds.
Q. Hundreds of lawyers?
A. I'm not kidding. Yes.
Q. Did you ask those lawyers to take your case?
A. I asked them to review it.
Q. Did any of them take the case?
A. No.
Q. They all reviewed it, though?
A. Yes. Most took the time to review it.
Q. Did any of them tell you why they didn't want to take the case?
A. There were different reasons I got from various. Some people just didn't get back to me and some people wrote me letters. I think I gave you some of those. But I got various reasons back from

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attorneys.
Q. I don't recall seeing any lawyers, but I would ask you to search for those.
MS. WILLIAMS: We'll search for those. I'll make a note.
BY MR. FLYNN:
Q. As you sit here, do you recall the basis for any attorney declining to take your personal injury case over from Popovich?
A. Say that again.
Q. As you sit here today, do you recall any of the reasons why any attorney declined to take your personal injury case over from the Popovich firm?
A. Yes.
Q. What were those reasons?
A. I remember a few. One I was looking at local lawyers in McHenry County and I was told like -- I can name them. My sister was married to him.
Anyway, I was told if Tom Popovich says you don't have a case, you don't have a case and we're not even going to look at it. That I got a lot of it.

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Q. That's one reason. Any others?
A. That I got locally a lot of. As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that.
Q. Who said that?
A. Sal Ferris.
Q. When did you speak to Sal Ferris?
A. I don't know the exact date.
Q. When did he --
A. He wasn't the only one.
Q. When did he say that to you, that you just described?
A. He said it in a letter and he said it on the phone and he sent me an e-mail, I think. I don't remember the ways that he contacted me. I'd have to go back and look.
MS. WILLIAMS: We'll find it.
BY MR. FLYNN:
Q. Besides Sal Ferris, can you recall any other attorney, specifically, that told you they wouldn't take the case because of your settlement with the McGuires?

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A. Yes.
Q. Who was that?
A. There was at least three firms downtown here right near the Daley Center that I came down to see and I don't remember their names, but they -- I got the same thing out of all three of them.
Q. Did any of the lawyers give you any other reason for declining your case?
A. Mostly it was because they knew Popovich or it was the McGuire settlement.
Q. Did any lawyer tell you that they didn't want to take your case because there was questionable liability against David Gagnon?
A. No.
Q. Did any lawyer tell you that there was questionable liability against the property owners, the McGuires?
A. No.
Q. We're jumping ahead, but did you have different lawyers that handled a binding arbitration or binding mediation for you in the underlying case?
A. Yes.
Q. Their name was Baudin?
A. Yes.

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Q. Why did Brad Balke not handle the binding arbitration?
A. I fired him.
Q. When did you fire Brad Balke?
A. I'd have to look at the dates. I'm not sure, exactly.
Q. Why did you fire him?
A. Because he forced me to undergo the exact mediation at the McHenry County court in front of Judge Meyer that Hans Mast set up that I specifically said no to.
Q. When was this mediation?
A. I'd have to look at the dates again.
Q. Was it a pretrial conference?
A. Yes.
Q. You actually attended this pretrial conference?
A. Yes, I did.
Q. What happened?
A. I said no.
Q. You said no about what?
A. They offered an amount of money and I said no.
Q. The defendants offered an amount of

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money?
A. Yes.
Q. Was this before or after the McGuires settled out of the case?
A. They were settled.
Q. So there was an offer of settlement from David Gagnon or his insurer?
A. Yes.
Q. Do you recall what that amount of money was?
A. $50,000.
Q. You refused the offer?
A. Yes.
Q. Why did that cause you to fire Brad Balke?
A. He wouldn't take it any further than that and he agreed to when I hired him. He agreed that that was not going to be the end of it and then he changed his tune, and I said, you know what – and the other thing was, I finally got through to the Baudins who I wanted to take the case because they had helped my family – his dad helped my family many eons earlier.
Q. Did you ever talk to Brad Balke about the

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liability or lack of liability by the McGuires, the property owners in the case?
A. I don't think so. We were on the Gagnon case.
Q. You didn't discuss the McGuires?
A. There may have been a word or something, but that's not what he was there for.
Q. He never gave you an opinion one way or the other whether the settlement was appropriate?
A. I don't believe Brad did, no. Like I said – I don't think he did.
Q. At some point after your accident did you hire the Daley Disability Law Firm?
A. Yes.
Q. Was that for --
A. I didn't hire.
Q. I know you're anticipating what I'm saying.
A. I was trying to correct myself. I did not hire.
Q. Either way, let me try to get out my question before you raise any kind of response, just so she can take down –
A. Count before I answer.

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Q. That's a good idea.
Did you ever retain the Daley Disability Law Firm?
A. NO.
Q. Did you have any relationship with Daley Disability –
A. Yes.
Q. – Law? Let me finish it before you answer. I know you're anticipating what you think I'm going to say, but it might not come out the way you think. Either way, she can't take down both of us talking over each other.
What relationship did you ever have with the Daley Disability Law Firm?
A. They stepped in as a substitute counsel for the law firm that I did hire.
Q. You originally hired some other law firm to represent you in connection with social security disability?
A. Yes.
Q. What was the name of that original law --
A. The lady's ladies name was Margaret Bradshaw.
Q. You terminated your relationship with her

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one way or another?
A. No.
Q. Why did Daley Disability Law substitute in for her?
A. I was told by – I have to go back and look at the communications exactly how it happened, but I was told that, basically, they are going to be taking over the hearing part of it. I don't know why. I don't know whether they sub out work. I don't know how it works.
Q. Would it be fair to say that you first retained Ms. Bradshaw in 2012 sometime?
A. I'd have to go back and look.
Q. Is that approximately when you applied for social security?
A. It sounds like it.
Q. The Daley Disability Law Firm came in sometime in 2012 as well?
A. I don't know exactly when. I don't know.
Q. Would it be 2012 or 2013?
A. I know that they were there and – I know that something had to be signed when we went in for the hearings. Margaret Bradshaw had to sign something for the judge allowing Daley Disability to

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represent me at the hearings. I don't know when exactly they got involved. That's behind the scenes. I didn't have anything to do with that.
Q. Did you file for bankruptcy while your personal injury case was pending?
A. Yes.
Q. When did you file for bankruptcy?
A. I'd have to look at the paperwork again, but I don't believe that was until, I want to say, about eight or nine months, but I'm guessing, after the McGuire settlement.
MS. WILLIAMS: The question was what month and year.
BY THE WITNESS:
A. I don't know exactly. I'd have to go back and look at the paperwork.
BY MR. FLYNN:
Q. Did you hire a lawyer to represent you in a bankruptcy?
A. Yes.
Q. Who was that lawyer?
A. David Stretch.
MS. WILLIAMS: If it helps, we can stipulate to the date the bankruptcy was filed.

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MR. FLYNN: That's fine. I think we've got some e-mails that may reflect when it was. I just wondered if he knew offhand.
MS. WILLIAMS: I can stipulate, at least, that it was 2014.
BY MR. FLYNN:
Q. You filed for bankruptcy while the Popovich firm was still representing you –
A. Yes.
Q. – in the underlying case, correct?
A. Yes.
Q. Sometimes I'll still pause in my question so if you could please pause before you answer.
In the underlying case you answered written discovery; is that true?
A. I believe so.
Q. Then you later testified at your deposition January 24, 2013, correct?
A. If that's the date, yes.
Q. Ultimately, David Gagnon was also deposed, true?
A. Yes.
Q. Were you present for his deposition?
A. No.

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Q. Did Caroline McGuire give a deposition in that case?
A. I believe so, yes.
Q. Were you present for that dep?
A. No.
Q. What about Bill McGuire's deposition?
A. I was not present.
Q. Did you e-mail back and forth with Hans Mast a fair amount during the Popovich firm's representation of you?
A. By "fair amount," what do you mean?
Q. Did you regularly e-mail with Hans Mast?
A. Yes.
Q. Those e-mail communications have all been produced in this case?
A. Yes.
Q. On to the exhibits. This will be 1.
(WHEREUPON, a certain document was marked Exhibit No. 1, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Let me show you what's been marked as Exhibit 1. These are one set of your Answers to Interrogatories in our case, the current legal

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malpractice case you filed against the Popovich firm and Hans Mast.
Do you recognize this document?
A. Yes.
Q. We've been providing you with various copies of the signature page in the case that's been back and forth between me and your counsel.
I don't, frankly, know if this verification that's attached is the one that went with this document, but I'll just ask you, for the record, if these are your answers, that's your signature, and that this verification is accurate?
A. That is my signature on there, yes.
Q. What was the e-mail address you used in the communication with Hans Mast?
A. Primarily it was pdulberg@comcast.net.
Q. His address was hansmast@comcast.net?
A. And he switched it to at&t.net.
Q. Did you use some other e-mail address as well?
A. I may have accidentally e-mailed him a couple of times from a Yahoo account.
Q. In answering discovery in our case, the legal malpractice case, did you search through both

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of those e-mail accounts of yours?
A. I no longer have the Yahoo account.
Q. Did you search through the Comcast account?
A. Yes.
Q. Did you search for PDFs or attachments to those e-mails that you produced?
A. Everything that I got, I turned over. I had converted the e-mails to PDFs because Comcast started purging the e-mails after so many years, so I turned them all into PDFs.
MS. WILLIAMS: The question was what did you search in your in box.
BY THE WITNESS:
A. What did I search?
BY MR. FLYNN:
Q. Let me ask you a different question. You produced e-mails in this case?
A. Yes.
Q. You turned e-mails into PDFs and sent them to your lawyer; is that right?
A. Yes.
Q. Some of the e-mails I reviewed have an icon that indicates there was a PDF or some other

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attachment to the e-mail. Do you understand that?
A. Yes.
Q. Did you produce the attachments to each of the e-mails in this case?
A. We went through that. I produced the attachments that I still had.
Q. There were some that were not available, correct?
A. Yeah. When I looked at them, 99 percent of them were already part of some other document that we turned over. I think 100 percent of them.
Q. At some point in time while Hans was handling your case, did he start to communicate with you relative to his analysis of the McGuires' liability in the case?
A. Yes.
Q. Did he start to generally advise you that he didn't believe that there was a strong case for liability against the McGuires?
A. Yes.
Q. Is it fair to say that Hans' opinion was that the McGuires did not have liability in the case because they did not control the work that David Gagnon was doing?

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A. Yes.
Q. That's generally a fair summary of Hans' opinion?
A. Not quite exactly those words, but yeah.
Q. The McGuires' liability as property owners was questionable because based on Hans' analysis of the evidence, they did not control the work or the manner of work of David Gagnon on the date of the accident; is that a fair summary?
A. Depends on which time he said that.
Q. Did he say things like that over and over again?
A. He did say things like that, yes.
Q. Again, I don't want to go over the facts you already testified to with regards to the date of the accident. At some point in time was William McGuire swimming in the swimming pool?
A. Yes.
Q. Was that an above ground pool or –
A. Above ground.
Q. Was there a fair amount of time during the day that Mr. McGuire was inside the house watching television?
A. Maybe – he went inside the house for

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probably about 45 minutes before the accident happened. I don't know that he was watching television.
MR. FLYNN: Let's mark the next exhibit as 2.
(WHEREUPON, a certain document was marked Exhibit No. 2, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 2, which is an e-mail chain including e-mails from November 18, 2013, are these e-mails between you and Hans Mast?
A. It looks like it, yes.
Q. I think the time stamps on these e-mails go from the bottom, which would be page 2, to the top of the first page, correct?
A. It's backwards, yes.
Q. In the original e-mail at 1:28 p.m., did Hans Mast relay to you a $5,000 settlement offer from the McGuires?
A. Which – where are you at?
Q. We're on Exhibit 2, which is also labeled as Bates label POP 181. At the bottom of the page, does Hans relay to you a settlement offer for

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$5,000?
A. Yes.
Q. He was telling you that the McGuires' attorney offered to settle the case for $5,000?
A. Yes.
Q. Did you have an understanding that that was a settlement just for the McGuires, not including David Gagnon?
A. Yes.
Q. In the e-mail Hans says, quote, "As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now."
Is that an accurate reading?
A. Of that sentence, yes.
Q. Is it fair to say that he suggested that you take the $5,000 but didn't force you to take it?
A. It says, "So my suggestion is..."
Q. Then did you respond to the e-mail?
A. Yes.
Q. Hans replied again at 8:07 p.m. that same day, right?
A. Yes.

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Q. He said, "Paul, whether you like it or not, they don't have a legal liability for your injury because they were not directing the work."
Is that right?
A. Part of it, yes.
Q. Was my prior summary of Hans' legal analysis a fair summary in view of these e-mails and his opinion that he relayed to you?
A. I think it went further than this, and other things, but yes.
Q. As far as these e-mails, I've accurately –
A. This e-mail, yes.
Q. What else did he tell you about the McGuires and why he didn't think they would be found liable in the case?
A. I'm pulling out of memory because I can't quote which document it's off of.
Q. That's what we're here for.
A. I can only give you the gist.
Q. I'll ask you for the exact language, but if you don't have it –
A. At one point he defined what an independent contractor is for me and he said that

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David was an independent contractor and that the McGuires weren't liable because they had hired somebody outside even though it's their own son, he's an adult, outside to do the work and that they weren't responsible.
Q. By the way, how old was David at the time that this accident occurred?
A. I'm adding. If I was 41 – I don't know what his birthday is, but I'm assuming he would be 44, 45.
Q. Is it fair to say that there were two 40-plus-year-olds, a 41- and a 44-year-old trimming trees with a chainsaw in David's parent's backyard that day, correct?
A. I was not using it. There was one 44-year-old using a chainsaw.
Q. You, the 41-year-old was holding some branches for him?
A. Yes. Just before the accident, yes.
Q. Up until this point in time when Hans is providing this legal analysis to you, you had a fair number of occasions to interact with lawyers, as we've discussed today, correct?
A. At this point, the only lawyer that I

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interacted with was the first one.
Q. I'm talking about in your lifetime. You had a corporate lawyer, you had a criminal lawyer, another personal injury lawyer –
A. I didn't hire –
Q. Let me finish. You had experience with lawyers representing you up to this point in time?
A. Yes.
Q. Did you have an understanding that lawyers evaluate cases differently?
A. Yes.
Q. And judges evaluate cases differently?
A. Sure. That's fair.
Q. Would it be fair to say that some laws in our country are clearer and some are open to interpretation?
A. I think all of them are.
MS. WILLIAMS: Objection. Calls for speculation.
If you understand the question, you can answer it.
BY MR. FLYNN:
Q. Would you say, for example, that the tax code is a little more clearcut than common law

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that's created by cases and case precedent?
A. I'm not real familiar with tax law. I have accountants for that.
Q. How about an easier question. The stop sign means that you stop, and if you go through it, it's pretty clear that you're liable for a traffic violation?
A. I'll agree with that.
Q. The legal liability for a property owner in Illinois might be a little more complicated; is that a fair statement?
A. I don't know.
Q. Would it be fair to say, in your opinion or your knowledge of the law, the property owner isn't necessarily liable because somebody is injured on their property?
A. Are you talking about what I know now or what I knew back when this was?
Q. At any time.
A. What I know now is in the circumstances that we were in, they were very liable.
Q. I'm just asking if – just because somebody is injured on a property owner's property, they are not necessarily liable, correct? Other

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factors are required too.
MS. WILLIAMS: I'm going to object for – he's not an expert and can't testify to legal analysis.
BY MR. FLYNN:
Q. As you sit here today, do you know whether a premises liability case involves multiple factors to prove liability against the property owner?
A. I don't know. I'd say that's fair. You're asking the wrong person for that.
Q. It was Hans' opinion that the McGuires did not control the work based on the evidence, correct?
A. In my opinion?
Q. That's not what I'm asking.
Was it Hans' opinion –
A. I can't –
Q. Let me just finish.
Did Hans tell you that it was his opinion that the McGuires were not liable because they did not control the work?
A. He said that right there, yes.
Q. Do you believe that he truly felt that way? That was his legal opinion?

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A. Do you want the Monday morning quarterbacking version or at the time?
Q. I'm asking if at that time you felt that he truly believed that the McGuires did not have liability?
A. At the time I trusted him, yes. I hired him to represent me, and yeah.
Q. You believed that he was relying his honest legal opinion to you at that time?
A. Yes.
Q. Including on November 18, 2013?
A. Yes.
Q. You did not accept the settlement offer of $5,000 that he relayed to you on that day, correct?
A. Correct.
Q. Did you ultimately meet with Hans to discuss the settlement offer?
A. I think it was the day before this, but I'm not sure. It was either the day before or the day after.
MS. WILLIAMS: I think the question was, did you meet with him, at all, not the date.

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BY THE WITNESS:
A. Yes.
MR. FLYNN: Can we mark this as Exhibit 3, please.
(WHEREUPON, a certain document was marked Exhibit No. 3, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 3. Do you recognize this memorandum?
A. Yes.
Q. You may have seen it from the document production that we made in this case. This is a memorandum drafted by Hans Mast, which purportedly memorializes a meeting that he had with you on November 20, 2013.
Does this refresh your memory as to when you met with him or if you met with him?
A. If he took the memorandum on the same day, then sure.
Q. In the memo Hans says, "I met with Paul and his friend."
Do you see that?
A. Yes.

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Q. Did you meet with Hans and some third person –
A. Yes.
Q. – at or about this time regarding the case?
A. Yes.
Q. Who was that friend?
A. Tom Kost.
Q. Who is Tom Kost?
A. My brother.
Q. Not that it matters necessarily for privilege purposes, but can you tell me how Tom Kost is your brother?
A. We have the same mom.
Q. He was with you and observed the meeting between you and Hans?
A. Yes.
Q. The $5,000 settlement offer was discussed, correct?
A. Yes.
Q. At that time did Hans, again, relay his opinion as to the questionable liability about the McGuires – strike that.
Did he relay to you his opinion about the

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questionable nature of the McGuires' liability?
A. At the meeting with Tom, yes.
Q. He advised you they maintain they were not directing Dave's work. That was the McGuires' position, correct?
A. I don't know that he stayed on that at that meeting. At different times he gave different reasons.
Q. The next line says, "Paul maintains the McGuires controlled everything that Dave was doing."
Is that an accurate reflection of your opinion?
A. Yes.
Q. As you sit here today, do you know if that statement is consistent with your own deposition testimony from the underlying case?
A. Yes.
Q. We'll come back to that. Did you tell Hans that you wanted to read the depositions of the McGuires and David Gagnon's depositions?
A. Say that again.
Q. Did you tell Paul that you wanted to read the depositions of the McGuires and Dave Gagnon's depositions?

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A. Did I tell Paul?
Q. I'm sorry. Did you tell Hans that?
A. That I wanted to read the McGuires and David Gagnon's depositions?
Q. Yes.
A. Yes, I did.
Q. What was the purpose of your wanting to review those depositions?
A. Hans had told me that what they said in their depositions meant that they had no liability.
Q. You wanted to review the testimony to determine whether you wanted to consider the $5,000 settlement offer; is that correct?
A. Right.
Q. Did you do that?
A. Eventually, yes.
Q. Before you accepted the offer?
A. I think so.
Q. So sometime after this meeting on November 20, 2013 and before you accepted the settlement offer on January 29, 2014, did you review those three deposition transcripts?
A. I'll correct you. I did not accept the offer on January 20th. I signed a release on

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January 29th.
Q. Fair point. Did you read the depositions between those two dates, November 20, 2013 and January 29, 2014?
A. Yes.
Q. Those are –
A. I believe I asked him -- I don't know – it may be a little earlier because I don't know that I asked him before or after the meeting. I don't remember. I'd have to go back in the e-mails to give the date.
Q. Some point in time between those two dates you read the deps?
A. I may have asked for them before. I don't know without seeing the e-mail. It was, roughly, in the last quarter of that year, yes. Or the first month. I don't remember the first time that I asked to read them. I don't remember off the top of my head.
Q. At any point in time did you ever grant Hans authority to make a settlement demand in the case?
A. No.
MR. FLYNN: Mark this as Exhibit 4.

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(WHEREUPON, a certain document was marked Exhibit No. 4, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 4. This is a copy of the original complaint in this instant case. It reflects a filing date of November 28, 2017.
Is this your original legal malpractice complaint against the Popovich firm and Hans Mast?
A. I believe so.
Q. Did you review and approve the allegations in this complaint?
A. For the most part. I wanted to reword some things, but the lawyer, they do their thing.
Q. At the time you were represented by the Gooch firm is when you filed this lawsuit, correct?
A. Yes.
Q. Directing your attention back to Exhibit 1, if you still have it. If you could turn to page 10.
The answer to Interrogatory No. 24 indicates that on November 4, 2013, Mast was granted authority to investigate a settlement but a specific

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dollar amount was never provided. Do you see that?
A. He was verbally granted authority to investigate, yes.
Q. Who did you want him to investigate a settlement with?
A. The McGuires.
Q. Just the McGuires or the McGuires and –
A. He wanted to do it. I didn't. I said, "If you want to look at that, go ahead."
Q. Did you grant him authority to investigate a settlement with David Gagnon as well?
A. I don't know if I did or not, off the top of my head, but that would have been much later.
Q. Eventually did you tell Hans that you would agree to accept the $5,000 settlement offer from the McGuires?
A. Eventually did I tell him that?
Q. Yes.
A. Yes.
Q. When did you tell him that?
A. I want to say just before Christmas in December of 2013.
Q. There's no doubt in your mind that you relayed your acceptance of the $5,000 settlement

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offer to Hans Mast before Christmas Day, which would be December 25, 2013?
A. Right.
Q. Then did Hans mail to you a settlement release by letter dated January 24, 2014?
A. I'd like to see the letter, but yeah, I believe so.
Q. I believe it's –
A. I believe he had to mail it a couple times because I didn't get it.
MR. FLYNN: Let's mark Exhibit 5.
(WHEREUPON, a certain document was marked Exhibit No. 5, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 5. I'll represent to you that this is a copy of the second amended complaint that you filed in this case by your new lawyers, your current lawyers. If I could direct your attention to Exhibit D attached to this Exhibit 5.
Is Exhibit D a January 24, 2014 cover letter from Hans Mast to you enclosing the general release and settlement agreement from defense

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counsel for Caroline and Bill McGuire?
A. That's what it says.
Q. In the letter did he ask you to – it looks like it might be a typo. It says, "Please release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience."
A. Right, but I believe it was just a release – it was all tied into one.
Q. This letter is unsigned. Did you receive the letter unsigned?
A. Did I receive this unsigned?
Q. Yes.
A. Yes.
Q. Have you ever seen a signed copy of this letter?
A. No.
Q. If I could direct your attention to the next page of Exhibit D. Is that page 1 of the general release and settlement agreement?
A. Exhibit D?
Q. Correct.
MS. WILLIAMS: Turn the page.

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BY MR. FLYNN:
Q. Is this what you received attached to the cover letter?
A. I don't think so. Let me see. Yes, this looks like it because it's got these things I remember.
Q. When did you receive this letter and the attachment?
A. I would say I wrote back on January 29th and I probably got it that day, signed it and sent it back.
Q. The copy of the release is also unsigned. It's attached as exhibit -- part of Exhibit D to your second amended complaint.
Do you see the signature lines and the notary signature here that's missing?
A. Yes.
Q. Is this the document that you signed and sent back to Hans Mast?
A. The document that I signed had my signature.
Q. I'm asking if this is the same document that you signed and sent back to him?
A. Yes.

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Q. Right now we don't have a signed copy. I don't know that I've seen one in the case.
MS. WILLIAMS: Can we go off the record for a second?
MR. FLYNN: Sure.
(WHEREUPON, discussion was had off the record.)
BY MR. FLYNN:
Q. Is there any doubt, in your mind, that Exhibit D is the letter and attachment that you received from Hans Mast?
A. No. I believe that this is it.
Q. You signed some copy of this release and sent it back to Hans on January 29; is that correct?
A. Yes.
Q. You accepted the settlement offer prior to Christmas and presumably defense counsel or Hans drafted the settlement release and then Hans mailed it to you, correct?
A. Yes.
Q. At any point in time from December 25th until you received this settlement release, did you contact any lawyer to discuss whether it would be appropriate to let the McGuires out for 5,000?

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A. I believe I contacted Hans again.
Q. Besides Hans, did you talk to anyone else?
A. No.
Q. Was there anything preventing you from seeking a second opinion from some other lawyer at that time?
A. No.
Q. Directing your attention to Exhibit E attached to the second amended complaint, the second amended complaint, again, being Exhibit 5. Is this an e-mail from you to Hans on January 29, 2014?
A. This is the e-mail chain between me and Hans, yes.
Q. Down below at the bottom of the page, January 29 at 10:51 a.m., it appears that you were questioning Hans regarding some of the language in the release, including social security disability check boxes. Do you see that?
A. Yes.
Q. Hans responded to you and then at the top of the page here at 1:59 p.m. it says, "Okay, it's signed and in the mail."
A. Correct.

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Q. What did you mean by that?
A. I signed it and mailed it.
Q. Did you -- where did you mail it from?
A. My home.
Q. How did you do that?
A. Put a stamp on the envelope and put it in the mailbox, put the flag up and waited for the mailman.
Q. Is the mailbox attached to your home or is it --
A. It's out on the street.
Q. You walked down there and you put the mail -- the envelope in the mailbox, put the flag up and --
A. That is correct.
Q. Your understanding of signing that release and sending it back to your lawyer was that you would agree to take the $5,000 settlement, correct?
A. Yes.
Q. Hans didn't deliver the letter to you personally. He mailed it to you, correct?
A. He mailed it to me?
Q. He mailed it to you.

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A. Correct. U.S. mail.
Q. Do you recall an allegation in your complaint or amended complaint or second amended complaint in this case alleging that you were pressured or alleging undue influence by Hans in urging you to accept the $5,000 settlement from the McGuires?
A. Yes.
Q. How is it, as you sit here today, can you tell me how Hans unduly influenced you to accept the $5,000 settlement offer?
A. I don't know what Hans was thinking. How did I feel influenced?
Q. Unduly influenced.
Let me put it this way. He didn't put a gun to your head?
A. No.
Q. He suggested that you take the settlement?
A. Correct.
Q. He didn't force you to take the settlement?
A. Correct.
Q. It was your decision?

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A. Correct.
Q. You signed it and you sent it back to him in the mail?
A. Yes.
Q. Aside from your e-mails with Hans on January 29, did you call him that day?
A. I believe so.
Q. Did you also discuss whether it was appropriate to accept the McGuires' $5,000 settlement offer at that time?
A. Yes.
Q. You deliberated on it and decided to take it, correct?
A. There wasn't much – it was take it or get nothing.
Q. You had the opportunity to deliberate on it, correct?
A. For that day, yeah.
Q. You had reviewed the transcripts of the McGuire depositions and David Gagnon's depositions in order to provide you with some information in order to determine whether to accept the settlement offer, correct?
A. I believe I did try to read those, yes.

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Q. Did you call Hans or e-mail him and question him with respect to the evidence, the testimony contained in those deposition transcripts?
A. Yes.
Q. What did you say to him and what did he say to you?
A. There were many conversations over the phone and I'm sure some through e-mails.
Q. He continued to tell you that it was his opinion that the liability on the McGuires is questionable because they did not control David Gagnon's work that day, correct?
A. It depends on which time. Sometimes he said because they didn't tell them how to squeeze the trigger. It depends which time you are talking about.
Q. Again, there was nothing preventing you from seeking a second opinion from some other lawyer at the time you signed the settlement release and sent it back to Hans, correct?
A. From the time I received it, signed it and sent it back?
Q. Right.
A. No. It was a matter of hours. I got it

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that morning.
Q. You decided to mail it that day, right?
A. He needed it. He said now or you're not going to get anything.
Q. There was nothing preventing you from seeking the advice of another attorney at that time?
A. At that time it was time. It was now or nothing.
Q. You were in the comfort of your own house when you received the letter, correct?
A. Yes.
Q. You had the ability to go find another lawyer and ask them to discuss the case at that time. You had done it hundreds of times earlier – strike that.
After the settlement with the McGuires, you continued to prosecute the case against Gagnon, correct?
A. Yes.
Q. Did you have an understanding as to what, if any, insurance coverage he had?
A. Yes.
Q. How much was that?
A. What time frame are you talking about?

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Q. What was your initial understanding as to the limits on David Gagnon's insurance coverage?
A. Hans Mast told me he had $100,000.
Q. Was that in an e-mail?
A. There were – not initially, no, but later on he reiterated that in e-mails, yes.
Q. Did you, ultimately, learn that there was some additional amount of coverage with respect to Gagnon's policy?
A. Long after Hans Mast was gone, not part of the case.
Q. How much was the coverage?
A. The Allstate coverage, I believe, was 300,000.
Q. We'll talk about the settlement later, but did you ultimately settle the case again Gagnon for 300,000?
A. I believe it went to binding mediation.
Q. Was there an award of $300,000 based on a high/low agreement?
A. Yes.
Q. Is it fair to say that if Hans made a mistake about the $100,000 in coverage, that that was corrected and there was never any harm done as a

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result of his –
A. No.
Q. Explain to me how you were harmed by the representation that there was $100,000 in coverage.
A. You want me to explain?
Q. Yes.
A. Had I known the value of the case, I would have not filed for bankruptcy.
Q. Explain to me why one has something to do with the other.
A. Is my family and me going to dump money into a black hole that we can't recover or is there a light at the end of the tunnel where I can pay them back.
Q. At the time that you filed for bankruptcy, had any settlement offer been made from David Gagnon or his lawyers to you?
A. At the time of when?
Q. When you filed for bankruptcy.
A. I don't think so. I'd have to check the dates, but I don't think so.
Q. As the case was progressing against David Gagnon, were your doctors deposed?
A. As the case progressed with David Gagnon,

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I believe they were deposed. I don't remember. I'd have to look at the dates.
Q. Discovery continued on in the case?
A. I believe one doctor was deposed after the McGuire settlement. I'm not sure, though.
Q. Did Hans continue to represent you for some period of time?
A. Yes.
MR. FLYNN: I'll have you mark this as Exhibit 6.
(WHEREUPON, a certain document was marked Exhibit No. 6, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 6. Do you recognize this e-mail chain?
A. Yes.
Q. This is from September 23, 2014. If we go from the bottom up, it appears that Hans said to you that he wanted to give you the option of finding other counsel at this point if you really want to take the case to trial, which I think ultimately will be necessary. Correct?
A. Are we at "before I proceed" or "that's

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the very reason"?
Q. "That's the very reason."
Is it fair to say he was suggesting you find another counsel in the case at that point?
A. Yes.
Q. He also said, "I just do not believe strongly that defense counsel will offer much in the way of settlement."
Do you see that?
A. Yes.
Q. That's his opinion regardless of what he believed the coverage limits to be; is that a fair statement?
A. Yes.
Q. You responded to him, he responded to you and then you wrote an e-mail to him at 8:25 p.m. that night?
A. Okay.
Q. Do you see that? Did you say, "First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw"?
A. Yes.
Q. Did you start to look for other lawyers to help you in your case against Gagnon at that

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point in time?
A. I believe I did, that summer. This is fall, September.
Q. You had already started looking for new lawyers?
A. I believe that Hans had told me to start looking for a new lawyer in April of that year.
Q. Did he say why?
A. We'd have to read his thing. He says why.
Q. Do you recall why he said that to you?
A. He did not feel that the case was provable against David. He did not feel the value of the case was worth it. He did not feel -- actually, this is 2014. The dates are rough.
Q. He thought the case against David was difficult, correct?
A. Yes.
Q. Have you ever described the case as a he said, she said with respect to the facts of the accident?
A. He described that to me many times.
Q. Have you also --
A. And I used that back, yes.

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Q. Have you ever described this case as a he said, she said case?
A. I may have. I don't know.
Q. It is your word against David Gagnon's as to what happened and whose fault it was that day?
A. That's what Hans explained to me as what the problem was.
Q. Did you ever describe the accident as a he said, she said?
A. I don't think I called David a "she said" or me a "she said." I don't know. Right here I do.
Q. What do you say there?
A. I said, "I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw."
Q. He was denying that he even cut you, correct?
A. No, he never denied that.
Q. What was your reason for writing this sentence in that way?
A. Because Hans said that he believed David over me.
Q. With respect to what fact at issue?
A. His deposition versus mine. He said that I didn't make a good witness.

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Q. With respect to what points?
A. All of it. He was dumping me and he was coming up with his own excuses.
Q. You and David were the only ones that witnessed this accident?
A. Correct.
Q. Based on your understanding of how the evidence came out in the case, would you agree that there were differences with respect to the version of events?
A. Oh, yeah.
Q. There were differences between what he said happened and what you said happened?
A. Oh, definitely.
Q. Would it be fair to say, then, it would be up to the trier of fact, whether it be a judge or a jury, to determine who they believed?
MS. WILLIAMS: Objection. Calls for a legal conclusion.
You can answer, if you understand.
BY THE WITNESS:
A. I believe it would be up to a judge or jury, sure.

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BY MR. FLYNN:
Q. At the bottom of Exhibit 7 you say, "Bottom line Hans... do the best you can with what you got."
I'm sorry. I didn't mark this one yet. My apologies.
(WHEREUPON, a certain document was marked Exhibit No. 7, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 7. Is this an e-mail chain between you and Hans?
A. I don't think it's a chain. I think it's one.
Q. Point is well taken. It's you writing to Hans?
A. Yes.
Q. At the bottom it sounds like you had been in the hospital with a migraine and then you wrote, "Bottom line, Hans... do the best you can with what you got."
A. Yes.
Q. What did you mean by that?

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A. He wanted to settle, and I can tell you right now this letter was written after a very traumatic experience and – let me read it and refresh myself. I'm melting down in this letter.
Q. You said after a traumatic experience. Are you referring to the bankruptcy filing from that day?
A. That, in combination with migraines, yes.
Q. David Stretch was your lawyer that filed bankruptcy for you?
A. Yes.
Q. Did you meet with Mr. Stretch and discuss the bankruptcy process before you hired him?
A. Yes.
Q. How long did you meet with him?
A. I think I asked about it. I don't know. It may have been a couple of months or a couple weeks before it got filed. I wanted to learn about it.
Q. Did you, ultimately, list the case against David Gagnon as an asset in your bankrupt filing?
A. Yes, I did.
Q. Is that why the bankruptcy trustee became

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involved with the binding mediation?
A. Yes.
Q. Did you ever meet the bankruptcy trustee?
A. Yes. The first one.
Q. What was the name of that person?
A. The first one was Heeg was her last name. H-e-e-g, I think.
Q. Again, we established that Brad Balke became your lawyer in the case on March 19, 2015, correct?
A. Yes.
Q. Is it fair to say that your relationship with Hans Mast was deteriorating over the fall and beginning of the winter of 2015?
A. I would say it had been deteriorating long before that. You can see from the last exhibit I'm melting down and it was already started deteriorating.
Q. By the time you drafted Exhibit 7, had you talked to other lawyers about taking your case?
A. I have to go back and look, but probably. If he told me to look at other lawyers in April before this, yes.
Q. How many lawyers would you say you talked

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to between April and the time you drafted this e-mail on September 26?
A. I couldn't count that high, probably.
Q. Quite a few?
A. Yeah.
Q. Did any of them take your case?
A. No.
MR. FLYNN: Mark this as Exhibit 8.
(WHEREUPON, a certain document was marked Exhibit No. 8, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 8. Is this an e-mail from you to Hans Mast?
A. Yes. It's an e-mail chain, yes.
Q. On February 22, 2015 at 7:42 p.m. you wrote to Hans, correct?
A. Yes.
Q. Halfway down in that e-mail message you said, quote, "Now I'm left wondering... how hard it is to sue an attorney?"
A. That is true.
Q. You wrote that?
A. Yes.

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Q. The next line you wrote, "And yes, I am and have been looking for someone who will take this case..."
A. That is not in reference to suing the attorney. That was in reference to the Gagnon case.
Q. What did the reference to suing an attorney mean?
A. That was me being angry.
Q. With Hans?
A. Yes. I was seeing red.
Q. You're suggesting that you may sue him?
A. Yeah. I didn't know that I could. I'm wondering about it.
Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?
A. Yes.
Q. You, ultimately, sued him for legal malpractice, right?
A. Yes.
Q. Is that what you had in mind when you wrote this?
A. No. This was about dropping Gagnon. The malpractice is about dropping the McGuires.

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Q. This –
A. We're talking – this is 2015.
Q. In this 2015 e-mail you are suggesting to Hans that you may sue him because of the McGuire settlement; is that right?
A. No.
Q. Then what is it that you're saying to him?
A. That if he damaged the Gagnon case, I didn't know if he did or didn't, and I'm threatening because I'm angry. You can see, again, I'm melting down here. These are emotional outbursts, I guess.
Q. Moving up the page a little bit also on February 22, 2015 at 8:14 p.m., you say, "To be honest, you took this case knowing it was my word versus his."
A. Yes.
Q. He said, he said, right?
A. Yes.
Q. Is that a fair characterization of the case, your word against David's?
A. That's how Hans kept describing it. That's the way I put it back to him, yes.
Q. You didn't correct him or dispute his

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characterization, did you?
A. No. I used his characterization.
Q. You agreed with it?
A. He said – how did it go? We had conversations between these e-mails on the phone. Then we would hang up and I would get angry and type it in an e-mail, type whatever it was that bothered me so he had it.
Q. Let me ask another question, if that's okay.
Did you ever correct Hans if he called this a he said, he said case? Did you ever say it's more than that?
A. Do I ever say it's more than that?
Q. Did you ever correct him? If he said it's a he said, he said case, did you say no, that's not right?
A. He said there's no witnesses. I said, "I'm a witness."
Q. You're one of the hes. It's your word against David Gagnon's, as you said in this e-mail?
A. Yes.
MR. FLYNN: If I could have you mark that as Exhibit 9.

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(WHEREUPON, a certain document was marked Exhibit No. 9, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Exhibit 9, is that Brad Balke's substitute appearance that was filed on March 19, 2015 in the case against Gagnon?
A. It looks like it, yes.
Q. Back to Exhibit 5, which is the second amended complaint. If I could direct your attention to Exhibit F. This appears to be a more complete copy of another e-mail we just talked about. Is Exhibit F more of the February 22, 2015 e-mail chain?
A. I'm not sure if that's separate or the same. Oh, it looks like it.
Q. At 7:20 p.m. Hans wrote to you and said, "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case."
Right?
A. Yes.
Q. He says, "I've been telling you over a year now the problems with the case and you just

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don't see them."
Correct?
A. That's what it says.
Q. Obviously, a difference of opinion, right?
A. Yes. Are you talking about difference of opinion as to the value or difference of opinion of the problems within the case?
Q. Let's go on. He says, "You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear, it is not. My guess is that seven out of ten times you will lose the case outright. That means zero. That's why I've been trying to convince you to agree to a settlement. You clearly do not want to."
Did I accurately read that?
A. Just that part of that paragraph, yes.
Q. So Hans is telling you that in his opinion your case against Gagnon you're going to lose it seven out of ten times, correct?
A. In this one, yes.
Q. He's acknowledging that you may have a

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chance.
A. I think later on he says nine out of ten.
Q. In this e-mail he says seven out of ten you will lose.
A. Yes.
Q. He's recognizing three times out of ten you may win, right?
A. I don't know what Hans is thinking.
Q. Is that what he said?
A. He says seven out of ten times you lose.
Q. You understood that there are risks in taking the case to trial that you could lose?
A. There are unforeseen risks, yes.
Q. There are always risks, period, in taking a case to trial?
A. Yes.
Q. Before you hired Brad Balke and after Hans told you he couldn't represent you, did you talk to any other lawyers about taking your case?
A. Yes.
Q. How many?
A. I can't tell you. A lot.
Q. Did any of them tell you that they wouldn't take the case because they didn't think you

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could prevail against Gagnon?
A. No.
Q. Not one?
A. No.
Q. What are the names of any of the lawyers you talked to about taking your case over from Popovich?
A. I can't tell you without looking at documents who it was and what date it was, what it was between these two.
Q. I don't think documents I produced would help you in that regard.
I'll just ask you based on your memory the names of any lawyers you met with from the time Hans wrote this February 22 e-mail –
A. I believe –
Q. Let me finish.
A. I believe –
MS. WILLIAMS: He has not finished his question.
THE WITNESS: Sorry.
BY MR. FLYNN:
Q. From the time that Hans wrote this February 22 e-mail and the time that Brad Balke

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enters an appearance on March 19. Just the name of any lawyer you –
A. I believe that Sal Ferris that I was talking about was one of the lawyers that I talked to.
Q. You're not sure? You believe that he was?
A. In between this time and this time?
Q. Yes.
A. I believe it's right around then.
Q. What type of law practice does Sal Ferris have?
A. I believe personal injury.
Q. Did you ever talk to him about taking your case before that date?
A. Before the date of this e-mail?
Q. Yes.
A. I'd have to look at it.
Q. He wasn't one of the original attorneys that you spoke with at the beginning of the case?
A. No.
Q. Fair to say once Balke entered his appearance on March 19, 2015 that Mast and Popovich were no longer your attorneys, correct?

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A. When Balke enters his appearance?
Q. Yes.
A. I would believe that, yes.
Q. They were terminated and Balke stepped in?
A. Yes.
Q. Can you tell me how the binding mediation which proceeded on December 8, 2015 evolved and came to be.
A. I was ordered into it from a bankruptcy court.
Q. Why is that?
A. I believe that the trustee put a motion up. I don't know who did it. I assume it was the trustee and the court ordered that it be put into binding mediation.
Q. Did you appear at the mediation?
A. Yes.
Q. Do you recall the name of the mediator?
A. Not off the top of my head, no.
Q. One of the exhibits to your second amended complaint indicates it was retired Judge James Etchingham.
A. That sounds familiar.

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Q. Do you recall how long the mediation lasted?
A. All day.
Q. Do you know if the parties submitted mediation briefs or statements to the judge?
A. I believe both sides submitted a whole bunch of things.
Q. The Boudins represented you in this mediation?
A. Yes.
Q. Because you had fired Balke by this point?
A. Oh, yes.
Q. Directing your attention, again, to Exhibit 5, the second amended complaint and Exhibit G. Exhibit G is, apparently, a memorialization of the mediation award. Do you see that?
A. It's how the judge decided to break it down, yes.
Q. Do you see that there's an award for future medical expenses of $200,000?
A. Yes.
Q. Since that date of December 8, 2015, have you received any medical treatment relative to your

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injuries –
A. Yes.
Q. Let me finish. Strike the question.
Since that date, December 8, 2015, have you received any medical treatment for your injuries incurred on January 28, 2011?
A. You're asking since the date of the binding mediation?
Q. That's right.
A. Yes.
Q. What medical treatment have you received?
A. I do an ongoing with the neurologist for the dystonia.
Q. That's in your right arm?
A. Yes.
Q. Have you calculated the medical bills that you've incurred since that day?
A. No, I have not.
Q. Are they anywhere near $200,000?
A. It depends if you calculate with or without insurance. I know what I pay, but then I have to pay for the insurance that pays for that.
Q. How much have you paid out of pocket since that date for medical treatment on your arm?

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A. I don't know, offhand.
Q. Was there any doctor that opined that you would require $200,000 in future medical expenses?
A. I believe so.
Q. Who was that?
A. I believe that was Dr. Patel. I don't know that she said $200,000. She was the doctor that was handling it at the time.
Q. Did you discuss your injury with the mediator at the mediation?
A. He did ask me a few questions.
Q. How much time did you spend with him?
A. On and off. He would come in and ask me questions and then go away and then come in and would ask me questions and then go away.
I don't remember which one was the mediator, which one was the Allstate adjuster, which one was the – I don't remember.
Q. You're not sure which one was the mediator?
A. They came in and they said they are going to ask you some questions and I answered them.
Q. As you sit here today, you don't know how much face time you had with the mediator that day?

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A. I don't remember the face of which one is which.
Q. Did the issue of lost wages ever come up?
A. At the mediation with me?
Q. Yes.
A. I don't remember.
Q. Did you ever make a claim of lost wages of $250,000?
A. I may have.
Q. Do you know what that was based on?
A. Yeah.
Q. What is that based on?
A. Past and future.
Q. What past wages had you ever earned that could lead to an award of $250,000?
A. To me, that's not a very high number. I think I asked for more than that. It would be an average over a certain number of years plus benefits and that's all lost.
Q. Would it be fair to say that your income would be accurately reflected in the tax returns you've produced in this case, so I don't want to ask you about each one of them?
A. I would say my personal income, yeah.

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Q. Have you filed personal tax returns since 2015?
A. Tried.
Q. I didn't ask you if you tried.
A. No. They won't let me. They said I don't make enough anymore.
MR. FLYNN: I believe the next exhibit is 10.
(WHEREUPON, a certain document was marked Exhibit No. 10, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what's been marked as Exhibit 10. This is a six-page binding mediation agreement. The copy I have is unsigned.
Do you recognize this as the mediation agreement that governed your December 8, 2016 mediation?
A. Yes.
Q. If I could direct your attention to -- first, let me ask you.
Do you know why the bankruptcy trustee or the bankruptcy court ordered binding mediation as opposed to nonbinding?
A. I have no idea.

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Q. On page 4, section F, subsection B -- I'm sorry, 1B. It says, "The parties agree that for this mediation the minimum award to Paul Dulberg will be $50,000. Also, the maximum award to Paul Dulberg will be $300,000."
Do you see that?
A. Yes.
Q. Do you know why the parties agreed to this high/low agreement?
A. No.
Q. Do you recall alleging in your original complaint against Popovich that there was a high/low agreement?
A. There is. There was.
MS. WILLIAMS: Can you repeat the question, please.
(WHEREUPON, the record was read by the reporter as requested.)
BY THE WITNESS:
A. I don't know. I'd have to read it.
MS. WILLIAMS: I asked her to read it. And you had answered it previously.
BY MR. FLYNN:
Q. Directing your attention back to

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Exhibit 4, which is the original complaint in this case. Page 4, paragraph 16.
A. Okay.
Q. There's a sentence that begins with, "Unfortunately, a high/low agreement had been executed by Dulberg reducing the maximum account he could recover to $300,000 based upon the insurance policy available."
Do you see that?
A. Yes.
Q. It's not your position or testimony that Popovich had anything to do with the high/low agreement?
A. That was a mistake in there. No.
Q. You would agree that Popovich had nothing to do with the high/low agreement?
A. I believe that events that unfolded the way they did was due to Hans Mast's initial assessment of the value of the case.
Q. Let me ask it a different way.
Did Popovich have any idea that this high/low agreement existed when it was entered into?
A. I don't know.
Q. Do you have any reason to believe that he

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did?
A. I don't know. I don't know how much the Boudins were in contact with them because they worked together. I don't know.
Q. What do you mean, "they worked together"?
A. They worked together on all different cases. That's a small county out there.
Q. Did you ever write to Hans and accuse Popovich of having a conflict of interest because he may have gone to high school with David Gagnon?
A. I did learn that.
Q. Do you believe the fact that someone went to high school with another person may give rise to a conflict of interest in a lawsuit?
A. I was shooting in the dark and guessing why they didn't see this as a viable case.
Q. Do you think that was appropriate to send to your lawyer at the time?
A. When you're wondering why they are doing what they are doing and you learn that and they were pretty much in the same class and they all knew each other and it's a small town, let me ask you, are you friends with the guy I'm suing? That's an appropriate question.

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Q. You didn't say that. You asked if they went to school together.
A. Correct.
Q. Popovich did not enter into this high/low agreement on your behalf, correct?
A. Popovich, no.
Q. When I say "Popovich," I mean generally the Popovich firm and your lawyers.
A. This was years later. No.
Q. They had nothing to do with it, right?
A. I wouldn't say anything to do with it.
Q. Withdrawn.
Who drafted this high/low agreement that's contained in the mediation agreement?
A. I'm not sure who drafted it.
Q. Would it have been either the mediator, the bankruptcy trustee, your lawyers or the defense attorneys?
A. I assume that this would have been an agreement of all of them.
Q. You don't think Popovich had anything to do with drafting this high/low agreement, do you?
A. I don't know that he did or didn't.
Q. Do you have any reason to believe that he

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did?
A. At this point, no.
Q. Continuing on in Exhibit 4. Directing your attention to the bottom of page 4, paragraph 10.
A. Exhibit 4. Say it again.
Q. The bottom of page 4, paragraph 20. This is your complaint against Popovich and Mast.
A. This has been amended since then.
Q. I understand. Paragraph 20 reads, "Following the execution of the mediation agreement with the high/low agreement contained therein and the final mediation award, Dulberg realized for the first time that the information Mast and Popovich had given Dulberg was false and misleading and that, in fact, the dismissal of the McGuires was a serious and substantial mistake."
Do you see that?
A. Yes.
Q. Can you tell me, as you sit here today, what false and misleading information did Mast and Popovich give you?
A. That I realized on the day of the – following the execution of the mediation agreement?

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Q. Correct.
A. The liability of the McGuires.
Q. What was false about it?
A. What made them liable and what didn't.
Q. What is it you learned to dispute what you were told?
A. I learned from a reliability expert that had the report there that day that the McGuires provided the tools which made Gagnon an agent of the McGuires. He was working at their behest.
Q. Who was this liability expert?
A. What's his name?
Q. He's a doctor?
A. Yes.
Q. Continue on with that paragraph. "Following mediation, Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016."
Do you see that allegation?
A. Yeah.
Q. Who advised you to seek an independent opinion from an attorney handling legal malpractice matters?

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A. I believe that was Boudin.
Q. You believe that or you know that?
A. I know that.
Q. You alleged it in this complaint so it's important that we know who that was.
A. Yes, that was Boudin.
Q. Boudin told you to seek an independent opinion from an attorney that handles malpractice matters?
A. Yes.
Q. It says you received that opinion on or about December 16, 2016.
A. Yes.
Q. That's separate and apart from any opinion you may have received from a liability expert, a doctor, an expert on chainsaws?
A. Yes.
Q. Who was the lawyer that you received a legal opinion from on December 16, 2016?
A. I believe that would be Thomas Gooch.
Q. The drafter of this complaint?
A. I'd have to look at the dates because I think – December 8th was the mediation; is that right?

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Q. Correct.
A. So the 16th would sound about right to be meeting with Gooch, but I can get that date.
Q. You met with Gooch –
A. Soon, within weeks. It was quick.
Q. Now that the door has been opened, you fired Gooch in this case, correct?
A. Yes.
Q. He drafted this complaint and he's also the one that gave you an opinion about legal malpractice liability on the part of my clients?
A. Yes.
Q. What is it that he told you on December 16, 2016?
MS. WILLIAMS: Objection. I don't think we've waived that privilege, but – can we go off the record for a second?
MR. FLYNN: I don't want to go off the record. I've asked this interrogatory in about five different ways and it hasn't been answered appropriately.
The allegation was made in the complaint. That's why I drafted the interrogatory the way I did. I don't think that there's been a square

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answer to it. This is clear that you're talking about a legal opinion.
BY THE WITNESS:
Q. Is this the same wording as we have in the current complaint?
BY MR. FLYNN:
Q. It's not exactly.
A. What would this be valid for, then?
Q. You've raised a response to a statute of limitations defense in this case and placed your knowledge of the malpractice and the date of incurring of an injury at issue.
Because your discovery of malpractice has been placed at issue, it's our position that you've waived privilege anyhow with respect to this conversation on December 16, 2016.
A. I'm not sure –
MS. WILLIAMS: There's not a question pending. I'm going to make a standing objection as to privilege with Gooch.
If we can agree that that objection will stand, we can go through this line of questioning and then if we need to later, have a judge determine whether or not that line of questioning is

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admissible. Are you agreeable to that?
MR. FLYNN: I'm agreeable to continuing on for a few minutes. I want to explore. I'll try to lay foundation for – to confirm this wasn't anyone else, for starters. Why don't we continue on and if you need to raise it again, we can talk.
MS. WILLIAMS: Otherwise, I'm just going to raise it to every single question you ask. I just don't want to have to continue to make the objection as to – if questions are asked about advice given by a legal malpractice attorney, I'm going to raise an objection as to that.
MR. FLYNN: Okay. But this is why we had the 201K conferences, multiple 201K conferences. It was made clear, to me, that there was a waiver with respect to subsequent counsel.
MS. WILLIAMS: Tom Gooch isn't subsequent counsel.
MR. FLYNN: The allegation has been made in this complaint and apparently this is subsequent counsel subsequent to my client's representation.
MS. WILLIAMS: It is a different case. It's not subsequent counsel in the underlying case. It's a new case.

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MR. FLYNN: We'll get to the interrogatory in a few minutes. I'll pull that out.
BY MR. FLYNN:
Q. Let me ask you. Is there any other attorney besides Mr. Gooch that gave you an opinion that's referenced here on December 16?
A. No one that isn't privileged.
Q. Could it have been anyone else?
A. No.
Q. So Gooch is the only person that's being referenced here in this allegation that's in your complaint that's a public record?
I'm not asking you right now what the opinion is. I'm going to do that later. I'm asking you who gave it to you. It's not anyone besides Mr. Gooch, correct?
A. Yes. It was Thomas Gooch.
Q. He drafted the very complaint that that allegation is contained in?
A. Yes.
Q. Dr. Landford was the liability expert that you referenced earlier, correct?
A. Yes.
Q. Back to the allegation that Gooch and –

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that Popovich and Mast provided you false and misleading information. That information was simply their legal opinion on the McGuires' liability; isn't that correct?
A. No. There was nothing simple about that. That's a very complex series of things that go all the way back to before the McGuire settlement.
Q. They didn't lie to you, did they?
A. It depends on how you define lie.
Q. How do you define lie?
A. If you know better and you say something else, that's a lie. Omission is a lie.
Q. Did they provide you with anything other than a legal opinion as to the McGuires' liability?
A. Yes. They provided me with case laws. They provided me with all different stuff. Yes.
Q. Whatever the advice that was given to you on December 16, 2016, you felt that you were mislead by Popovich and Mast at that point in time, correct?
A. At that point in time it was confirmed to me that I had a valid case against Popovich.
Q. You had a valid malpractice case against Popovich?
A. Yes. I did not know before that.

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Q. As of December 16, 2016?
A. Yes.
Q. Why is it that you didn't file that lawsuit until nearly a year later on November 28, 2017?
A. I believe because Thomas Gooch had some health issues and then his wife had some health issues. It took a while.
(WHEREUPON, a certain document was marked Exhibit No. 11, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what has been marked as Exhibit 11. This is one set of your supplemental Answers to Interrogatories.
First, I'll ask you if that is your verification and signature at the end?
A. That is my signature.
Q. Again, I don't know if that verification was attached to this original document. It may have been. But there's been some confusion with respect to these verification pages. This is your signature and you answered these interrogatories, correct?
A. Yeah.

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Q. So this is a valid verification page with respect to this discovery document; is that a fair statement?
A. This is supplemental to original answers.
Q. That's your signature and you agree these are your answers?
A. I've reviewed them and we went over them and yes, I agree.
Q. And they are accurate?
A. As accurate as we can be.
Q. If I could direct your attention to Interrogatory No. 26. Do you see that?
A. Okay. Yes, I see it.
Q. This is similar to what we just talked about a few minutes ago. I'll read the interrogatory to you. "Identify and describe the false and misleading information Mast and Popovich provided to you and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake as alleged in paragraph 56 of your second amended complaint."
Do you see your supplemental answer here?

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A. I see it, yes.
Q. You reference the mediation award and then you state, quote, "At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning."
A. I do.
Q. Can you explain what that means because I don't quite understand it.
A. Hans Mast assured me — I want to go back to 2013, the Fall between October and the signature of the final release for the McGuires.
He assured me that, he said -- at that time he didn't tell me what anybody's policies were. He assured me that if we let the McGuires out of the case, Gagnon has enough insurance, you're going to get everything from him, so it doesn't matter that you're carrying the McGuires in the case.
Q. The next interrogatory is 27. "Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint including the identity of the expert, any opinions and any other information

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provided by the expert which caused you to learn in the summer of 2016 and became reasonably aware that Mast and Popovich did not properly represent you."

What does the summer of 2016 have to do with your discovery of malpractice?

A. Technically, I was sent Dr. Landford's report – I might be off a little by a couple months here, but I think in July of that year. And I read it, but I didn't – you don't catch everything the first time you read it.

It was not until later that I caught the part of the report that was brought to the attention – it caught my eye when I was sitting there and reading it.

Q. You didn't read any of this interrogatory or the original interrogatory as requesting legal opinions that you had alleged that gave you notice that there was a malpractice claim against Mast and Popovich?

A. Excuse me?

MR. FLYNN: Can you read that back.

(WHEREUPON, the record was read by the reporter as requested.)

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BY THE WITNESS:

A. The way she said it, I don't understand.

BY MR. FLYNN:

Q. I'll rephrase it.

We've known about this allegation in the original complaint since it was filed. You received some legal opinion in 2016. That's why you didn't know you had a malpractice case against Mast and Popovich.

We asked you in discovery answers a couple different ways what those legal opinions are. You didn't read 26 and 27 as requesting information about legal opinions?

A. I don't know that an expert witness would be considered a legal opinion. Wouldn't that be more like an attorney?

Q. I'll ask you again. Why is it that you first became aware of a legal malpractice matter against Mast and Popovich on or about December 16, 2016?

A. December 16th I was talking to a legal malpractice attorney.

Q. You were told that there was a case against –

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A. A valid case, yes.

Q. – Mast and Popovich?

A. Yes.

Q. Why is it you didn't know about this valid case prior to that date?

A. Because I hadn't talked to anybody that was a lawyer that specialized in that area.

Q. Whatever it is that he said to you gave you the basis for believing you had a valid case against Mast and Popovich?

A. Very much so, yes.

Q. You're withholding that information from me right now, as we sit here. You won't tell me what that expert said, correct?

MS. WILLIAMS: Repeat the question.

(WHEREUPON, the record was read by the reporter as requested.)

MS. WILLIAMS: I'm asserting attorney-client privilege on behalf of my client for Gooch's advice on December – in December of 2016.

However, because I want to move forward with this deposition, if he can answer the question, I believe we should go ahead and move forward and have him answer the question.

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I'll assert the privilege with the understanding that this may have to be briefed later.

MR. FLYNN: To be stricken later?

MS. WILLIAMS: Right.

MR. FLYNN: The substance of the answer he can put on the record. You're just saying you may move to strike it later?

MS. WILLIAMS: Right. I want to maintain the privilege with the objection, but I don't want to have to call the judge right now. I don't think it's something we should have to call the judge about right now.

MR. FLYNN: Just for the record, I believe it's been placed at issue by virtue of the first amended complaint. The responses to the statute of limitation defenses that were raised in very dispositive motions before Gooch withdrew from the case, the gist of that is the discovery rule has been raised and, therefore, it's our position that the date of discovery has been placed at issue and, accordingly, any legal opinions that were provided to this plaintiff have been exposed and that we're entitled to know what those are.

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MS. WILLIAMS: Can I also note one more thing?
MR. FLYNN: Sure.
MS. WILLIAMS: In the supplemental -- in the request it specifically refers to paragraph 57 of the second amended complaint, which is different.
MR. FLYNN: It is different. I'll acknowledge that. I believe that the prior original interrogatories asked for any opinions relative to the discovery of the malpractice. I could be wrong. There was a reason I asked this and that's why I believe that's what it was about.
MS. WILLIAMS: So --
MR. FLYNN: That particular one I agree with you is not phrased as calling for --
MS. WILLIAMS: Right. That's the question that was asked. We answered the question that was asked, which that particular paragraph does not refer to a legal expert. It just merely -- I'll read it out loud. "It was not until the mediation in December of 2016 based on the expert's opinion that Dulberg retain for mediation that Dulberg became reasonably aware."
I just want it clear that he did answer the question that was asked. I understand your line

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of questioning and we'll agree to move forward.
MR. FLYNN: I believe there were other discovery requests that did point to that and I think we can take a break here and I can find them fairly quickly because I think we're getting close to the end anyway.
MS. WILLIAMS: Okay.
BY MR. FLYNN:
Q. Did you ever receive any money from the mediation award?
A. No. I received money from the bankruptcy itself. It was a surplus bankruptcy.
Q. There was a $300,000 award given in the mediation.
A. That did not go to me. That went to bankruptcy.
Q. It was collected on your behalf and paid to the bankruptcy trustee, correct?
A. Correct.
Q. All $300,000?
A. I don't know that because I think -- I don't know how exactly it works. I heard attorneys have a lien that's special. I don't know how they break it up. I assume it goes to the trustee.

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Q. The Boudins weren't working for free. They got something out of it, right?
A. Yes.
Q. The trustee took the remainder and paid off some of your creditors, correct?
A. Correct. All of them.
Q. But the award was paid to the trustee on your behalf?
A. I believe so. I don't know how it worked.
Q. How much was the surplus after your creditors were paid?
A. After just the creditors?
Q. How much did you get?
A. How much did I get?
Q. Yes.
A. A third.
Q. I'm asking how much money did you get?
A. A third of the award.
Q. Dollars. How much money did you get?
A. Roughly a hundred.
Q. $100,000?
A. I don't know the exact number. It's roughly a hundred.

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Q. Was there a check that was issued to you?
A. By the trustee, yes.
Q. Did you cash it?
A. Yes.
Q. At what bank?
A. McHenry Bank & Trust.
Q. Do you still have an account there?
A. Yes.
Q. Do you have a copy of the canceled check?
A. I'm sure the bank has a photo thing.
Q. You can request a copy of the check, correct?
A. I could. I could see if they got it.
Q. I would ask you to do that. If you have any other documentation relative to the payouts that were made by the bankruptcy trustee on your behalf, we are requesting that information.
MR. FLYNN: Why don't we take a break and I'm going to look for one document and then we're just about done here.
(WHEREUPON, a recess was had.)
MR. FLYNN: Mark these as the next two.

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(WHEREUPON, a certain document was marked Exhibit No. 12, for identification, as of 02/19/2020.)
(WHEREUPON, a certain document was marked Exhibit No. 13, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm going to show you what I've marked as Exhibits 12 and 13. Twelve are your answers to Hans Mast's interrogatories. Thirteen is your responses to Popovich's request for production.
Interrogatory No. 1 from Mast asks, "Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach."
Do you understand that?
A. Yes.
Q. So how is it they committed malpractice?
A. May I see it?
Q. I'm going to show it to you in a second. I only have one copy.
This is basically, how did you first become aware that they committed malpractice?

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That's the essence of that interrogatory.
Here is your response. I can show that to you. It doesn't reflect any discussion with any malpractice lawyer in December of 2016.
Tell me –
A. Let me read it again. We're talking about No. 1 on this?
Q. Correct.
A. Okay.
Q. You understand it?
A. Yes.
Q. Would you agree that the legal opinion you received on December 16, 2016 is responsive to that interrogatory, whatever it is that you were told?
A. Yes.
Q. You didn't identify this December 16, 2016 discussion in the answer to that interrogatory, correct?
A. Say that again.
Q. Your discussion with Mr. Gooch on December 16, 2016, that's referenced in your original complaint, you didn't respond and identify it in this answer to the interrogatory, correct?

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A. This asks for every way Popovich or Mast breached the duty of care. It didn't ask for Gooch's opinion.
Q. How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?
A. Yes.
Q. That's what you've alleged here in this complaint.
A. Yes.
Q. Here I'm asking you, each and every way that they ever breached a duty of care to you. I covered the waterfront. You didn't answer --
A. On the McGuire case it was between October 2013 and January 2014. Yes. There's a multitude of things and that's why I listed a range.
Q. I'm asking when you became aware of it, in that interrogatory. Do you see that?
A. I became aware of that when Thomas Gooch read them and said there's a problem here.
Q. That's not the way you answered the interrogatory, correct?
A. I answered the first part. I did not answer after the comma and the and.

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Q. There's no objection and indication that any information is being withheld, correct?
A. Excuse me?
Q. There's no objection and an indication that you're withholding –
A. I was not withholding.
Q. I'll show you Exhibit 13. It asks – Exhibit 13 are the production requests to you. Number 8 asks for you to produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created and the date the recipient received the document.
The answer is, "The plaintiff is only withholding attorney-client communication between his successor counsel."
Is that your answer to the production request and did I accurately read No. 8?
A. May I consult with her for a minute?
Q. Sure.
THE WITNESS: Can we go off the record?
MS. WILLIAMS: If you can answer the question, answer the question first.

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BY THE WITNESS:
A. It's been a while since I've done this, so I'm not sure who the successor counsel is. Is it her or is it the Boudins or Balke?
BY MR. FLYNN:
Q. I think successor counsel, we can both agree, the successor counsel in the underlying case which would be Balke and then Boudin.
You didn't identify any documents withheld other than documents between you and successor counsel, correct?
THE WITNESS: I believe we waived those, didn't we, for Balke and Boudin?
MS. WILLIAMS: For Balke and Boudin we can represent that we waived those.
BY MR. FLYNN:
Q. Let me ask a different question.
Did Gooch communicate with you in writing relative to his opinion that you had a legal malpractice case against Mast and Popovich?
A. In writing?
Q. Yes.
A. I suppose the agreement between us that he would represent me because I had the case is a

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document in writing.
Q. Did he tell you -- strike that.
The discussion that you reference in the complaint, paragraph 20 of December 16, 2016, was that a face-to-face communication with Gooch?
A. What number is that?
Q. Exhibit 4, paragraph 20. The legal opinion you received, was it verbal, was it written?
A. I believe it was verbal.
Q. Now, I'm going to ask you what he said. There was an objection and that will be addressed by the Court later. Please tell me what Gooch told you.
A. He read what I brought him, looked through some things, and I don't remember if it was the same day that we talked to him or he took a day or two. I don't remember. He got back to me and he said, "You have a case here. You have a valid case."
Q. Did he say why?
A. On the basis of what I brought to him. Yes.
Q. Specifics, though. I don't want to talk about generalities. Did he tell you what Mast and

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Popovich did wrong and how it injured you?
A. How it injured me? Yeah.
Q. The first part of my question was, did he tell you exactly what they did wrong in connection with your -- their representation of you?
A. He probably did. I'm not recalling it right now. I'm pulling a blank.
The parts of the conversation I'm remembering, and for some reason I'm not pulling it. We've been at this a while and this is a long thing. Yes, he said based on what he saw, he saw reason for malpractice.
Q. You don't remember any details, as you sit here? Did you discuss the liability of property owners in Illinois?
A. Well, if they were just property owners in the case, that would be one thing, but they weren't just property owners.
Q. That wasn't my question. I'm asking if you discussed it?
A. Certainly.
Q. You and Gooch discussed the liability of the McGuires in the case?
A. Yes.

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Q. What did you say to him and what did he say to you?
A. I showed him the expert opinion.
Q. The chainsaw expert?
A. Yes.
Q. Did you show him any deposition transcripts?
A. Yes.
Q. Which ones?
A. All of them.
Q. And he read them before you talked?
A. I don't remember. Like I said, it may have been a few days between our initial meeting and bringing the whole file that I had and trying to get what the Boudins had and letting him go through it. I don't remember how long that took.
Q. How did you transmit the documents to him --
A. My brother carried them.
Q. Let me finish.
How did you transmit the documents to Mr. Gooch, including the deposition transcripts?
A. I believe we brought him a box.
Q. So you physically handed the documents to

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him?
A. I didn't physically hand them. My brother did.
Q. Did you communicate with Mr. Gooch by e-mail, at all, leading up to this meeting?
A. No.
Q. Did he ever write you any letters?
A. An e-mail or regular mail or what are you talking about?
Q. Any letters whatsoever.
A. Throughout the course of his representation, yes.
Q. What about in December of 2016?
A. I believe we started communicating in December, yes.
Q. But in writing?
A. In e-mails, sure.
Q. Did he discuss –
A. We may have. I'm not – whenever we started – whenever he started sending me things and going back and forth, I don't remember the exact date, but it was right after he started representing me, sure, we exchanged e-mails and started, yes.
Q. When did Gooch begin representing you?

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A. The day that he agreed to represent me. I believe it would have been the day that he decided that he had a case.
Q. On or about December 16?
A. Yes.
Q. At that point in time, or shortly thereafter, he communicated with you in writing the details of the breach of the standard of care committed by Popovich and Mast; is that correct?
A. I believe he started to detail those out in the complaint and we were working it back and forth trying to get it right.
Q. When did you first exchange drafts of the complaint?
A. I'd have to look back in the e-mails. I don't remember the dates.
Q. Did you look for any of these e-mails in connection with my discovery requests in this case?
A. At the time I think we thought they were privileged.
Q. That privilege objection wasn't exactly made. My question is, did you look for them?
A. Did I look for them? I have them.
Q. I would ask that you preserve each and

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every communication between you and Mr. Gooch, all written communications, even phone records that might reflect the dates and times of your phone communications, if any. Did you use a cell phone back then?
A. I used VOIP over a data line.
Q. Who was your carrier?
A. Comcast.
Q. Is that still your carrier?
A. Yes.
Q. Do you have the same phone that you utilized?
A. Same phone number for 50 years, yes.
Q. What else could you remember that Gooch told you on or about the 16th of December 2016 about Mast and Popovich breaching the standard of care and how it damaged you?
A. Say that again.
Q. What, if anything, else do you recall about your discussions with Gooch on December 16 regarding the breach of the standard of care by Popovich and Mast and how it injured you?
A. We discussed the whole scenario between October and January and what happened. It was

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pretty detailed. We discussed everything that you see that's been communicated in the e-mails. He didn't have much else to go on other than the documents and the e-mails.
Q. You're talking about the e-mails between you and Hans from the fall of 2013?
A. Yes.
Q. Ultimately leading to the $5,000 settlement?
A. Yes.
Q. Other than you have a case, what did Gooch say to you?
A. He said that they definitely committed malpractice.
Q. Did he ever put this in writing?
A. Did he ever put it in writing? I think he backed it up by filing a suit. That's documented.
Q. Again, the suit wasn't filed until November of 2017.
A. Yes, he had some health problems and then his wife had some health problems. Believe me, I was pushing for him to get that done.
Q. From December of 2016 until the complaint

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was filed, you exchanged some drafts of complaints with him?
A. I believe he let me see what he wanted to put in the complaint. I got to review some things. Of course I had, do this or that's not right. In fact, a couple of these things in here we had to definitely – you caught one. He totally worded it wrong. It was wrong. We had to amend.
MS. WILLIAMS: His question was, did he give you drafts for you to review?
THE WITNESS: Yes.
BY MR. FLYNN:
Q. These were exchanged by e-mail?
A. I believe so, yes.
Q. So you would have records of them?
A. Yes.
Q. Any comments with respect to the pleadings, as well, did you ever ask him questions? Did he explain to you the basis for the allegations in the draft complaints, similar to what you did with Hans?
A. Over many times, yes.
Q. This is all reflected in e-mails?
A. Yes.

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Q. Ultimately, you didn't file until November of 2017?
A. Correct.
Q. Popovich ceased being your lawyer March 19 of 2015, correct?
A. That sounds about right.
Q. Until December 16, 2016, you didn't have any reason to believe there was a malpractice case against –
A. Say the date again.
Q. Until December 16, 2016, you didn't have any other reason to believe there was a malpractice case against Popovich and Mast?
A. I did not know that I had a case, no.
Q. You threatened one with respect to the Gagnon case –
A. Yes.
Q. – at another point in time, correct?
A. I think I threatened him a few times in there. Yeah. I was actually nice to what I really wanted to say.
Q. Subject to the ruling on these objections, you don't recall any other specific details that you discussed with Popovich – I'm

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sorry – Gooch on December 16, other than what we already talked about?
A. I discussed the exact same things that you – the same documents that you already have. We went over the case that Mast and Popovich had against the McGuires. He followed through all the way to the end. We went over the whole case. You see as much as he did.
Q. Did Gooch ever explain to you why the McGuires would have been liable any more than Mast explained to you that they wouldn't be liable?
A. He said he agreed right away. He said that's obvious.
Q. Did Gooch ever provide you with any cases or statutes?
A. Provide to me, maybe. Maybe. I don't know.
Q. Would that be by e-mail?
A. It could be. I was in his office quite a few times. He may have.
Q. As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to

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the McGuires' liability?
A. That they were definitely liable. He tried to say that – like Popovich and Mast were first- or second-year lawyers and that they may have made a mistake here.
I said they've got 20 years in this. You think they'd know the difference. That's the kind of thing. He agreed with me. Twenty years, yeah, they should have known better.
Q. Did you ever discuss the specifics of the McGuires' potential liability with Gooch?
A. Liability with Gooch?
Q. With Gooch, did you ever discuss the specifics of the McGuires' liability other than he thinks you have a case?
A. Yes.
Q. Did he ever tell you why? What was it?
A. Because he agreed with the expert's opinion.
Q. The expert on the chainsaw?
A. Yes. The liability expert.
Q. The expert said you should use safety goggles and gloves and things like that?
A. He said more than that, but yes.

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Q. Do you know who commissioned that expert report?
A. Boudins.
Q. Do you know when the first draft of that doctor's expert report was circulated?
A. I heard that Boudin got it in February, maybe. I don't think I got it until July, but I'm not sure about that.
Q. July of what year?
A. The same year as the mediation.
Q. Of 2016?
A. Yeah.
Q. So you actually read it in advance of the mediation?
A. I talked about this earlier. I said yes. You don't catch everything the first time you read it. I was sitting there at the mediating table and I was reading it and I caught it and I turned to Randy and I said, after it was over, does this mean – that means.
Q. Means what?
A. Does this mean the McGuires are liable? Yeah, that means they are liable. He said, call my office after everything and I'll give you a name for

an attorney you should go see.
MR. FLYNN: Any follow-up, Julia?
MS. WILLIAMS: I have two follow-up questions.

EXAMINATION

BY MS. WILLIAMS:
Q. Did you ever give Hans authority to make a settlement demand regarding Mr. Gagnon?
A. I think at one time in one of my meltdown letters I said get whatever you can, but no, I never actually signed anything saying you have the right to offer a settlement.
Q. Did you ever give Hans authority to make a settlement demand with regard to the McGuires?
A. A demand, no. He said he was going to probe and see what was out there, and I said, if you want to do that, that's fine.
MS. WILLIAMS: I have no further questions.
MR. FLYNN: Signature?
MS. WILLIAMS: We can waive signature.
THE REPORTER: Are you ordering this?
MR. FLYNN: Yes.
THE REPORTER: Regular delivery, e-tran?
MR. FLYNN: Yes.
THE REPORTER: Copy?

MS. WILLIAMS: Yeah.
THE REPORTER: Regular delivery, e-tran?
MS. WILLIAMS: PDF.

(WHEREUPON, at 4:00 p.m., the deposition of PAUL DULBERG was concluded.)

* * * * *

STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)

I, KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify:

That previous to the commencement of the examination of the witness, the witness was duly sworn to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction, and constitutes a true record of the testimony given and the proceedings had;

That the said deposition was taken before me at the time and place specified;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto

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set my hand and affix my seal of office at Chicago, Illinois this 3rd day of March, 2020.

Karen Piteggi

Notary Public, DuPage County, Illinois.
My commission expires 1/2/24.

CSR Certificate No. 84-3404

EXAMINATION

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

DULBERG'S ANSWERS TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S INTERROGATORIES TO PLAINTIFF PAUL DULBERG

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds to Defendant, The Law Offices of Thomas J. Popovich, P.C.'s Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

1. Identify the person(s) answering and/or providing assistance in the answering of these interrogatories.

ANSWER: Paul Dulberg, available through counsel. The Clinton Law Firm, as counsel for Paul Dulberg.

2. Identify all persons who have knowledge of any matters relating to any of the facts, claims, damages, or defenses at issue in this case.

ANSWER: Paul Dulberg is the Plaintiff in this matter and is expected to testify in accordance with any deposition testimony he provided or provides. He has knowledge regarding the circumstances leading to the injury he sustained, the actual injury, the harm he suffered, including financial injury.

William McGuire ("William") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

EXHIBIT # 1

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Caroline McGuire ("Caroline") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

David Gagnon ("Gagnon") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

Barbara Dulberg. 4606 Hayden Ct., McHenry, IL 60051. Retired. Barbara is expected to testify to the facts and circumstances of the November 4, 2013 meeting with Hans Mast. Barbara is also expected to testify as to the facts and circumstances of Paul Dulberg's pain and suffering, and Dulberg's loss of use of his arm.

Thomas Kost. 423 Dempster Ave., Mt Prospect, IL 60056. Electrician. Thomas Kost is expected to testify as to the legal advice given to Dulberg from Mast and The Popovich Firm on the McGuires' liability, or lack of it, and how the judge would rule in the December 2013 meeting, as well as Dulberg's pain and suffering and loss of use of arm.

Mike McArtor, 4606 Hayden Ct., McHenry, IL 60051. McArtor was Dulberg's business partner at Sharp Printing, Inc. He is expected to testify regarding the facts and circumstances as to Dulberg's ability to work, loss of use of arm, and the facts and circumstances of the pain and suffering after the accident.

Scott Dulberg, 8245 Cunat Blvd, Apt. 2B, Richmond, IL 60071. Scott Dulberg is Paul Dulberg's family member and was Paul Dulberg's business partner at Sharp Printing, Inc. He is expected to testify regarding the facts and circumstances as to Dulberg's ability to work, loss of use of arm, and the facts and circumstances of the pain and suffering after the accident.

Investigation continues.

3. Identify the address of the McGuire's property described in paragraph 6 of your second amended complaint, and your address identified in paragraph 7 of the second amended complaint.

ANSWER: McGuires' real property is located at 1016 W. Elder Ave., McHenry, IL 60051.

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Dulberg's home is located at 4606 Hayden Ct., McHenry IL 60051

4. Identify and describe how you were invited to the McGuires' property to see if you wanted any of the wood from the tree, as alleged in paragraph 12 of your second amended complaint.

ANSWER: Dulberg received a call from Gagnon on June 27, 2011. Over the phone, Gagnon asked Dulberg if he wanted wood from the tree that the McGuires were removing and invited Dulberg to come see the wood.

5. Identify how William McGuire physically assisted in cutting down the tree, including the date, time, and location of his assistance, and describe how and when he supervised David Gagnon's actions in cutting down the tree, as alleged in paragraph 13 of your second amended complaint.

ANSWER: On June 28, 2011, Dulberg went to the McGuires' home and arrived between 8:30-9:00 am. He observed William McGuire working with Gagnon between that time and approximately noon that same day to remove tree branches from the tree. Gagnon continued to work throughout the day, after William stopped working. Caroline was present observing the work and supervising the work.

William and Caroline McGuire purchased and provided the chainsaw that was used to cut the branches. William and Caroline McGuire provided the ropes and straps that Gagnon used to climb the tree. Caroline had the chain saw owner's manual in her possession and instructed Gagnon what fuel/oil ratio to use for the chain saw.

William and Caroline McGuire instructed Gagnon as to which trees and branches that they wanted removed and where they wanted the trees and branches to fall during the removal process. Gagnon climbed into the tree and cut the branches utilizing the chain saw that the McGuire's provided. The branches would fall to the ground and William would pile the branches in the yard. He also started a fire and burnt some of the branches. At times, William started the chainsaw for Gagnon.

Throughout the entire day, Caroline observed the work and instructed Gagnon to "be careful"

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on several occasions. She also provided water to both William and Gagnon.

William, Caroline, and Gagnon had several conversations throughout the morning as to which trees and branches to cut, how to best remove the trees and branches, where the trees and branches would fall, and how to clean them up. William and Caroline instructed Gagnon regarding those matters.

At approximately noon on that same date, William stopped working on cutting down the tree and went into the house. He then came out of the house and entered the McGuires' pool that is located on the same property.

Gagnon continued to work through the afternoon and early in the afternoon complained to Caroline that he was "working alone" and couldn't complete the work that day without help. Caroline and Gagnon then asked Dulberg to assist. Dulberg agreed to assist.

Dulberg assisted William McGuire by moving branches to the garden and started the chainsaw for Gagnon once while Gagnon was in the tree.

Dulberg then assisted Gagnon by moving the large branches that had already been cut and holding the large limbs steady so that Gagnon could cut them. Dulberg would hold the large branch while Gagnon would cut the smaller branches off the larger branch with the chain saw.

Gagnon would tell Dulberg which branches to pick up and move to the location where Gagnon was cutting them into smaller pieces by cutting off smaller limbs with the chain saw. Gagnon would also instruct Dulberg as to how and where to hold the limbs so that he could cut the branch with the chain saw. Gagnon placed the larger limb, which was now stripped of the smaller branches in a pile and instructed Dulberg to grab the next limb, which still had the smaller branches, to start the process again.

The chain saw was very loud and little conversation occurred during the time the chain saw was on. Instead, Gagnon would gesture to communicate with Dulberg as to how he wanted the branch

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held or moved.

No one cut down the entire tree that day, instead branches were removed from the tree and cut down into smaller pieces.

6. Identify and describe how Caroline McGuire supervised David Gagnon and William McGuire's actions, as alleged in paragraph 14 of the second amended complaint.

ANSWER: See answer to 5.

7. Identify the date, time, the location, and the exact words exchanged between Gagnon and the McGuires on the one hand and you on the other as alleged in paragraph 15 of your second amended complaint, in which it is alleged that were asked to assist the trimming and removal of the tree.

ANSWER: See answer to 5. Dulberg does not recall the "exact words exchanged" but does recall the incident as outlined in his answer to 5.

8. Identify what safety information was readily available to Caroline and William McGuire as alleged in paragraph 18 of your second amended complaint, and how you know this information.

ANSWER: Caroline and William McGuire had the owner's manual to the chain saw. Caroline was reading parts of it aloud to Gagnon in the morning of June 28, 2011. Dulberg observed Caroline in possession of the owner's manual and saw her reading it in the morning of June 28, 2011.

The owner's manual had safety instructions and warnings that would have prevented the accident.

9. Did you request any protective equipment or other safety devices from the McGuires or Gagnon while you provided assistance to Gagnon in operating the chainsaw?

ANSWER: No, Gagnon instructed Dulberg as to what to do and Dulberg never operated the chain saw or read the owner's manual.

10. Did you assist Gagnon with trimming and removal of the tree? If so, describe

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each and every action you took in assisting Gagnon with the cutting down or removal of the tree.

ANSWER: See answer to 5.

11. Identify and describe each and every conversation between and David Gagnon while you were assisting him with trimming or cutting down the tree.

ANSWER: See answer to 5.

12. Identify and describe each of your employers in the ten year period prior to the accident of June 28, 2011, including any self-employment. For each employer, identify your wage rate or salary, your title, your job description, your required duties, and your income for the ten year period prior to the accident in question.

ANSWER:

1. 1999-2011 Sharp Printing, Inc., 4606 Hayden Ct., McHenry, IL 60051

Paul Dulberg was an owner and operator of Sharp Printing, Inc. along with his two partners Scott Dulberg and Michael McArtor.

Paul Dulberg was the President, salesperson, graphic designer, 8 color screen print pressman, handled fulfillment, shipping & receiving, as well as other day to day operations of the company.

For income, see tax returns.

Sharp Printing, Inc. operated out of the lower floor of Paul Dulberg's personal residence and paid all utilities bills, including garbage, water, natural gas, electric, internet, phone, and cable. The approximate value is $650 per month.

2. 1999-2011 Juskie Printing

Paul Dulberg served as an independent contractor for Juskie Printing performing graphic design and prepress functions.

From 1999-2006, this was a barter arrangement.

From 2007-2011, Paul Dulberg earned approximately $18,000 per year.

See tax documents.

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3. Intermatic Incorporated

1998-2002 Intermatic Incorporated, Offset Press Operator I

2002-2007 Intermatic Incorporated, Graphic Designer

2010 Intermatic Incorporated, Independent Contractor for Graphic Design

See tax documents for income information.

See job description provided with documents.

4. 2011 Art Material Services. Material Handler

Operated and maintain thread roller.

See tax documents for income information.

13. Did you suffer any serious personal injury and/or illness within ten years prior to the date of the occurrence? If so, describe where and how you were injured and/or became ill and describe the injuries and/or illness suffered.

ANSWER:

1. Migraine Headaches, treated at home.

2. 2002. Rear end collision at Hayden Dr and Johnsburg/Wilmot Rd., in McHenry, IL.

See medical records produced.

3. Approx. 2004, Chest Infection. Treater: Dr. Sek. Treated with inhaler and antibiotics

4. 2005. Broken Foot. Treated at Centegra Hospital in McHenry. Scott Dulberg stepped on Paul Dulberg's bare right foot.

14. Have you suffered any serious injury and/or illness since the date of the occurrence? If so, state when, where, and how you were injured and/or became ill and describe the injury and/or illness suffered.

ANSWER:

1. 2011 to present. Migraines.
   Treaters: Dr. Levin
   Dr. Terrance Lee
   Investigation Continues.
2. 2013 Hemorrhoid related to stress. Treater: Dr. Conway

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3. 2016 Dog Bite to Left Leg. Treater: Centegra, McHenry.

a. Dulberg broke up a fight between his dog and the neighbors' dog when he was bitten by a neighbor's dog.

4. Enlarged Prostate Treaters: Dr. Berger, The Uro Center, Lake Zurich, Illinois.

Dr. Elterman and Dr. Tarnauskas, Elterman Center, Skokie, Illinois.

Investigation continues. No other major illness or injuries relevant to this case.

15. Have you filed any claim for workers compensation benefits in the ten years prior to the underlying accident of June 28, 2011? If so, state the name and address of your employer, the date(s) of the accidents, the identity of the insurance company that paid you such benefits and the case nos. and jurisdictions where filed.

ANSWER: No.

16. State the personal injuries sustained by you as the result of the underlying occurrence.

ANSWER: Chainsaw injury to the right arm. See medical records.

17. With regard to your injuries, state:

(a) The name and address of each attending physician and/or health care professional;
(b) The name and address of each consulting physician and/or health care professional;
(c) The name and address of each person and/or laboratory taking an x-ray, MRI and/or other radiological tests of you;
(d) The date or inclusive dates on which each of them rendered you service;
(e) The amounts to date of respective bills for services; and
(f) From which of them you have written reports

ANSWER: See medical records provided.

18. As a result of your personal injuries from the underlying case, were you a patient or outpatient at any hospital and/or clinic? If so, state the names and addresses of all hospitals and/or clinics, the amounts of their respective bills and the date or inclusive dates of their services.

ANSWER: See medical records provided.

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19. As a result of your personal injuries from the underlying case, were you unable to work? If so, state:

(a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;
(b) The date or inclusive dates on which you were unable to work;
(c) The amount of wage and/or income lost by you; and
(d) The name and address of your present employer and/or wage and/or salary.

ANSWER: Paul Dulberg was self-employed and unable to work after the accident. He has not been employed since the date of the accident. See tax returns for lost wages. See SSDI documents for current income.

20. State any and all other expenses and/or losses you claim as a result of the occurrence in the underlying case or resulting from any alleged legal malpractice committed by Popovich or Mast. As to each expense and/or loss, state the date or dates it was incurred, the name of the person, firm, and/or company to whom such amounts are owed, whether the expense and/or loss in question has been paid, and if so, by whom it was so paid and describe the reason and/or purpose for each expense and/or loss.

ANSWER: Investigation continues. Medical costs, lost wages, loss of use, permanent disability resulting from injury, and pain and suffering.

21. Were any photographs, movies, and/or videotapes taken of the scene of the occurrence or the persons and/or equipment involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, and the name, address, occupation and employer of the person taking them.

ANSWER: Photograph of Mr. Gagnon. See all photographs produced with request to produce.

22. Had you consumed any alcoholic beverage within the 12 hours immediately prior to the occurrence or had you used any drugs or medications within 24 hours immediately prior to the occurrence. If so, state the name(s) and address(es) of those from whom it was obtained, where it was used, the particular kind and amount of drug, medication, or alcohol so used by you, and the names and current residence addresses of all persons known by you to have knowledge concerning the use of said drug or medication or alcohol.

ANSWER: Dulberg may have taken Naproxen sodium prior to the accident. Naproxen

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sodium is a pain reliever available over the counter. Dulberg does not recall whether he took the drug the night before or the day of the accident, but he did take it on a regular basis at that time. He did not consumer any other drugs or alcohol during that time.

23. Describe why you agreed to a binding mediation in the summer of 2016 as alleged in paragraph 52 of your second amended complaint.

ANSWER: At that time, a bankruptcy trustee was appointed by the bankruptcy court and the bankruptcy trustee filed a motion for binding mediation that was granted.

24. Identify the date on which you provided any settlement authority to Hans Mast or the Popovich firm, and the amount of any specific settlement authority to make any settlement demand upon the defendants in the underlying case.

ANSWER: Specific settlement authority was never given. On November 4, 2013, Mast was granted authority to investigate a settlement, but a specific dollar amount was never provided. On or around January 29, 2014, Dulberg signed the settlement agreement.

25. Identify and describe the date on which you received a copy of the settlement agreement from Mast in the underlying case, the date on which you executed the settlement agreement and the date on which you mailed the executed settlement agreement to Mast.

ANSWER: January 29, 2014, received, signed and mailed back to Mast.

26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.

ANSWER: Mast told Dulberg that Illinois law does not permit a recovery against the McGuires in the circumstances of Dulberg's case and that Dulberg would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to

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seek and receive a full recovery from Gagnon.

27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.

ANSWER:

Dr. Landford is a chain saw expert who was retained by Dulberg. See documents produced.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

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MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the $5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans

EXHIBIT # 3

2-19-20

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true, correct, and complete, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Paul Dolberg

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT # 4
2-19-20

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as Exhibit B reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as Exhibit C.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. *MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by* violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Client

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT

COPY
FILED
MAY 15 2012
KATHERINE M. KEEPE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
vs.) No.: 12LA178
)
DAVID GAGNON, Individually, and as)
Agent of CAROLINE MCGUIRE and BILL)
MCGUIRE, and CAROLINE MCGUIRE)
and BILL MCGUIRE, Individually,)
)
Defendants.)

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT
B
ALL-STATE LEGAL®

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 204 ON 11-28 20 22, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON 20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CARGLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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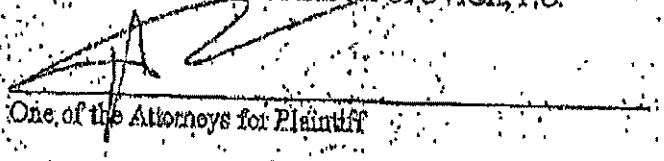
WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06209784

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Korbak

Mark J. Vogo
James P. Tutai
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT
C
ALL-STATE LEGAL®

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No: 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____ _____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation:

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

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McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF, v. THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	)	Case No. 17 LA 377

NOTICE OF FILING

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on December 6, 2018, the undersigned caused the enclosed Second Amended Complaint to be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, a non-attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Mary Winch
Mary Winch

EXHIBIT # 5
2-19-20

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Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendant.	)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

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15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

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27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A.**

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

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44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

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53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing

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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

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Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20___.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to _____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Client

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
A

CORY
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 17LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 226 ON 7/28, 20 22, AT 2:00 AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON 20 AT AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06208684

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>>
>> Sent from my iPhone
>>
>>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>>
>>> Only 5, That's not much at all.
>>> Is this a take it or leave it or do we have any other options?
>>>
>>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>>
>>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

EXHIBIT GROUP C

They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ---- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
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Telephone: 815.344.3797
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www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kowiak

Mark J. Vogo
James P. Tutin
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #1711111174017 Case #17LA000377
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Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____ _____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2018 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ---- Original Message ----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI

EXHIBIT
F

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap..
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.

EXHIBIT
tabbies
F

ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
)
David Gagnon)

On December 8, 2015, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

EXHIBIT

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Pamela Walker

From: McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
Sent: Monday, December 10, 2018 1:37 PM
To: George K. Flynn; Pamela Walker
Subject: 17LA000377 - 2 Documents Filed

17LA000377

DULBERG, PAUL VS MAST, HANS, ET AL

Doc Type	COAA
Description	COMPLAINT - AMENDED
Date Filed	12/6/2018
Image Link	View Document Image

Doc Type	NOTF
Description	NOTICE - FILING
Date Filed	12/6/2018
Image Link	View Document Image

NOTE: E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Just received your mailed letter**
Date: December 27, 2016 7:10:43 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: September 23, 2014 at 9:06:46 PM CDT
To: Hans Mast <hansmast@comcast.net>
Subject: **Fwd: Just received your mailed letter**

Hans,
if I use a chainsaw and cut you badly who is going to believe me when I say it's not my fault, Hans just fell into it?

Who in their right mind is going to believe me when your pointing your finger at me saying I did it?

Who?

Begin forwarded message:

> **From:** Paul Dulberg <pdulberg@comcast.net>
> **Date:** September 23, 2014 at 8:25:03 PM CDT
> **To:** Hans Mast <hansmast@comcast.net>
> **Subject:** **Re: Just received your mailed letter**
>
> First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw. I was but a lowly printer/graphic designer my whole life and never asked for anyone's sympathy till now.
>
> Secondly, I'm sorry I must live among a bunch of potential jurors that you don't trust to just do the right thing.
>
> Thirdly, I'm most sorry for agreeing to lend David Gagnon a hand when he needed some help, I had no idea he was going to try and lop it off.
>
> Fourth, I'm sorry you don't feel good about pushing for a trial. I wish whatever mysterious evidence you seek would be shared with me because without a video camera I can only say what I've seen from direct experience. And I guess in this case "me" the victim isn't credible enough but the one wielding a chainsaw that hurt me is.
>
> A few questions from a layman,
>
> How much could a trial actually cost?
> What,
> $50,000
> $150,000
> Does it even cost as much as a car?
> What number?
>
> How much would you hope to get for us in a settlement?
>
> How much could be expected if the trial does proceed and we have a favorable outcome?
>
> Hans, if your heart is not in this I'm sorry
>
> Paul
>
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> On Sep 23, 2014, at 7:39 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Hi Paul. My view hasn't changed. I think each time we've talked I've always tried to be open about my reservation to take this

EXHIBIT # 6
2-19-20

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case to trial. I just don't think we have enough evidence to prove our case and to invest the time and cost and preparing for trial and moving to trial just in my mind does not make sense to me. I have to be very realistic about things and honest with my opinion. It doesn't do you any good if I do not feel strongly about the case.

That's the very reason why I wanted to have this discussion. I want to give you the option of finding other counsel at this point if you really want to take the case to trial which I think ultimately will be necessary. I just do not believe strongly that defense counsel will offer much in the way of a settlement. Although I will ask him if he is going to make an offer and maybe that will allow you to make a better judgment on this.

Sent from my iPhone

> On Sep 23, 2014, at 7:17 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>
> Before I proceed,
> Why the change of heart?
> I mean, last month your response was we are setting a date for trial or something like that but Now it's settle or find new council again.
> Paul
>
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Bad night**
Date: December 27, 2016 7:07:16 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: September 26, 2014 at 6:32:40 PM CDT
To: Hans Mast <hansmast@comcast.net>
Subject: Bad night

Hans,

Last evening I was in the hospital with the most severe migraine I've ever had.

This morning I filed for bankruptcy with David Stretch.

This afternoon I spent with my regular physician Dr Zaide doing a follow up from yesterday.

And right now, I have to email you. All when I still have a slight residual headache and should be in bed.

At first I thought the migraine was brought on by the medications I'm taking but it wasn't, it was brought on after our discussions. Now I can't prove that but it seems pretty obvious to me. Joke no pun intended there!

That migraine made me realize I need the stress of this situation over with. All the stress on top of losing everything is too much and I'd rather live than die from it all before my body does something worse.

My body is not reacting well and the migraines are getting more frequent and worse. Have you ever vomited at the same time as deficating while being in some of the most excruciating pain in your life?

If not, neither did I till the chainsaw went through my arm. That's when the migraines became more frequent, stronger and faster coming on. And now for the first time during the day.

Ever since I awoke this morning, all I can I think is the stress of it all is killing me more and more as the reality sets in and I just can't afford to care about it anymore.

My health means more than some lawsuits and the lure of money.

All because some idiot named David Gagnon forgot to tell me to move out of the way and he can't seem to admit it.

Yes, after reading his deposition and hearing it was my fault I was pissed.

In my anger I suspected all sorts of things. Including it being intentional especially after my discussions at his home only trying to get his homeowners policy number and him wanting money and threatening me for it.

Yes, my arm and elbow were hurt from his stupidity irregardless if some dr can link the two together or not.

Yes, there will be ongoing medical as a result of all this because it still hurts and doesn't work right.

Yes, I am now disabled irregardless of what SSDI appeal goes because of this.

Yes. I understand I'm screwed because of a system that allows one person to hurt another and even after a trial and judgement entered all they have to do is go file for bankruptcy in the same courthouse on the same day.

Yes, it just took me almost an hour just to type this.

Yes, yes, yes...

but none of it matters anymore!

Bottom line Hans... Do the best you can with what you got, I've got nothing more to lose or give. I need it all to just go away.

EXHIBIT # 7
2-19-20

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:01:21 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 9:38:57 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

No answer, that's what I thought...
Your not very quick when cornered and your not excused from this case until I say you are whether or not your firm agrees.
Got it?

> On Feb 22, 2015, at 9:05 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>
> Is your wanting out a personal issue with me or is it strictly financial?
>
> > On Feb 22, 2015, at 9:01 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Oh, and unless I'm wrong, David did admit to having control over the chainsaw. David, in his lie, admitted to seeing me move my arm and continued along his path with the chainsaw at cutting rpm's.
> > In effect he did admit it was his fault.
> >
> > > On Feb 22, 2015, at 8:52 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > You do not have my consent to quit.
> > >
> > > > On Feb 22, 2015, at 8:23 PM, Hans Mast <hansmast@att.net> wrote:
> > > >
> > > > Paul, honesty hurts. I am honest to a fault sometimes. You told me at the start that David would admit his fault. That proved not to be true. Still your threats and putdowns don't change anything. Just find another attorney and we can part ways.
> > > >
> > > > Sent from my iPhone
> > > >
> > > > > On Feb 22, 2015, at 8:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > >
> > > > > To be honest, you took this case knowing it was my word vs. his.
> > > > > Now you back out because the value of the case isn't worth your time?
> > > > > You got some nerve and your earning the reputation of a shady lawyer
> > > > >
> > > > > > On Feb 22, 2015, at 7:42 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > > >
> > > > > > To believe David's version of events you must believe I was committing suicide.
> > > > > > Who in their right mind puts his arm into a chainsaw?
> > > > > >
> > > > > > I figured you would cop out again...
> > > > > >
> > > > > > Now I'm left wondering...
> > > > > > How hard is it to sue an atty?
> > > > > >
> > > > > > And yes I am and have been looking for someone who will take this case...
> > > > > >
> > > > > > The issue of my word vs David Gagnons... Did he cut me or did I cut myself?
> > > > > >
> > > > > > Of coarse he cut me.
> > > > > >
> > > > > > Next issue please?

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY

FILED APE
MAR 19 2015
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

PAUL DULBERG

vs. Case Number 12 LA 178

DAVID GAGNON, ET AL.

APPEARANCE

I HEREBY ENTER THE APPEARANCE OF

PAUL DULBERG
(Insert the name of the party for whom you are entering your appearance)

AND MY OWN AS

☐	REGULAR COUNSEL	☐	TRIAL COUNSEL
☐	SPECIAL & LIMITED APPEARANCE	☒	SUBSTITUTE COUNSEL
☐	PRO-SE	☐	COUNSEL IN FORCIBLE ENTRY
☐	ADDITIONAL COUNSEL	☐	APPELLATE COUNSEL
☐	GUARDIAN AD LITEM	☐	COURT APPOINTED COUNSEL

AND AS (HIS) (HER) (THEIR) COUNSEL IN THE ABOVE ENTITLED CASE.

SIGNED BB
(Signature of Attorney filing appearance)

Name BRAD J. BALKE, P.C. BRAD J. BALKE
Printed Name

ARDC Number 6273504

Attorney for PLAINTIFF

Address 542 S. DEARBORN ST., STE. 310

City, State Zip CHICAGO, IL 60605

Phone 312-986-8063

GE-APPI (Revised 12/01/08)

EXHIBIT # 9
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Binding Mediation Agreement
ADR Systems File # 33391BMAG

Revised for Special Billing

I. Parties

A. Paul Dulberg, by attorneys, Kelly N. Baudin and Randall Baudin, II

B. David Gagnon, by attorney, Shoshan Reddington

SPECIAL BILLING – Section V.B.5 – Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.

II. Date, Time and Location of the Binding Mediation

Date: Thursday, December 8, 2016
Time: 1:30 P.M.
Location: ADR Systems of America, LLC
20 North Clark Street
Floor 29
Chicago, IL 60602
Contact: Alex Goodrich
312-960-2267

III. Rules Governing the Mediation

Each party ("Party") to this agreement ("Agreement") hereby agrees to submit the above dispute for binding mediation ("Mediation") to ADR Systems of America, L.L.C., ("ADR Systems") in accordance with the following terms:

A. Powers of the Mediator

1. The Parties agree that The Honorable James P. Etchingham (Ret.) shall serve as the sole Mediator in this matter (the "Mediator").
2. The Mediator shall have the power to determine the admissibility of evidence and to rule upon the law and the facts of the dispute pursuant to Section III(D)(1). The Mediator shall also have the power to rule on objections to evidence which arise during the hearing.
3. The Mediator is authorized to hold joint and separate caucuses with the Parties and to make oral and written recommendations for settlement purposes.
4. **The Parties agree that the Mediator shall decide all issues concerning liability and damages arising from the dispute if this matter cannot be settled, unless any of the above is waived. Any other issues to be decided must be agreed upon by the Parties, and included in this contract.**
5. Any failure to object to compliance with these Rules shall be deemed a waiver of such objection.

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B. **Amendments to the Agreement**

1. No Party shall amend the Agreement at any time without the consent and approval of such changes by the opposing Party, and ADR Systems of America.
2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR Systems case manager by telephone. The agreed proposal must also be submitted to the ADR Systems case manager in writing, by fax or email, if necessary, and the contract changes MUST be made by ADR Systems. No changes made outside these guidelines will be accepted. Furthermore, if the amended contract made by ADR Systems is not signed by both Parties, the Agreement shall be enforced in its original form, without changes.

C. **Pre-Hearing Submission**

1. Mediation statements are permitted provided that the statement is shared among the other parties. The Mediation Statement may include: statement of facts, including a description of the injury and a list of special damages and expenses incurred and expected to be incurred; and a theory of liability and damages and authorities in support thereof.

D. **Evidentiary Rules**

1. The Parties agree that the following documents are allowed into evidence, without foundation or other proof, provided that said items are served upon the Mediator and the opposing Party at least **17 (seventeen)** days prior to the hearing date:
   a. Medical records and medical bills for medical services;
   b. Bills for drugs and medical appliances (for example, prostheses);
   c. Property repair bills or estimates;
   d. Reports of lost time from employment, and / or lost compensation or wages;
   e. The written statement of any expert witness, the deposition of a witness, the statement of a witness, to which the witness would be allowed to express if testifying in person, if the statement is made by affidavit sworn to under oath or by certification as provided in section 1-109 of the Illinois Code of Civil Procedure;
   f. Photographs;
   g. Police reports;
   h. Any other document not specifically covered by any of the foregoing provisions that a Party believes in good faith should be considered by the Mediator; and
   i. Each Party may introduce any other evidence, including but not limited to documents or exhibits, in accordance with the rules of evidence of the State of Illinois.
2. The Parties agree that they will not disclose any and all dollar figures relating to the high/low agreement; last offer and last demand; policy limits; and /or set-offs orally or in written form, to the Mediator at any time before or during the conference, or while under advisement, prior to the Mediator's final decision.

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a. Violation of this rule set forth in (D)(2) shall constitute a material breach of this Agreement. The non-disclosing Party must formally object to the Mediator upon learning of the breach, or the breach will be considered waived. The non-disclosing Party shall then have the option to continue the Mediation from the point of objection to its completion; or to terminate the Mediation at the point of objection as null and void. The ADR Systems case manager must be made aware of this breach at the time of the objection, so the objection is addressed in accordance with the Agreement; and

b. If the Mediation is terminated as null and void, all costs of the Mediation will be charged entirely to the disclosing Party. A new Mediation shall then take place with a new Mediator on a new date. If the Mediation is not terminated, the costs of the Mediation shall remain the responsibility of each Party or in accordance with the Agreement.

3. The Parties agree if a Party has an objection to the evidence or material submitted by any other Party pursuant to Paragraph (D)(1), notice of the objection shall be given to the ADR Systems case manager and opposing counsel by telephone and in writing at least seven days prior to the Mediation. If resolution cannot be obtained, the case manager will forward the objection to the Mediator to be ruled upon before or at the Mediation. The case manager will notify each of the Parties of the objection. The objection may result in a postponement of the proceedings. **If the objection is because of new material being disclosed with the submission for the first time (for example, new or additional reports, additional medical/wage loss claims, etc.) then the disclosing party shall be charged for the total cost associated with the continuance.**

4. The Parties agree that any Party desiring to introduce any of the items described in Paragraph (D)(1) without foundation or other proof, must deliver said items to the Mediator and to the other Parties no later than **Monday, November 21, 2016**.

5. The items are considered delivered as of the date that one of the following events occur:

   a. If mailed, by the date of the postmark;

   b. If delivered by a courier or a messenger, the date the item is received by the courier or messenger; and

   c. The date transmitted by facsimile or email.

6. The Parties agree to deliver any of the items described in Paragraph (C)(1) and (D)(1) to the following addresses:

   If emailing Submissions, please send to submissions@adrsystems.com, however, please do not send anything over 50 pages, including exhibits.

   The Honorable James P. Etchingham, (Ret.) (Mediator)
   C/O ADR SYSTEMS
   20 North Clark Street
   Floor 29
   Chicago, IL 60602

   Kelly N. Baudin, Esq. / Randall Baudin, II, Esq. (Plaintiff Attorneys)
   BAUDIN LAW GROUP
   304 McHenry Avenue
   Crystal Lake, IL 60039

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Shoshan Reddington, Esq. (Defense Attorney)
LAW OFFICES OF STEVEN LIHOSIT
200 N. La Salle Street
Suite 2550
Chicago, IL 60601

E. **Conference Procedure**

1. The Parties may present opening statements but there will be no live testimony.
2. The Parties will attempt to reach a voluntary settlement through negotiation with the assistance of the Mediator.
3. If the Parties cannot voluntarily reach a settlement, the Mediator will advise the Parties that settlement cannot be reached. The Mediator will then take the matter under advisement and render an award that will be binding to all Parties, (the "Award"), subject to the terms of any high/low agreement that the Parties may have as described below in Paragraph (F)(1).

F. **Award Limits**

1. The Parties may agree prior to the Mediation that a minimum and maximum amount will serve as parameters for the Award (sometimes referred to as a "high/low agreement"), such that the actual amount that must be paid to the plaintiff or claimant shall not exceed a certain amount (the "high" or "maximum award") and shall not be less than a certain amount (the "low" or "minimum award").

   a. If liability is disputed and comparative fault or negligence is asserted as an affirmative defense, the Mediator shall make a finding regarding comparative fault or negligence, if any. In the event that there is a finding of comparative fault or negligence of the plaintiff that is greater than 50% (fifty percent), the plaintiff shall receive the negotiated minimum award. In the event that there is a finding of comparative fault or negligence of 50% (fifty percent) or less against the plaintiff, then any damages awarded in favor of the plaintiff shall be reduced by the amount of the plaintiff's comparative fault or negligence, but shall be no less than the minimum parameter or more than the maximum parameter.

   b. All award minimum and maximum parameters are subject to applicable set-offs if any, as governed by policy provisions if not specified in the Agreement.

      The Parties agree that for this Mediation the minimum award to Paul Dulberg will be **$50,000.00**. Also, the maximum award to Paul Dulberg will be **$300,000.00**. These amounts reflect the minimum and maximum amounts of money that David Gagnon shall be liable to pay to Paul Dulberg.

IV. Effect of this Agreement

A. After the commencement of the Mediation, no Party shall be permitted to cancel this Agreement or the Mediation and the Mediator shall render a decision that shall be in accordance with the terms set forth in this Agreement. When the Award is rendered, the Mediation is resolved, and any Award arising from this Mediation shall operate as a bar and complete defense to any action or proceeding in any court or tribunal that may arise from the same incident upon which the Mediation is based.

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B. The Parties further agree that any pending litigation will be dismissed, with prejudice, as to those Parties participating in this Mediation upon the conclusion thereof. Any and all liens, including contractual rights of subrogation owed are subject to existing Illinois law. By agreement of the Parties, the Mediator's Award will be final and binding and not subject to appeal or motion for reconsideration by any Party.

V. Mediation Costs

A. ADR Systems Fee Schedule

1. A deposit is required for the Administrative Fee, Mediator's estimated review, session, and follow-up time ("Mediation Costs"). Binding-Mediations are billed at a four hour per day minimum. **The required deposit amount is $2,590.00 from Party B and is due by November 21, 2016.** Any unused portion of the deposit will be refunded based on the four hour minimum. If the Mediator's review, session and follow-up time go over the estimated amount, each Party will be invoiced for the additional time.
2. Mediation Costs are usually divided equally among all Parties, unless otherwise agreed upon by the Parties. **ADR Systems must be notified of special fee arrangements.**
3. All deposits are due two weeks prior to the session. ADR Systems reserves the right to cancel a session if deposits are not received from all Parties two weeks prior to the session.
4. ADR Systems requires **14-day notice in writing or via electronic transmission** of cancellation or continuance. For Binding-Mediations **cancelled or continued** within 14 days of the session, the Party causing the cancellation will be billed for the Mediation Costs of all the Parties involved, which includes the four hour per day minimum, additional review time, and any other expenses incurred("cancellation fees"). If the cancellation is by agreement of all Parties, or if the case has settled, the cancellation fees will be split equally among all Parties, unless ADR Systems is instructed otherwise. The cancellation fees may be waived if the Mediator's lost time can be filled by another matter.

Administrative Fee	$390.00 (Non-refundable)
Mediator's Review Time	$450.00 per hour
Session Time	$450.00 per hour
Mediator's Decision Writing Time	$450.00 per hour
Mediator's Travel Time (if any)	$75.00 per hour

B. Responsibility for Payment ****Special Billing**

1. Each Party and its counsel (including that counsel's firm) shall be jointly and severally responsible for the payment of that Party's allocated share of the Mediation Costs as set forth above.
2. All expenses and disbursements made by ADR Systems in connection with the Mediation, including, but not limited to, outside room rental fee, meals, express mail and messenger charges, and any other charges associated with the Mediation, will be billed equally to the Parties at the time of the invoice.

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3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney's fees, incurred by ADR Systems in connection with the collection of any amount due and owing. Payment of additional costs incurred by ADR Systems in connection with the collection of any amount due and owing shall be made within 15 days of invoice.

4. In the event ADR Systems' session rooms are completely booked on your selected session date, ADR Systems will attempt to find another complimentary venue for your session. If ADR Systems cannot find a complimentary venue or the parties cannot agree on the complimentary venue, ADR Systems reserves the right to schedule your case in a location that may involve a facilities charge. The facilities charge will be split equally among the parties unless ADR Systems is instructed otherwise.

5. ****Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.**

VI. Acknowledgment of Agreement

A. By signing this Agreement, I acknowledge that I have read and agree to all the provisions as set forth above.

B. Each Party is responsible for only his/her own signature where indicated and will submit this signed Agreement to ADR Systems within 10 days of receipt of the Agreement. Counsel may sign on behalf of the Party.

By: _____
Paul Dulberg / Plaintiff Date

By: _____
Kelly N. Baudin / Attorney for the Plaintiff Date

By: _____
Randall Baudin, II / Attorney for the Plaintiff Date

By: _____
Shoshan Reddington / Attorney for the Defendant Date

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

DULBERG'S SUPPLEMENTAL ANSWERS TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S INTERROGATORIESTO PLAINTIFF PAUL DULBERG

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds, in supplement, to Defendant, The Law Offices of Thomas J. Popovich, P.C.'s Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

12. Identify and describe each of your employers in the ten year period prior to the accident of June 28, 2011, including any self-employment. For each employer, identify your wage rate or salary, your title, your job description, your required duties, and your income for the ten year period prior to the accident in question.

SUPPLEMENT TO ORIGINAL ANSWER:

1. 1999-2011 Sharp Printing, Inc., 4606 Hayden Ct., McHenry, IL 60051

Paul Dulberg was an owner and operator of Sharp Printing, Inc. along with his two partners Scott Dulberg and Michael McArtor. Dulberg provided full time employment services to Sharp Printing, Inc. and thus was "employed" by Sharp Printing, Inc. However, Dulberg did not draw a salary from Sharp Printing, Inc. and did not receive any profits from the company.

Paul Dulberg was the President, salesperson, graphic designer, 8 color screen print pressman, handled fulfillment, shipping & receiving, as well as other day to day operations of the company.

For income, see tax returns.

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Sharp Printing, Inc. operated out of the lower floor of Paul Dulberg's personal residence and paid all utilities bills, including garbage, water, natural gas, electric, internet, phone, and cable. The approximate value is $650 per month.

19. As a result of your personal injuries from the underlying case, were you unable to work? If so, state:

(a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;
(b) The date or inclusive dates on which you were unable to work;
(c) The amount of wage and/or income lost by you; and
(d) The name and address of your present employer and/or wage and/or salary.

SUPPLEMENT TO ORIGINAL ANSWER:

Paul Dulberg was self-employed by Sharp Printing and unable to work after the accident. He was also an independent contractor with Juskie Printing. He has not been employed since the date of the accident. See tax returns for lost wages. See SSDI documents for current income.

26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.

SUPPLEMENT TO ORIGINAL ANSWER:

On December 8, 2016, the mediator issued a net award to Dulberg of $561,000. Dulberg discovered he could not recover the entire mediation award from Gagnon. At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect, because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning.

27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.

SUPLEMENT TO ORIGINAL ANSWER:

Dr. Landford is a chainsaw expert who was retained by Dulberg during the mediation which occurred in 2016. Landford's expert opinion demonstrates that contrary to Mast's advice, the McGuires were liable for Gagnon's actions with the chainsaw. The expert report came out in February of 2016 and the mediation award was issued in December of 2016.

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Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street
Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

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VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true, correct, and complete, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Paul Dulberg

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DULBERG'S ANSWERS TO DEFENDANT HANS MAST'S INTERROGATORIESTO PLAINTIFF PAUL DULBERG

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds to Defendant Hans Mast's Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER: Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

ANSWER: Various dates between October 2013 to January 2014. The advice was

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provided via email, text messages, telephone calls, and in person meetings.

Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg would that he would retain his claim against Gaganon and be able to seek and receive a full recovery from Gagnon.

All documents in Plaintiff's possession and control produced.

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

ANSWER: The McGuire's owned their home and vehicles. McGuire's also held bank accounts in their name. Investigation continues.

4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than $100,000?

ANSWER: The McGuire's produced insurance information to Dulberg on the day of the accident and also were represented by insurance counsel.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street, Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

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5ttIN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

DULBERG'S RESPONSES TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPVICH, P.C., s REQUESTS FOR PRODUCTION TO PLAINTIFF

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 214, responds to Defendants, The Law Offices of Thomas J. Popovich, P.C.'s Requests for Production To Plaintiff as follows:

PRODUCTION REQUESTS

1. Produce any and all records regarding the legal representation provided to you by the Law Offices of Thomas J. Popovich, P.C. ("Popovich") and/or Hans Mast ("Mast") in connection with the underlying case, against William McGuire, Caroline McGuire, and David Gagnon.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

2. Produce any and all correspondence, agreements, draft agreements, emails, letters, and any other documents between you and Popovich or Mast in connection with the legal representation in the underlying case.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

3. Produce any and all correspondence between you and any defendant from the underlying case, including Caroline McGuire, William McGuire, and David Gagnon, from June 28, 2011 to the present time.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

4. Produce any and all documentation relating to legal representation of you by any successor counsel in the underlying case.

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RESPONSE: Objection. Attorney Client Privilege.

5. Any and all engagement or disengagement letters or agreements between you and any attorney relative to legal services in the underlying case.

RESPONSE: Objection. Attorney Client Privilege.

6. Any and all pleadings and discovery (including deposition transcripts) created, filed, served, and received in the underlying case prior and subsequent to Popovich and Mast's withdrawal as your attorneys, including but not limited to any "high/low" agreement and any arbitration award, arbitration agreement, and any other documentation relating to any arbitration in the underlying case.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

7. Produce any and all documents relating in any way to your claimed damages in the instant case, including but not limited to any special damages, such as medical bills, medical records, costs, invoices, and lost wages.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

8. Produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created, and the date any recipient received the document.

RESPONSE: Plaintiff is only withholding attorney client communication between his successor counsel.

9. Produce any and all state and federal tax returns you filed in the ten year period prior to the accident of June 28, 2011.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

10. Produce any and all documentation of lost wages as alleged in paragraph 30 of your second amended complaint, including but not limited to any employment agreement, wage records, paystubs, cancelled checks, and any other documentation reflecting income in the ten year period prior to the date of the accident.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

11. Produce copies of any and all settlement documents, settlement agreements, cancelled checks or other payments made in connection with any settlement reached in the underlying case, including payment of approximately $300,000 as alleged in paragraph 54 of your supplemental complaint.

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RESPONSE: All relevant documents in Plaintiff's possession will be produced.

12. An affidavit signed you (and not your attorney) pursuant to Illinois Supreme Court Rule 214, certifying that your response is complete in accordance with each request contained herein.

RESPONSE: Produced.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:01:21 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 9:38:57 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

No answer, that's what I thought...
Your not very quick when cornered and your not excused from this case until I say you are whether or not your firm agrees.
Got it?

> On Feb 22, 2015, at 9:05 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>
> Is your wanting out a personal issue with me or is it strictly financial?
>
> > On Feb 22, 2015, at 9:01 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Oh, and unless I'm wrong, David did admit to having control over the chainsaw. David, in his lie, admitted to seeing me move my arm and continued along his path with the chainsaw at cutting rpm's.
> > In effect he did admit it was his fault.
> >
> > > On Feb 22, 2015, at 8:52 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > You do not have my consent to quit.
> > >
> > > > On Feb 22, 2015, at 8:23 PM, Hans Mast <hansmast@att.net> wrote:
> > > >
> > > > Paul, honesty hurts. I am honest to a fault sometimes. You told me at the start that David would admit his fault. That proved not to be true. Still your threats and putdowns don't change anything. Just find another attorney and we can part ways.
> > > >
> > > > Sent from my iPhone
> > > >
> > > > > On Feb 22, 2015, at 8:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > >
> > > > > To be honest, you took this case knowing it was my word vs. his.
> > > > > Now you back out because the value of the case isn't worth your time?
> > > > > You got some nerve and your earning the reputation of a shady lawyer
> > > > >
> > > > > > On Feb 22, 2015, at 7:42 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > > >
> > > > > > To believe David's version of events you must believe I was committing suicide.
> > > > > > Who in their right mind puts his arm into a chainsaw?
> > > > > >
> > > > > > I figured you would cop out again...
> > > > > >
> > > > > > Now I'm left wondering...
> > > > > > How hard is it to sue an atty?
> > > > > >
> > > > > > And yes I am and have been looking for someone who will take this case...
> > > > > >
> > > > > > The issue of my word vs David Gagnons... Did he cut me or did I cut myself?
> > > > > >
> > > > > > Of coarse he cut me.
> > > > > >
> > > > > > Next issue please?

EXHIBIT F

EXHIBIT # 8
2-19-20

Dulberg 001384

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STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

-vs- No. 17 LA 377

THE LAW OFFICES OF THOMAS POPOVICH and HANS MAST,

Defendants.

The remote videoconference deposition of HANS MAST, appearing remotely from McHenry County, Illinois, called by the Plaintiff for examination, pursuant to subpoena and pursuant to the Code of Civil Procedure of the State of Illinois, and the Rules of the Supreme Court thereof, pertaining to the taking of depositions, for the purpose of discovery, taken before Barbara G. Smith, appearing remotely from Will County, Illinois, Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, commencing at the hour of 10:00 a.m. on the 25th day of June, A.D., 2020.

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REMOTE APPEARANCES:

THE CLINTON LAW FIRM, By
MS. JULIA C. WILLIAMS
111 West Washington Street, Suite 1437
Chicago, Illinois 60602
(312) 357-1515
(312) 201-0737 (Facsimile)
juliawilliams@clintonlaw.net
On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, By
MR. GEORGE FLYNN
150 South Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3622
(312) 431-3670 (Facsimile)
gflynn@karballaw.com

On behalf of the Defendants.

ALSO PRESENT: Mr. Paul Dulberg

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I N D E X

WITNESS	EXAMINATION
HANS MAST	
By Ms. Williams	5
By Mr. Flynn	76

E X H I B I T S

HANS MAST DEPOSITION EXHIBIT	MARKED FOR ID
No. 1	10
No. 2	17
No. 3	18
No. 4	26
No. 5	28
No. 6	32
No. 7	35
No. 8	36
No. 9	40
No. 10	46
No. 11	48
No. 12	49
No. 13	53
No. 14	55
No. 15	64

(All exhibits provided electronically to the reporter.)

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THE REPORTER: The attorneys participating in this deposition acknowledge that I am not physically present in the deposition room and that I will be reporting this deposition remotely. They further acknowledge that, in lieu of an oath administered in person, the witness will verbally declare his testimony in this matter is under penalty of perjury. The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting. Please indicate your agreement by stating your name and your agreement on the record.

MS. WILLIAMS: Julia Williams. I agree.

MR. FLYNN: George Flynn. I agree.

THE REPORTER: Will the witness kindly present his government-issued identification by holding it up to the camera for verification?

(Witness presents government-issued identification and identity is verified.)

THE REPORTER: Thank you.

HANS MAST,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

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EXAMINATION

BY MS. WILLIAMS:

MS. WILLIAMS: Okay, so this is the discovery deposition of Hans Mast taken pursuant to all applicable rules and notice in the case of Dulberg versus The Law Offices of Thomas Popovich, et al. This deposition is being taken for the purposes of discovery.

Q. Hans, can you state your name for the record, please?

A. Hans Mast.

Q. Have you had your deposition taken before?

A. Yes.

Q. And how many times?

A. I think two.

Q. And for what purpose?

A. Long, long time ago I think there was a malpractice case I was a witness on and a legal -- a medical malpractice case that turned into a legal malpractice case, not against me but against the office I was with.

Q. Okay. So you weren't named in the lawsuit as a defendant?

A. I might have been named. I might have been

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named, but I was somebody that appeared on a motion. I think I got out eventually.

Q. Okay, and then -- And then -- Sorry. And then you said you think twice, so do you know approximately what year that medical malpractice case that turned into a legal malpractice case, do you know roughly what year that was?

A. '94 or something.

Q. Okay, and then the second time, what would have that been?

A. It's not coming to me. It was another legal case. I don't remember the details.

Q. Okay --

A. There -- Go ahead.

Q. More than 10 years? I'm sorry, I didn't mean to interrupt you.

A. Yes.

Q. We can go over the -- I'm going to try not to interrupt you, you're going to try not to interrupt me. You've taken depositions before, I'm sure we can get into that and appreciate you answering orally, all of those typical things that apply, and I'll try not to interrupt you too much. Have you ever -- Other than the one time you just

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identified, have you ever been sued other than this suit for legal malpractice?

A. No.

Q. Do you recall any other details about that medical malpractice lawsuit that turned into a legal malpractice suit? Do you know what the basis of the suit was?

A. It was a medical malpractice case that I think lost on a summary judgment motion and they were -- the client was suing the office and I think I got involved in it because I was on a motion.

Q. Were you the one that drafted the summary judgment motion?

A. I don't think so. I don't really remember clearly back then, but I don't think I did.

Q. Okay.

A. I think I argued -- I might have argued it. I don't remember.

Q. Okay. Have you -- Have you taken depositions before?

A. Yes.

Q. Roughly how many depositions do you think you've taken in your legal career?

A. Lots. Lots.

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Q. Hundreds?

A. Probably.

Q. Oh, I'm sorry, I forgot to do this, but I think we saw your room. It's just you and George Flynn in the room with you, correct?

A. Yes.

Q. And there's no one else in the room and if there were, you would identify them, correct?

A. Yes.

Q. And you don't have any devices or anything with you? You're not communicating with anyone during this deposition other than the attorney in the room with you, correct?

A. And you and who else is on this meeting.

Q. Okay. I'm sorry, let me rephrase. Is there anyone that I don't know that you are communicating with that I wouldn't know?

A. Not that I'm aware of.

Q. Okay. If you take any notes or otherwise communicate with people during the deposition, we just ask that those notes be produced. Okay. Did you do anything to prepare for the deposition today?

A. Well, I just saw some exhibits you sent George. I didn't really prepare them. I looked them

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over briefly.

Q. Did you review any of the other files that have been produced in this case?

A. No.

Q. Did you review any notes?

A. No.

Q. Any other documents?

A. No.

Q. Did you meet with anyone --

A. Other than George?

Q. -- to prepare? Other than George.

A. No.

Q. And you did meet with George, I'm assuming. I don't want to know the contents of that meeting, but you met with George to prepare?

A. Not very long.

Q. Okay. Did you talk to anyone else about today's deposition prior to the deposition today?

A. No.

Q. Where did you go to law school?

A. Kent.

Q. And what year did you graduate?

A. '91.

Q. And were you admitted to practice in

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Illinois that same year?
A. Yes.
Q. And have you -- Are you admitted to practice anywhere else?
A. No.
Q. Have you ever been reprimanded or disciplined by any courts?
A. No.
Q. Have you ever been publicly reprimanded or disciplined by any oversight body, such as the ARDC?
A. No.
Q. When did you start practicing?
A. '91.
Q. And where did you start?
A. In Rockford.
Q. With a firm?
A. Yeah, Cacciatore.
Q. And how long were you there?
A. About a year and a half.
Q. And what kind of work did you do there?
A. Personal injury, plaintiff.
Q. Have you done personal injury your entire career?
A. No, I did some defense work.

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Q. Okay. So you were at Cacciatore for a year and a half and you were doing plaintiff's personal injury work. What did you do after that?
A. I went to the Loggans firm in Chicago for about 6 months.
Q. And what did you do there?
A. Plaintiff's.
Q. PI again, personal injury?
A. Yeah.
Q. And after that?
A. Judge and James in Park Ridge.
Q. And how long were you there?
A. 7 years, I think.
Q. Did you do plaintiff's personal injury there as well?
A. No, that was defense.
Q. What kind of defense work?
A. Lots -- All kinds, municipal, tort.
Q. Did you defend personal injury cases while you were there as well?
A. Yes.
Q. And then after that, where did you go?
A. Kemper, I think.
Q. And how long were you with Kemper?

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A. I think a couple years. Maybe a little more than that.
Q. And what kind of work did you do at Kemper?
A. Defense.
Q. Defense of what type of cases?
A. Lots of different kinds, auto accidents, premises.
Q. Mostly torts though, negligence-type cases?
A. Yes.
Q. And then after Kemper?
A. I think Popovich was next.
Q. And how long were you with the Popovich firm?
A. About 18 years, I think.
Q. And do you know what year you -- roughly what year you joined Popovich?
A. 2001 maybe.
Q. And you were there for roughly 18 years you think?
A. Yes.
Q. So you left maybe just last year?
A. In '18.
Q. 2018?
A. Yeah.

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Q. And why did you leave Popovich?
A. To start on my own.
Q. And where are you now?
A. With Compton Law Group.
Q. I'll give you just a second to come back.
A. Yeah.
Q. And what types of -- I'm sorry, I'm going to go back to the Popovich firm. What kind of cases did you handle at Popovich's firm?
A. Plaintiff's personal injury, all kinds.
Q. And then at Compton, what kind of work do you do?
A. Same thing, same kind of cases, plaintiff's personal injury.
Q. So is it fair to say you've been doing plaintiff's personal injury cases steadily throughout your career?
A. Yeah, except for the time I was with the defense offices.
Q. Okay. But you were still doing personal injury, just on the defense side, not on the plaintiff side?
A. Right.
Q. Okay. Did you answer discovery in this

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case, in the malpractice case that we're -- the Dulberg versus Thomas Popovich case?
A. I think I did.
Q. Do you remember -- Did you review discovery in this case, do you recall?
A. Like I said, I think I answered some and signed off on some, I just don't remember. I haven't seen them recently.
Q. Okay. Okay. If you recall, do you remember reviewing the documents that were produced in this case?
A. I don't know what was produced.
Q. Okay.
A. I assume the file.
Q. Right. Okay, if I represented that the file was produced, would that make sense to you? Can we kind of agree that the file was produced?
A. Well, if you told me that.
Q. Okay. So when the file was produced, I don't know if you recall, there were black -- some black pages between the file. Do you remember any discussions about that?
A. I didn't produce anything so and I haven't reviewed what was produced, that wasn't my -- I was

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in a different office when it was produced, I think.
Q. Okay. So Thomas Popovich would have had possession of the file?
A. Right.
Q. You did not have possession of any documents from the underlying case, from the Dulberg versus Gagnon-McGuire case?
A. I didn't.
Q. Okay. So you would not have had access to that file since you were with Thomas Popovich in 2018?
A. Once I left the firm, I have not had the file.
Q. Okay. In this case did you produce emails that you possessed or did you not have access to those either?
A. I would -- I don't know what was produced, again, by the Popovich firm. I don't know if they had my emails, but I have a new email address. I don't think it's the same as it was back then.
Q. Okay.
A. So I didn't produce anything.
Q. So you didn't produce any emails or communications that -- in the -- from the underlying

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case?
A. Not that I'm aware of. Unless I produced it to Popovich and he produced it. I don't know how that worked.
Q. Okay. When were you retained by Paul Dulberg?
A. I don't recall. I'm assuming there's paperwork that shows that.
Q. Yes. Let me upload a file here. Just give me a second.
A. I don't think he retained me. I think he retained Tom Popovich's office.
Q. Okay. I just uploaded a file that's titled Dulberg Mast Dep Exhibit 1, if you can -- And, George, you should have that as well -- and it should be the retainer contract.
A. Yeah, I see it.
Q. Okay. So it's a contract for legal services and it's marked POP, P O P, 000586 on the bottom, just for reference, so this will be the first exhibit in this deposition. Do you recognize this document?
A. I recognize what it looks like, yeah.
Q. Yeah, and it's the contract for legal services and it's undated, it looks like.

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A. That's what it looks like.
Q. Okay. I'm going to upload another exhibit. So I'm uploading Exhibit 2, it's titled Dulberg Mast Dep Exhibit 2, and this should be the original complaint filed in the case of Dulberg versus Gagnon, et al., 12 LA 178, filed in McHenry County. Do you see that document?
A. Yeah. What I'm going off are an email I got with all the exhibits attached, so I'm not — that's what I'm looking at.
Q. Okay.
A. It's a complaint and it says Exhibit 2.
Q. Right, okay. So our numbers may be a little off, but the description should be correct. In that complaint shows file stamp May 15, 2012?
A. Yeah, that's what it says.
Q. Okay, and so Mr. Dulberg would have hired you sometime -- hired the Popovich firm sometime prior to that, correct?
A. I'm assuming. I --
Q. Okay. Do you have any idea?
A. I'm sorry.
Q. I'm sorry, I didn't mean to interrupt you. Go ahead.

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A. Go ahead.
Q. Do you have any idea about -- Do you have any idea about what timeframe he would have hired -- retained you?
A. I really, again, I don't have an independent recollection of it. I think there's probably a memo out there of me meeting with him, too.
Q. Okay. Actually, I think there is. Okay, I just uploaded Dulberg Mast Dep Exhibit No. 3 and the top says -- it's titled, "Intake Memo." At the top it says, "Memorandum," it's Popovich, it says POP00961 and 000962. Do you recognize this document?
A. I -- It looks familiar.
Q. And it indicates that it's from you, so you would have drafted this document, correct?
A. I would have dictated it, yeah.
Q. Okay, and it looks like you had a new client meeting with Paul on December 1st of 2011?
A. That's what it says.
Q. Okay. Does that seem like that timeframe would have been roughly correct?
A. I have no reason not to believe that's accurate.
Q. Okay. So Paul retained you probably

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sometime in December of 2011 and then you filed a complaint around May 15, 2012?
A. That's what it appears.
Q. Okay. So can you just tell me what the case against Mr. -- I'm sorry. Can you describe the case between Paul Dulberg and David Gagnon, Caroline and William McGuire?
A. What do you mean describe it? What it's about?
Q. Yeah, basically what was it about?
A. An injury, a chain saw injury.
Q. Okay. Was there anything about the case that was unique to you?
A. Other than it was a chain saw injury.
Q. Okay. What was your theory of that case? What was your theory of liability in the case?
A. I think the -- Paul had claimed Dave struck him with the chain saw.
Q. So was it just a negligence theory or was it a strict liability or --
A. I believe it was negligence, if I recall correct.
Q. Negligence against Gagnon, David Gagnon?
A. Yeah, and I think the McGuires actually were

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named as well.
Q. And what was the theory as to the McGuires?
A. I think Paul had said that they were the ones that owned and looked over the work that was being done.
Q. Okay. So if they owned the chain saw and were overseeing the work, what's the legal theory for liability on that? Why would they be liable?
A. Under case law potentially there's liable -- liability for people that oversee and direct the work.
Q. Okay, and is that a strict liability or is it some other form of liability?
A. It would be negligence.
Q. So negligent oversight?
A. Potentially.
Q. Okay. Were there any other theories that you were going to pursue or could be pursued?
A. Not that I recall.
Q. Okay. So a negligence claim against Gagnon for negligently utilizing the chain saw and then a negligence claim against McGuires for not -- for not controlling his use of the chain saw, is that accurate?

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A. I don't recall the exact allegations, but I think in a general theme that was what we were going to try to prove.
Q. Okay. In the intake memo, do you want to go back to that? There are some notes on this exhibit that state -- it looks to me like it says, "Hans BC the accident occurred on their premises, their HO med pay will cover the bills," and then it's signed. Do you recognize that handwriting?
A. Yeah, that would be Tom.
Q. Okay, and what does that note mean?
A. Medical coverage, medical payments coverage.
Q. So there -- So the McGuires -- When he says their, is he referring to Caroline and Bill McGuire?
A. Well, I don't know what he's referring to. I think what he's -- Well, he circled their names, so that probably indicates what he's referring to.
Q. Okay. Would their -- Would their insurance cover medical bills in an instance like this?
A. Possibly.
Q. Okay. Did you reach out to their insurance company about covering any medical bills?
A. I don't recall if that was applicable or I don't know -- I don't recall that issue.

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Q. Okay.
A. Oh, uh, I think -- It just kicked me off.
MR. FLYNN: I got disconnected, too. It's the Wi-Fi.
BY MS. WILLIAMS:
Q. Okay, we'll just wait a minute here.
A. I can hear you. I just can't see you.
Q. We'll wait a minute until you can get your video back on.
MR. FLYNN: Julia, we think the Wi-Fi may have dropped here in the office.
MS. WILLIAMS: Okay. Well, let's just give it a minute and see.
MR. FLYNN: Okay.
(Whereupon, a break was taken, after which the following proceedings were had:)
MS. WILLIAMS: Okay. I think we're back on the record. Barb, are you doing all right?
THE REPORTER: Yes.
BY MS. WILLIAMS:
Q. Okay. So we just went through the memo that Tom made a note about insurance and your testimony was that you don't recall whether you made any

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requests to the McGuires' insurance to pay Paul's medical bills; is that correct?
A. I don't remember, right.
Q. Okay. Back to the actual claims made. Do you remember -- Do you recall what the defense was for first Gagnon and then Bill -- William and Caroline McGuire?
A. What do you mean by defense?
Q. What was their theory of defense in the case, do you recall? As you understood it.
A. I mean, that's a big question. I mean, they, like every case, they were denying what we were alleging.
Q. Were they denying the facts? Did they dispute the facts of the case?
A. Definitely.
Q. Okay. Do you recall what they were alleging as far as the facts that were different from what you were alleging?
A. I mean, I can probably answer that for -- with an hour -- an hour answer. There's a lot that they were denying. There was a lot that, you know, I mean, I'd have to -- I could look at their answer. I could look at their deposition testimony, but, I

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mean, that brings up a lot of issues.
Q. Okay. Let's -- Let me narrow it down a little bit and try to get more to a point that will be useful for our discussion. At some point, you had recommended that Paul settle the case as to the McGuires; is that correct?
A. Yeah.
Q. And what was the reasoning for settling the case as to William and Bill McGuire?
A. Just risk, like you always discuss with any settlement.
Q. Can you be a little more specific about what type of risk?
A. Again, that's a long question but, I mean, it's like any settlement, you're taking a risk if you don't settle the case when you have issues that could be problematic.
Q. Okay. When you say issues that can be problematic, and I know it could be a very long answer, but as much as you can, can you summarize what you think those risks were?
A. Understanding it's a summary that, I mean, I could probably answer that in a couple hours, but the chance of recovery was in my view very slim if at all

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because of lots of reasons, one, because of Paul's testimony, Gagnon's testimony, the McGuires' testimony. The evidence didn't seem to be something that was going to allow us to prove the case against the McGuires.
Q. Okay. What -- And, again, I understand this is -- these are very long questions, but just in summary, what were you going to need to prove the case against the McGuires?
A. Now, again, understanding I would have to put myself in my place where I was back at the time that I fully evaluated this with Paul, but if I'm just trying to come up with some thoughts now years later the case law, I think, was against us. The defense was going to file a motion for summary judgment if we didn't work out some sort of settlement that I felt they were going to win and the testimony from all parties was not helpful to us.
Q. Okay. I'm going to move forward and then we may come back to this a little bit. Do you recall when the first time was that you talked to Paul about settling the claims with the McGuires?
A. No, whenever -- You know, the defense attorney would have reached out to me to ask for some

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sort of demand, I assume.
Q. Did you make a demand at some point?
A. I think -- I think some of your paperwork showed that I did.
Q. Okay. I just uploaded Dulberg Mast Exhibit 4 and it says letter -- it's "Letter Re Settlement," and that should be -- still be Exhibit 4 that was emailed around to Counsel so that you would have it. And it is labeled POP192 and POP193. Do you recognize those documents?
A. Wait. I think the Internet, maybe because we were having problems, is the Internet went down, so now my exhibits aren't pulling up. Can you try it again? Do you have that, George?
MR. FLYNN: Yeah, here's the hard copy.
THE WITNESS: I'll look at the hard copy, so what are you asking?
BY MS. WILLIAMS:
Q. Great. So it should be the document it has letterhead on the top, Popovich letterhead on the top, and at the bottom it's POP000192 and POP000193.
A. Right.
Q. Do you recognize those documents?

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A. I mean, they look familiar. Documents from the Popovich firm, if that's what you're asking.
Q. Is that your signature?
A. Yes.
Q. So you would have drafted or caused this letter to be drafted and sent?
A. It appears that way, yeah.
Q. And this is a demand letter where you make a demand of $7,500; is that correct?
A. Yes.
Q. Do you recall making that demand?
A. No.
Q. Do you recall if you talked to Paul prior to making the demand?
A. I'm sure I would have.
Q. Okay. Do you recall -- Do you have any memos or notes regarding that conversation with Paul?
A. I don't personally.
Q. Okay. If there were memos and notes, would they be in Thomas Popovich's file?
A. It should.
Q. Okay. Do you recall any emails about the demand -- the 7,500 demand?
A. I know there were lots of emails. I don't

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know if this number is identified in those emails, but, again, it would have been something I would have talked to him about before making it.
Q. Okay. But at this time you don't know if there are any memos, notes or emails memorializing any conversation with Paul prior to sending the October 22, 2013 demand?
A. Not that I recall.
Q. Okay, and if they did exist, they would be in the possession of Thomas Popovich, correct?
A. I would think so.
Q. Okay, and if you had those in your possession, you would produce them in discovery, correct?
A. If I had them.
Q. Okay. Just uploaded Exhibit 5, and this is email dated October 30, 2013, and it's marked at the bottom POP000195.
A. Okay.
Q. Okay, and here in this email it looks like you started this email chain to Paul on October 25, 2013. Do you see that?
A. It looks like there's a couple emails here. There's several pages. You just mean the first page?

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Q. I think -- It should only be, I believe it's only one page and it looks like --
A. Oh, these aren't part of it? Just one page?
Q. The document that I have is just one page. Are we looking at the same thing?
A. Okay.
Q. It's POP00195 on the bottom.
A. Yeah, he had a couple other pages on it, but okay.
Q. Okay. I just want to make sure that I didn't -- Okay. And on the bottom there of the first sheet, if you have several, I've only published one sheet for the purposes of this deposition, it states, "Friday, October 25, 2013," do you see that?
A. Where does it say that?
Q. So about halfway down the page it looks like it says, "Original message from Paul"?
A. Yeah.
Q. Okay. So that looks like Paul reached out to you about medical deposition and then on the top it appears to be your reply of October 30, 2013. Does that seem like that's accurate?
A. That's what it shows.
Q. Okay. Okay. And here you first -- Am I

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correct in summarizing this is an email where you talk to Paul about liability for Mr. Gagnon?
A. Look likes I did cover that issue.
Q. Okay, and do you recall at the time what your purpose was behind this email?
A. I mean, every purpose is just to have open communication. That's all the purpose --
Q. Okay. Would you have been trying to explain to Paul the liability issues in his case that you described earlier?
A. Yeah, I definitely was discussing several issues for him so he knows what's going on.
Q. Okay, and this email response is dated October 30th, so that was after you sent that initial letter. Do you recall whether there would have been anything prior to this?
A. Whether what was prior to this?
Q. Would there have been any communications about liability either to Gagnon or the McGuires prior to the October 30, 2013 email?
A. Every time we talked, there were issues about liability, I mean, for whatever I first -- he first came to the office I recall he was lots of questions and I gave him lots of answers as is

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reflected in my emails.
Q. Okay. Did you meet with Paul after you sent that October 22nd demand letter?
A. Did I meet with him?
Q. Yes. In person.
A. I'm sure I did.
Q. Okay. Do you recall -- Do you recall meeting -- the dates of those meetings?
A. No, I don't recall the dates.
Q. Okay. So I'm going to upload another file here.
A. Yeah, our Internet is down. That's why I can't bring these up.
Q. Okay.
MR. FLYNN: Julia, just so you know, I've got hard copies of the majority of the exhibits you sent with the exception of the larger files, like the insurance policy and the dep transcripts.
MS. WILLIAMS: Okay. Okay, great.
MR. FLYNN: I've got some of the deposition transcripts, but I didn't want to waste a lot of paper and ink at home.
MS. WILLIAMS: Okay. I think we'll be -- For the most part, I think we'll be fine and we'll

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deal with it if and when we get to that point.
Q. Okay. So the document that I'm looking at now is another email on the -- it's now titled Exhibit 6. I don't think it was entitled Exhibit 6 in what I sent to George, but it's an email that the first date on the email is November 4, 2013, and the last date on the email is November 5, 2013 email chain and it's -- at the bottom it's stamped Dulberg001531.
A. What exhibit is it?
Q. I think it might have been 5-A to George. It's now Exhibit 6 for the purposes of this deposition.
A. Yeah, that wasn't part of the download then. Do you have --
MR. FLYNN: Yeah, I don't think that was included.
THE WITNESS: What's the Bates stamp or what's the stamp?
MS. WILLIAMS: The Bates stamp is Dulberg001531.
THE WITNESS: Yeah, I don't recall --
MR. FLYNN: I don't recall seeing a 5-A on the download. I think it just went straight from

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5 to 6.
MS. WILLIAMS: Okay, let me see if I can do something else. I'm going to try to share my screen. I don't know if I'm going to be able to do it. So bear with me. Okay. I can't -- I can't share the screen. Can I email -- George, can you pull up an email if I email it to you?
MR. FLYNN: I should be able to eventually.
MS. WILLIAMS: Okay, let me see if that will --
THE WITNESS: Let me run to the washroom real quick while you guys do --
MS. WILLIAMS: We'll take a quick break, that's fine, we'll try to work this out. If anybody else needs a break, obviously take a break now.
(Whereupon, a break was taken, after which the following proceedings were had:)
BY MS. WILLIAMS:
Q. Okay, back on the record. This is the Exhibit 6 for the deposition and it's marked at the bottom Dulberg001531 and it's an email chain between Paul Dulberg and Hans Mast dated November 4th through about November 5th, is that accurate, Hans?

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A. That's what it appears.
Q. Okay, and it appears at the bottom that Paul is asking you if he should bring anything to a meeting.
A. Okay.
Q. And that meeting appears to be at 3:00 p.m. on November 4th of 2013.
A. Okay.
Q. Is that an accurate description? Okay? Do you recall having --
A. Go ahead, I'm sorry.
Q. Do you recall having a meeting on November 4th of 2013 with Paul Dulberg?
A. I don't have an independent recollection.
Q. Okay. Okay.
MR. FLYNN: Julia, now I recall, this is a separate exhibit you sent a little bit later than the original download, so I did have this.
MS. WILLIAMS: Okay. Okay. We got it worked out.
MR. FLYNN: Yeah, okay.
BY MS. WILLIAMS:
Q. Okay. So you don't recall calling a meeting for November 4th?

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A. We had lots of meetings so --
Q. Okay.
A. -- I don't have an independent recollection of that one particular date.
Q. Okay. Okay, I'm going to stop screen sharing. Okay. I'm going to upload another file. This is Deposition Exhibit 7. George, you probably had it as Exhibit 6, but for the purposes of this deposition right now it's going to be 7 and it's an email chain dated --
A. I have these on the computer. You don't need to, unless you want to, but I'm just saying I have these on the computer.
Q. Okay, but Barb needs them, so that's why I keep uploading them, otherwise she doesn't have them. Okay. So Exhibit 7, and it's POP00181 and POP00182, and it's two pages of an email chain, November 15th, looks like on the second page it starts November 15th and ends November 19th, is that accurate?
A. Yes.
Q. Okay, great. So here it looks like Paul started this email chain, but then on November 18th you note that, "The McGuires' attorney has offered us, you, $5,000 in full settlement of the claim against the McGuires only," do you see that?
A. Yes.
Q. Okay. Do you recall that offer being made?
A. I do have some recollection of having a conversation with them.
Q. Okay. So I'm going to upload another document and then we can keep going here. And then this is Exhibit 8 and for -- it is a letter from Ronald Barch to you, Hans, and it's POP000667. Do you have that?
A. What's it dated?
Q. I'm sorry, dated November 18, 2013.
A. Yeah, I have that.
Q. Okay. And that's a settlement letter from Barch offering the settlement of $5,000, correct?
A. Right.
Q. Do you recall receiving this letter?
A. I mean, I don't today recall getting the letter, but I'm familiar with the transaction, yes.
Q. Okay. Okay. So you would have received the $5,000 offer from Barch and you communicated it to Paul via the email on November 18th?
A. As well as when we talked, yes.
Q. Okay. Okay. And when did you talk?

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A. Again, I don't know the dates. I just know generally how this all transpired.
Q. Would you have talked to Paul on the 18th when the letter came in?
A. It's dated the 18th. I doubt I got it on the 18th. Whenever I got it, I would have told Paul.
Q. Okay. And it looks like the email you sent, which is Exhibit 7, communicated that offer?
A. Okay.
Q. Would you have talked to the McGuires' attorney prior to receiving the letter about the offer?
A. I don't recall. It might have -- that might have happened.
Q. Okay. Do you recall whether you met with Paul sometime after -- on or after November 18 to discuss the settlement offer?
A. I'm sure we did. I know we had several conversations and meetings about that.
Q. Okay. In this email chain that's Exhibit 7 about halfway down the page it says on November 18, 2013, at 7:40 p.m., Paul responds to your email. Can you see that?
A. Are we going back to the email now?

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Q. Yep, it's POP00181.
A. What exhibit?
Q. It's Exhibit 7.
A. 7, that's the letter.
Q. If may be 6 for you. It may be 6 for you.
A. Let's take a look. What page is the email?
Q. The date at the top of the email chain is Tuesday, November 19, 2013.
A. Yeah, I have that.
Q. Okay. And then about maybe halfway down the page it's dated on November 18, 2013, at 7:40 p.m., do you see that?
A. Yep.
Q. And there it says, "Only five? That's not much at all," do you see that?
A. That's his response, yes.
Q. Right. Right. Do you recall talking to Paul about the $5,000 and that not being much?
A. Like I said, yes, we've had plenty of conversations and meetings on that.
Q. Okay. When you originally offered the 7,500, did you talk about what the possible outcomes as far as counteroffers, what they may demand, something like that, did you talk about that prior to

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making that $7,500 offer?
A. I mean, I think I generally understand what you're asking. Did we just have general conversations of numbers? Yes.
Q. Okay. In this email and this is -- I understand this is speculation, but in this email it appears that Paul is surprised that it's $5,000 was the offer, correct? Would that be fair to characterize it that way?
A. Is he surprised at it or is he surprised at the amount? It looks like he didn't think it was much.
Q. Right. So if you originally offered 7,500 and they came back at 5,000, in your experience, does that seem like much of a difference when it comes to counteroffers?
MR. FLYNN: I'll object to the form.
THE WITNESS: Yeah, I'm not real sure what you mean by that.
BY MS. WILLIAMS:
Q. I guess let me rephrase because I don't think I'm getting to the point. Prior to making the $7,500 offer, did you discuss with Paul that the McGuires may come back with an offer that was lower

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than the 7,500?
A. Again, I'm -- I understand the question. I'm just not trying to play games, but you're asking me do I recall specific words that are used or topics. All I can tell you about this is we talked about the whole gamut of options, that I didn't feel it was a strong case, that they were reaching out to us for $5,000, and that balancing everything, the risks, costs, even though it wasn't much, it was something that would have been desirable for him if he wants to end up with money versus the McGuires.
Q. I'm going to add another exhibit here. Okay, for the purposes of this deposition it's Deposition Exhibit 9. This is a memorandum. At the top it will say, "Memorandum," and the date is November 20, 2013, and at the bottom it's identified as POP and then 3 — there's 000003, I believe. Do you have that?
A. What exhibit is it?
Q. I think you're probably going to have it as Exhibit 8, but for the purposes of this deposition it's actually going to be Exhibit 9.
A. Okay.
Q. And it's Dulberg Mast Memo,

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2013 November 20.
A. Okay, yeah.
Q. Okay. It looks from this memo that you had a meeting with Paul and his friend on November 20th, is that accurately reflected what's stated in the memo?
A. Yes.
Q. Do you remember this document? Do you recall this?
A. As I said before, I understand what you're asking, but we've had lots of meetings. Do I remember that particular date, no, but I remember the meetings.
Q. Do you recognize this memorandum?
A. I recognize the discussion that's referenced in the memo. I haven't seen the memo for 7 years.
Q. Okay. Do you recall the advice that you gave in that meeting of November 20th?
A. Yeah, like I said, it's summarized a little bit in there. Yeah.
Q. Okay. And what was the -- Why don't -- What was the advice that you gave?
A. Do you want me to read the memo or you want me to just tell you generally what the topics were or

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what?
Q. Generally to the best that you can recall.
A. Looks like on that day he brought his friend in because before he wanted to consider the offer, he wanted to have his friend come with him to talk about these issues with me. So we went over --
Q. So --
A. Go ahead.
Q. No, I'll let you finish. Go ahead. I'm sorry.
A. Well, we went over all the issues, all the risks, all the money issues, all of the issues.
Q. Do you recall who the friend was?
A. Not as I sit here today.
Q. From this memo it says, "Paul maintains the McGuires controlled everything that they were doing and you told him that wasn't what the evidence seemed to show." So can you expound on what -- This is really going to be a complicated question, but to the best of your ability, can you explain what the theory of your case was against the McGuires and what the evidence was that was going to -- what evidence was your reason for believing that you couldn't prove your theory?

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A. We already talked a little bit about that earlier, but every time we met, we talked about this because this was a subject at the time with the McGuires and given the testimony of the McGuires, given Paul's testimony, given the lack of any evidence that they were controlling any work or even knew what Paul was doing, I felt it was a big, high risk of moving forward on that claim.
Q. So I'm going to try to summarize this. Maybe in parts. So in order for the McGuires to be liable for Gagnon's work, Paul would have to prove in his case that the McGuires controlled Gagnon's work, is that accurate?
A. Are you asking me if that's an accurate statement of the law?
Q. Yes.
A. I think that's partially right. There's a lot more to it. It's different branches and elements that you have to prove, control was a factual matter, and he would have to be able to establish there was some oversight. It goes down into some factual issues that you have to be able to show.
Q. Okay. So can you -- To the best of your ability, can you kind of walk me through for the

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negligence claim against the McGuires what the legal elements were that you would have to show?
A. I haven't brushed up recently on that area, but I can tell you that under the case law they have to have some oversight and control over what was going on and some involvement in the work and some knowledge higher and above what Paul was doing, and if you look at their testimony, they were not out there, they were not looking at it, they didn't even really know what Paul was doing frankly.
Q. And what about David? Did they have to control what David was doing as well?
A. I meant David, I'm sorry.
Q. Okay. So the McGuires would have to have oversight and control over David Gagnon?
A. Over the work.
Q. Okay. Over the work. Okay. So William and Caroline did buy the chain saw, correct?
A. I believe that is true.
Q. Okay. But then David Gagnon was the one operating the chain saw?
A. Right.
Q. And you would have to show in Paul's case that Bill and Caroline, one or the other, had control

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over David's operation of the chain saw?
A. Control could mean a lot of things. They would have to be in a position to instruct him, tell him what to do, be aware of the work that was being done and have some control over what he was doing.
Q. Okay. So in your -- Your opinion of the case was that it was insufficient for them to have simply purchased the chain saw and provided it to Gagnon?
A. Yeah.
Q. And what about if they were paying him? Would that make any difference?
A. No.
Q. I'm sorry, I don't know or no?
A. No.
Q. Just bear with me for a second here. And you informed Paul -- I'm sorry, let me back up. In exhibit -- Deposition Exhibit 7, so it's probably 6 for you, the email chain between you and Paul, roughly November 18th through the 19th, Popovich 000181, on the bottom of that first page, November 18, 2013, at 1:28 p.m. there's an email from you. Do you see that?
A. Yes.

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Q. "In addition, the McGuires' attorney," so it's ATTY, "has offered us, you, 5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners so they likely will get out of the case on a motion." Did I read that correctly?

A. Yes.

Q. So this is where you told Paul that you didn't believe the McGuires had any liabilities for the reasons -- in part for the reasons we just discussed?

A. Right.

Q. Ultimately Paul accepted that $5,000 offer, correct?

A. Yes.

Q. And you communicated that to the other side later in 2013, does that sound correct to you?

A. Yes.

Q. I'm uploading Exhibit 10, and it should be Exhibit 10 for you as well, and it's a memorandum dated December 20, 2013, and at the bottom it's POP000884, do you see that?

A. Yes.

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Q. And that's a memorandum that you wrote to the legal file; is that correct?

A. It looks like that.

Q. I think I already said this, it's dated December 20, 2013?

A. Yes.

Q. Okay. And the substance of it, it appears that you had a conversation on December 18th with Paul and that he was authorizing you to accept the $5,000 settlement?

A. Yes.

Q. Okay. Do you recall that conversation of December 18?

A. I recall having lots of conversations, this is one of them, and generally I do recall the conversations in a general sense, not the exact dates.

Q. Okay. So you don't remember anything specific to this December 18th call what you would have discussed?

A. Not other than what I've already said we discussed over the time.

Q. Okay.

A. Paul was weighing his options. He knew the risk and he had -- he wanted some time to think about it and consider it.

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Q. Okay. All right, just bear with me here. Okay, I just uploaded Deposition Exhibit 11, it's a settlement acceptance letter, letterhead from Thomas Popovich's office dated December 26, 2013. Hans, your signature appears on there and it's POP00670. Do you recognize this document?

A. That appears to be a letter from Popovich's office to defense counsel.

Q. Do you recognize your signature on here?

A. Yes.

Q. And this is the letter where you accepted the offer on behalf of Paul, is that accurate?

A. It appears, yeah.

Q. Okay. So the Defendants made the original offer around November 18 and Paul -- November 18, 2013, and Paul accepted it around December 20, 2013. Is that statement accurate?

A. I don't have, like I said, independent recollection of the dates. I would just have to go off the documents.

Q. Okay. Was there -- If that timeframe is roughly correct, was there anything that occurred during that timeframe that indicated to you, you know, why Paul changed his mind from originally thinking it was too little to now accepting it. Was there anything that stuck out in your mind about that?

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A. Yeah.

Q. Can you expound on that?

A. Well, he had his friend with him during our meeting and he reviewed the depositions.

Q. Okay. Did he not have the depositions prior to that?

A. I remember he asked for copies of them, so I provided them to him.

Q. Okay, and when you say the depositions, do you mean just the party depositions, the McGuires and the Gagnon?

A. I don't remember if I gave him the doctors. I don't remember which ones I gave him, but I know specifically it was Gagnon and the McGuires.

Q. Okay, I'm uploading Dulberg Mast Dep Exhibit 12. This is titled, "Legal Research." And this is hard because there's -- it's 27 pages. Some of them have Bates numbers, but some of them are black on the bottom, so I think the Bates numbers

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didn't -- didn't take, but it's roughly -- looks like roughly 204, maybe 205, Dulberg204, 205 through roughly Dulberg00304 -- Actually, I'm sorry, these aren't going to be continuous. But do you have that packet of legal research in front of you? It appears to be copies out of a -- copies of case law out of the Northeastern Digest.

A. I just have the one case here.

Q. Just one case? Which -- What's the case title?

A. The first one, it's L A J A T O.

Q. Okay. Do you -- Did you copy this case law?

A. I don't know.

Q. Do you recall providing any case law to Paul?

A. I don't know if I did or didn't. I don't know if he asked.

Q. Okay. Do you recall doing case law research?

A. I'm sure I did, yeah.

Q. Would have there been a memo or something regarding that research?

A. Not necessarily. I was familiar with the law.

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Q. Okay. Okay. Was there any -- Was there any case law that stuck out to you, any particular cases that stuck out to you?

MR. FLYNN: Object to the form.

THE WITNESS: You mean stuck out to me with regard to Paul and his case?

BY MS. WILLIAMS:

Q. No. Were there any applicable cases that stuck out to you one way or the other as to whether the McGuires would be liable? Was there any specific cases that made you think that the McGuires may not be liable given the facts in Paul's case?

A. I mean, you deal with this issue a lot and I can't think of one particular name of a case, but these cases all go along the same line, so there were lots of cases on this one particular issue. It wasn't a complicated issue.

Q. So particularly the issue of control of Gagnon.

A. Of a premises owner's liability for an independent contractor.

Q. Okay. So can you explain generally what an independent contractor is?

A. I'll give you have an answer if you want,

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but just, I mean, we're talking now, what is it, 7 years later? I haven't been asked to do any research before today's deposition, but so, I mean, if you're asking me for what the case law says, I'd have to look at the case law, if that's what you're asking.

Q. I'm asking based on your -- on your experience and knowledge as a personal injury attorney and not necessarily related to Dulberg's case specifically.

A. Okay.

Q. But based on your knowledge and experience in premises liability cases, what is an independent contractor?

A. Someone that works on their own.

Q. And can you explain what you mean by on their own?

A. Somebody that's hired, like, somebody that's hired to paint the house.

Q. Okay. So somebody that's hired by a homeowner or maybe a business?

A. Yes.

Q. But someone that's hired by a homeowner but the homeowner doesn't -- doesn't tell them how to do

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their job?

A. Right.

Q. Did you ever obtain a copy of the McGuires' insurance policy, do you recall?

A. I don't have an independent recollection.

Q. Did you ever advise Paul as to the limits of the McGuires' policy?

A. I'm sure we talked about it.

Q. Okay. I just uploaded Dulberg Mast Deposition Exhibit 13 McGuire Interrogatory Answers and they're Bates stamped Dulberg000162 is the first page and there's roughly 14 pages. Do you see that document?

A. Yes.

MR. FLYNN: This is 14?

MS. WILLIAMS: It should be Exhibit 13 -- 13 or 14. I think I have it as 13. Yes, okay. And this -- I'm looking at paragraph 15 or at least I'm trying to look at paragraph 15.

Q. Okay. In paragraph 15 it looks like there was a question about the homeowner's insurance and the McGuires respond with their personal liability and their medical liability, do you see that?

A. Yes.

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Q. Okay. Now that you see that, do you recall whether you ever got a copy of that policy?
A. I don't -- You mean the dec pages or the whole policy?
Q. Either. Did you get a copy of the dec pages?
A. I have no idea.
Q. And you have no idea whether you got a copy of the whole policy?
A. Yeah, don't know.
Q. But they are representing what their insurance was and the liability there, correct, or their liability coverage there?
A. That's what it appears.
Q. Okay. And these -- This was -- looks like this was responded to based on the McGuires' signature on roughly the 12th page of the document. It looks like it was August 6th of 2012.
A. That's what it appears.
Q. Yeah. So prior to when they would have made the settlement offers, correct?
A. That's what it appears.
Q. Okay. Did you ever talk to Paul about those -- the limits of the insurance policy and how

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that may be important in his case?
A. I suspect we talked about the policy, yeah.
Q. Okay. Prior to any settlement discussions?
A. Yeah.
Q. Okay. But you've already testified you didn't -- You don't know if you -- You don't know if you obtained a copy. What about Gagnon's insurance policy, did you ever obtain a copy of that?
A. I don't know. I don't know.
Q. Okay. Did you issue interrogatories to Mr. Gagnon?
A. I'm sure I did.
Q. Let me upload this. Would they have been in Popovich's file if you --
A. Yes.
Q. Okay. So I can tell you, I don't recall seeing any documents issued by you. I'm going to upload a document that appears to be interrogatories issued by McGuires' counsel in the case. I'm going to upload it right now. It's Exhibit 14 and Answers to Co-Defendant Interrogatories and it is stamped Dulberg00178. Do you see that document?
A. Yes.
Q. It appears that these were issued by

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Co-Defendants, in other words, the McGuires, does that seem accurate to you?
A. Yes.
Q. So would you have issued interrogatories in addition to what the McGuires' counsel issued?
A. It's probable.
Q. Okay. Do you recall one way or the other today as we sit here?
A. Not other than it's probable I did.
Q. I have not seen those in discovery, so if they exist, we'd ask that they be produced. Do you ever recall talking to Paul about the policy limits of the Gagnon insurance policy?
A. It's a topic that frequently comes up. I don't have an independent recollection.
Q. Would you have any memos or notes on that?
A. I could. I may. I don't have an independent recollection of that.
Q. Okay. And, again, that would have been in the file that -- in Thomas Popovich's file?
A. Correct.
Q. In your knowledge and experience not related to the Dulberg case but just in your general knowledge and experience, are there any situations

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where a homeowner may be strictly liable for someone doing work on their property?
MR. FLYNN: I'm just going to object to the hypothetical being inaccurate and incomplete, also calls for an expert opinion. While this witness is a lawyer, I won't necessarily -- I don't expect to call him as an F-2 or F-3 witness in the case.
THE WITNESS: So you're asking if a homeowner can be strictly liable for an injury?
BY MS. WILLIAMS:
Q. Right.
A. In general terms, not with regard to this case?
Q. No, in general terms. I'm just asking in general terms in your -- based on your experience and knowledge of injury cases.
A. I mean, I think -- Not in Paul's case, but I think I could probably think of something that maybe could be -- as products strict liability, there's hazardous materials strict liability, there's different issues that potentially factually if they're applicable could apply, but not in Paul's case.
Q. Okay. Just in general, what kind of

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hazardous -- When you say hazardous, are you talking about hazardous chemical-type cases?

A. There's a string of cases when you're dealing with hazardous chemicals and hazardous materials, like a bomb or something like that, things like that.

Q. Okay. Okay. Are there any, like, hazardous actions? Could something be considered, like, some type of action be considered hazardous?

A. What do you mean by action? Activity?

Q. Yeah, like, I'm trying to give you an example because I'm just trying to understand it more than anything else. Yeah, is there an activity that you could be doing on your property, I don't know, like, what about tearing down your home, would that be considered -- would that be something that could be hazardous?

A. There would have to be statutory authority for that and there isn't.

Q. Okay. Okay. Okay. So generally for strict liability there has to be some type of statutory authority for that?

A. Or common law. Yeah. They have a particular fact pattern.

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Q. Okay. But this case particularly is simply a negligence case. Paul's case against the McGuires was a simple negligent failure to control case in your opinion?

A. That's what was pled.

Q. Okay. Did you ever make any -- ever consider pleading any other allegations?

MR. FLYNN: Object to the form.

THE WITNESS: I don't -- No. Not that I recall.

MS. WILLIAMS: Okay. Can we take about a 4-minute break?

MR. FLYNN: Sure.

MS. WILLIAMS: Let's just take -- I just want to take a quick break and review my notes and I want to give everybody an opportunity to kind of stretch for a second. I'm going to go on mute.

MR. FLYNN: Okay.

(Whereupon, a break was taken, after which the following proceedings were had:)

MS. WILLIAMS: Let's go back on the record. Okay, thank you everyone. Okay, just a little bit more here.

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Q. On -- When you were talking to Paul about settlement in the general timeframe of November-December 2013, did you ever suggest at that time that he seek alternative counsel or any recommendation related to that?

A. I think that did come up.

Q. Do you recall what your advice to him was or what the discussion was?

A. I think, you know, we always talk about the risks of not settling and further down the road what, you know, having to try the case and having to try prove the case or getting a motion for summary judgment, having the costs exceed the benefits and all that, and I think my position with Paul, since he didn't give a relatively very good deposition, my thought was we were going to have a tough time, an uphill battle, and he can always seek other counsel if he doesn't agree with me.

Q. And you just stated that you thought Paul didn't give a very good deposition, that may not have been your exact language, but roughly that the deposition wasn't great. Can you explain what -- as you recall it, what about the deposition was problematic?

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A. I mean, he even agreed with me, but he just doesn't do a very good job.

Q. You mean -- Can you expand on that a little bit?

A. As a witness, as I recall, again, it's been quite some time, as I recall he was -- his testimony wasn't given -- wasn't strong, it wasn't definite, it didn't have credible points and some points were incredible when compared to other -- other testimony. I mean, there's just a lot -- there was a lot of problems with his testimony.

Q. Okay. Do you recall the circumstances that Paul described as to why he came to the McGuires'?

A. I think he was either going to pick up something or drop something off.

Q. Okay.

A. I don't really recall. I'm just thinking back now.

Q. Okay. Do you recall whether he was asked to come over to help with the tree, to help take down the tree? Was that the purpose of his visit?

A. I don't recall that.

Q. Would it matter as for liability whether it was or wasn't?

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A. As by who? As to whose liability?
Q. I'm sorry, his and McGuires' liability.
A. As to how he got there?
Q. Whether he was -- Whether he was invited for the purpose of assisting with the removal of the tree.
MR. FLYNN: Object to the form. Just invited by whom?
THE WITNESS: Yeah, that's a complicated question, but I don't think --
BY MS. WILLIAMS:
Q. Let me clarify if I can. Okay. So my question was does it matter if the McGuires invited Paul to their residence to remove the tree on that -- on the June -- roughly June, I believe, 2011 date?
MR. FLYNN: Object to the hypothetical.
THE WITNESS: I don't think it matters.
BY MS. WILLIAMS:
Q. Okay. Would it matter if they were paying Paul?
A. That's not the issue. The issue is Dave.
Q. Okay. So the relationship between the McGuires and Paul is somewhat irrelevant?
A. I'm just saying the issue really that --

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about liability is Dave's relationship with them.
Q. Because Dave is the one that controlled the chain saw that injured Paul, is that accurate?
A. He was the one hired to do the work or asked to do the work, however, whatever that background was.
Q. And Caroline and William McGuire both testified that they had never used a chain saw; is that correct?
A. I think that's accurate. I'd have to refresh my memory, but that sounds right.
Q. Okay. Do you remember discussing bankruptcy with Paul?
A. I don't remember that.
Q. Do you remember that Paul filed for bankruptcy? Do you recall that?
A. I saw a -- Maybe I didn't see one. I remember there was some sort of bankruptcy matter. I don't know the dates or when it came up.
Q. Okay. Do you recall if you advised Paul to file for bankruptcy?
A. I don't advise people to file for bankruptcy.
Q. All right. So you would not have advised

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Paul to file for bankruptcy?
A. Would not.
Q. Okay. And then sometime after the McGuire settlement but before the -- but while the Gagnon -- the claims against David Gagnon were still pending you withdrew from the case; is that correct?
A. The law firm did. I -- Again, he hired the law firm.
Q. Sure. Sure. I'm sorry. The Popovich firm withdrew?
A. Right.
Q. And I -- Let's see -- I think we're on Exhibit 14.
THE REPORTER: 15.
MS. WILLIAMS: 15, okay.
Q. I have, I think, one more and then -- Okay, I am uploading Exhibit 15, Dulberg Mast Dep Exhibit 15. It's a motion to withdraw and it's four pages and on the first page it has a Dulberg versus Gagnon case caption and file stamped March 13, 2015. Do you have that document?
A. Yeah.
Q. And this is the Popovich's firm motion to withdraw as counsel for Paul Dulberg in the Dulberg

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versus Gagnon-McGuire case, correct?
A. Yes.
Q. And you drafted or caused this motion to be drafted and filed?
A. Yes.
Q. And was it granted that same day it was filed?
A. I'm sure it had to be noticed up.
Q. Okay. On the notice of motion it looks like it was noticed for March 13, filed on March 13, but sent to the service list on March 5th, does that seem accurate?
A. That's what it says.
Q. But at any rate, you withdrew sometime in roughly March of 2015?
A. It appears that way. Again, I don't have an independent recollection of the date.
Q. Okay. Okay. That's fine. And I didn't see it -- an order actually showing the exact date of when you withdrew. Can you explain why you withdrew from the case?
A. The short version is just we had a difference of opinion.
Q. Can you give me the long version or slightly

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longer?
A. Well, we have difference of opinion but Paul was a bit difficult, so I just had to -- there were a couple times that I told him I was going to withdraw and then he begged me not to and so I didn't, but then ultimately he -- it got pretty -- it got pretty tough. He was saying some unfavorable, unflattering things and I just decided we're not going to get anywhere, I'm going to move on.
Q. Okay, so you -- the client relationship broke down and you withdrew?
A. Yes.
Q. Okay. Was there anything about Gagnon's liability or your thoughts on his liability that would have caused you to withdraw?
A. That was another aspect of it. Paul was looking for the stars and the moon and I didn't see it.
Q. And when you say Paul was looking for the stars and the moon, you mean -- Well, what do you mean by that?
A. He was looking for a lot of money.
Q. Okay, and what was your opinion as to David Gagnon's liability in the case?

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A. I didn't think much of the liability issue. I thought it was going to be a long, tough haul given that --
Q. And --
A. -- Paul was going to be our only witness on our side pretty much.
Q. Okay, and there were no other witnesses other than Paul and David; is that correct?
A. Correct.
Q. And what about -- Anything related to, like, the actual injury, the doctors' depositions or anything like that?
A. That all -- It was the whole ball of wax. The doctors weren't supporting his claim. Dave was saying he's a liar, he tried to bribe him. There was just a lot of -- a lot of bad stuff, not enough good stuff.
Q. Okay, and then at that point you and Paul disagreed and Paul retained alternative counsel?
A. Right.
Q. Okay. Was there anything else about the case that you can recall right now that gave you pause as to the liability either to the McGuires or David Gagnon?

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A. Anything other than what? Pretty much everything was not good.
Q. Okay. I mean, anything that we haven't really discussed here today. We've talked about Paul's testimony, Gagnon's testimony a little bit, the McGuires, the premises liability. We talked -- You mentioned the doctors' depositions. Is that sort of the general gamut of it?
A. That's the whole case.
Q. Okay. Have you ever had any other chain saw liability cases other than this particular case?
A. I'm sure I have. I don't -- If you're going to ask me to name a date, I don't know. I mean, it's not a common issue, but it comes up from time to time.
Q. Okay. Did you state -- Did you seek out a liability expert, a chain saw liability expert, during the time you were representing Paul?
A. No.
Q. Is there a reason for that?
A. That's always a possibility. It's always a consideration, but I had to consider even more whether we could even get to prove a credible case and that was my first object, my first -- my first

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tier. It doesn't do any good to hire an expert if you don't have a good case.
Q. Okay. Okay. If you were going to take the case to trial, at that point would you have hired an expert, chain saw expert?
A. For this case, I don't know. I'd have to look at it again and see what we need to prove, what they're arguing. There's -- As I recall, they weren't arguing the chain saw -- They weren't arguing. He didn't get hit with the chain saw. So I'm not real sure. I'd have to think whether we need to prove -- what we need to prove, anything more than that.
Q. Okay.
A. It was more what happened, who caused it to happen, not that it happened.
Q. Okay. Is there a difference between an independent contractor and an employee?
A. In terms of what? In terms of duty or what?
Q. Right. In terms of the supervisor's duty. So if the Gagnons -- If Gagnon was, and this is a hypothetical, if Gagnon was an employee of his parents as opposed to an independent contractor, would there be a liability difference?

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MR. FLYNN: Object to the hypothetical. It's inaccurate and incomplete.
THE WITNESS: That's a very complicated question, even though it doesn't sound like one. It depends on lots of things.
BY MS. WILLIAMS:
Q. Okay. We've already talked about an independent contractor. So just in your experience and knowledge, what is a supervisor's duty as to an employee? That's actually a really terrible question. Let's strike that question.
Is there a difference -- Is there a difference between the control aspect of -- Would an -- Let me start again. This is a complicated question, more complicated than I'm anticipating right now. Okay.
We've generally established that in order for an -- someone who hires an independent contractor to be liable for the actions of that independent contractor, they would have to control the work. In a situation, an employer-employee situation, is that control element also present when considering liability? Does the employer have to control the work of the employee in the same way?

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A. I think there are --
MR. FLYNN: I just want to raise an objection for the record. I object to the form. I think that the premise of the question indicated that we already established some legal precedent. I don't think that's the case. I don't think that he's testified to that, so, again, I'll just object to the form. But if you can --
THE WITNESS: You're asking me to compare two different theories without a fact pattern, but there's a lot to each issue and it's hard to just say, well, if you have this, then you have that. There's a lot of different facts that apply, but now I'm forgetting what you asked initially about the employer-employee question.
BY MS. WILLIAMS:
Q. So I guess my question to the point of is an employer liable for their employees in a different way than a homeowner would be liable for an independent contractor?
A. I think --
Q. Based on -- You go ahead.
A. I think under the law there are different elements to those actions.

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Q. And there are --
A. Go ahead.
Q. So there would be different elements if something was an employer-employee situation, that would be different law, different case law?
A. Yeah, there's a different cause of action.
Q. Okay.
A. Different elements potentially have to be pled and proved.
Q. Okay. But in this case you were trying to prove -- In Dulberg's case against the McGuires and Gagnon you were trying to show that -- The theory of the case was that Gagnon was not an employee, but an independent contractor, and the McGuires had to control him in order to be liable?
A. Well, that's ultimately what it appeared. You followed the evidence, you follow the facts, so if it turned out it was employee-employer-employee relationship, that's a different evaluation.
Q. Okay. So but, for the most part, you were -- your evaluations of the liability were based on an independent contractor analysis?
A. Well, that's where it went because of the evidence.

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MS. WILLIAMS: Okay. I'm going to go on mute for just a second so you guys don't hear me shuffling papers, but I think I'm almost finished here or may be finished.
MR. FLYNN: Okay.
BY MS. WILLIAMS:
Q. Okay. Just a couple more questions and then we'll wrap things up here. When did you first advise Paul that you didn't think the claims against Gagnon were going to be very strong?
A. Probably day one.
Q. Before the settlement with the McGuires?
A. Yeah.
Q. And did you discuss that several times prior to that McGuire settlement?
A. Like I said, we discussed those issues every time we'd meet, liability issues, damages issues.
Q. Do you recall any particular instances, like maybe after Paul's deposition, after David's deposition, did that stick out in your mind at all?
A. Discussing what, the issues of liability against Gagnon?
Q. Yes.
A. Those are probably something we talked about

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every visit.
Q. Okay. So we discussed this a little bit before, but I believe the testimony was that the McGuires testified that they purchased the chain saw and I believe you said yes, that was your recollection as well; is that correct?
A. That sounds right. I just don't have an independent recollection at this point.
Q. Okay. If the McGuires -- Let's assume that -- Just for the purposes of this, let's assume that the McGuires did -- it was their chain saw, they purchased it and let Gagnon use it on their property. Would they have any duties to share the manual of that chain saw with Gagnon or provide any other education as to the use of the chain saw to Gagnon?
A. All right, so you're asking me to make a judicial decision whether they had a duty or not?
Q. No, I'm asking you in your experience with these types of cases is there any duty there for them.
A. All right, so a legal duty?
Q. Right. Right. And -- Go ahead, George.
MR. FLYNN: Yeah, I'll just object. I mean, there isn't any evidence that Gagnon asked for a

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manual, for one, but as far as him providing legal opinions not based on the facts of this case, I'm just going to caution him not to provide what could be considered an expert opinion.
THE WITNESS: You don't want me to answer?
MR. FLYNN: It's up to you. I don't know if you can.
THE WITNESS: I don't remember the question. You're asking me should the McGuires have given Gagnon the manual to the chain saw?
BY MS. WILLIAMS:
Q. Yes.
A. Sure, if he asked for it or if they wanted to give it to him.
Q. Are there any other warnings that they should have provided?
A. See, I mean, you're asking me to -- I get the question, but I'm saying you're asking me to evaluate the conduct of both parties and interpret something and I don't know that that's my position as a witness, but should they have warned him? You know, sure, go ahead and warn him, but obviously when you take on a piece of equipment that you're skilled and experienced in operating, you should be able to

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operate it effectively yourself safely.
Q. Sure. Okay. And --
A. So I mean --
Q. Okay. But today you're not giving an opinion one way or the other whether they had a duty to provide warnings, whether they had a duty to provide the manual, fair enough?
A. Yeah, legal wise, no, I'm not giving you a legal opinion on that.
MS. WILLIAMS: Okay. Okay, I don't think I have anything further.
MR. FLYNN: I actually have just a few follow-ups to that.
MS. WILLIAMS: Sure.
EXAMINATION
BY MR. FLYNN:
Q. Hans, is your understanding based on the evidence that there were only two eyewitnesses to Mr. Dulberg's accident, correct?
A. Correct.
Q. That was Mr. Dulberg himself and David Gagnon?
A. Correct.
Q. And did you have an understanding as to how

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the evidence and testimony shook out as to each gentleman's version of the accident and how it occurred?
A. Well, as I said before, I thought Paul's case was going to be very difficult to prove based on the testimony of everybody, credibility issues, and the lack of evidence to support and prove.
Q. David Gagnon's testimony regarding the facts surrounding the accident differed from Paul Dulberg's version of the facts, correct?
A. Correct.
Q. You took that into account in your evaluation and analysis of the case?
A. Definitely.
Q. Did you also take into account your professional analysis of Paul Dulberg's performance as a witness at his discovery deposition?
A. Definitely.
Q. You didn't think he made a very good witness for himself, did he?
A. He even admits he didn't and I don't think he -- I think -- that was one of the worst -- that was one of my worst fears with this case. I had lots of cases and on a scale of weak witnesses, he's

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probably up at the top, and I'm not putting him down, that's just a reality and I think he even acknowledged that reality.

Q. Okay. Not everyone is a professional witness?

A. Right.

Q. Okay. Generally speaking, your evaluation of the case hinged in part on whether the McGuires controlled the manner and method of the use of the chain saw, correct?

A. Right.

Q. Do you have any recollection as to what the McGuires were doing while the work was being done?

A. They were inside the house, just another day to them. They weren't even -- I don't think even paying attention to what was going on outside.

Q. Did Mr. McGuire testify that he was watching television inside the house while David was working on the tree?

A. They were both inside as I recall.

Q. Your recommendation or suggestion that Mr. Dulberg settle the case for $5,000 was based on your analysis of the entire case, including the risks and benefits of going forward and potentially losing

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the case at trial, correct?

A. Yes.

Q. Did you have any way to predict whether the case would result in a verdict on behalf of the plaintiff in the case against the McGuires?

A. I'm sorry?

Q. Did you have any -- Did you have any certainty as to whether Mr. Dulberg could prevail at trial on liability against the McGuires?

A. I would have staked a lot that we would not have recovered in the case and just something that didn't come up with the direct is they didn't offer the arbitrator to me. That was something that was later decided. I talked to them about that. They did not offer that to me, so that was not an option to me.

Q. So you were -- Based on your professional judgment, you suggested that you attempt to settle the matter as opposed to taking it to trial versus the McGuires, correct?

A. Right.

MR. FLYNN: Okay. That's all I have.

MS. WILLIAMS: I have no follow-up.

THE REPORTER: Signature?

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THE WITNESS: I'll waive signature.

MS. WILLIAMS: We'll order the original, E-tran.

MR. FLYNN: I'll take a regular and a mini copy.

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DECLARATION UNDER PENALTY OF PERJURY

I, HANS MAST, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on June 25, 2020; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this _____ day of _____, 20__, at _____, Illinois.

_____

HANS MAST

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STATE OF ILLINOIS }
} SS:
COUNTY OF C O O K }

I, Barbara G. Smith, Certified Shorthand Reporter and Notary Public in and for the County of Cook, State of Illinois, do hereby certify that on the 25th of June, A.D., 2020, the deposition of the witness, HANS MAST, called by the Defendants, was taken remotely before me, reported stenographically and was thereafter reduced to typewriting through computer-aided transcription.

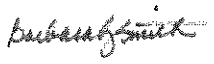
The said witness, HANS MAST, was first duly sworn to tell the truth, the whole truth, and nothing but the truth, and was then examined upon oral interrogatories.

I further certify that the foregoing is a true, accurate and complete record of the questions asked of and answers made by the said witness, at the time and place hereinabove referred to.

The signature of the witness was waived by agreement.

The undersigned is not interested in the within case, nor of kin or counsel to any of the parties.

Witness my official signature and seal as Notary Public, in and for Cook County, Illinois on this 7th day of July, A.D., 2020.



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Exhibits

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

Exhibit 1
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

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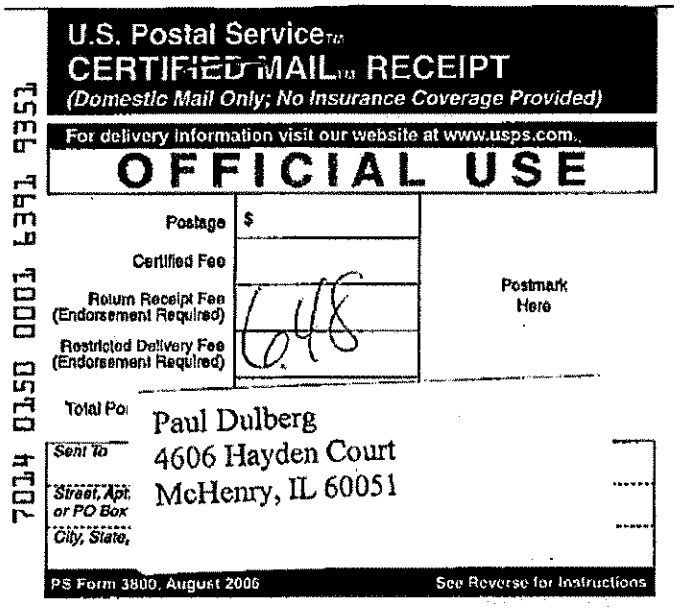

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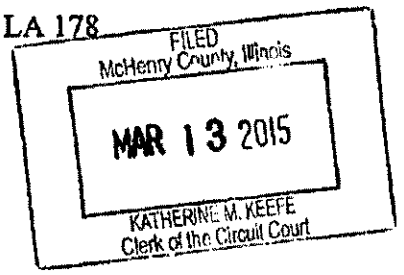
IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, Individually, Defendants.	)	No. 12 LA 178



MOTION TO WITHDRAW AS COUNSEL

NOW COME the LAW OFFICES OF THOMAS J. POPOVICH, P.C., attorneys for the Plaintiff, PAUL DULBERG, and hereby move to withdraw as counsel for the Plaintiff in this cause pursuant to Supreme Court Rule 13. In support of said Motion, the attorneys hereby state as follows:

1. Communication between Plaintiff and Plaintiff's counsel has broken down resulting in an unworkable situation for both attorney and client.

2. By copy of this motion, Plaintiff is hereby advised that, to ensure notice of any further action in this cause, she should retain new counsel or within 21 days of the hearing of this motion and withdrawal of counsel, retain other counsel or file her own supplementary appearance with the clerk of the circuit court, stating an address at which service of notices or other papers may be had upon her.

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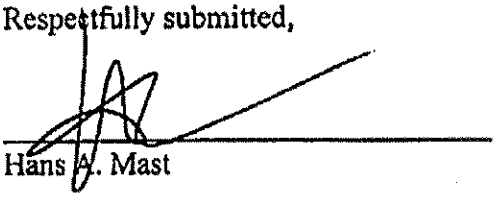
WHEREFORE, the LAW OFFICES OF THOMAS J. POPOVICH, P.C. respectfully requests that this Court enter an Order granting the LAW OFFICES OF THOMAS J. POPOVICH, P.C. leave to withdraw as counsel for the Plaintiff, PAUL DULBERG.

Respectfully submitted,



Hans A. Mast

LAW OFFICES OF THOMAS J. POPOVICH
3416 West Elm Street
McHenry, IL 60050
(815) 344-3797
Attorney No. 06208070

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Exhibit 2
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

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STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 204 ON 11/8 20 12, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON
20 , AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20 That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	No.:

AFFIDAVIT

I, HANS A. MAST, being first duly sworn on oath, depose and state as follows:

1. That I am one of the attorneys responsible for the prosecution of the above-entitled case.

2. That on behalf Plaintiff, PAUL DULBERG, I am hereby requesting money damages in an amount not to exceed $50,000.00, together with the costs of this action, against each of the above-named Defendants.

FURTHER, Affiant sayeth naught.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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Page 251 of 464

MEMORANDUM

TO: Tom, Marla, Diana and Alarie

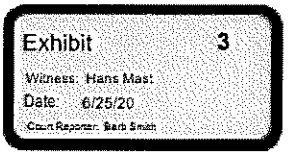
FROM: Hans

DATE: December 5, 2011

SUBJECT: **PAUL DULBERG - NEW CLIENT**

HAM
B/C the accident occurred on their premises, their H.O. med-pay will cover the bills.

On December 1, 2011, I met Paul Dulberg and his mother, concerning a recent injury that Paul suffered at a friend's house due to a chainsaw accident on June 28, 2011. Paul was referred to our office by a former client, Hubert McArtor. Paul had previously been with Francisco Botto in Woodstock but they rejected the case. He did sign a contract with Botto but we have correspondence in the file that they rejected him and sent him away. They did not refer him to us. Apparently, they rejected the case because they did not think that they would be able to prove that the defendant was more than 50% negligent causing the accident. I disagree.



Paul's contact information is as follows:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051
847/497-4250
SSN 323-76-4001
DOB 03-19-70
DOA 06/28/11

Paul describes that he was at a friend's house, Caroline and Bill McGuire who live at 1016 W. Elder Avenue, McHenry, IL 60051, phone 815/344-4274. The McGuire's son, Dave was at the home and Dave was cutting up some tree limbs in the yard. Caroline had called Paul over to the house earlier to see if he wanted the wood for firewood. Dave asked Paul to hold some tree limbs while he cut them up. He had held two tree branches previously and then about an hour after he arrived he was holding another branch and Dave suddenly swung around with the chainsaw rising it in the air and cutting his Paul's forearm severely while holding on to a branch. Paul said that the chainsaw went about 40% through his forearm. Dave took him immediately to NIMC where they stitched him up. It was a very deep and open wound. Unfortunately, he did not take any photos of the wound. Instead, he followed up with his family physician, Dr. Frank Sek on Route 120 in McHenry who removed the stitches about a week later. Dr. Sek thought there was going to be possible nerve damage due to his arm being very painful. About two weeks later he went to a doctor at the Associates in Neurology in Libertyville and they took and EMG test which found that there were some branch nerves that had been severed which may be the cause of his ongoing pain. They thought that the pain was probably more ligamentous and they referred him to Dr. Paul Papierski, phone 847/247-0547. That was in August. He has not returned to see Dr. Papierski because apparently they needed an MRI and he did not have money to pay for an MRI. I urged him to return

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to see Dr. Papierski and to have the MRI done even if they have to hold a lien on our case. His arm is very painful when he lifts anything and he drops things continuously. He said that he will follow up with Dr. Papierski and advise me further what needs to be done as far as treatment.

At the time of the accident he was not employed but he had been just recently hired when the accident occurred by AMS Screw Products in Spring Grove. He was going to earn $12 an hour for 40 hours per week. He had talked to Karen over at AMS Screw and she agreed to hire him, but unfortunately, he was injured before he could start work. Their phone number is 732/545-8888x231.

The central issue in my view in this case is whether there is insurance coverage. Since the son was not living with the McGuire's at the time of the accident, it may be that David Gagnon is not going to be insured for the accident. However, Paul and his mother advised me that Dave also had a home and lived at 39010 90th Place in Genoa City, Wisconsin. Therefore, hopefully he has homeowner's insurance that will apply to this claim as well as med-pay coverage to help pay for the MRI that needs to be done.

The McGuire's were insured by:

Auto Owners Insurance
Tom Malatia, Adjuster
6000 Tallgate Road, Suite D
Elgin, IL 60123
847/587-3077
847/531-5420
847/531-8063x3808 gen. #
Claim No. 13-2779-11

By copy of this memo, I ask **Alarie** to set up a new file.

By copy of this memo, I ask **Marla** to order the medical records and bills from NIMC, Dr. Frank Sek and Associates in Neurology in Libertyville. Please also diary the 1 and 2 year SOL deadlines in this case.

Thanks,

Hans

S:\Main\DULBERG, PAUL\Memos\Memo re new client 12-5-11.wpd

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
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Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

FAXED

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for $7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Exhibit 4
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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** Transmit Conf.Report **

P.1 Oct 22 2013 12:24pm
LAW OFFICE T POPOVICH Fax 1-815-344-5280

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
18152267701	Normal	22:12:23pm	0'25"	1	* O K	

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
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Thomas J. Popovich
Hans A. Mast
John A. Kokinak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for $7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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XFINITY Connect

hansmast@comcast.ne

+ Font Size -

Re: Medical depositions

From : Hans Mast <hansmast@comcast.net>

Wed, Oct 30, 2013 02:34 PM

Subject : Re: Medical depositions

To : Paul Dulberg <pdulberg@comcast.net>

Cc : Hans Mast <hansmast@comcast.net>

Paul, here are my thoughts regarding your case. There are two issues. The first liability, or whether Mr. Gagnon is liable for your injury. If he is not proven liable, then it does not matter how badly you were hurt since he will not be found responsible for your damages. The second issue is your damages, or to what extent you were injured due to Mr. Gagnon’s acts.
Both of these issues are strongly contested in your case.
As to liability, there were no witnesses to the accident. So, whether Mr. Gagnon will be held responsible for your damages is uncertain and a gamble. That is because it is your word against his word. Our argument is that you were simply holding a limb when he caused the chain saw to strike you. His argument is that you moved your arm in the path of the chain saw unexpectedly. If the jury determines that we did not prove your "version" of the accident, then they can find against you and in favor of Mr. Gagnon at trial.
As to damages, the issue is complicated. That is because your treating physicians do not all agree on exactly what injury you suffered or whether your had a fully recovery or not.
Dr. Talerico at MidAmerica Hand and Shoulder, saw you twice. The first time was in December, six months after your injury. He was not supportive of your claim in most respects. He didn’t really feel there was anything wrong with you - as to the forearm. He said that you complained mostly of pain radiating down the forearm from the laceration site with numbness and tingling. On exam he noted no tenderness and it was mostly a normal presentation. Strength was good. He did not see any nerve problem. He prescribed physical therapy due to a muscular sort of symptomology - not nerve related. Apparently you did only 2 sessions of therapy and returned January, 2012. No new complaints at the time. The EMG was normal. He did not believe you were disabled. He continued you on therapy. He saw no evidence of nerve problems. The only symptoms were subjective - not represented by any abnormal exam finding.
Dr. Sagerman has also been deposed. I will summarize his testimony for your soon. His was more favorable, but still limited in what he related to the chain saw accident. Apparently he does not believe you presently have any symptoms relatable to the chain saw injury.
Think about these issues. I will provide you Dr. Sagerman’s summary soon.
Hans

----- Original Message -----From: Paul Dulberg <pdulberg@comcast.net>To: Hans Mast <hansmast@comcast.net>Sent: Fri, 25 Oct 2013 13:18:24 -0000 (UTC)Subject: Medical depositions

Morning Hans,Wanted to touch base this morning because the call from you about something not being medically linked has been on my mind.I'm not sure what was said during that deposition with the drs that prompted the call but I have been thinking about what it could be. Most likely it was the right elbow procedure. During my deposition I remember being asked if the two were linked and I answered yes. Let me explain my answer to you. If the chainsaw had not gone through my arm then the procedure on my elbow wouldn't have happened. That procedure was exploratory to find what was bothering the arm from the chainsaw. Upon opening up the arm they did find some compressions which from my understanding was nothing unusual for a male of my age and very well may or may not have happened during my retreat from the chainsaw when I ended up half way across the yard on the ground. Incidental finding or not it still would not have been found if I hadn't had the chainsaw incident. So as I see it they are linked good or bad and cannot be separated. The exploratory procedure was to find and possibly fix issues relating to the chainsaw incident. They also removed a ton of scar tissue in the forearm on the same day during the same exploratory procedure that was a direct result of the chainsaw.

Hope this helps explain things better.Let me know,Thanks,Paul

Paul Dulberg847-497-4250Sent from my iPad

Exhibit 5
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: 3 pm meeting**
Date: December 28, 2016 10:39:25 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 5, 2013 at 9:46:33 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: 3 pm meeting

Hans,

Below is a link to an article talking about the integration of digital cameras at the centegra facilities.

A friend of mine who works at NIMC for well over a decade just replied to me and she says everything is recorded and available exactly for the purposes we discussed.

http://www.sdmmag.com/articles/print/success-stories-in-integrating-video-surveillance

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 5, 2013, at 9:00 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> no chance, sorry
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Mon, 04 Nov 2013 22:54:28 -0000 (UTC)
> Subject: Re: 3 pm meeting
> Also,
> Any chance the hospital (centegra) has video of their parking lots?
> This could disprove David's claim of talking before entering the ER.
> Thanks,
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 4, 2013, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> No need to bring anything, your mom is welcome...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Mon, 04 Nov 2013 17:31:20 -0000 (UTC)
>> Subject: 3 pm meeting
>> Hi Hans,
>> Curious if I should bring anything with me at 3 pm?
>> Mind if my Mom comes along?
>> Thanks and see you soon,
>> Paul
>> Paul Dulberg
>> 847-497-4250
>> Sent from my iPad

Exhibit 6
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

XFINITY Connect

hansmast@comcast.ne

+ Font Size -

Re: Dave's Best and oldest friend John

From : Paul Dulberg <pdulberg@comcast.net> Tue, Nov 19, 2013 02:29 AM

Subject : Re: Dave's Best and oldest friend John

To : Hans Mast <hansmast@comcast.net>

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>
> Sent from my IPhone
>
>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>
>> Only 5, That's not much at all.
>> Is this a take it or leave it or do we have any other options?
>>
>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>
>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.
>>
>> They all left me out in the yard screaming for help while they were busy making sure they were covered.
>>
>> She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.
>>
>> How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.
>>
>> I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.
>>
>> I'm not happy with the offer.
>>
>> As far as John Choyinski, he knows he has to call you and said he will tomorrow.
>>
>> Paul
>>
>> Paul Dulberg
>> 847-497-4250
>> Sent from my iPad
>>
>>> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>>>
>>> Im waiting to hear from John. I tried calling him last week, but no one answered.
>>>
>>> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at

Exhibit 7
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>>>
>>> Let me know what you think..
>>>
>>> Hans
>>> ----- Original Message -----
>>> From: Paul Dulberg <pdulberg@comcast.net>
>>> To: Hans Mast <hansmast@comcast.net>
>>> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
>>> Subject: Dave's Best and oldest friend John
>>> Hans,
>>> Just spoke with John Choyinski again about talking with you.
>>> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
>>> I believe he will try and call sometime tomorrow.
>>> Paul
>>> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
>>> Sorry for the rant but Dave was a complete ass all the way and deserves this.
>>> Paul Dulberg
>>> 847-497-4250
>>> Sent from my IPad

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

CICERO, FRANCE, BARCH & ALEXANDER, P.C.
A Professional Corporation
Attorneys at Law
6323 EAST RIVERSIDE BOULEVARD
ROCKFORD, ILLINOIS 61114

PAUL R. CICERO
JOHN W. FRANCE
RONALD A. BARCH
CHARLES P. ALEXANDER

CHANTEL R. BIELSKIS
ANDREW T. SMITH

TEL: (815) 226-7700
FAX: (815) 226-7701

November 18, 2013

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich, PC
3416 West Elm Street
McHenry, IL 60050

Case: *Paul Dulberg v. David Gagnon, Caroline McGuire and Bill McGuire*
(McHenry County Case No. 12 LA 178)

Issued For Settlement Purposes Only

Dear Mr. Mast:

I am writing to confirm our telephone conversation earlier this morning, wherein I advised you that I was authorized to propose settlement of Mr. Dulberg's claim against Carolyn and Bill McGuire for a lump-sum total of $5,000.00. The settlement would of course be contingent upon customary settlement documents, including a release, a good faith settlement finding and dismissal.

Pursuant to your request, I searched my file materials for lien notices. The only notice of lien contained in my file at this time is your Attorney's Lien (enclosed). I have asked my contact at Auto-Owners Insurance Company to confirm no lien notices have arrived on his end since Mr. Dulberg's case was assigned to me for the defense of Mr. and Mrs. McGuire. I do not anticipating any lien notices, but just wanted to be safe.

I understand that you intend to run my settlement proposal by Mr. Dulberg. I look forward to hearing from you once you have had a chance to confer with him.

Very truly yours,

RONALD A. BARCH

RB:mj\37ltr.HAM
cc Tom Malatia (Claim No. 13-2779-11)
Encl.

Exhibit 8
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

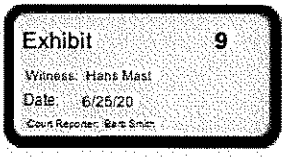
SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the $5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

MEMORANDUM

TO: File

FROM: Hans

DATE: December 20, 2013

SUBJECT: **PAUL DULBERG**

On December 18, 2013, I called Paul today after an email and we had a long discussion about the McGuire's liability and he seemed to concede and understand that probably based on the testimony there is nothing we can prove against the McGuric's and he is willing to take their $5,000 settlement offer.

Exhibit 10
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Sara Smith

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

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3416 W. Elm Street
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Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

FAXED 12/27

December 26, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

Please be advised that we will accept your $5,000 settlement offer on behalf of you clients, Caroline and Bill McGuire. Please forward your settlement agreement to my attention. Also, please present a motion for good faith finding with regard to the settlement.

As I understand it, you have no liens on the file other than our attorney's lien.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Exhibit 11
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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debridement and skin grafting. In *Fomond*, a two-and-one-half-year-old girl sustained third-degree burns that required at least seven surgeries, including two skin grafts and continued physical therapy even several years after receiving the burns. In *Negrete*, a 17-month-old baby boy sustained burns from hot water, resulting in permanent scarring across 60% of his body and, due to the burning of his genital area, possible permanent damage to his reproductive capacity. In *Rogers*, the defendant poured grain alcohol on top of the female victim's head and then threw a lit match at her, causing her head, face, chest and pants to ignite.

In light of the above-cited case law, I would reverse defendant's conviction for heinous battery.

Defendant was properly convicted of aggravated battery against a child, however, no sentence was imposed for that crime. If a reviewing court reverses a conviction on which the sentence was imposed, it can remand for sentencing on a conviction on which no sentence was imposed. Such process has been approved in *People v. Dixon*, 91 Ill.2d 346, 63 Ill.Dec. 442, 438 N.E.2d 180 (1982) and *People v. Frantz*, 150 Ill.App.3d 296, 300, 103 Ill.Dec. 649, 501 N.E.2d 966 (1986) ("[i]f the reviewing court acts to affirm the incomplete judgment of conviction, the reviewing court then must remand the cause for imposition of sentence").



283 Ill.App.3d 126
669 N.E.2d 645

Fernando LAJATO, Plaintiff-Appellant,

v.

AT & T, INC., Defendant-Appellee, and Third Party Plaintiff (Quinn Delivery Service, Inc., Third Party Defendant).

No. 1-95-0447.

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Independent contractor who was injured when loading telephone company's battery hoist for transport brought negligence action against telephone company. The Circuit Court, Cook County, Anthony J. Bosco, J., granted summary judgment for telephone company. Contractor appealed. The Appellate Court, Gordon, J., held that: (1) contractor's motion for reconsideration was timely; (2) telephone company had not voluntarily undertaken duty to properly maintain and secure battery hoist for transport; (3) telephone company was not liable as gratuitous bailor; and (4) trial court did not abuse its discretion by denying contractor's motion to amend his complaint.

Affirmed.

1. Judgment ⇐321, 386(1)

Posttrial motion must be filed within 30 days of final judgment or trial court will lose jurisdiction to modify or vacate final order which it entered after lapse of 30 days. S.H.A. 735 ILCS 5/2-1203.

2. Motions ⇐39

Motion to reconsider is posttrial motion, and therefore falls within purview of post-judgment motions which must be filed within 30 days after challenged judgment is entered. S.H.A. 735 ILCS 5/2-1203.

3. Appeal and Error ⇐344

Only if posttrial motion is timely filed will it extend time for filing notice of appeal. Sup.Ct.Rules, Rule 303(a)(1).

4. Judgment ⇐186

Motion to reconsider filed within 30 days of entry of summary judgment was timely, although no certificate of service was filed until well after 30 days of entry of summary judgment. S.H.A. 735 ILCS 5/2-1203; Sup. Ct.Rules, Rule 104.

5. Appeal and Error ⇐893(1), 1073(1)

Although trial court did not entertain motion for reconsideration of summary judgment in erroneous belief that it did not have jurisdiction to hear motion, appellate court

Exhibit 12
Witness: Hans Mist
Date: 6/25/20

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d not need to remand to allow trial court to nsider merit of motion, as grant of sum- ary judgment required de novo review by ppellate court to determine question of law.

Negligence ⇐36

Independent contractor could not base rsonal injury action against defendant on eory of premises liability, where he was jured in bed of his truck and not due to any ndition of defendant's premises.

Appeal and Error ⇐893(1)

Appellate review of order granting sum- ary judgment is de novo.

Judgment ⇐185(2)

Negligence ⇐1

To withstand motion for summary judg- ent in action based in negligence, plaintiff ust allege facts sufficient to show that de- ndant owed him a duty, that defendant reached that duty, and that his injury proxi- ately resulted from that breach.

Negligence ⇐20

Telephone company did not voluntarily ndertake duty to properly maintain and se- re its battery hoist for transport, where dependent contractor, who was injured by ist when loading it for transport as result loosening of strap securing motor, had tal discretion in preparing and moving ist, and there was no evidence that tele- one company had strapped motor, that rapping was undertaken as protection for ntractor, or that contractor relied upon fety of strapping. Restatement (Second) Torts § 323.

Negligence ⇐136(14)

Whether a duty has been voluntarily ndertaken is question of law to be deter- ined by court. Restatement (Second) of orts § 323.

Bailment ⇐35

Telephone company was not liable as ratuitous bailor for injuries sustained by dependent contractor when strap securing otor on battery hoist loosened when con- ractor was loading hoist for transport, here contractor presented no evidence oth- r than inadmissible hearsay rumors to show either defect in hoist or that telephone company knew or should have known of any dangerous propensities in hoist.

12. Appeal and Error ⇐169

Contentions not raised in trial court are waived on appeal, even in summary judgment case.

13. Bailment ⇐9, 21

Gratuitous bailor may be liable for physical harm caused by use of chattel when he knows or has reason to know that chattel is or is likely to be dangerous when put to use for which it was supplied, has no reason to believe that those for whose use chattel is supplied will realize its dangerous condition, and fails to exercise reasonable care to inform user of its dangerous condition or of facts which make it likely to be dangerous.

14. Judgment ⇐185(1)

Unsubstantiated hearsay statements cannot be considered in ruling on motion for summary judgment.

15. Pleading ⇐236(6)

Trial court did not abuse its discretion by denying motion of independent contractor, who was injured when loading telephone company's battery hoist for transport, to amend his complaint to allege more specifically facts that there was voluntary undertaking by telephone company, after trial court granted summary judgment for telephone company, where issue was not that complaint was deficient in its framing of issues but that evidence presented in support of voluntary undertaking theory failed to establish genuine issue of material fact, and amendment would be prejudicial to telephone company in that amendment was sought on eve of trial and five years after inception of lawsuit, with no explanation as to why contractor never before attempted to develop facts necessary to withstand telephone company's summary judgment motion.

Beerman, Swerdlove, Woloshin, Barezky, Becker, Genin & London, Harvey L. Walner & Associates, Chicago (Alvin R. Becker, Harvey L. Walner, Christopher A. White, of counsel), for Appellant.

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William F. DeYoung, Loretto M. Kennedy, Carole C. Tubbesing Burke, Weaver & Prell, Chicago, for American Telephone & Telegraph.

Justice GORDON delivered the opinion of the Court:

This is an action for damages brought by the plaintiff, Fernando Lajato, arising from injuries he incurred while working as an independent contractor for third-party defendant Quinn Delivery Service, Inc. (Quinn) to move a battery hoist owned by defendant AT & T. AT & T filed a contingent third-party complaint against Quinn, not at issue in this appeal, seeking indemnification pursuant to the delivery service contract between Quinn and AT & T, in the event plaintiff recovered a judgment in his tort action against AT & T. AT & T subsequently filed a motion for summary judgment against plaintiff which the trial court granted. In that order, the court also denied plaintiff's oral motion requesting leave to amend his complaint. Subsequently, plaintiff filed a motion to reconsider, which the court ultimately struck by reason of its alleged lack of jurisdiction to hear it. Plaintiff appeals from the orders granting summary judgment to AT & T, denying his motion to amend his complaint, and refusing to hear his motion to reconsider. AT & T has moved to dismiss this appeal for lack of appellate jurisdiction.

In November 1989, plaintiff filed a complaint against AT & T, wherein he alleged that on July 1, 1988, he was on the premises of AT & T on behalf of Quinn in order to move an AT & T battery hoist. The complaint further alleged that while performing that task, the hoist fell upon him, causing him injuries for which he sought damages. The complaint averred that AT & T was negligent in its failure to maintain, inspect, and repair the battery hoist, and for AT & T's failure to warn plaintiff of the propensity of the hoist to fall. In April 1990, AT & T filed its answer, specifically denying each basis for recovery alleged in plaintiff's complaint. The matter was scheduled for trial in June 1995.

On April 25, 1994, AT & T filed a motion for summary judgment, alleging that, based upon the undisputed facts, it was clear that [illegible] owed no duty of care to plaintiff with respect to his injuries. In support of its motion, AT & T submitted excerpts of the deposition testimony of plaintiff and a copy of the delivery services contract between AT & T and Quinn. In his deposition, plaintiff testified that on the date of the accident, July 1, 1988, he was making pick-ups and deliveries of telephone equipment at various AT & T locations as an independent contractor for Quinn. He stated that he had received instructions from Quinn via radio to go to an AT & T property in Rolling Meadows, Illinois, the scene of the accident, to pick up a battery hoist and to transport it to another AT & T location in Rockford, Illinois. Approximately 99% of plaintiff's delivery work for Quinn involved pick-ups and deliveries of AT & T equipment. The plaintiff stated that AT & T did not direct him in his moving work, but rather, allowed him to use his own expertise to determine how each move would be accomplished.

Plaintiff further testified that the battery hoist, which weighs approximately [illegible] pounds, was used to lift batteries weighing approximately 300 pounds up onto shelves. Plaintiff described the hoist as being rectangular in shape, on wheels, and consisting of a large, black metal frame with a motor and hoist accessories suspended from the middle of the frame. The hanging motor and accessories could be pulled to one side of the hoist frame and secured thereto with a nylon strap and a chain, both of which were permanently attached to the hoist, in order to stabilize the hoist during transport and when not in use to perform its battery-lifting function. It was plaintiff's customary practice to inspect the hoist to ensure that the motor and accessories were firmly secured with the strap and the chain prior to moving the hoist. Plaintiff had moved this particular hoist on at least 10-15 different occasions.

Plaintiff's deposition further revealed that when he reached the AT & T Rolling Meadows location, an AT & T employee directed him to the hoist, and that after that brief conversation, plaintiff had no further discussions with anyone, AT & T employees or otherwise, until after the accident. [illegible]

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intiff approached the hoist, he observed t its motor and accessories were already apped and secured to the hoist's frame. also testified that he personally examined strap to ensure that the hanging appara- was firmly secured to the frame of the st with the nylon strap and the motor ain before attempting to move the hoist. intiff then wheeled the hoist to the back his truck and onto his truck's hydraulic lift form, which he had lowered to ground- el in order to lift the hoist into his truck. er raising the lift and the hoist from und-level up to the truck's bed, plaintiff bed into the truck bed and began to pull hoist into the bed.

Plaintiff further testified that while pulling hoist into the truck, the strap around the or and hoist accessories loosened for rea- beyond his knowledge, permitting the or and the accessories to swing free and weight of the hoist to shift towards him. ediately thereafter, the hoist fell onto tiff, causing him various injuries. Plain- stated that there were no known wit- es to the accident. He also stated that t, two months after the accident, he d from an AT & T installer that certain laborers at AT & T had told him that plaintiff's accident, they would not use hoist because it was unsafe, and that AT ultimately shipped the hoist back to the facturer.

addition to plaintiff's deposition testimo- AT & T submitted the Quinn–AT & T ery contract in support of its motion for mary judgment. That contract reveals Quinn, through its own independent con- tors, performed moving services for de- ant AT & T. The contract required n to

eceive, pick up, load, transport, unload, d deliver telephone equipment and other terial (the "Material"), and perform the er services provided for in this agree- ent as ordered by [AT & T] from April 1, 87 to March 31, 1989."

contract further provided that Quinn or gents

hall have the sole and exclusive care, ustody and control of the Material from the time it is tendered to [Quinn], [Quinn's] agents or servants, until it is delivered to and accepted by [AT & T] * * *."

In his response to AT & T's motion for summary judgment, plaintiff argued that AT & T had voluntarily assumed and breached a duty to him to keep its premises safe and to maintain the hoist such that it would not do harm to those moving it. In support of his position, plaintiff attached additional excerpts from his own deposition, pointing to his testimony that the AT & T hoist's motor and accessories were already secured to the frame of the hoist by the nylon strap and the motor chain when he arrived at the site to move the hoist. He also referred to his testimony that there was no motor lock securing the motor to the frame, and that the motor and accessories would not have swung free after the strap loosened if there had been such a motor lock.

In a hearing on July 27, 1994, the trial court granted AT & T's motion for summary judgment with prejudice. Later at that same hearing, the trial court heard plaintiff's oral request for leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)), where plaintiff argued that he should be allowed to amend his complaint to show that AT & T voluntarily undertook to secure the hoist and did so negligently. The court denied plaintiff's motion to amend, stating as its reason that "[i]t's an '89 case."

On August 25, 1994, within 30 days of the July 27 order granting summary judgment and denying leave to amend, plaintiff filed a motion to reconsider. However, plaintiff did not serve AT & T with that motion until September 18, 1994, at which time he transmitted that motion to AT & T via facsimile at AT & T's request. No notice of motion was served upon AT & T until November 9, 1994, and plaintiff did not file a certificate of service for that motion until November 17, 1994.

AT & T subsequently filed a motion objecting to plaintiff's motion to reconsider, arguing that the trial court had no jurisdiction to hear it based on plaintiff's failure to file a proof of service within 30 days of the July 27 order. On January 13, 1995, the trial court

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sustained AT & T's objection, finding that it had no jurisdiction to hear plaintiff's motion to reconsider, and therefore did not address the merits of that motion. On January 25, 1995, within 30 days of the trial court's January 13 order, plaintiff filed his notice of appeal, both from that order and from the July 27, 1994 order granting summary judgment and denying plaintiff leave to amend.

Plaintiff contends on appeal that the trial court erred in granting summary judgment because by improperly securing the battery hoist for transport, AT & T negligently performed a voluntary undertaking, and because as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that the trial court abused its discretion in denying him leave to amend his complaint after the grant of summary judgment.

I. JURISDICTION:

Before reaching plaintiff's contentions on appeal, we must first address defendant's motion to dismiss this appeal for want of appellate jurisdiction. *Bell Federal Savings & Loan Ass'n v. Bank of Ravenswood*, 203 Ill.App.3d 219, 148 Ill.Dec. 559, 560 N.E.2d 1156 (1990). In its motion to dismiss, AT & T contends that plaintiff's failure to file a proof of service with its August 25, 1994 motion to reconsider prevents this court from reviewing either of the trial court's July 27 or January 13 orders. Defendant argues, somewhat obliquely, that plaintiff's motion to reconsider should not be considered as being timely filed, because it was not accompanied by a proof of service, and as a result, the trial court was correct in stating that it had no jurisdiction to consider it. Consequently, defendant would urge that the motion to reconsider did not have the effect of extending the time for filing plaintiff's notice of appeal beyond the initial 30 day period following entry of the summary judgment order. See Illinois Supreme Court Rule 303(a)(1) (155 Ill.2d R. 303(a)(1)) (discussed more fully below). We disagree.

[1–3] Under Supreme Court Rule 303(a)(1), a notice of appeal must be filed within 30 days after the entry of the final judgment from which the appeal is taken, or, if a timely post-trial motion directed at the judgment is filed, within 30 days after entry of the order disposing of the last pending post-trial motion. (134 Ill.2d R. 303(a)(1)). Under section 2–1203 of the Illinois Code of Civil Procedure, a post-trial motion must be filed within 30 days of a final judgment. 735 ILCS 5/2–1203 (West 1994). Otherwise, the trial court will lose jurisdiction to modify or vacate the final order which it entered after the lapse of 30 days. *Archer Daniels Midland Co. v. Barth*, 103 Ill.2d 536, 83 Ill.Dec. 332, 470 N.E.2d 290 (1984); *In Matter of Application of County Treasurer*, 208 Ill. App.3d 561, 153 Ill.Dec. 528, 567 N.E.2d 486 (1990). A motion to reconsider is a post-trial motion (*Elmhurst Auto Parts v. Fencl–Tufo Chevrolet*, 235 Ill.App.3d 88, 175 Ill.Dec. 771, 600 N.E.2d 1229 (1992)), and therefore "falls within the purview of post-judgment motions which must be filed within 30 days after the challenged judgment is entered." *Sho–Deen, Inc. v. Michel*, 263 Ill.App.3d 288, 290, 200 Ill.Dec. 729, 732, 635 N.E.2d 1068, 1071 (1994). Only if a post-trial motion is timely filed pursuant to section 2–1203 will it extend the time for filing the notice of appeal under Rule 303(a). *In Matter of Application of County Treasurer.*

[4] Thus, the question as to whether the appellant's notice of appeal was filed beyond the 30 day period allowed under Rule 303(a), thereby depriving this court of its jurisdiction, depends upon whether the failure to file a certificate of service vitiated the filing of the plaintiff's motion to reconsider. If we determine that the filing of plaintiff's motion to reconsider on August 25 within 30 days after the July 27 summary judgment order was timely, notwithstanding the failure to file an accompanying certificate of service within that 30–day period, then plaintiff's notice of appeal from both the July 27 and the January 13 orders was timely. This would follow under Rule 303(a), since the notice of appeal was filed on January 25, within 30 days after the trial court's disposition on January 13 of plaintiff's motion to reconsider. On the other hand, if the trial court was correct in its determination that under section 2–1203, the timely filing of a certificate of service is

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[5] Defendant next would urge that if we determine that the January 13 order is reviewable, we should confine our review solely to the correctness of the trial court's denial of its jurisdiction over the motion to reconsider. Defendant contends that if we find that the trial court's jurisdictional determination was erroneous, we should remand the matter to the trial court to allow the trial court to first consider the merit of that motion. We disagree for the same reasons as articulated in *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 167 Ill.Dec. 225, 587 N.E.2d 494 (1992). There, the court stated as follows:

> "Defendant initially urges us, without citation to authority, to remand this matter to the circuit court because that court did not address the merits of plaintiff's motion. This argument betrays a misperception of the nature both of the question presented and of our review. As noted above, we consider summary judgment orders *de novo*: we, like the circuit court, must decide only whether the parties' pleadings and other submissions present an issue of triable fact and if not, whether plaintiff is entitled to judgment as a matter of law. This is a question of law, not of fact." *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 76, 167 Ill.Dec. 225, 231, 587 N.E.2d 494, 500 (1992).

Here, too, the grant of summary judgment is subject to *de novo* review, requiring our *de novo* determination whether the submissions of the parties presented triable issues of fact and if not whether defendant was entitled to a judgment as a matter of law. Thus, here, as in *Myers*, we may consider this appeal on its merits without the necessity of a remand.

II. MERITS:

[6] As noted earlier, plaintiff contends on appeal that the trial court erred in granting summary judgment because the facts are sufficient to create an inference that AT & T voluntarily assumed a duty to properly secure the battery hoist for transport, a duty which was breached as a result of AT & T's negligence. Additionally, plaintiff contends, for the first time on appeal, that there was error in granting summary judgment because the facts are sufficient to create an inference that as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that even if summary judgment was properly entered in favor of AT & T under the issues framed by the existing complaint, the trial court abused its discretion in denying him leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)).[1]

[7, 8] We first address plaintiff's contention that the trial court erred in entering summary judgment pursuant to the issues framed by the existing complaint. Summary judgment is proper when the pleadings, depositions and affidavits on file, construed in the light most favorable to the nonmoving party, establish that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. See generally 735 ILCS 5/2–1005 (West 1994); *First State Insurance Co. v. Montgomery Ward & Co.*, 267 Ill.App.3d 851, 204 Ill.Dec. 814, 642 N.E.2d 715 (1994); *Torres v. City of Chicago*, 261 Ill.App.3d 499, 197 Ill.Dec. 985, 632 N.E.2d 54 (1994); *Giannoble v. P & M Heating & Air Conditioning, Inc.*, 233 Ill.App.3d 1051, 175 Ill.Dec. 169, 598 N.E.2d 1183 (1992). Appellate review of an order granting summary judgment is *de novo*. *E.g., Hesselink v. R.L. Perlow Corp.*, 265 Ill.App.3d 478, 202 Ill.Dec. 36, 637 N.E.2d 575 (1994); *La Salle National Bank v. Skidmore, Owings & Merrill*, 262 Ill.App.3d 899, 200 Ill.Dec. 225, 635 N.E.2d 564

1. As previously noted, at the trial level, plaintiff urged liability both on the basis of premises liability and the law governing voluntary undertakings. Plaintiff has conceded on appeal that he cannot base his action against AT & T upon a theory of premises liability as a matter of law, due to the holding in *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994), insofar as he incurred his injuries in the bed of his truck, and not due to any condition of AT & T's premises. See also *Jackson v. Hilton Hotels Corp.*, 271 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995) (in action based on premises liability, no duty to plaintiff existed where plaintiff failed to show that his injuries were caused by any condition of the premises).

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jurisdictional, without which the motion to reconsider cannot be deemed to have been timely filed, then the notice of appeal in this case, filed more than three months after the entry of the summary judgment order, would be untimely pursuant to Rule 303(a) and leave this court without appellate jurisdiction.

The rule is clear that the absence of a certificate of service will not vitiate the filing of a motion to reconsider. This matter has been specifically preempted by Illinois Supreme Court Rule 104 (134 Ill.2d Rule 104), which provides at parts (b) and (d) as follows:

"(b) Filing of Papers and Proof of Service. Pleadings subsequent to the complaint, written motions, and other papers required to be filed shall be filed with the clerk with a certificate of counsel or other proof that copies have been served on all parties who have appeared * * *.

* * * * * *

(d) Failure to deliver or serve copies as required by this rule *does not in any way impair the jurisdiction of the court* over the person of any party, but the aggrieved party may obtain a copy from the clerk and the court shall order the offending party to reimburse the aggrieved party for the expense thereof." 134 Ill.2d R. 104(b), (d) (Emphasis added).

Thus, under Rule 104(d), the failure to deliver or serve copies does not impair the jurisdiction of the court. This rule has been applied to post-trial motions in *In re Marriage of Collins*, 154 Ill.App.3d 655, 107 Ill.Dec. 109, 506 N.E.2d 1000 (1987) and in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d 353, 321 N.E.2d 344 (1974), which held that the failure to include proof of service with a post-trial motion will not invalidate the motion or render it untimely.

Defendant contends that Rule 104(d) only addresses the failure to actually serve copies of the motion but does not address the failure to file a certificate of service. This contention is devoid of any rationale since a failure to serve will preclude the filing of a certificate, unless the movant seeks to perjure himself. Thus, if the failure to actually serve notice does not impair jurisdiction, then *a fortiori*, the failure to serve a certificate of service will not impair the validity or timeliness of the motion. See *In re Marriage of Collins*.

Defendant's reliance on *Vlahakis v. Parker*, 3 Ill.App.3d 126, 278 N.E.2d 523 (1971) (abstract of op.) and *Ingrassia v. Ingrassia*, 156 Ill.App.3d 483, 109 Ill.Dec. 68, 509 N.E.2d 729 (1987) is misplaced. Although *Vlahakis* reached a contrary result, it is clear that that opinion did not purport to in any way consider or confront the impact of Rule 104(d) in its determination. That opinion has therefore been distinguished and rejected on that basis in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d at 357–58, 321 N.E.2d at 348 ("Rule 104(d) renders a failure to comply with Rule 104(b) * * * non-jurisdictional * * * [and] the only cases decided since enactment of rule 104(d) which reached a contrary result [, including *Vlahakis v. Parker*,] did not consider that provision at all"). Likewise, the opinion in *Ingrassia* does not purport to consider rule 104(d) in its determination. Moreover, *Ingrassia* does not purport to deal with the validity or timeliness of the filing of a post-trial motion, but, rather, with the sufficiency of the notice of that motion when given to the opposing party only a few hours before the hearing on the motion. Hence, *Ingrassia* is not in point, since here there is no question that defendant had actual knowledge of the pendency of plaintiff's motion to reconsider well in advance of the scheduled hearing date on that motion.

Consequently, plaintiff's August 25 motion to reconsider, and therefore his January 25 notice of appeal, were seasonably filed, notwithstanding that no certificate of service was filed until long after 30 days had passed since summary judgment was entered on July 27. Since the August 25 motion was timely, the notice of appeal filed on January 25 complied with Rule 303(a) since it was filed within 30 days after the trial court disposed of the motion to reconsider, albeit on jurisdictional grounds, on January 13. Accordingly, our jurisdiction to review both the July 27 and January 13 orders of the trial court remains unimpaired.

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(1994). To withstand a motion for summary judgment in an action based in negligence, a plaintiff must allege facts sufficient to show that the defendant owed him a duty, that defendant breached that duty, and that his injury proximately resulted from that breach. See *DiBenedetto v. Flora Township*, 153 Ill.2d 66, 178 Ill.Dec. 777, 605 N.E.2d 571 (1992); *Ziemba v. Mierzwa*, 142 Ill.2d 42, 153 Ill.Dec. 259, 566 N.E.2d 1365 (1991).

[9, 10] With respect to plaintiff's contention concerning AT & T's duty arising from its purported voluntary undertaking, section 323 of the Restatement (Second) of Torts provides as follows:

"One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking." Restatement (Second) of Torts § 323, at 135 (1965).

See generally, *Cross v. Wells Fargo Alarm Services*, 82 Ill.2d 313, 45 Ill.Dec. 121, 412 N.E.2d 472 (1980); *Jackson v. Hilton Hotels Corp.*, 277 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995). Whether a duty has been voluntarily undertaken is a question of law to be determined by the court. *Gouge v. Central Illinois Public Service Co.*, 144 Ill.2d 535, 163 Ill.Dec. 842, 582 N.E.2d 108 (1991); *Jackson v. Hilton Hotels Corp.*

In the instant case, plaintiff has failed to allege facts sufficient to establish in the first instance that defendant voluntarily assumed or undertook any duty to properly maintain and secure the battery hoist for transport. First, it is undisputed that AT & T had neither control nor influence over the manner in which plaintiff, an independent contractor retained by Quinn (who was also an independent contractor), readied or moved the hoist, and that plaintiff had total discretion in preparing and moving the hoist. Moreover, plaintiff did not submit any evidence that AT & T strapped the motor to the hoist, nor any evidence regarding whether the strapping was undertaken as protection for the plaintiff. Lastly, and more overridingly, even if we were to presume that the strapping was effected by AT & T, there is no evidence whatsoever submitted by plaintiff that he relied upon the safety of that strapping. In fact, the record is clear that plaintiff himself checked the strapping of the motor to ensure it was fastened securely prior to moving the hoist, as was his customary practice when moving that particular hoist.

[11-13] Plaintiff urges that even if there is no basis for liability under a theory of voluntary undertaking, there is a basis established for liability under a theory of gratuitous bailment. In that regard, he contends that there is a genuine issue of material fact that AT & T, as a gratuitous bailor of the hoist, breached a duty to plaintiff to provide a safe hoist or to warn plaintiff of its dangers. We first note that contentions not raised in the trial court are waived on appeal, even in a summary judgment case. *Witek v. Leisure Technology Midwest, Inc.*, 39 Ill.App.3d 637, 640, 350 N.E.2d 242, 245 (1976) ("This rule of waiver applies even in a summary judgment case"); *Wilson v. Gorski's Food Fair*, 196 Ill.App.3d 612, 143 Ill.Dec. 477, 554 N.E.2d 412 (1990). However, even if the argument were preserved, we note that there was no evidence presented that AT & T breached a duty to plaintiff as a gratuitous bailor of the hoist.

"[A] gratuitous bailor may be liable for physical harm caused by the use of his chattel when he knows or has reason to know that the chattel is or is likely to be dangerous when put to the use for which it is supplied; has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition; and fails to exercise reasonable care to inform the user of its dangerous condition or of the facts which make it likely to be dangerous." *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994).

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[14] Plaintiff has not produced evidence as to any specific defect either in the design or manufacture of the hoist itself which would indicate that AT & T had actual or constructive knowledge that the hoist was unsafe when it was handed over to plaintiff. Plaintiff himself did not testify as to the condition of the hoist except to say that the strap loosened. The only other evidence that plaintiff has presented consists of unsubstantiated hearsay statements. In that regard, plaintiff testified in his deposition to a conversation which took place after the accident with an AT & T installer who told plaintiff that certain other fellow employees had stated that after plaintiff's accident they refused to use the hoist because it was unsafe, and that AT & T ultimately returned the hoist to its manufacturer. However, plaintiff was unable to identify those other AT & T employees, and he did not provide any further detail regarding the specific contents of their statements. Such unsubstantiated hearsay statements cannot be considered in a ruling on a motion for summary judgment. See *Certified Mechanical Contractors, Inc. v. Wight & Co., Inc.*, 162 Ill.App.3d 391, 113 Ill.Dec. 888, 515 N.E.2d 1047 (1987) (in deciding a motion for summary judgment, court should ignore personal conclusions, opinions and self-serving statements and consider only facts admissible in evidence under the rules of evidence); *Seefeldt v. Millikin National Bank of Decatur*, 154 Ill.App.3d 715, 107 Ill.Dec. 161, 506 N.E.2d 1052 (1987) (although a complaint may purport to raise an issue of material fact, summary judgment is appropriate if such issue is not further supported by evidentiary facts, and in determining the genuineness of a fact, a court should ignore personal conclusions and opinions and consider only admissible facts).

Plaintiff's reliance on *Pagano* is not well taken. There, the court on appeal did find an issue of fact as to whether a defective dolly supplied by the defendant to help move certain barrel drums of ink rendered the defendant liable under a theory of gratuitous bailment. However, in that case, plaintiff gave direct testimony as to specific, observable defects in the dolly which, if believed, would establish that the dolly was defective. Here, aside from the inadmissible hearsay rumors which were reported, the plaintiff himself presented no evidence to show either a defect in the hoist or that AT & T knew or should have known of any dangerous propensities in the hoist. Consequently, the evidence presented here was not effective to support a counterinference for purposes of summary judgment.

[15] Plaintiff next contends that the trial court erred in its refusal in its July 27 order to allow him leave to amend his complaint to more specifically allege facts that there was a voluntary undertaking and that it was implemented negligently. We disagree.

Section 2-1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(g) (West 1994)) provides as follows:

"(g) Amendment of pleading. Before or after the entry of a summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms."

The allowance of an amendment to the pleadings is in the trial court's discretion, and reversible error can only be found if there is a manifest abuse of discretion. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992). See also *Misselhorn v. Doyle*, 257 Ill.App.3d 983, 195 Ill.Dec. 881, 629 N.E.2d 189 (1994); *Eyman v. McDonough District Hospital*, 245 Ill.App.3d 394, 184 Ill.Dec. 502, 613 N.E.2d 819 (1993).

As noted, on July 27, immediately after the trial court entered summary judgment against him, plaintiff made an oral motion to amend his complaint, as follows:

"MR. JOHNSON [Plaintiff's attorney]: I set it out to specifics that they undertook the duty to secure the hoist and they negligently performed that duty and as a result Plaintiff was injured based upon the *Nelson v. Pippen, Phillips* [*sic*] case, that once undertakes a duty to do something, they do so negligently, and someone is injured they are absolutely liable.

* * * * * *

If the fact that the Court feels that the premises liability count cannot stand does not mean then that a negligent voluntary [*sic*] undertaking is not proper here

There will be no
position."

The court denied p
stating that "It's a
motion [to amend]."

We first note tha
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rtaking is not proper

There will be no new deps. That's what the evidence is through the Plaintiff's deposition."

The court denied plaintiff's motion to amend, stating that "It's an '89 case. I'll deny the motion [to amend]."

We first note that plaintiff never made the proposed amended complaint a part of the record on appeal, except for his oral proposal before the trial judge which, without any offers of new evidence, essentially duplicates the voluntary undertaking theory which has already been argued and rejected. Plaintiff's failure to include the proposed amendment and supporting facts therefor in the record could be found to constitute a waiver in this court of his right to have the denial of his request for leave to amend reviewed. See *Mendelson v. Ben A. Borenstein & Co.*, 240 Ill.App.3d 605, 181 Ill.Dec. 114, 608 N.E.2d 87 (1992) (plaintiff's failure to tender amended complaint or to include it in the appellate record diminished the appellate court's ability to determine whether the proposed amendment would provide a viable theory against defendant, and constituted waiver of right to a review of the denial of his request for leave to amend). See also *Ignar v. Norbut*, 271 Ill.App.3d 522, 207 Ill.Dec. 2, 648 N.E.2d 285 (1995) (no abuse of discretion in denying motion for leave to amend complaint where movant orally moved to amend yet failed to submit proposed amendment to trial court).

Notwithstanding waiver, even if we were to review the amendment which plaintiff orally proposed, we would find no abuse of discretion by the trial court in denying plaintiff leave to amend. As already discussed, there is ample evidence before the trial court to support its conclusion that the facts in this case as revealed in the summary judgment submissions would not permit a pleading which could allege a valid cause of action. Moreover, by the same token, even if the complaint were amended to more specifically allege a voluntary undertaking as requested by the plaintiff, the allegations of the complaint would be superseded by the extrinsic facts already submitted which as noted would dictate for summary judgment. See *Werckenthein v. Bucher Petrochemical Co.*, 248 Ill.App.3d 282, 188 Ill.Dec. 332, 618 N.E.2d 902 (1993) (where allegations in nonmovant's complaint are contravened by movant's extrinsic submissions in summary judgment proceedings, extrinsic submissions control); *East Side Fire Protection District v. City of Belleville*, 221 Ill.App.3d 654, 164 Ill.Dec. 192, 582 N.E.2d 755 (1991) (nonmovant must controvert proofs offered by movant in support of motion for summary judgment and cannot merely rest on pleadings); *Seefeldt v. Millikin National Bank of Decatur.* The issue here is not simply that plaintiff's complaint is deficient in its framing of the issues, but that, as discussed, the testimony and evidence presented in support of his negligent voluntary undertaking theory are deficient, and fall short of establishing a genuine issue of material fact such that judgment should not be entered as a matter of law on that theory of action.

Plaintiff's reliance on *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992) is not well taken. In *Loyola*, the court on appeal set forth four factors to determine whether the trial court had abused its discretion in denying a section 2–1005(g) amendment, including whether the proposed amendment would cure the defective pleading, whether it would cause prejudice or surprise to other parties, whether it was timely, and whether previous opportunities to amend the pleading could be identified.

Applying these factors in order, in the instant case the question of whether plaintiff's proposed amendment would cure the defective pleading is not relevant, because as already discussed, AT & T succeeded in its motion for summary judgment not because plaintiff's complaint was improperly pleaded, but because the evidence presented at summary judgment shows no genuine issue of material fact regarding the allegations in the complaint. *Werckenthein v. Bucher Petrochemical Co.*; *East Side Fire Protection District v. City of Belleville.* Taking the second and third *Loyola* factors together (whether there would be prejudice or surprise to AT & T and whether the proposed amendment was timely), the record is ample to support the trial court's determination that the allowance

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of an amendment would in fact be prejudicial to AT & T, insofar as the amendment was being sought on the eve of trial, five years after the inception of this lawsuit, with no explanation from plaintiff as to why he never before attempted to develop the facts which would be necessary to withstand AT & T's motion for summary judgment. See *Mendelson v. Ben A. Borenstein & Co.* (no abuse of discretion in denying leave to amend following grant of summary judgment where proposed amendment was sought beyond the pleading stages). See also *Ignarski v. Norbut.*

The final *Loyola* factor is whether plaintiff had sufficient prior opportunities to amend. To that extent, we note that plaintiff indeed had substantial opportunities to amend. Although plaintiff complains that AT & T never gave him notice of any deficiency in his complaint which would require amendment because AT & T never filed a motion to dismiss prior to filing its motion for summary judgment, it is axiomatic that a party can amend its pleading on its own motion. See 3 R. Michael, Illinois Practice, ch. 26, at 446 (West 1989). The case of *Evans v. United Bank of Illinois, N.A.*, 226 Ill.App.3d 526, 168 Ill.Dec. 533, 589 N.E.2d 933 (1992), upon which plaintiff relies, does give credence to plaintiff's contention under the fourth *Loyola* factor that the failure of AT & T to challenge his pleadings prior to its motion for summary judgment deprived plaintiff of any prior opportunity to amend. However, we note that in *Evans* the court on appeal did not rely on that factor alone in finding that the trial court abused its discretion in denying the plaintiff in that case leave to amend, but found that *all* of the *Loyola* factors supported that plaintiff's motion for leave to amend.

In any event, even if plaintiff were correct in his reliance upon *Evans*, we need not consider its application here. As already discussed, the issue here is not whether the allegations of the complaint were sufficient to state a cause of action based upon a voluntary undertaking theory, but whether the facts adduced were sufficient to create an inference to support such allegations. See *Werckenthein v. Bucher Petrochemical Co.; East Side Fire Protection District v. City Belleville.* As previously noted, the fa submitted here are insufficient to raise su an inference. Hence, we find that the tr court's denial of the motion to amend was an abuse of discretion. See *Regas v. Asso ated Radiologists, Ltd.*, 230 Ill.App.3d 9 172 Ill.Dec. 553, 595 N.E.2d 1223 (19 (where a cause of action cannot be sta even after amendment, leave to am should be denied).

For the foregoing reasons, the judgment the Circuit Court of Cook County is affirm

McNULTY, P.J., and HOURIHANE, J. concur.



283 Ill.App.3d 112
669 N.E.2d 655

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Vernetta CASSELL, Defendant-Appellant.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Curlee SIMMONS, Defendant-Appellan

Nos. 1-94-2782, 1-95-1380.

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Rehearing Denied Sept. 11, 1996.

Defendants were convicted in the Cir Court, Cook County, John J. Moran, J., aggravated criminal sexual assault, and defendant was convicted of additional cri of home invasion and aggravated kidnapp Defendants appealed. The Appellate Co McNulty, P.J., held that: (1) circuit co had adequate basis for its determination t victim was not entitled to assert privile

gainst self-incrimination; ficient evidence that defer reat of force in order t urse with victim to sup ggravated criminal sexua s sufficient evidence th confined victim to supp pping conviction; (4) enied effective assistan efendant who drove vehi ault occurred was cri the assault; and (6) e emergency room nurse that victim identified d who dragged her fr rmless error.

Affirmed.

1. Witnesses ⇐297(13.1)
Trial court had adeq on for aggravated cri its determination th led to assert Fifth A nst self-incrimination t did not conduct he ther victim's testimon , where, in response t s as to why she wan e, victim never expres of being charged wit she could not remem rly. U.S.C.A. Const.

2. Witnesses ⇐297(1)
Privilege against rds against compulsor ding to establish S.C.A. Const.Amend. 5

3. Witnesses ⇐297(1)
Although witness i ilege to refuse to an to incriminate him ured by Fifth Amend se instances where wi se to believe he or self or herself to pro swers. U.S.C.A. Cons

4. Witnesses ⇐297(1)
Once witness asser endment privilege no f or herself, trial cou

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laintiff approached the hoist, he observed t its motor and accessories were already apped and secured to the hoist's frame. e also testified that he personally examined e strap to ensure that the hanging appara- was firmly secured to the frame of the st with the nylon strap and the motor ain before attempting to move the hoist. laintiff then wheeled the hoist to the back his truck and onto his truck's hydraulic lift form, which he had lowered to ground- el in order to lift the hoist into his truck. er raising the lift and the hoist from ound-level up to the truck's bed, plaintiff bed into the truck bed and began to pull hoist into the bed.

Plaintiff further testified that while pulling hoist into the truck, the strap around the or and hoist accessories loosened for rea- beyond his knowledge, permitting the r and the accessories to swing free and weight of the hoist to shift towards him. ediately thereafter, the hoist fell onto tiff, causing him various injuries. Plain- stated that there were no known wit- s to the accident. He also stated that two months after the accident, he d from an AT & T installer that certain laborers at AT & T had told him that plaintiff's accident, they would not use hoist because it was unsafe, and that AT ultimately shipped the hoist back to the facturer.

addition to plaintiff's deposition testimo- AT & T submitted the Quinn–AT & T ry contract in support of its motion for ary judgment. That contract reveals Quinn, through its own independent con- ors, performed moving services for de- nt AT & T. The contract required n to

eceive, pick up, load, transport, unload, d deliver telephone equipment and other terial (the "Material"), and perform the her services provided for in this agree- nt as ordered by [AT & T] from April 1, 87 to March 31, 1989."

contract further provided that Quinn or gents

hall have the sole and exclusive care, ustody and control of the Material from the time it is tendered to [Quinn], [Quinn's] agents or servants, until it is delivered to and accepted by [AT & T] * * *."

In his response to AT & T's motion for summary judgment, plaintiff argued that AT & T had voluntarily assumed and breached a duty to him to keep its premises safe and to maintain the hoist such that it would not do harm to those moving it. In support of his position, plaintiff attached additional excerpts from his own deposition, pointing to his testimony that the AT & T hoist's motor and accessories were already secured to the frame of the hoist by the nylon strap and the motor chain when he arrived at the site to move the hoist. He also referred to his testimony that there was no motor lock securing the motor to the frame, and that the motor and accessories would not have swung free after the strap loosened if there had been such a motor lock.

In a hearing on July 27, 1994, the trial court granted AT & T's motion for summary judgment with prejudice. Later at that same hearing, the trial court heard plaintiff's oral request for leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 1LCS 5/2–1005(g) (West 1994)), where plaintiff argued that he should be allowed to amend his complaint to show that AT & T voluntarily undertook to secure the hoist and did so negligently. The court denied plaintiff's motion to amend, stating as its reason that "[i]t's an '89 case."

On August 25, 1994, within 30 days of the July 27 order granting summary judgment and denying leave to amend, plaintiff filed a motion to reconsider. However, plaintiff did not serve AT & T with that motion until September 18, 1994, at which time he transmitted that motion to AT & T via facsimile at AT & T's request. No notice of motion was served upon AT & T until November 9, 1994, and plaintiff did not file a certificate of service for that motion until November 17, 1994.

AT & T subsequently filed a motion objecting to plaintiff's motion to reconsider, arguing that the trial court had no jurisdiction to hear it based on plaintiff's failure to file a proof of service within 30 days of the July 27 order. On January 13, 1995, the trial court

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debridement and skin grafting. In *Fomond*, a two-and-one-half-year-old girl sustained third-degree burns that required at least seven surgeries, including two skin grafts and continued physical therapy even several years after receiving the burns. In *Negrete*, a 17-month-old baby boy sustained burns from hot water, resulting in permanent scarring across 60% of his body and, due to the burning of his genital area, possible permanent damage to his reproductive capacity. In *Rogers*, the defendant poured grain alcohol on top of the female victim's head and then threw a lit match at her, causing her head, face, chest and pants to ignite.

In light of the above-cited case law, I would reverse defendant's conviction for heinous battery.

Defendant was properly convicted of aggravated battery against a child, however, no sentence was imposed for that crime. If a reviewing court reverses a conviction on which the sentence was imposed, it can remand for sentencing on a conviction on which no sentence was imposed. Such process has been approved in *People v. Dixon*, 91 Ill.2d 346, 63 Ill.Dec. 442, 438 N.E.2d 180 (1982) and *People v. Frantz*, 150 Ill.App.3d 296, 300, 103 Ill.Dec. 649, 501 N.E.2d 966 (1986) ("[i]f the reviewing court acts to affirm the incomplete judgment of conviction, the reviewing court then must remand the cause for imposition of sentence").

283 Ill.App.3d 126

669 N.E.2d 645

Fernando LAJATO, Plaintiff–Appellant,

v.

AT & T, INC., Defendant–Appellee, and Third Party Plaintiff (Quinn Delivery Service, Inc., Third Party Defendant).

No. 1–95–0447.

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Independent contractor who was injured when loading telephone company's battery hoist for transport brought negligence action against telephone company. The Circuit Court, Cook County, Anthony J. Bosco, J., granted summary judgment for telephone company. Contractor appealed. The Appellate Court, Gordon, J., held that: (1) contractor's motion for reconsideration was timely; (2) telephone company had not voluntarily undertaken duty to properly maintain and secure battery hoist for transport; (3) telephone company was not liable as gratuitous bailor; and (4) trial court did not abuse its discretion by denying contractor's motion to amend his complaint.

Affirmed.

1. Judgment ⇐321, 386(1)

Posttrial motion must be filed within 30 days of final judgment or trial court will lose jurisdiction to modify or vacate final order which it entered after lapse of 30 days. S.H.A. 735 ILCS 5/2–1203.

2. Motions ⇐39

Motion to reconsider is posttrial motion, and therefore falls within purview of post-judgment motions which must be filed within 30 days after challenged judgment is entered. S.H.A. 735 ILCS 5/2–1203.

3. Appeal and Error ⇐344

Only if posttrial motion is timely filed will it extend time for filing notice of appeal. Sup.Ct.Rules, Rule 303(a)(1).

4. Judgment ⇐186

Motion to reconsider filed within 30 days of entry of summary judgment was timely, although no certificate of service was filed until well after 30 days of entry of summary judgment. S.H.A. 735 ILCS 5/2–1203; Sup. Ct.Rules, Rule 104.

5. Appeal and Error ⇐893(1), 1073(1)

Although trial court did not entertain motion for reconsideration of summary judgment in erroneous belief that it did not have jurisdiction to hear motion, appellate court

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d not need to remand to allow trial court to nsider merit of motion, as grant of sum- ary judgment required de novo review by ppellate court to determine question of law.

Negligence ⇐36

Independent contractor could not base ersonal injury action against defendant on eory of premises liability, where he was ured in bed of his truck and not due to any ndition of defendant's premises.

Appeal and Error ⇐893(1)

Appellate review of order granting sum- ary judgment is de novo.

Judgment ⇐185(2)

Negligence ⇐1

To withstand motion for summary judg- ent in action based in negligence, plaintiff ust allege facts sufficient to show that de- ndant owed him a duty, that defendant reached that duty, and that his injury proxi- ately resulted from that breach.

Negligence ⇐20

Telephone company did not voluntarily dertake duty to properly maintain and se- re its battery hoist for transport, where dependent contractor, who was injured by ist when loading it for transport as result loosening of strap securing motor, had al discretion in preparing and moving ist, and there was no evidence that tele- one company had strapped motor, that apping was undertaken as protection for ntractor, or that contractor relied upon fety of strapping. Restatement (Second) Torts § 323.

Negligence ⇐136(14)

Whether a duty has been voluntarily dertaken is question of law to be deter- ined by court. Restatement (Second) of rts § 323.

Bailment ⇐35

Telephone company was not liable as ratuitous bailor for injuries sustained by dependent contractor when strap securing otor on battery hoist loosened when con- actor was loading hoist for transport, here contractor presented no evidence oth- than inadmissible hearsay rumors to show either defect in hoist or that telephone company knew or should have known of any dangerous propensities in hoist.

12. Appeal and Error ⇐169

Contentions not raised in trial court are waived on appeal, even in summary judgment case.

13. Bailment ⇐9, 21

Gratuitous bailor may be liable for physical harm caused by use of chattel when he knows or has reason to know that chattel is or is likely to be dangerous when put to use for which it was supplied, has no reason to believe that those for whose use chattel is supplied will realize its dangerous condition, and fails to exercise reasonable care to inform user of its dangerous condition or of facts which make it likely to be dangerous.

14. Judgment ⇐185(1)

Unsubstantiated hearsay statements cannot be considered in ruling on motion for summary judgment.

15. Pleading ⇐236(6)

Trial court did not abuse its discretion by denying motion of independent contractor, who was injured when loading telephone company's battery hoist for transport, to amend his complaint to allege more specifically facts that there was voluntary undertaking by telephone company, after trial court granted summary judgment for telephone company, where issue was not that complaint was deficient in its framing of issues but that evidence presented in support of voluntary undertaking theory failed to establish genuine issue of material fact, and amendment would be prejudicial to telephone company in that amendment was sought on eve of trial and five years after inception of lawsuit, with no explanation as to why contractor never before attempted to develop facts necessary to withstand telephone company's summary judgment motion.

Beerman, Swerdlove, Woloshin, Barezky, Becker, Genin & London, Harvey L. Walner & Associates, Chicago (Alvin R. Becker, Harvey L. Walner, Christopher A. White, of counsel), for Appellant.

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William F. DeYoung, Loretto M. Kennedy, Carole C. Tubbesing Burke, Weaver & Prell, Chicago, for American Telephone & Telegraph.

Justice GORDON delivered the opinion of the Court:

This is an action for damages brought by the plaintiff, Fernando Lajato, arising from injuries he incurred while working as an independent contractor for third-party defendant Quinn Delivery Service, Inc. (Quinn) to move a battery hoist owned by defendant AT & T. AT & T filed a contingent third-party complaint against Quinn, not at issue in this appeal, seeking indemnification pursuant to the delivery service contract between Quinn and AT & T, in the event plaintiff recovered a judgment in his tort action against AT & T. AT & T subsequently filed a motion for summary judgment against plaintiff which the trial court granted. In that order, the court also denied plaintiff's oral motion requesting leave to amend his complaint. Subsequently, plaintiff filed a motion to reconsider, which the court ultimately struck by reason of its alleged lack of jurisdiction to hear it. Plaintiff appeals from the orders granting summary judgment to AT & T, denying his motion to amend his complaint, and refusing to hear his motion to reconsider. AT & T has moved to dismiss this appeal for lack of appellate jurisdiction.

In November 1989, plaintiff filed a complaint against AT & T, wherein he alleged that on July 1, 1988, he was on the premises of AT & T on behalf of Quinn in order to move an AT & T battery hoist. The complaint further alleged that while performing that task, the hoist fell upon him, causing him injuries for which he sought damages. The complaint averred that AT & T was negligent in its failure to maintain, inspect, and repair the battery hoist, and for AT & T's failure to warn plaintiff of the propensity of the hoist to fall. In April 1990, AT & T filed its answer, specifically denying each basis for recovery alleged in plaintiff's complaint. The matter was scheduled for trial in June 1995.

On April 25, 1994, AT & T filed a motion for summary judgment, alleging that, based upon the undisputed facts, it was clear that [illegible] owed no duty of care to plaintiff with respect to his injuries. In support of its motion, AT & T submitted excerpts of the deposition testimony of plaintiff and a copy of the delivery services contract between AT & T and Quinn. In his deposition, plaintiff testified that on the date of the accident, July 1, 1988, he was making pick-ups and deliveries of telephone equipment at various AT & T locations as an independent contractor for Quinn. He stated that he had received instructions from Quinn via radio to go to an AT & T property in Rolling Meadows, Illinois, the scene of the accident, to pick up a battery hoist and to transport it to another AT & T location in Rockford, Illinois. Approximately 99% of plaintiff's delivery work for Quinn involved pick-ups and deliveries of AT & T equipment. The plaintiff stated that AT & T did not direct him in his moving work, but rather, allowed him to use his own expertise to determine how each move would be accomplished.

Plaintiff further testified that the battery hoist, which weighs approximately [illegible] pounds, was used to lift batteries weighing approximately 300 pounds up onto shelves. Plaintiff described the hoist as being rectangular in shape, on wheels, and consisting of a large, black metal frame with a motor and hoist accessories suspended from the middle of the frame. The hanging motor and accessories could be pulled to one side of the hoist frame and secured thereto with a nylon strap and a chain, both of which were attached to the hoist, in order to stabilize the hoist during transport and when not in use to perform its battery-lifting function. It was plaintiff's customary practice to inspect the hoist to ensure that the motor and accessories were firmly secured with the strap and the chain prior to moving the hoist. Plaintiff had moved this particular hoist on at least 10–15 different occasions.

Plaintiff's deposition further revealed that when he reached the AT & T Rolling Meadows location, an AT & T employee directed him to the hoist, and that after that brief conversation, plaintiff had no further discussions with anyone, AT & T employees or otherwise, until after the accident.

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sustained AT & T's objection, finding that it had no jurisdiction to hear plaintiff's motion to reconsider, and therefore did not address the merits of that motion. On January 25, 1995, within 30 days of the trial court's January 13 order, plaintiff filed his notice of appeal, both from that order and from the July 27, 1994 order granting summary judgment and denying plaintiff leave to amend.

Plaintiff contends on appeal that the trial court erred in granting summary judgment because by improperly securing the battery hoist for transport, AT & T negligently performed a voluntary undertaking, and because as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that the trial court abused its discretion in denying him leave to amend his complaint after the grant of summary judgment.

I. JURISDICTION:

Before reaching plaintiff's contentions on appeal, we must first address defendant's motion to dismiss this appeal for want of appellate jurisdiction. *Bell Federal Savings & Loan Ass'n v. Bank of Ravenswood*, 203 Ill.App.3d 219, 148 Ill.Dec. 559, 560 N.E.2d 1156 (1990). In its motion to dismiss, AT & T contends that plaintiff's failure to file a proof of service with its August 25, 1994 motion to reconsider prevents this court from reviewing either of the trial court's July 27 or January 13 orders. Defendant argues, somewhat obliquely, that plaintiff's motion to reconsider should not be considered as being timely filed, because it was not accompanied by a proof of service, and as a result, the trial court was correct in stating that it had no jurisdiction to consider it. Consequently, defendant would urge that the motion to reconsider did not have the effect of extending the time for filing plaintiff's notice of appeal beyond the initial 30 day period following entry of the summary judgment order. See Illinois Supreme Court Rule 303(a)(1) (155 Ill.2d R. 303(a)(1)) (discussed more fully below). We disagree.

[1-3] Under Supreme Court Rule 303(a)(1), a notice of appeal must be filed within 30 days after the entry of the final judgment from which the appeal is taken, or, if a timely post-trial motion directed at the judgment is filed, within 30 days after entry of the order disposing of the last pending post-trial motion. (134 Ill.2d R. 303(a)(1)). Under section 2-1203 of the Illinois Code of Civil Procedure, a post-trial motion must be filed within 30 days of a final judgment. 735 ILCS 5/2-1203 (West 1994). Otherwise, the trial court will lose jurisdiction to modify or vacate the final order which it entered after the lapse of 30 days. *Archer Daniels Midland Co. v. Barth*, 103 Ill.2d 536, 83 Ill.Dec. 332, 470 N.E.2d 290 (1984); *In Matter of Application of County Treasurer*, 208 Ill. App.3d 561, 153 Ill.Dec. 528, 567 N.E.2d 486 (1990). A motion to reconsider is a post-trial motion (*Elmhurst Auto Parts v. Fencl-Tufo Chevrolet*, 235 Ill.App.3d 88, 175 Ill.Dec. 771, 600 N.E.2d 1229 (1992)), and therefore "falls within the purview of post-judgment motions which must be filed within 30 days after the challenged judgment is entered." *Sho-Deen, Inc. v. Michel*, 263 Ill.App.3d 288, 290, 200 Ill.Dec. 729, 732, 635 N.E.2d 1068, 1071 (1994). Only if a post-trial motion is timely filed pursuant to section 2-1203 will it extend the time for filing the notice of appeal under Rule 303(a). *In Matter of Application of County Treasurer.*

[4] Thus, the question as to whether the appellant's notice of appeal was filed beyond the 30 day period allowed under Rule 303(a), thereby depriving this court of its jurisdiction, depends upon whether the failure to file a certificate of service vitiated the filing of the plaintiff's motion to reconsider. If we determine that the filing of plaintiff's motion to reconsider on August 25 within 30 days after the July 27 summary judgment order was timely, notwithstanding the failure to file an accompanying certificate of service within that 30-day period, then plaintiff's notice of appeal from both the July 27 and the January 13 orders was timely. This would follow under Rule 303(a), since the notice of appeal was filed on January 25, within 30 days after the trial court's disposition on January 13 of plaintiff's motion to reconsider. On the other hand, if the trial court was correct in its determination that under section 2-1203, the timely filing of a certificate of service is

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dictional, without which the motion to consider cannot be deemed to have been ely filed, then the notice of appeal in this e, filed more than three months after the try of the summary judgment order, would untimely pursuant to Rule 303(a) and ve this court without appellate jurisdic-n.

The rule is clear that the absence of a tificate of service will not vitiate the filing a motion to reconsider. This matter has en specifically preempted by Illinois Su-me Court Rule 104 (134 Ill.2d Rule 104), ich provides at parts (b) and (d) as follows:

"(b) Filing of Papers and Proof of Service. Pleadings subsequent to the complaint, written motions, and other papers required to be filed shall be filed with the clerk with a certificate of counsel or other proof that copies have been served on all parties who have appeared * * *.

* * * * * *

(d) Failure to deliver or serve copies as required by this rule *does not in any way impair the jurisdiction of the court* over the person of any party, but the aggrieved party may obtain a copy from the clerk and the court shall order the offending party to reimburse the aggrieved party for the expense thereof." 134 Ill.2d R. 104(b), (d) (Emphasis added).

Thus, under Rule 104(d), the failure to liver or serve copies does not impair the isdiction of the court. This rule has been plied to post-trial motions in *In re Mar-ge of Collins*, 154 Ill.App.3d 655, 107 Ill. ec. 109, 506 N.E.2d 1000 (1987) and in *ollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d 353, 321 N.E.2d 344 (1974), which eld that the failure to include proof of ser-ce with a post-trial motion will not invali-ate the motion or render it untimely.

Defendant contends that Rule 104(d) only addresses the failure to actually serve copies of the motion but does not address the fail-ure to file a certificate of service. This con-tention is devoid of any rationale since a failure to serve will preclude the filing of a certificate, unless the movant seeks to per-jure himself. Thus, if the failure to actually serve notice does not impair jurisdiction, then *a fortiori*, the failure to serve a certifi-cate of service will not impair the validity or timeliness of the motion. See *In re Mar-riage of Collins*.

Defendant's reliance on *Vlahakis v. Par-ker*, 3 Ill.App.3d 126, 278 N.E.2d 523 (1971) (abstract of op.) and *Ingrassia v. Ingrassia*, 156 Ill.App.3d 483, 109 Ill.Dec. 68, 509 N.E.2d 729 (1987) is misplaced. Although *Vlahakis* reached a contrary result, it is clear that that opinion did not purport to in any way consider or confront the impact of Rule 104(d) in its determination. That opinion has therefore been distinguished and rejected on that basis in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d at 357–58, 321 N.E.2d at 348 ("Rule 104(d) renders a failure to comply with Rule 104(b) * * * non-jurisdictional * * * [and] the only cases decided since enactment of rule 104(d) which reached a contrary result [, including *Vlahakis v. Parker*,] did not consider that provision at all"). Likewise, the opinion in *Ingrassia* does not purport to consider rule 104(d) in its determination. Moreover, *Ingrassia* does not purport to deal with the validity or timeliness of the filing of a post-trial motion, but, rather, with the sufficiency of the notice of that motion when given to the opposing party only a few hours before the hearing on the motion. Hence, *Ingrassia* is not in point, since here there is no question that defendant had actual knowledge of the pendency of plaintiff's motion to reconsider well in advance of the scheduled hearing date on that motion.

Consequently, plaintiff's August 25 motion to reconsider, and therefore his January 25 notice of appeal, were seasonably filed, notwithstanding that no certificate of service was filed until long after 30 days had passed since summary judgment was entered on July 27. Since the August 25 motion was timely, the notice of appeal filed on January 25 complied with Rule 303(a) since it was filed within 30 days after the trial court disposed of the motion to reconsider, albeit on jurisdictional grounds, on January 13. Accordingly, our jurisdiction to review both the July 27 and January 13 orders of the trial court remains unimpaired.

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[5] Defendant next would urge that if we determine that the January 13 order is reviewable, we should confine our review solely to the correctness of the trial court's denial of its jurisdiction over the motion to reconsider. Defendant contends that if we find that the trial court's jurisdictional determination was erroneous, we should remand the matter to the trial court to allow the trial court to first consider the merit of that motion. We disagree for the same reasons as articulated in *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 167 Ill.Dec. 225, 587 N.E.2d 494 (1992). There, the court stated as follows:

> "Defendant initially urges us, without citation to authority, to remand this matter to the circuit court because that court did not address the merits of plaintiff's motion. This argument betrays a misperception of the nature both of the question presented and of our review. As noted above, we consider summary judgment orders *de novo*: we, like the circuit court, must decide only whether the parties' pleadings and other submissions present an issue of triable fact and if not, whether plaintiff is entitled to judgment as a matter of law. This is a question of law, not of fact." *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 76, 167 Ill.Dec. 225, 231, 587 N.E.2d 494, 500 (1992).

Here, too, the grant of summary judgment is subject to *de novo* review, requiring our *de novo* determination whether the submissions of the parties presented triable issues of fact and if not whether defendant was entitled to a judgment as a matter of law. Thus, here, as in *Myers*, we may consider this appeal on its merits without the necessity of a remand.

II. MERITS

[6] As noted earlier, plaintiff contends on appeal that the trial court erred in granting summary judgment because the facts are sufficient to create an inference that AT & T voluntarily assumed a duty to properly secure the battery hoist for transport, a duty which was breached as a result of AT & T's negligence. Additionally, plaintiff contends, for the first time on appeal, that there was error in granting summary judgment because the facts are sufficient to create an inference that as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that even if summary judgment was properly entered in favor of AT & T under the issues framed by the existing complaint, the trial court abused its discretion in denying him leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)).[1]

[7, 8] We first address plaintiff's contention that the trial court erred in entering summary judgment pursuant to the issues framed by the existing complaint. Summary judgment is proper when the pleadings, depositions and affidavits on file, construed in the light most favorable to the nonmoving party, establish that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. See generally 735 ILCS 5/2–1005 (West 1994); *First State Insurance Co. v. Montgomery Ward & Co.*, 267 Ill.App.3d 851, 204 Ill.Dec. 814, 642 N.E.2d 715 (1994); *Torres v. City of Chicago*, 261 Ill.App.3d 499, 197 Ill.Dec. 985, 632 N.E.2d 54 (1994); *Giannoble v. P & M Heating & Air Conditioning, Inc.*, 233 Ill.App.3d 1051, 175 Ill.Dec. 169, 599 N.E.2d 1183 (1992). Appellate review of an order granting summary judgment is *de novo*. *E.g., Hesselink v. R.L. Perlow Corp.*, 265 Ill.App.3d 473, 202 Ill.Dec. 36, 637 N.E.2d 575 (1994); *La Salle National Bank v. Skidmore, Owings & Merrill*, 262 Ill.App.3d 899, 200 Ill.Dec. 225, 635 N.E.2d 564

1. As previously noted, at the trial level, plaintiff urged liability both on the basis of premises liability and the law governing voluntary undertakings. Plaintiff has conceded on appeal that he cannot base his action against AT & T upon a theory of premises liability as a matter of law, due to the holding in *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994), insofar as he incurred his injuries in the bed of his truck, and not due to any condition of AT & T's premises. See also *Jackson v. Hilton Hotels Corp.* 273 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995) (in action based on premises liability, no duty to plaintiff existed where plaintiff failed to show that his injuries were caused by any condition of the premises).

(1994). To withstand a motion for summary judgment in an action based in negligence, a plaintiff must allege facts sufficient to show that the defendant owed him a duty, that defendant breached that duty, and that his injury proximately resulted from that breach. See *DiBenedetto v. Flora Township*, 153 Ill.2d 66, 178 Ill.Dec. 777, 605 N.E.2d 571 (1992); *Ziemba v. Mierzwa*, 142 Ill.2d 42, 153 Ill.Dec. 259, 566 N.E.2d 1365 (1991).

[9, 10] With respect to plaintiff's contention concerning AT & T's duty arising from its purported voluntary undertaking, section 323 of the Restatement (Second) of Torts provides as follows:

"One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking." Restatement (Second) of Torts § 323, at 135 (1965).

See generally, *Cross v. Wells Fargo Alarm Services*, 82 Ill.2d 313, 45 Ill.Dec. 121, 412 N.E.2d 472 (1980); *Jackson v. Hilton Hotels Corp.*, 277 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995). Whether a duty has been voluntarily undertaken is a question of law to be determined by the court. *Gouge v. Central Illinois Public Service Co.*, 144 Ill.2d 535, 163 Ill.Dec. 842, 582 N.E.2d 108 (1991); *Jackson v. Hilton Hotels Corp.*

In the instant case, plaintiff has failed to allege facts sufficient to establish in the first instance that defendant voluntarily assumed or undertook any duty to properly maintain and secure the battery hoist for transport. First, it is undisputed that AT & T had neither control nor influence over the manner in which plaintiff, an independent contractor retained by Quinn (who was also an independent contractor), readied or moved the hoist, and that plaintiff had total discretion in preparing and moving the hoist. Moreover, plaintiff did not submit any evidence that AT & T strapped the motor to the hoist, nor any evidence regarding whether the strapping was undertaken as protection for the plaintiff. Lastly, and more overridingly, even if we were to presume that the strapping was effected by AT & T, there is no evidence whatsoever submitted by plaintiff that he relied upon the safety of that strapping. In fact, the record is clear that plaintiff himself checked the strapping of the motor to ensure it was fastened securely prior to moving the hoist, as was his customary practice when moving that particular hoist.

[11–13] Plaintiff urges that even if there is no basis for liability under a theory of voluntary undertaking, there is a basis established for liability under a theory of gratuitous bailment. In that regard, he contends that there is a genuine issue of material fact that AT & T, as a gratuitous bailor of the hoist, breached a duty to plaintiff to provide a safe hoist or to warn plaintiff of its dangers. We first note that contentions not raised in the trial court are waived on appeal, even in a summary judgment case. *Witek v. Leisure Technology Midwest, Inc.*, 39 Ill.App.3d 637, 640, 350 N.E.2d 242, 245 (1976) ("This rule of waiver applies even in a summary judgment case"); *Wilson v. Gorski's Food Fair*, 196 Ill.App.3d 612, 143 Ill.Dec. 477, 554 N.E.2d 412 (1990). However, even if the argument were preserved, we note that there was no evidence presented that AT & T breached a duty to plaintiff as a gratuitous bailor of the hoist.

"[A] gratuitous bailor may be liable for physical harm caused by the use of his chattel when he knows or has reason to know that the chattel is or is likely to be dangerous when put to the use for which it is supplied; has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition; and fails to exercise reasonable care to inform the user of its dangerous condition or of the facts which make it likely to be dangerous." *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994).

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[14] Plaintiff has not produced evidence as to any specific defect either in the design or manufacture of the hoist itself which would indicate that AT & T had actual or constructive knowledge that the hoist was unsafe when it was handed over to plaintiff. Plaintiff himself did not testify as to the condition of the hoist except to say that the strap loosened. The only other evidence that plaintiff has presented consists of unsubstantiated hearsay statements. In that regard, plaintiff testified in his deposition to a conversation which took place after the accident with an AT & T installer who told plaintiff that certain other fellow employees had stated that after plaintiff's accident they refused to use the hoist because it was unsafe, and that AT & T ultimately returned the hoist to its manufacturer. However, plaintiff was unable to identify those other AT & T employees, and he did not provide any further detail regarding the specific contents of their statements. Such unsubstantiated hearsay statements cannot be considered in a ruling on a motion for summary judgment. See *Certified Mechanical Contractors, Inc. v. Wight & Co., Inc.*, 162 Ill.App.3d 391, 113 Ill.Dec. 888, 515 N.E.2d 1047 (1987) (in deciding a motion for summary judgment, court should ignore personal conclusions, opinions and self-serving statements and consider only facts admissible in evidence under the rules of evidence); *Seefeldt v. Millikin National Bank of Decatur*, 154 Ill.App.3d 715, 107 Ill.Dec. 161, 506 N.E.2d 1052 (1987) (although a complaint may purport to raise an issue of material fact, summary judgment is appropriate if such issue is not further supported by evidentiary facts, and in determining the genuineness of a fact, a court should ignore personal conclusions and opinions and consider only admissible facts).

Plaintiff's reliance on *Pagano* is not well taken. There, the court on appeal did find an issue of fact as to whether a defective dolly supplied by the defendant to help move certain barrel drums of ink rendered the defendant liable under a theory of gratuitous bailment. However, in that case, plaintiff gave direct testimony as to specific, observable defects in the dolly which, if believed, would establish that the dolly was defective. Here, aside from the inadmissible hearsay rumors which were reported, the plaintiff himself presented no evidence to show either a defect in the hoist or that AT & T knew or should have known of any dangerous propensities in the hoist. Consequently, the evidence presented here was not effective to support a counterinference for purposes of summary judgment.

[15] Plaintiff next contends that the trial court erred in its refusal in its July 27 order to allow him leave to amend his complaint to more specifically allege facts that there was a voluntary undertaking and that it was implemented negligently. We disagree.

Section 2-1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(g) (West 1994)) provides as follows:

> "(g) Amendment of pleading. Before or after the entry of a summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms."

The allowance of an amendment to the pleadings is in the trial court's discretion, and reversible error can only be found if there is a manifest abuse of discretion. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992). See also *Misselhorn v. Doyle*, 257 Ill.App.3d 983, 195 Ill.Dec. 881, [illegible] N.E.2d 189 (1994); *Eyman v. McDonough District Hospital*, 245 Ill.App.3d 391, 184 Ill.Dec. 502, 613 N.E.2d 819 (1993).

As noted, on July 27, immediately after the trial court entered summary judgment against him, plaintiff made an oral motion to amend his complaint, as follows:

> "**MR. JOHNSON** [Plaintiff's attorney]: I'll set it out to specifics that they undertook the duty to secure the hoist and they negligently performed that duty and as a result Plaintiff was injured based upon the *Nelson v. Pippen, Phillips* [*sic*] case, that one undertakes a duty to do something, they do so negligently, and someone is injured they are absolutely liable.
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> If the fact that the Court feels that the premises liability count cannot stand does not mean then that a negligent voluntary [*sic*] undertaking is not proper here

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There will be no new deps. That's what the evidence is through the Plaintiff's deposition."

The court denied plaintiff's motion to amend, stating that "It's an '89 case. I'll deny the motion [to amend]."

We first note that plaintiff never made the proposed amended complaint a part of the record on appeal, except for his oral proposal before the trial judge which, without any offers of new evidence, essentially duplicates the voluntary undertaking theory which has already been argued and rejected. Plaintiff's failure to include the proposed amendment and supporting facts therefor in the record could be found to constitute a waiver in this court of his right to have the denial of his request for leave to amend reviewed. See *Mendelson v. Ben A. Borenstein & Co.*, 240 Ill.App.3d 605, 181 Ill.Dec. 114, 608 N.E.2d 97 (1992) (plaintiff's failure to tender amended complaint or to include it in the appellate record diminished the appellate court's ability to determine whether the proposed amendment would provide a viable theory against defendant, and constituted waiver of right to a review of the denial of his request for leave to amend). See also *Ignar v. Norbut*, 271 Ill.App.3d 522, 207 Ill.Dec. 9, 648 N.E.2d 285 (1995) (no abuse of discretion in denying motion for leave to amend complaint where movant orally moved to amend yet failed to submit proposed amendment to trial court).

Notwithstanding waiver, even if we were to review the amendment which plaintiff orally proposed, we would find no abuse of discretion by the trial court in denying plaintiff leave to amend. As already discussed, there was ample evidence before the trial court to support its conclusion that the facts in this case as revealed in the summary judgment submissions would not permit a pleading which could allege a valid cause of action. Moreover, by the same token, even if the complaint were amended to more specifically allege a voluntary undertaking as requested by the plaintiff, the allegations of the complaint would be superseded by the extrinsic facts already submitted which as noted would dictate for summary judgment. See *Werckenthein v. Bucher Petrochemical Co.*, 248 Ill.App.3d 282, 188 Ill.Dec. 332, 618 N.E.2d 902 (1993) (where allegations in nonmovant's complaint are contravened by movant's extrinsic submissions in summary judgment proceedings, extrinsic submissions control); *East Side Fire Protection District v. City of Belleville*, 221 Ill.App.3d 654, 164 Ill.Dec. 192, 582 N.E.2d 755 (1991) (nonmovant must controvert proofs offered by movant in support of motion for summary judgment and cannot merely rest on pleadings); *Seefeldt v. Millikin National Bank of Decatur*. The issue here is not simply that plaintiff's complaint is deficient in its framing of the issues, but that, as discussed, the testimony and evidence presented in support of his negligent voluntary undertaking theory are deficient, and fall short of establishing a genuine issue of material fact such that judgment should not be entered as a matter of law on that theory of action.

Plaintiff's reliance on *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992) is not well taken. In *Loyola*, the court on appeal set forth four factors to determine whether the trial court had abused its discretion in denying a section 2–1005(g) amendment, including whether the proposed amendment would cure the defective pleading, whether it would cause prejudice or surprise to other parties, whether it was timely, and whether previous opportunities to amend the pleading could be identified.

Applying these factors in order, in the instant case the question of whether plaintiff's proposed amendment would cure the defective pleading is not relevant, because as already discussed, AT & T succeeded in its motion for summary judgment not because plaintiff's complaint was improperly pleaded, but because the evidence presented at summary judgment shows no genuine issue of material fact regarding the allegations in the complaint. *Werckenthein v. Bucher Petrochemical Co.*; *East Side Fire Protection District v. City of Belleville*. Taking the second and third *Loyola* factors together (whether there would be prejudice or surprise to AT & T and whether the proposed amendment was timely), the record is ample to support the trial court's determination that the allowance

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of an amendment would in fact be prejudicial to AT & T, insofar as the amendment was being sought on the eve of trial, five years after the inception of this lawsuit, with no explanation from plaintiff as to why he never before attempted to develop the facts which would be necessary to withstand AT & T's motion for summary judgment. See *Mendelson v. Ben A. Borenstein & Co.* (no abuse of discretion in denying leave to amend following grant of summary judgment where proposed amendment was sought beyond the pleading stages). See also *Ignarski v. Norbut.*

The final *Loyola* factor is whether plaintiff had sufficient prior opportunities to amend. To that extent, we note that plaintiff indeed had substantial opportunities to amend. Although plaintiff complains that AT & T never gave him notice of any deficiency in his complaint which would require amendment because AT & T never filed a motion to dismiss prior to filing its motion for summary judgment, it is axiomatic that a party can amend its pleading on its own motion. See 3 R. Michael, Illinois Practice, ch. 26, at 446 (West 1989). The case of *Evans v. United Bank of Illinois, N.A.*, 226 Ill.App.3d 526, 168 Ill.Dec. 533, 589 N.E.2d 933 (1992), upon which plaintiff relies, does give credence to plaintiff's contention under the fourth *Loyola* factor that the failure of AT & T to challenge his pleadings prior to its motion for summary judgment deprived plaintiff of any prior opportunity to amend. However, we note that in *Evans* the court on appeal did not rely on that factor alone in finding that the trial court abused its discretion in denying the plaintiff in that case leave to amend, but found that *all* of the *Loyola* factors supported that plaintiff's motion for leave to amend.

In any event, even if plaintiff were correct in his reliance upon *Evans*, we need not consider its application here. As already discussed, the issue here is not whether the allegations of the complaint were sufficient to state a cause of action based upon a voluntary undertaking theory, but whether the facts adduced were sufficient to create an inference to support such allegations. See *Werckenthein v. Bucher Petrochemical Co.; East Side Fire Protection District v. City Belleville.* As previously noted, the fa submitted here are insufficient to raise su an inference. Hence, we find that the tr court's denial of the motion to amend was an abuse of discretion. See *Regas v. Asso ated Radiologists, Ltd.*, 230 Ill.App.3d 9 172 Ill.Dec. 553, 595 N.E.2d 1223 (19 (where a cause of action cannot be sta even after amendment, leave to am should be denied).

For the foregoing reasons, the judgment the Circuit Court of Cook County is affirm

McNULTY, P.J., and HOURIHANE, J. concur.

283 Ill.App.3d 112

669 N.E.2d 655

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Vernetta CASSELL, Defendant-Appellant.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Curlee SIMMONS, Defendant-Appellan

Nos. 1-94-2782, 1-95-1380.

Appellate Court of Illinois, First District, Fifth Division.

Aug. 9, 1996.

Rehearing Denied Sept. 11, 1996.

Defendants were convicted in the Cir Court, Cook County, John J. Moran, J., aggravated criminal sexual assault, and defendant was convicted of additional cri of home invasion and aggravated kidnapp Defendants appealed. The Appellate Co McNulty, P.J., held that: (1) circuit co had adequate basis for its determination th victim was not entitled to assert privile

Cite a

against self-incrimination: ficient evidence that defe threat of force in order to course with victim to sup aggravated criminal sexua was sufficient evidence tha confined victim to supp napping conviction; (4) denied effective assistan defendant who drove vehi assault occurred was cri for the assault; and (6) e of emergency room nurse that victim identified d and who dragged her fr harmless error.

Affirmed.

1. Witnesses ⇐297(13.1)

Trial court had adequ motion for aggravated cri for its determination th entitled to assert Fifth A against self-incrimination court did not conduct he whether victim's testimon ver, where, in response t tions as to why she wan age, victim never expres fear of being charged wit that she could not remem clearly. U.S.C.A. Const.

2. Witnesses ⇐297(1)

Privilege against guards against compulsor leading to establish U.S.C.A. Const.Amend. 5

3. Witnesses ⇐297(1)

Although witness ir privilege to refuse to an tend to incriminate him secured by Fifth Amend those instances where wi cause to believe he or himself or herself to pro answers. U.S.C.A. Const

4. Witnesses ⇐297(1)

Once witness asser Amendment privilege no self or herself, trial cou

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appointed to you and we will not ask questions until he has been appointed—"I told him, without his attorney I wouldn't talk to him and that would be it. That he didn't have to say anything." (He said he didn't want a lawyer.) (5) If you decide to answer now with or without a lawyer, you have the right to stop questioning at any time or stop questioning and consult a lawyer—"I told him, if I start talking to you and it becomes apparent to you that you suddenly think you want an attorney to tell me and we will stop right there and we won't ask any further questions at that point. In other words, he could stop me from asking anything, at any time and I will just stop and leave the room." (He said he still wanted to talk to me.)

Dickett testified that she gave defendant the *Miranda* warnings one at a time, speaking slowly. After each one she asked defendant if he understood and he said he did. She testified that she told him the word attorney meant lawyer and instead of the phrase, "appoint a lawyer", she told him the court would give him a lawyer.

In contrast to this questioning by Kill and Dickett, Smith testified that she interviewed defendant on December 15, 1989, six months after the fire. In questions she posed which were intended to determine whether or not he could intelligently waive what are commonly known as "Miranda rights or Miranda warnings" she would ask him "what does this mean, and then I would say what the particular right was" and his reaction would be to "look around, scratch his head and draw a blank. He didn't say anything." From these reactions she concluded that "he didn't understand what these rights meant."

The contrast in the manner in which the police officer and assistant State's Attorney advised the defendant and the form of the questions posed to the defendant by the psychologist lead us to the conclusion that the record does not support the trial court's conclusion that defendant did not understand his rights and therefore did not knowingly and intelligently waive them. The court's grant of defendant's motion to suppress is not supported by the record.

Here we find the defendant was advised of his right to remain silent and his right to have an attorney present in language he could understand. He was advised that anything he told the officer could be used against him in court. Defendant then stated that he wanted to tell the police about the fire. He repeated the story to the officer and to the assistant State's Attorney in a coherent manner. Although he was asked to do so, he chose not have his statement taken down verbatim in writing. Since he was unable to read, he could not verify what a written statement contained.

While the State has a heavy burden to show that a defendant has waived his constitutional rights in a knowing, intelligent and voluntary manner, (*Brownell*, 79 Ill.2d at 516, 38 Ill.Dec. 757, 404 N.E.2d 181) we find the State has met that burden. We find the weight of the evidence establishes that defendant waived his *Miranda* rights in a knowing and intelligent manner. For all of the foregoing reasons the order of the trial court granting defendant's motion to suppress his statements is reversed.

REVERSED.

RAKOWSKI, P.J., and EGAN, J., concur.



217 Ill.App.3d 952
578 N.E.2d 33

Byong K. CHOI, Plaintiff-Appellant,

v.

COMMONWEALTH EDISON COMPANY, Defendant-Appellee.

No. 1-89-2177.

Appellate Court of Illinois, First District, Third Division.

July 10, 1991.

Rehearing Denied Aug. 26, 1991.

Independent contractor's employee brought action against owner of nuclear

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power plant to recover for injuries sustained when he slipped and fell on wet concrete floor. The Circuit Court, Cook County, Dean Sodaro, J., granted summary judgment for owner, and employee appealed. The Appellate Court, Cerda, P.J., held that owner's duty to maintain safe workplace did not include mopping up water that accumulated on floor when snow and ice from pipes used in construction project melted onto floor, causing puddles of water.

Affirmed.

1. Judgment ⇐185(2)

Although plaintiff does not have to try his case on defendant's motion for summary judgment, he must provide factual basis which would arguably entitle him to judgment.

2. Appeal and Error ⇐949

Determination that summary judgment is appropriate will not be reversed absent abuse of trial court's discretion such that plaintiff's right to fundamental justice is violated.

3. Negligence ⇐32(2.10)

Landowner owed duty to independent contractor's employee to maintain reasonably safe workplace.

4. Negligence ⇐50

Landowner's duty to independent contractor's employee to maintain reasonably safe workplace did not extend to taking precautions against water tracked inside from natural accumulation outside.

5. Negligence ⇐2, 10

Duty is determined by considering number of factors, including foreseeability of harm, likelihood of injury, magnitude of burden of guarding against it, consequences of placing that burden on defendant, public policy, and social considerations.

6. Negligence ⇐29, 44

Landowner owes no duty where natural accumulation of snow, ice or water exists on outside or is tracked into building by pedestrian traffic.

7. Negligence ⇐28

Property owner has duty and may be liable in negligence when injuries are result of unnatural or artificial accumulation of snow, ice or water, or natural condition aggravated by owner's use of area and creation of condition.

8. Negligence ⇐50

Duty owed by owner of nuclear power plant to independent contractor's employee to provide reasonably safe workplace did not include duty to mop up water that accumulated on concrete floor when snow and ice from pipes being brought in from outside for use in construction project melted onto floor, causing puddles of water, where there was no evidence that owner did anything to aggravate that condition, but instead condition was continuation of natural accumulation.

Lane and Munday, Thomas J. Nathan, Chicago, for plaintiff-appellant.

Johnson, Cusack and Bell, Ltd., John W. Bell, Michael B. Gunzburg and Thomas H. Fegan, Chicago, for defendant-appellee.

Presiding Justice CERDA delivered the opinion of the court:

Plaintiff, Byong K. Choi, brought this action against defendant Commonwealth Edison Company seeking recovery for injuries sustained when plaintiff fell on a concrete floor while working at a construction site. The trial court granted defendant's motion for summary judgment. On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary judgment because a genuine issue of material fact exists. In addition, he argues that the trial court erred by failing to recognize defendant's duty to provide a safe workplace for workmen engaged in construction work on its premises and by failing to extend that duty to include taking precautions against the accumulation of water inside the building.

On January 10, 1979, plaintiff Choi was employed by Universal Power Piping, Inc. (UPP) as a welder at the Dresden Nuclear Power Plant, which is owned by defendant

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Commonwealth Edison Company. UPP was a subcontractor hired by Commonwealth Edison to complete installation of a decontamination flushing system in the Reactor 1 building. Plaintiff was working on the third-floor turbine deck receiving pipes brought in from the outside by UPP employees. While stored outside, the pipes became encrusted with snow and ice. Once inside, the pipes were raised from the ground floor to the third-floor turbine deck area by an overhead crane, which was operated by a Commonwealth Edison employee. Then, the pipe was taken from the crane, placed on a cart, and moved through the interlock hatch to the reactor building by UPP employees, including plaintiff. Snow and ice melted from the frozen pipes, forming puddles of water on the deck wherever the pipes were transported. Plaintiff was working in this manner all day prior to the accident.

As plaintiff and a co-worker were carrying a pipe, approximately 20 feet long and 10 inches in diameter, plaintiff slipped on water that was on the concrete floor. He fell backward, hitting his back on a pipe, and a floor spacer fell across his mid-section, causing injuries.

Previously, the appellate court upheld the trial court's summary judgment order for defendant regarding a Structural Work Act (Ill.Rev.Stat.1983, ch. 48, pars. 60 through 69). (*Choi v. Commonwealth Edison Co.* (1984), 129 Ill.App.3d 878, 85 Ill.Dec. 17, 473 N.E.2d 385.) In plaintiff's second amended complaint, he alleged that defendant was guilty of several negligent acts in its supervision of the construction work. Defendant filed a motion for summary judgment, arguing that under Illinois law, it had no duty to take precautions against natural accumulations of snow, ice or water that were tracked into a building. Defendant noted that the UPP foreman's deposition stated that he did not inform Edison of the condition because it was the duty of the contractor's own employees to clean up after themselves. Defendant pointed out that the snow came from pipes that plaintiff and his co-workers had brought in and carried to the area.

In response to defendant's motion for summary judgment, plaintiff argued that defendant owed him a duty to maintain a reasonably safe work place because it retained control over the construction work performed by UPP employees and could stop the work in progress for safety or other reasons. Plaintiff also argued that defendant breached that duty by failing to provide a reasonably safe workplace and by failing to stop work that was being performed in an unsafe manner. In addition, plaintiff contended that the melted snow and ice that caused the unsafe condition did not accumulate naturally, was not transported into the building by pedestrian traffic, and was caused by defendant's refusal to allow the pipes to be brought into the building and cleaned off before being transported to the work area. Plaintiff notes that the deposition of Commonwealth Edison's superintendent stated that Commonwealth Edison employees had the responsibility to clean snow and ice which came into the building, had the authority to stop work being performed in an unsafe manner, and regularly inspected the area.

Concluding that the facts were essentially undisputed, the trial court ordered summary judgment for defendant. The trial court stated that there was a common law duty of an occupier of land to exercise reasonable care for the safety of people lawfully on the premises, but that duty did not extend to a building owner being required to mop up water from an accumulation of snow, ice or water brought inside a building construction site. The trial court indicated that it would be an impossible burden placed on an owner of a building construction site to require following the independent contractor's employees around, mopping up every drip of water brought in from the outside. The trial court further ruled that Commonwealth Edison did not create the dangerous condition, but merely failed to clean up a mess which is common whenever building materials from the outside of a building are moved into a building.

The trial court analogized this case to *Lohan v. Walgreens Co.* (1986), 140 Ill.App.3d 171, 173, 94 Ill.Dec. 680, 488 N.E.2d 679, which ruled that a landowner has no duty to clean up snow, ice or water that is

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tracked into a building from a natural accumulation on the outside. The trial court made no finding whether the accumulation inside the building was natural or unnatural, but did state that the water began as a natural accumulation of snow and ice on the pipes outside, and was brought into the building the same way as people tracking it on their feet. The trial court did not consider the expert's affidavit and deposition because it was not factually based. The expert did not actually examine the premises, the court noted, but merely looked at photographs.

After the trial court denied plaintiff's motion to reconsider, plaintiff appealed the summary judgment order. Plaintiff's argument emphasizes that Commonwealth Edison owed him a duty to maintain a safe workplace even though he was employed by an independent contractor hired by Commonwealth Edison. He asserts that the duty included mopping up water that accumulated on the building's floor when snow and ice from the pipes melted onto the floor, causing puddles of water. Plaintiff relies on cases holding that the landowner owes a duty to the employee of an independent contractor if the owner retains sufficient control over the contractor's work. *Claudy v. City of Sycamore* (1988), 170 Ill.App.3d 990, 120 Ill.Dec. 812, 524 N.E.2d 994; See *Haberer v. Village of Sauget* (1987), 158 Ill.App.3d 313, 110 Ill.Dec. 628, 511 N.E.2d 805; *Tsourmas v. Dineff* (1987), 161 Ill.App.3d 897, 113 Ill.Dec. 758, 515 N.E.2d 743; *Weber v. Northern Illinois Gas Co.* (1973), 10 Ill.App.3d 625, 295 N.E.2d 41; *Pasko v. Commonwealth Edison Co.* (1973), 14 Ill.App.3d 481, 302 N.E.2d 642. These cases state that the duty owed is to maintain a reasonably safe workplace.

Even if the water began as a natural accumulation on the outside, plaintiff asserts, Commonwealth Edison's intervening acts caused the water to be unnaturally accumulated on the inside of the building. In the alternative, plaintiff states, the condition was aggravated by Commonwealth Edison because it would not allow the pipes to be stored inside where the snow and ice could be safely removed after it melted. Furthermore, plaintiff argues, the pipes were brought in from the outside and loaded onto an overhead crane operated by a Commonwealth Edison employee. The overhead crane then took the pipes to the third floor of the building, where UPP employees transported the pipes through a tunnel into the reactor building. By the time the pipes reached the third floor, the snow and ice was melting, and water from the pipes was dripping on the floor. It is on that water that plaintiff fell and injured himself.

Defendant responds that the water was a natural accumulation tracked in from the outside by UPP employees, including plaintiff. It asserts that this situation should be treated the same as a natural accumulation tracked in from the outside by pedestrian traffic, thus creating no duty by the landowner.

Defendant relies on two types of cases: those concerning natural accumulations of snow, ice or water outdoors and those concerning snow, ice or water tracked into a building from the outside, whether tracked in by pedestrians' shoes, coats or umbrellas. In *Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679, the plaintiff slipped and fell on water that had been tracked from the outside into the common hallway of the defendants' stores. The appellate court ruled that the owners did not have a duty to continuously remove the tracks left by customers who had walked through the natural accumulations of snow or water outside, tracking them inside. Even if the owner has knowledge that the accumulation caused a dangerous condition, the court stated, there is no duty if the accumulation is natural. (*Lohan*, 140 Ill.App.3d at 173, 94 Ill.Dec. 680, 488 N.E.2d 679.) See also *Handy v. Sears, Roebuck & Co.* (1989), 182 Ill.App.3d 969, 131 Ill.Dec. 471, 538 N.E.2d 846 (summary judgment in favor of defendant store affirmed where plaintiff slipped and fell on water located within store); *Shoemaker v. Rush–Presbyterian–St. Luke's Medical Center* (1989), 187 Ill.App.3d 1040, 135 Ill.Dec. 446, 543 N.E.2d 1014 (hospital had no duty to clean up natural accumulation of water tracked into hospital on pedestrians' coats and umbrellas); *Serritos v. Chicago Transit Authority* (1987), 153 Ill.App.3d 265, 106 Ill.Dec. 243, 505 N.E.2d 1034 (city transit authority had no duty where plain-

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tiff fell on snow and slush covered steps of bus owned and operated by defendant).

[1, 2] The purpose of summary judgment is to determine whether a triable issue of fact exists. (*Haberer*, 158 Ill.App.3d at 316, 110 Ill.Dec. 628, 511 N.E.2d 805.) It may be granted if the pleadings, exhibits, affidavits, and depositions on file establish that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (Ill.Rev. Stat.1985, ch. 110, par. 2–1005(c); *Branson v. R & L Investment, Inc.* (1990), 196 Ill. App.3d 1088, 1090, 143 Ill.Dec. 689, 554 N.E.2d 624.) Although the plaintiff does not have to try his case, he must provide a factual basis which would arguably entitle him to judgment. (*Handy*, 182 Ill.App.3d at 972, 131 Ill.Dec. 471, 538 N.E.2d 846.) The determination that summary judgment is appropriate will not be reversed absent an abuse of the trial court's discretion such that the plaintiff's right to fundamental justice is violated. *Breeze v. Payne* (1989), 181 Ill.App.3d 720, 727, 130 Ill.Dec. 386, 537 N.E.2d 453.

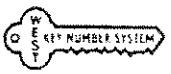
[3–5] Commonwealth Edison owed plaintiff the duty to maintain a reasonably safe workplace, but it did not extend to taking precautions against water tracked inside from a natural accumulation outside. Duty is determined by considering a number of factors: the foreseeability of harm (*Breeze*, 181 Ill.App.3d at 727, 130 Ill.Dec. 386, 537 N.E.2d 453), the likelihood of the injury, the magnitude of the burden of guarding against it, the consequences of placing that burden on the defendant, public policy, and social considerations. *Dealers Service & Supply Co. v. St. Louis National Stock.* (1987), 155 Ill.App.3d 1075, 1080, 108 Ill.Dec. 664, 508 N.E.2d 1241.

[6, 7] In Illinois, a landowner owes no duty where a natural accumulation of snow, ice or water exists on the outside or is tracked into a building by pedestrian traffic. (*Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679.) However, a property owner does have a duty and may be liable where the injuries are a result of an unnatural or artificial accumulation, or a natural condition aggravated by the owner's use of the area and creation of the condition. (*Handy v. Sears, Roebuck & Co.* (1989), 182 Ill.App.3d 969, 971, 131 Ill. Dec. 471, 538 N.E.2d 846.) To establish a duty, the plaintiff must make an affirmative showing of an unnatural accumulation or an aggravation of a natural condition before recovery will be allowed. (*McCann v. Bethesda Hospital* (1979), 80 Ill.App.3d 544, 549, 35 Ill.Dec. 879, 400 N.E.2d 16.) Plaintiff made no such showing in this case.

[8] Therefore, summary judgment for defendant was proper. The water in the nuclear power plant was a continuation of a natural accumulation. There was no evidence presented that Commonwealth Edison did anything to aggravate the condition. To require an owner of a construction site to follow workmen around and immediately clean up any melting snow, ice or water that had been brought in from the outside would be too high a burden.

Affirmed.

WHITE and GREIMAN, JJ., concur.



217 Ill.App.3d 958
578 N.E.2d 37

FISTER/WARREN, successor in interest to Charles L. Fister and Associates, Inc., a corporation; Charles L. Fister and Robert J. Warren, Plaintiffs–Appellants/Counter–Defendants–Appellees,

v.

BASINS, INC., a Wyoming corporation, and Georgia Marble Company, a Georgia corporation, Defendants–Appellees/Counter–Plaintiffs–Appellants.

Nos. 1–90–2260, 1–90–2882.

Appellate Court of Illinois, First District, Sixth Division.

July 12, 1991.

Rehearing Denied Aug. 30, 1991

Stock sellers brought action against buyer of corporation and corporation, seek-

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	Case No. 12 LA 178

ANSWER TO PLAINTIFF'S INTERROGATORIES TO DEFENDANTS BILL McGUIRE AND CAROLYN McGUIRE

TO: Paul Dulberg
c/o Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

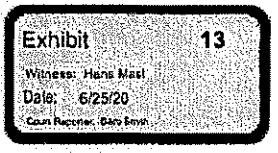
Defendants, BILL McGUIRE AND CAROLYN McGUIRE (improperly named Caroline), by and through their attorneys, Cicero, France, Barch & Alexander, PC, and for their Answer to Plaintiff's Interrogatories, state as follows:

1. State the full name of the defendant(s) answering, as well as your current residence address, date of birth, marital status, and social security number, and, if different, give the full name, as well as the current residence address, date of birth, marital status, and social security number of the individual(s) signing these Answers.

ANSWER:

William "Bill" McGuire	Carolyn McGuire
1016 W. Elder Avenue	1016 W. Elder Avenue
McHenry, IL 60051	McHenry, IL 60051
Married: Carolyn	Married: Bill
DOB: July 29, 1952	November 26, 1946

Defendants object to providing Social Security Numbers. Such information is highly sensitive and private and is furthermore irrelevant to any issues in the pending lawsuit.



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2. State the full name and current residence address of each person who witnessed or claims to have witnessed the accident to the Plaintiff on the premises as described in the complaint.

ANSWER: David Gagnon
39010 90th Place
Genoa City, WI 53128

Paul Dulberg
4606 Hayden
McHenry, IL 60051

3. State the full name and current residence address of each person who witnessed or claims to have witnessed the work and/or conditions existing as described in the complaint at the location of the accident on the date of the accident described.

ANSWER: See answer to Interrogatory No. 2.

4. State the name and address of the person(s) or entity that owned the property premises whereat the accident occurred as alleged, as of the date in question.

ANSWER: Bill and Carolyn McGuire
1016 W. Elder Avenue
McHenry, IL 60051

5. State the name and address of the person(s) or entity that was involved in the work and/or maintenance of the exterior of the premises as alleged on the date in question.

ANSWER: See response to Interrogatory No. 2.

6. State the name and address of the person(s) or entity that decided or chose to undertake the work and/or maintenance of the exterior of the premises as alleged on the date in question, including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

7. State the name and address of the person(s) or entity that was to supervise or oversee the work and/or maintenance at the exterior of the premises as alleged on the date in question including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

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8. State the full name and current residence address of each person, who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after said occurrence.

ANSWER:

Before:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
At Time Of Occurrence:	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
After:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051

9. State the name and address of each witness that knows or claims to know the circumstances of the alleged accident, how it occurred or how the Plaintiff became injured – as alleged in the Complaint.

ANSWER: On information and belief, David Gagnon and Paul Dulberg were present at the time of the alleged occurrence and therefore know the circumstances surrounding the occurrence. Answering further, Defendants Bill McGuire and Carolyn McGuire were not present at the time of the occurrence but knew that David Gagnon and Paul Dulberg were present on the date of the occurrence. From conversations with David Gagnon, the answering Defendants believe that Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Investigation continues.

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10. With respect to the chain saw that was being operated on the premises at the time of the alleged injury, state as follows:

a. Who was operating the chain saw at the time of the Plaintiff's alleged injury;

b. Who owned the chain saw at the time of Plaintiff's alleged injury;

c. who requested that the chain saw be used to perform work at the time of Plaintiff's injury.

ANSWER:

a. On information and belief, David Gagnon was operating the chain saw at the time Mr. Dulberg was injured.

b. Bill McGuire was the owner of the chain saw on the date of the occurrence.

c. David Gagnon had Bill McGuire's permission to use the chain saw.

11. With respect to David Gagnon's experience in use of a chain saw prior to the date of the alleged accident, state as follows:

a. How many times had David Gagnon operated the same or similar chain saw prior to the date of alleged accident;

b. What formal training did David Gagnon receive in use or operation of a chain saw prior to the occurrence alleged;

c. Who, if any, (names and addresses) trained David Gagnon in use or operation of a chain saw prior to the occurrence.

ANSWER:

a. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, and to the best of the answering parties' knowledge, David Gagnon has used chain saws in the past but the answering parties do not known how often he has used chain saws in the past.

b. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering parties do not know whether David Gagnon has been formally trained the use or operation of a chain saw. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

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c. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering party do now know whether or by whom David Gagnon was trained in the use of chain saws. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

12. What was the scope of work or task David Gagnon was engaged in with use of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent "scope of work" or "engaged" constitute legal conclusions, the answering Defendants object to Interrogatory No. 12. Answering subject to objection, at the time of the alleged occurrence, the answering Defendants were in the process of replacing an old shed on their property. Paul Dulberg helped David Gagnon tear down the old shed. The answering Defendants further believe that Mr. Dulberg took the components of the old shed to his property for eventual reassembly. On the date of the occurrence, Mr. Dulberg was helping David Gagnon take down several trees to make room for a new shed. On information and belief, prior to the occurrence Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Answering further, the answering Defendants did not engage, hire or pay either individual for their activities on site. Nor did either answering Defendant dictate, control or otherwise supervise the methods and means by which Mr. Gagnon and Mr. Dulberg performed the tree and branch cutting at issue.

13. Who (names and addresses) requested or chose to engage Gagnon in the "task" of use and operation of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent the words "chose" and "engage" constitute legal conclusions, the answering Defendants object to Interrogatory No. 13. Answering subject to objection, David Gagnon undertook the tree cutting and trimming in question as a favor to his parents. He was not engaged, hired or paid for the activities in question.

14. What instructions or guidance, if any, was given to Gagnon prior to Plaintiff's alleged injury/accident with regard to how he was to perform the chain saw work at the premises.

ANSWER: See response to Interrogatory No. 11.

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15 Were you (Defendant) covered under any policy of insurance at the time of the occurrence. If so, were you named or covered under any policy, policy, or policies, of liability insurance effective on the date of said occurrence, and: State the name of each such company or companies, the policy number of numbers, the effective period(s) occurrence, including umbrella or excess insurance coverage, property damage and medical payment coverage.

ANSWER: Yes.
Auto-Owners Insurance Company
Policy No. 48-010-965-01
Eff.: May 9, 2011 thru May 9, 2012
Personal Liability (Each Occurrence): $300,000.00
Medical Payments (Each Person): $1,000.00

16. Do you have any information:

(a) That any plaintiff was, within the 5 years immediately prior to said occurrence, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than person injury? If so, state each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or other health care professional, the approximate date of such confinement or service and state the reason for such confinement or service;

(b) That any plaintiff has suffered any serious personal injury and/or illness prior to the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(c) That any plaintiff has suffered any serious personal injury and/or illness since the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(d) That any plaintiff has ever filed any other suit for his or her own personal injuries? If so, state each plaintiff so involved, state the court, and caption in which filed, the year filed, the title and docket number of said case.

ANSWER:

a. On information and belief, the answering parties believe that Paul Dulberg was involved in a motor vehicle accident that resulted in a shoulder injury of some sort. The answering parties do not know of any other details about the auto accident or injuries, if any.
b. See answer to Interrogatory No. 16(a).
c-d. No.

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17. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, the name, address and occupation and employer of the person taking them.

ANSWER: None, other than those furnished as part of Plaintiff's discovery response.

18. Have you (or anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with regard to the injuries complained of by plaintiff or the manner in which the occurrence complained of occurred? If the answer to this Interrogatory is in the affirmative, state the following:

(a) The date or dates of such conversations and/or statements;
(b) The place of such conversations and/or statements;
(c) All persons present for the for the conversations and/or statements;
(d) The matters and things stated by the person in the conversations and/or statements;
(e) Whether the conversation was oral, written and/or recorded; and
(f) Who has possession of said statement if written and/or recorded.

ANSWER: (a) thru (f): See summary of oral communication received from David Gagnon set forth in response to Interrogatory No. 9. Answering further, on information and belief, a few weeks after the subject occurrence Paul Dulberg did roofing work and moved heavy pieces of lumber for Mike Thomas, 460 Walbeck Drive, Twin Lakes, WI 53181 (312/961-9655). Investigation continues.

19. Do you know of any statements made by any person relating to the occurrence complained of by the plaintiff? If so, give the name and address of each such witness, the date of said statement, and state whether such statement was written and/or oral.

ANSWER: See answers to Interrogatories No. 9 and 18.

20. State the name and address of each person having knowledge of Plaintiff's activities on the premises PRIOR to the accident in question.

ANSWER: Paul Dulberg and David Gagnon.

21. State the name and address of each person having knowledge of Plaintiff's activities on the premises AFTER the accident in question.

ANSWER: Paul Dulberg, David Gagnon, Bill McGuire and Carolyn McGuire.

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22. Had the Plaintiff ever used or operated a chain saw on the premises or for the Defendant's prior to his alleged accident. If so, state the dates and times such occurred.

ANSWER: Yes. In June 2011 Carolyn and Bill McGuire had a contractor take down a large tree on their property. The contractor left the fallen limbs. Shortly thereafter, Paul Dulberg brought his own chain saw down to the property. He cut the limbs into logs. David Gagnon helped him cut and load the logs.

23. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial, and state the subject of each witness' testimony, giving the following information:

(a) The subject matter on which the opinion witness is expected to testify;
(b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of said witness, if any;
(c) The qualifications of each opinion witness, including a Curriculum Vitae and/or resume, if any; and
(d) Identify any written reports of the opinion witness regarding this occurrence.

ANSWER:

Illinois Supreme Court Rule 213(f)(1) – Lay Witnesses:

The answering party has not yet determined the identity of the witnesses that might be called upon to offer lay witness testimony and opinions at trial. However, each of the following individuals are possible trial witnesses:

a. Paul Dulberg. Presumably, Mr. Kemp will testify about his age, education and work experience. He may testify concerning all the events and occurrences alleged in his complaint. He may also testify concerning his state of health before the events and occurrences alleged in his complaint, the injuries he attributes to the events and occurrences alleged in his complaint, and his current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

b. David Gagnon. The answering party does not know the specifics of Mr. Gagnon's potential trial testimony. Presumably, however, Mr. Gagnon will testify about his age, education and work experience. He may testify concerning his connection to Bill McGuire and Carolyn McGuire. He may testify concerning the events and occurrences alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health before the events and occurrences alleged in Plaintiff's Complaint, observations he made about the injuries Mr.

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Dulberg attributes to the events and occurrences alleged in Plaintiff's Complaint, and observations he made about Mr. Dulberg's current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

c. Bill McGuire. If called upon to testify, Mr. McGuire will testify about his age, education and work experience. He will testify concerning his connection to David Gagnon and Carolyn McGuire. He may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations he made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

d. Carolyn McGuire. If called upon to testify, Mrs. McGuire will testify about her age, education and work experience. She will testify concerning her connection to David Gagnon and Bill McGuire. She may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. She may also testify concerning observations she made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations she made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that she will testify concerning all matters covered by her discovery responses and discovery deposition, if taken. Investigation continues.

e. Mike Thomas. If called upon to testify, Mr. Thomas may testify about his age, education and work experience. He may testify concerning his connection to Paul Dulberg. He may also testify concerning observations he made about Mr. Dulberg's state of health after the occurrence alleged in Plaintiff's Complaint, including observations he made of Mr. Dulberg performing roofing work and moving lumber. Lastly, it is anticipated that he will testify concerning all matters covered in his discovery deposition, if taken. Investigation continues.

f. Investigation continues.

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Illinois Supreme Court Rule 213(f)(2) – Independent Opinion Witnesses.

To the extent any of the individuals disclosed above as potential Rule 213(f)(1) witnesses also qualify for disclosure as an independent expert witness within the meaning of Illinois Supreme Court Rule 213(f)(2), the responding Defendants incorporate the above Rule 213(f)(1) disclosure as though fully and completely set forth herein as a Rule 213(f)(2) disclosure. Answering further, the responding Defendants further incorporate the identity and opinions of any medical provider that treated Plaintiff for injuries he claims are associated with the occurrence alleged in his Complaint. For additional detail, see the medical records and materials produced by Plaintiff as part of his production response. Investigation continues.

Illinois Supreme Court Rule 213(f)(3) – Controlled Opinion Witnesses.

None at this time. Answering further, Defendants reserve the right to retain and disclose controlled opinion witnesses and will do so, if necessary, in accordance with all applicable court orders and discovery rules.

24. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of said occurrence and/or of the injuries and damages claimed to have resulted therefrom.

ANSWER: None, other than as disclosed in response to the interrogatories above.

25. Identify any statements, information and/or documents known to you and requested by any of the foregoing Interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each Interrogatory, specify the legal basis for the claim as required by Supreme Court Rule 201(n).

ANSWER: None at this time.

26. State the name and address of each person at the premises (although maybe at different location or not a witness to the incident) described at the time of the occurrence.

ANSWER: See response to Interrogatory Nos. 1 and 2.

27. Was the Plaintiff struck and injured by the chain saw while in operation on the date and time alleged. If so, what caused the chain saw to strike the Plaintiff.

ANSWER: On information and belief, yes. Answering further, Defendants were not present at the time of the occurrence. See answer to Interrogatory No. 9.

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28. Describe what, if any, of the Plaintiff's conduct caused or contributed to his injury on the date and time in question.

ANSWER: See answer to Interrogatory No. 9.

29. Did the chain saw malfunction at any time during its use prior to Plaintiff's alleged injury.

ANSWER: To the best of the answering parties' knowledge, no.

30. Prior to Plaintiff's alleged injury, was the subject chain saw operating safely and properly.

ANSWER: To the best of the answering parties knowledge, yes.

CAROLYN MCGUIRE and BILL MCGUIRE,
Defendants, by their attorneys,
CICERO, FRANCE, BARCH & ALEXANDER, P.C.,

By _____
RONALD A. BARCH (6209572)

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

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STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

BILL McGUIRE, being first duly sworn on oath, deposes and states that he is one of the defendants herein; that he has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of his knowledge and belief.

Bill McGuire

Subscribed and sworn to before
me on the 6TH day August, 2012.

Notary Public

OFFICIAL SEAL
RONALD A BARCH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 08/07/14

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STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

CAROLYN McGUIRE, being first duly sworn on oath, deposes and states that she is one of the defendants herein; that she has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of her knowledge and belief.

Carolyn McGuire

Carolyn McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

Notary Public

OFFICIAL SEAL
RONALD A BARCH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 05/07/14

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon:

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid, at Rockford, Illinois, at 5:00 o'clock p.m. on 9/6/12.



Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

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0245281968.1/SKO/ACCARDO/PAA

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

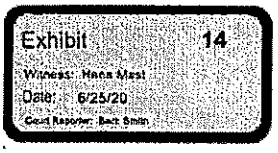
Plaintiff(s),

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendant(s).

CASE NO. 12LA000178



ANSWERS TO CO-DEFENDANT INTERROGATORIES

The Defendant, DAVID GAGNON, in response to the Interrogatories propounded states as follows:

1. State the full name, present residence address and birth date of the person answering these Interrogatories.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128
DOB: 4/3/1697

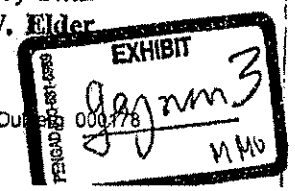
2. State your marital status on the date of the occurrence in question and, if married, your spouse's name and age on said date.

ANSWER: Married; Pamela Gagnon, 39010 90th Place, Genoa City Wisconsin 53128.

3. State the full name and present or last known address (indicating which) of each person who:

(a) Witnessed or claims to have witnessed the occurrence in question.
(b) Was present or claims to have been present at the scene immediately before said occurrence.
(c) Was present or claims to have been present immediately after said occurrence.
(d) Otherwise has or claims to have any knowledge of the facts or possible causes of the occurrence to include any damages or injuries alleged to have resulted from said occurrence.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128; Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050; Carolyn McGuire, 1016 W. Elder



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Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051.

4. State specifically and with certainty the personal injuries and property damage, if any, sustained by PAUL DULBERG as a result of said occurrence.

ANSWER: Defendant has no knowledge regarding the plaintiff's personal injuries and/or property damage claims.

7. State whether PAUL DULBERG was hospitalized or had suffered any illness or personal injury prior to or subsequent to the date of said occurrence, and if so, state the nature and date of each such hospitalization, illness or personal injury.

ANSWER: I do not know.

8. State whether PAUL DULBERG suffered any permanent scarring as a result of the accident alleged in the complaint. If so, state the location of such scar, the width and length of such scar or scars. (Pursuant to Supreme Court Rule 214, please attach any photos of any such scar to your answers hereto.)

ANSWER: I do not know.

9. State whether prior to the accident alleged in the complaint PAUL DULBERG suffered any physical disability or impairment of any kind whatsoever. If so, state the nature of such physical disability or impairment and how PAUL DULBERG came to have such physical disability or impairment.

ANSWER: I do not know.

10. State the location of the alleged occurrence, pinpointing such location in feet, inches and direction from fixed objects or boundaries at the scene of the occurrence.

ANSWER: The accident occurred in ~~front~~ BACK of my parent's home at 1016 W. Elder Avenue, McHenry Illinois 60051.

11. State with particularity the nature of the alleged defect, object substance or condition which caused the alleged occurrence giving the exact dimensions and physical description of such including the size, shape, color, height, length and depth of such defect or object.

ANSWER: Chainsaw, EFCO, Model # MT3500, 2.38 Cubic Inch, 16" blade.

12. State with particularity what PAUL DULBERG was doing at the time of the accident alleged in the complaint.

ANSWER: He was helping me trim a tree by holding a branch.

13. State with particularity what DAVID GAGNON was doing at the time of the accident alleged in the complaint.

ANSWER: I was cutting through a branch with the chainsaw.

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14. State with particularity the address for David Gagnon on June 28, 2011.

ANSWER: 39010 90th Place, Genoa City Wisconsin 53128.

15. State with particularity all the reasons why PAUL DULBERG was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I asked him to help me trim the tree at my parents' home.

16. State with particularity all the reasons why DAVID GAGNON was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I was trimming a tree for my parents.

17. State with particularity your basis for alleging that David Gagnon was working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

18. State with particularity your basis for alleging that Defendants Bill McGuire and Carolyn McGuire instructed and/or advised David Gagnon in the use of a chain saw on or before the date of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

19. State with particularity your basis for alleging that David Gagnon was under the supervision and control of Defendants Bill McGuire and Carolyn McGuire and working as their apparent and actual agent on the date of and at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

20. State with particularity any and all defects associated with the chain saw you believe or claim was involved in the occurrence alleged in Plaintiff's Complaint.

ANSWER: None.

21. State whether any photographs or videos were taken of the scene of the occurrence or of the persons, objects or premises involved, and if so, state the number of photographs or videos taken, their subject matter and who now has custody of them.

ANSWER: No.

22. Pursuant to Supreme Court Rule 213(f), furnish the identity and addresses of witnesses who will testify at trial and the following information:

(a) For each lay witness, identify the subjects on which the witness will testify.

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(b) For each independent expert witness, identify the subjects on which the witness will testify and the opinions the party expects to elicit.

(c) For each controlled expert witness, identify:

(i) the subject matter on which the witness will testify;

(ii) the conclusions and opinions of the witness and the bases therefor;

(iii) the qualifications of the witness; and

(iv) any reports prepared by the witness about the case.

ANSWER: **David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128**— This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his insurance policy and coverage; maintenance, repair and inspection of the chainsaw; as to any dangerous or defective area on the premises. This witness is also expected to testify regarding his observations of the plaintiff before, during and after the alleged occurrence; his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050—This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his relationship to the tenants of the building; his observations prior, during and after his alleged injury; the nature of his injury, medical bills, medical records and recovery; his understanding of his injury and recovery. This witness is also expected to testify to his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Carolyn McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051— These witnesses are expected to testify as to their ownership of the property in question; their insurance policy and coverage; their knowledge of the area, chainsaw and tree; maintenance, repair and inspection of the chainsaw; as to any violations the premises; as to any dangerous or defective area on the premises. These witnesses are also expected to testify regarding their observations of the plaintiff before, during and after the alleged occurrence; their understanding as to the facts of the accident; their observations of the scene and they are expected to testify as to any conversations which took place between the parties and witnesses. These witnesses are also expected to testify consistent with any testimony they may have given and/or may give at a discovery deposition.

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Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

DAVID GAGNON

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

I HEREBY CERTIFY that on 1/31/13, a true and correct copy of the foregoing Answers to Interrogatories were filed with the Clerk of the Circuit Court of McHenry County and a copy of same was also mailed to:

Hans A. Mast
Law Offices of Thomas J. Popovich, P.C.
3416 W Elm St
McHenry IL 60050

Attorney for Plaintiff(s) Paul Dulberg

Cicero, France, Barch & Alexander PC
6323 East Riverside Blvd
Rockford, IL 61114

Attorney for Co-Defendants, Caroline and Bill McGuire

LAW OFFICE OF M. GERARD GREGOIRE
200 N LaSalle St Ste 2650
Chicago, IL 60601-1092
Telephone: 312-558-9821

By: _____
PERRY A. ACCARDO
Firm No.: 46878
E-MAIL ADDRESS:
ILLINOISLEGAL@ALLSTATE.COM
Attorney Bar No.: 6228720
Attorney for Defendant(s):
David Gagnon

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IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
McHenry County, Illinois
MAR 13 2015
KATHERINE M. KEEFE
Clerk of the Circuit Court

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, Individually, Defendants.	)	No. 12 LA 178

COPY

NOTICE OF MOTION

TO: *VIA FIRST CLASS MAIL:*
Perry Accardo
Law Office of Steven A. Lihosit
200 N. LaSalle Street, Suite 2550
Chicago, IL 60601-1092

VIA CERTIFIED MAIL:
Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

On **March 13, 2015 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Thomas A. Meyer** or any judge sitting in his stead, in courtroom 201 in the Circuit Court of McHenry County in Woodstock, Illinois and shall then and there present **MOTION TO WITHDRAW AS COUNSEL**, a copy of which is hereby served upon you

AFFIDAVIT OF SERVICE

I certify that I served this Notice by mailing to whom it is directed at approximately 5:00 p.m. on March 5, 2015 in McHenry, IL and further that the statements set forth in this Affidavit of Service are true and correct.

Hans A. Mast, Attorney for Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, IL 60050
815-344-3797
Attorney ID No. 06208070

Exhibit 15
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

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ORD

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	Case No. 12 LA 178

FILED
McHenry County, Illinois
JAN 2 2 2014

GOOD FAITH FINDING AND ORDER OF DISMISSAL

THIS CAUSE coming on to be heard on the Motion for Good Faith Finding and for Order of Dismissal with Prejudice filed by Defendants Bill McGuire and Carolyn McGuire, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That settlement between Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire (improperly named Caroline) constitutes a fair and reasonable and good faith settlement within the meaning of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 0.01 et seq.

2. That the good faith settlement shall henceforth constitute a bar to any and all claims that Plaintiff Paul Dulberg and Defendant David Gagnon and other known or unknown tortfeasors may have against Defendants Bill McGuire and Carolyn McGuire on account of or arising out of the injuries, if any, sustained by Plaintiff Paul Dulberg as a result of the alleged chain saw accident that occurred on June 28, 2011, whether by way of original action, third party claim, cross-claim, counterclaim, claim for contribution or otherwise.

EXHIBIT
tabbies
D

EXHIBIT H

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3. That Defendants Bill McGuire and Carolyn McGuire be and are hereby dismissed from the above-captioned lawsuit as party defendants and cross-claimants, with prejudice, and in bar of further suit.

4. That that there is no just reason to delay the enforcement or appeal of this good faith finding and order of dismissal.

DATED: _____

JUDGE Thomas A. Meyer

Prepared by:
Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

February 17, 2016

To: Mr. W. R. Baudin II, Plaintiff Attorney
PO Box 1678
Crystal Lake, IL 60039-1678
lawbaudin@gmail.com
(815) 307-6197

From: Dr. Bobby L. Lanford, PhD
2066 Girls Ranch Road
Camp Hill, AL 36850
bob@lanfordintl.com
(406) 531-3541

Subject: Findings and Conclusions for Dulberg v. Gagnon and McGuire

After reviewing the Depositions of Mr. Dulberg and Mr. Gagnon and the chainsaw owner's manual, the following observations and conclusions were made:

Mr. Dulberg was cut on the forearm (bottom) by a chainsaw while helping Mr. Gagnon limb a pine tree on the property of Mr. Gagnon's parents – Bill and Carol McGuire. While power tools such as this chainsaw make work more efficient, they carry hazards such as experienced in this incident. Manufacturers and retailers of power equipment go to great lengths to reduce the dangers associated with such equipment through training and warnings listed in owner's manuals. The chainsaw in this incident appears from a photograph to be a EFCO MT3500 purchased by the McGuires close to the date of the incident and probably was a new saw and probably equipped with an owner's manual. Depositions from both Mr. Gagnon and Mr. Dulberg indicated that they received no additional chainsaw training. Therefore, the owner's manual and their field experience were the primary sources of instructions for the safe use of the saw.

Mr. Gagnon was the only operator of the saw and, therefore, was responsible for its use. While the saw was appropriate for the tasks involved, there are safe and unsafe activities that could have taken place. The owner's manual shows 2 bar lengths for this saw – 14 and 16 inches. It appears that the McGuires chose the 16 inch bar. For the work involved, the shorter bars would have been safer and might have prevented or reduced the injury. It appears that Mr. Gagnon performed some unsafe acts which lead to Mr. Dulberg being cut. Also, Mr. and Mrs. McGuire who owned the saw apparently did not heed the warnings posted on page 2 of the owners manual which states: "Allow persons only who understand this manual to operate your chainsaw."

Cuts with chainsaws cause more damage than those caused by power or hand tools having a thinner blade such as that of a table saw. Chainsaws are designed to take out a "kerf" of about ¼ -inch, so if someone is cut, the sides of the cut are separated by this gap (or kerf) removing a chunk of meat and causing excessive bleeding and organ damage.

From the depositions, there is no mention of safety apparel – hard hat with ear and eye protection, safety chaps or pants nor safety gloves. (See page 7 of the owners manual for proper safety apparel.)

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Proper safety apparel may have eliminated or reduced the severity of the injury.

Mr. Gagnon and the McGuires' goal was to remove a tall pine tree (40 – 50 feet in height) in their yard without damaging their buildings. From depositions, Mr. Gagnon chose to delimb this tree as it stood in a vertical position. According to Mr. Dulberg, Mr. Gagnon did this by climbing and cutting off limbs as he climbed the tree using limb stubs as a ladder where he placed his feet. In the owner's manual on page 9, it tells to never cut limbs from a ladder or a tree and always cut from a firm foundation or platform. Not having seen the exact circumstances, it cannot be stated unequivocally, but my recommendations would have been to fell the tree first before trying to remove any limbs higher than could be reached safely from the ground. Once the tree has been felled on the ground, the secondary limbs could have been removed while the primary limbs were still attached to the main bole. Bucking the primary limbs into firewood lengths could also be done in a safer fashion with them attached to the bole. Doing the work in this fashion would have eliminated the conditions of where Mr. Dulberg was cut. From Mr. Gagnon's deposition, there was room to fell the pine tree with its described height.

The EFCO MT3500 has a number of features designed to operate it safely. The handle where the accelerator trigger is located has a throttle trigger lockout device that must be depressed before the engine can accelerate which means that Mr. Gagnon had a tight hold on the trigger handle when the saw accelerated before cutting Mr. Dulberg. Mr. Dulberg states in his deposition that he was holding the butt end of a primary limb, and Mr. Gagnon was removing the secondary limbs moving from the tip of that primary limb toward the butt. The accident occurred after Mr. Gagnon removed the last secondary limb and was moving toward him with the saw. The saw accelerated with the bar and chain moving upward contacting the bottom of Mr. Dulberg's arm.

There was no mention of the chain brake being used. The MT3500 has a lever mounted just forward of the front handle. This lever serves to stop and lock the cutting chain movement when pushed forward; when in the rear position, the chain travels freely on the bar. On page 8 of the owners manual, it is recommended that the chain brake be set whenever the operator moves from place to place. Also, the bar should be facing to the rear of the direction of travel so that the sawyer would not fall on the bar and chain if he were to trip and fall. This applies directly to this incident. If Mr. Gagnon had set his chain brake and/or put the bar in a rearward position as he finished cutting the last secondary limb, Mr. Dulberg would not have been cut.

The MT3500 comes with a saw chain designed to reduce kickback. Kickback is a violent upward action of a chainsaw bar when the chain on the upper quadrant of the bar's tip comes in contact with an object. While this chain does not completely eliminate kickback, it helps. It is assumed here that the chain supplied by the manufacturer had not been replaced. In addition, if the saw chain had come in contact with some object that caused a kickback, the chain brake would have instantly stopped the chain as the bar traveled vertically and Mr. Gagnon's hand activated the chain brake. This brake activation would probably have protected Mr. Dulberg. Therefore, it is doubtful that a kickback occurred.

Page 7 of the owner's manual recommends that other people (bystanders) be kept at least 35 feet from someone operating a chainsaw. This is because the chainsaw operator should be focusing his attention on his task, not bystanders. Chainsaws are noisy and anyone around them should be wearing ear protection thus muffling emergency calls for help. It is recommended that bright clothing be worn by all bystanders and operators to help operators see people who might inadvertently move into the danger

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zones. This distance of 35 feet may be a bit overcautious, but the intent is to keep bystanders beyond the reach of the saw, limbs or trees being cut. The operator is the person in control of his saw and responsible for whatever results from his cutting. When trees are being felled, bystanders should be beyond the height of the tree; 2 tree heights is the recommended distance. If this rule had been followed, Mr. Dulberg would not have been cut.

Page 7 of the owner's manual has some additional recommendations that might apply to this incident. Cutting with chainsaws is fatiguing even for professional sawyers who use their saws everyday. For the occasional operator, chainsaw work can be very exhaustive. In this incident, Mr. Gagnon not only used a chainsaw when he was not accustomed to using one, but he also climbed a tree and delimbed it as he climbed. By the time Mr. Gagnon stop limbing and started removing secondary limbs from the primary limbs, he must have been very fatigued even with frequent breaks as described by Mr. Dulberg. The warning of the owner's manual not to cut when fatigued is very important in that fatigue impairs judgment, reduces response time and probably impairs reflexive actions. Simply put, we make mistakes when we are tired.

Another factor of this incident may have been a loose chain. New saw chains stretch when first used. This saw was probably new; this may have been its first application. The owner's manual discussed how to tension the chain on page 17 and describes proper break-in of the chain. The chain should have been tightened after the engine had become warm and later after some use. A loose chain might jump off the bar. Pertinent to this incident was that a loose chain will not decelerate as fast as a properly tightened one. Without the chain brake engaged, the chain continues to travel along the bar until it naturally comes to a stop. Mr. Dulberg said he tried to move away from the saw chain but could not escape its travel path. With a properly tensioned chain, it may have stopped before contacting his arm or at least been traveling at a slower speed and caused less damage to his arm.

After the review of the above evidence, it is my opinion that Mr. Gagnon was fully responsible for this accident and his parents – the McGuires – were also somewhat responsible by letting their son, Mr. Gagnon, use their chainsaw – a potentially dangerous tool – without enforcing the warnings and instructions available in the owner's manual. Mr. Gagnon was in full control of the saw and Mr. Dulberg was his assistant. Mr. Gagnon could have prevented this accident by following the instructions given in the owner's manual. The instructions in the owner's manual are quite clear and unambiguous, and if followed, would have prevented this accident. Mr. Gagnon admits that he was relatively inexperienced in the use of chainsaws, and therefore, should have been more careful while using such a potentially dangerous tool.

Respectfully submitted,

Bobby L Lanford

Dr. Bobby L. Lanford, PhD

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McHenry County, Illinois
17LA000377
Date: 10/5/2020 3:27 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast ("Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, for their motion to compel Plaintiff to answer written discovery, state as follows:

1) On November 28, 2017, Plaintiff Paul Dulberg ("Dulberg") filed a complaint for legal malpractice against Defendants, more than two years after Defendants withdrew their appearance for Dulberg in his personal injury action against Defendant David Gagnon in *Dulberg v. Gagnon*, Case No. 12 LA 178 in the Circuit Court of McHenry County, Illinois (the underlying complaint), which arose out of a chainsaw accident.

2) At the time of the original filing in the instant matter, Plaintiff was represented by the Gooch Law Firm, and the complaint against Popovich was signed by Thomas W. Gooch, III. (Complaint, Ex. A)

3) In ¶20 of Exhibit A, Dulberg invoked the "discovery rule" in an attempt to toll the two year statute of limitations for legal malpractice claims under 735 ILCS 5/13-214.3. He alleged that Mast and Popovich had provided Dulberg false and misleading information in

GROUP EXHIBIT J

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connection with his settlement in the premises liability case with Gagnon's co-defendants, Bill and Carolyn McGuire in the premises liability case, and that Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016.

4) The Gooch firm withdrew from representing Dulberg in the instant case, and the Clinton Law Firm substituted as his counsel, with attorney Julia Williams as the primary handling attorney.

5) On December 6, 2018, Dulberg filed his second amended complaint in this case (Ex., B) filed by the Clinton Law Firm. As compared to Exhibit A, Dulberg's allegations regarding the "discovery" on his cause action against Popovich are slightly different. In ¶¶ 56 and 57 of his second amended complaint, Dulberg alleges that he did not learn that false and misleading information had been provided to him until the mediation in December 2016 based on the expert opinions that Dulberg retained for the mediation.

6) Dulberg gave a discovery deposition in this case on February 19, 2020 (Ex. C). Dulberg was questioned about the "discovery" of his cause of action against Popovich and his law firm beginning on page 106 of his deposition (See also, page 108 where plaintiff Dulberg testified that his attorney at the time, Randy Boudin had told him to seek an independent opinion from an attorney that handles malpractice matters, and that Dulberg received that opinion on or about December 16, 2016 from Thomas Gooch.) Dulberg again confirmed that Gooch provided him with the legal opinion on December 16, at page 112 of his deposition. See also, pp. 113 and 114.

7) At Dulberg's deposition, Ms. Williams asserted the attorney-client privilege on behalf of her client relative to Gooch's advice in December 2016, but over the objection allowed

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Dulberg to testify concerning the substantive the discussions. The substantive testimony was sparse and vague. At p. 126 of his deposition, Dulberg agreed that his discussion with any malpractice lawyer in December 2016 is responsive to interrogatory no. 1 from Hans Mast (Ex. D). At p. 127 of his deposition, Dulberg responded to the following question:

Q: How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?

A: Yes.

Q: That's what you've alleged here in this complaint.

A: Yes.

8) On July 2, Popovich served supplemental production requests aimed at Dulberg's discovery of the malpractice as alleged in December of 2016, including the following production requests. (Ex. E)

9) On July 30, 2020, Julia Williams, then Dulberg's counsel requested 28 days to respond to Popovich's supplemental request for production. Counsel for Popovich agreed, but then received notice of the Clinton Law Firm's motion to withdraw on August 18, 2020.

10) On September 10, 2020, this Honorable Court granted the Clinton Law firm's motion to withdraw as Dulberg's counsel. Dulberg currently has a *pro se* appearance filed on his own behalf.

11) The attorney-client privilege exists to encourage and promote full and frank consultation between a client and legal advisor by removing the fear of compelled disclosure of information. *Waste Management, Inc. v. International Surplus Lines Ins. Co.*, 144 Ill. 2d 178, 190 (1991); *Daily v. Greensfelder, Hemker & Gale, P.C.*, 2018 IL App (5th) 150384, ¶1122-23. However, it is not unconditional, and it is the privilege, not the duty to disclose, that is the exception. Id. Illinois adheres to a strong policy of encouraging disclosure, with an eye toward

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ascertaining that the truth which is essential to the proper disposition of a lawsuit. *Center Partners, Ltd. v. Growth Head GP, LLC*, 2012 IL 113107, ¶ 35; Daily, 2018 IL App (5th) 150384 at ¶ 23. Accordingly, "the privilege ought to be strictly confined within its narrowest possible limits." *Waste Management, Inc.*, 144 Ill. 2d at 190; Daily, 2018 IL App (5th) 150384, ¶ 23.

While the Illinois Supreme Court has not had occasion to find an "at issue" exception to the attorney-client privilege, it has clearly recognized that such an exception exists where the client voluntarily injects into a case either a factual or legal issue, the truthful resolution of which requires examination of confidential communications. *Center Partners, Ltd.*, 2012 IL 113107 at ¶ 35; Daily, 2018 IL App (5th) 150384 at Irri 24-25. The Illinois Supreme Court in *Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc.* illustrated that the test in determining whether the exception exists is whether or not the communications in question are necessary to resolve the truthfulness of a factual or legal issue that was introduced by the client holding the privilege. 189 Ill. 2d 579 (2000). Furthermore, when a plaintiff places at issue in a case the extent to which multiple attorneys representing it proximately caused its alleged damages, all communications between the plaintiff and its attorneys are discoverable "to truthfully resolve the factual and legal issues necessary to adjudicate the causation element of plaintiff's claims." *Daily*, 2018 IL App (5th) 150384 at ¶¶31- 32 (finding that the "at-issue" exception applied because "there is an issue of whether [plaintiffs' attorneys] contributed to the cause . . . and the relative contribution of each to the plaintiffs' damages").

12) In *Lama v. Preskill*, 353 Ill. App. 3d 300 (2nd Dist. 2004), the Plaintiff's husband met with an attorney 4 days after her medical procedure (in March 1999) that was the subject of a medical malpractice claim. The claim was untimely filed, and the doctor sought production of

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records relative to the husband's meeting with the attorney. The patient asserted that production would violate the attorney-client privilege. The court affirmed the trial court's finding that the privilege was waived when she voluntarily injected the statute of limitations issue into her case, alleging she did not discover her medical malpractice claim until June 1999. This case is on point and binding.

13) At pages 133-142 of his deposition, Dulberg admitted that he communicated in writing with Gooch regarding Popovich's breaches of the standard of care, and the bases for same.

14) Based on all of the above, Dulberg has placed the discovery of his malpractice claim "at issue" and must produce any and all communications which form the basis for his "discovery" of his malpractice claims, and the bases for his argument that the 2 year statute of limitations should be tolled.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court grant their motion to compel Plaintiff to answer written discovery and produce requested documents and that Plaintiff be required to answer the outstanding written discovery and produce all documents requested in Exhibit D within 14 days of the presentation of this motion, deny any and all objections to said production, including any objection based on the attorney-client privilege, and for any and all further relief this Court deems just and appropriate.

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT A

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT

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CORY
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CITY CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT
B
ALL-STATE LEGAL

NOTICE
PURSUANT TO LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 12 28 2012, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM
ON 20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, RAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
9416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06208684

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The Law Offices of Thomas J. Popovich P.C.

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www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kobliak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT
C
ALL-STATE LEGAL®

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

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** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendant.	)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT B

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4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

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15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

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27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.)**

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.)**

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

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44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

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53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing

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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

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Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
A

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CORY
FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs. No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 9/28/2012 AT 9:00 AM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____ 20__ AT ____ AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
Deposition
2

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06209684

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> —— Original Message ——
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>>
>> Sent from my iPhone
>>
>>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>>
>>> Only 5, That's not much at all.
>>> Is this a take it or leave it or do we have any other options?
>>>
>>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>>
>>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Konrad

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
Snyder D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No: 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
> > ----- Original Message -----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
> > Subject: McGuire settlement
> > Here is a copy of the first page.
> > It has check boxes and one of the check boxes says;
> > I am not eligible to receive SSI or SSDI.
> > Another says;
> > I am not receiving SSI or SSDI.
> > As you know, I have applied for SSDI and SSI

EXHIBIT
tabbies
F

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of ccarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.



ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

EXHIBIT sticker 6

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000
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Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377
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Pamela Walker

From: McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
Sent: Monday, December 10, 2018 1:37 PM
To: George K. Flynn; Pamela Walker
Subject: 17LA000377 - 2 Documents Filed

17LA000377

DULBERG, PAUL VS MAST, HANS, ET AL

Doc Type	**COAA**
Description	**COMPLAINT - AMENDED**
Date Filed	**12/6/2018**
Image Link	View Document Image

Doc Type	**NOTF**
Description	**NOTICE - FILING**
Date Filed	**12/6/2018**
Image Link	View Document Image

NOTE: E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

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IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

The deposition of PAUL DULBERG, called for examination, taken pursuant to the provisions of the Code of Civil Procedure and the rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Realtime Reporter of said state, at 150 South Wacker Drive, Chicago, Illinois, February 19, 2020, at the approximate hour of 1:00 p.m.

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PRESENT:
THE CLINTON LAW FIRM,
111 West Washington Street, Suite 1437,
Chicago, Illinois 60602,
312-357-1515, by:
MS. JULIA C. WILLIAMS,
juliawilliams@clintonlaw.net,
appeared on behalf of the Plaintiff;

KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC,
150 South Wacker Drive, Suite 1700,
Chicago, Illinois 60606,
312-431-3700, by:
MR. GEORGE K. FLYNN,
gflynn@karballaw.com,
appeared on behalf of the Defendants.

REPORTED BY: Karen Pileggi, CSR, RPR, RMR, CRR,
CSR License No. 84-3404

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(WHEREUPON, the witness was duly sworn.)

PAUL DULBERG,

called as the plaintiff herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FLYNN:

Q. Let the record reflect that this is the discovery deposition of Paul Dulberg taken by agreement of the parties and pursuant to notice.

This deposition is being taken pursuant to the Rules of the Illinois Supreme Court, the Illinois Code of Civil Procedure and any applicable local rules in McHenry County.

Sir, could you state your name and spell your last name for the record.

A. Palm Dulberg, D-u-l-b-e-r-g.

Q. What is your address?

A. 4606 Hayden Court, McHenry, Illinois 60051.

Q. How long have you lived there?

A. Forty-nine years.

Q. Who do you live there with now?

A. Mike McArtor.

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Q. Did your mother live there at some point throughout the history of this case?

A. Yes.

Q. I'm just going to go over a few rules for the deposition. I know you've testified at least one time in a deposition before because you testified in the underlying personal injury case, correct?

A. Correct.

Q. Have you testified in any other depositions before?

A. No.

Q. I'll just remind you of a few rules that I'm sure you were aware of back then when you gave your deposition.

The court reporter is here to take down everything that you and I say. She can only take down one at a time so I'd ask that before you answer a question, let me finish the entire question. Okay?

A. Yes.

Q. I'll try to do the same. I'll try to let you respond before I ask a follow-up question.

You just nodded your head. That's

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another good point to make. She can't take down nods of the head, shrugs of the shoulders or other hand gestures. Your answers need to be verbal.

From time to time we forget those rules and I may just point to the court reporter as a reminder, if that's okay.

A. Yes.

Q. If you need to take a break at any time, feel free to stop me. I just ask that it's not while a question is pending that has not been answered. Fair enough?

A. I'll try to do that.

Q. If you've answered a question, I will assume you understood it. Okay?

A. Yes.

Q. I was asking you about your mother. She lived at the house during the pendency of the underlying case?

A. Yes.

Q. Is she still alive?

A. Yes.

MS. WILLIAMS: Can we define "underlying case"?

BY MR. FLYNN:

Q. The underlying case is a personal injury

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case that you filed against Bill and Caroline McGuire and David Gagnon.

A. That sounds correct.

Q. We'll get into the dates of the filing a little bit later. We'll call that, generally, the underlying case.

Your mother lived at the house at that time?

A. Yes.

Q. Did she own the house?

A. No.

Q. Do you own the house currently?

A. Yes.

Q. Does anyone else own the house?

A. No.

Q. How long have you owned it?

A. I think I first purchased it off my parents in '97, '98, something like that.

Q. Did you hire a lawyer in connection with that transaction?

A. No.

Q. Were your parents represented by a lawyer?

A. No.

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Q. The building, as I understand it, is a duplex; is that right?

A. No.

Q. Were there two apartments in the building at one time?

A. No.

Q. Was there a point in time where you and your mother lived in one half of the house and Mike McArtor lived in the other half?

A. Yes.

Q. How was that arrangement with respect to the location of the living spaces, if you can describe it?

A. It has a walkout basement. He had the downstairs with an exit out the back. We had the upstairs with an exit out the front.

Q. Have you ever been convicted of a crime of fraud, dishonesty or deceit?

A. No.

Q. Besides the hiring of the Popovich firm in connection with the underlying personal injury case, up to that point in time had you ever had an occasion to hire a lawyer?

A. I did during a traffic accident, and I

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don't remember the year.

Q. Were you injured in about 2002? Does that sound right?

A. Roughly.

Q. Who did you hire?

A. I might get the name wrong because it's been a long time. I think it was Weiss and Michling and something else. It was a lawyer right outside the courthouse in Woodstock.

Q. A McHenry County lawyer?

A. Yeah.

Q. It was a personal injury case?

A. Yeah. It was a car accident.

Q. Did you file a lawsuit in that case?

A. I don't think we needed to.

Q. You just filed an insurance claim?

A. They did, yes.

Q. You settled it?

A. Yes.

Q. Any other occasions to hire a lawyer between that time and the time you hired the Popovich firm?

A. May I consult for a minute because I'm not sure how to answer that.

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Q. Why don't you just tell me why you can't answer it.
A. Because I've hired lawyers, but they were for the company that I had. That's different.
Q. I'm asking general questions about any interaction you've had with hiring lawyers. Any experience you've had with hiring lawyers.
A. I had a corporate lawyer. My mom and dad hired a lawyer for me when I was a kid. It was something. And myself, just the corporate lawyer, the car accident lawyer and the Popovich firm.
Q. Have you ever been married?
A. No.
Q. So you never hired a divorce lawyer. Good. How old are you now?
A. Forty-nine.
Q. The underlying case arose out of an injury that occurred on June 28, 2011, correct?
A. That sounds correct.
Q. How old were you at that time?
A. Forty-one.
Q. Besides the underlying lawsuit against the McGuires and Mr. Gagnon, had you ever filed any other lawsuit up until that point in time?

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A. No.
Q. Have you filed any lawsuits since that time besides the lawsuit against Popovich and Mast?
A. No.
Q. Do you have any military experience?
A. Yes.
Q. Please tell me about that.
A. Army National Guard. Illinois Army National Guard.
Q. How long have you been in the National Guard?
A. I'm not currently in it.
Q. When were you, from when to when?
A. I may not get the year correct. '88 or '89 to '92 or '93, somewhere in there.
Q. What was your highest rank when you were discharged from the National Guard?
A. When I was discharged?
Q. Correct.
A. I don't know. I've gotten moved up and moved down. I don't know where I ended up.
Q. How was it that you were discharged?
A. Less than honorable.
Q. What was the cause?

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A. I missed morning call, roll call. If you're not there, you're AWOL.
Q. Absent without leave?
A. Yes.
Q. What is the highest level of education that you've attained?
A. I do not have a degree. Two years of college.
Q. You graduated from high school?
A. Yes.
Q. Was that in Johnsburg in 1988?
A. Yes.
Q. Did you know Mr. Gagnon from Johnsburg High School?
A. Not from high school but just after high school.
Q. Just coincidentally you attended the same high school?
A. He was three years older than I was. I didn't know who he was until after high school.
Q. You had some education after high school but did not receive a degree, correct?
A. Correct.
Q. Where did you study?

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A. I had a couple classes at McHenry County College and McMurray College.
Q. What did you study?
A. The first two years. The basics.
Q. General studies?
A. Yeah. I did a criminal justice course. I did a macro/microeconomics. I did psychology, sociology. The normal stuff.
Q. How did you meet David Gagnon?
A. Through a mutual friend.
Q. When was that?
A. I want to say, roughly, 1990.
Q. Was your home located somewhere fairly close to his parents' home or his mom and stepdad's home?
A. Two streets away.
Q. That's where you were injured on June 28, 2011, was at David Gagnon's mom's house and his stepdad's house?
A. Yes.
Q. And their name is McGuire?
A. Yes.
Q. Generally speaking, you were injured assisting David with a chainsaw trying to cut down a

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tree?
A. He was cutting a branch.
Q. Cutting branches off a tree, correct?
A. Cutting up the branches after they were off the tree.
Q. Could you tell me a little bit about your work history. Do you have any licenses or certifications?
A. I'm certified to run printing presses. Or at least I was.
Q. You worked for Sharp Printing, Inc. from '91 to 2011; is that right?
A. Ninety-one? No. I would say 1999.
Q. Did you own that corporation?
A. Yes. Well, partner. I was a partner. I didn't own like...
Q. It was an Illinois corporation?
A. Yes.
Q. Were you –
A. A stockholder.
Q. Let me just finish my question so she can take us down.
You were a stockholder in Sharp Printing, Inc.?

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A. Yes.
Q. Who else were the stockholders?
A. Mike McArtor and Scott Dulberg and at that time it was Herbert Dulberg.
Q. What does that mean? Do you mean Scott's name was Herbert?
A. No. Scott Dulberg was an owner and Herbert Dulberg was an owner. Three different Dulbergs: me, my brother, my dad.
Q. And Mike McArtor?
A. Yes.
Q. There were four owners at what time?
A. Until my dad died and then it went to three.
Q. Was that business incorporated?
A. Yes.
Q. Did a lawyer assist the corporation with setting up the corporation?
A. Yes.
Q. When did that happen?
A. 1999.
Q. Did you hire the lawyer yourself?
A. All three of us did. All four of us. Sorry.

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Q. What was the name of that attorney?
A. McAndrews, and I don't remember the rest of it. It was McAndrews in McHenry. I can get you the rest of that information.
Q. They are based in Crystal Lake, Illinois?
A. It used to be in McHenry when we did that.
Q. Patrick McAndrews, he was also identified as the registered agent of that corporation?
A. Yes.
Q. It was voluntarily dissolved on April 8, 2011; is that right?
A. That's what the Secretary of State's Office has, yes.
Q. Is that your understanding as well?
A. I was corrected. My partners – I was corrected. It was actually after the accident. How it got to end up with that date, I'm not sure.
Q. What was corrected, exactly?
A. Well, do you want me to – Mike read my deposition and he said, "You got that wrong." I said, "What do you mean?" because I answered it twice in that deposition.
I was thinking that Juskie happened

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before the accident. Sharp Printing wasn't actually dissolved until after the accident when we decided to sell off the equipment and end it all. That's the honest truth.
Q. I will represent to you that the Illinois Secretary of State's Website as of today shows that the company was involuntarily dissolved on April 8, 2011. So it's your testimony that that is not true?
A. I don't know how they come up with that.
Q. Why don't we break it down and start with why the corporation was involuntarily dissolved. Do you know that?
A. Involuntarily? I don't know. It may be that I was late on paying the corporate licensing thing, which we just pay a fine and did it. We didn't renew it because we decided to end it.
We had a ten-year thing, I think, on it. I may be wrong. I've got to go back and look at the records.
Q. Is it possible that the corporation was actually involuntarily dissolved by the Illinois Secretary of State on April 8, 2011?
A. Sure.
Q. Did Sharp Printing, Inc. file corporate

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tax returns while it was a going concern?
A. We had a problem the couple of years before the accident because I was not up in Illinois and I usually did that with the lawyer and the accountant and things got screwed up while I was taking care of a loved one who was dying down in Florida.
Q. Did the corporation ever file tax returns?
A. Oh, yes.
Q. When did they file?
A. Quarterly and annually.
Q. Until what year?
A. Roughly somewhere in 2008. I was missing things because I was not here. I know we missed a few.
Q. I believe you testified in your underlying deposition that Sharp Printing, Inc. was not dissolved as a result of your June 28, 2011 chainsaw accident, correct?
A. Yes, I did. I stood corrected by my partners.
Q. So is it your testimony that the corporation was dissolved because of your personal

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injury?
A. I don't know how to answer that without going back and looking at records.
Q. Was the company winding down up until about the time you were hurt?
A. The company books got screwed up when I was down in Florida and I was back up in Illinois in 2010 getting back on my feet and I was going to pick things back up, get everything paid up, the fines and everything.
Q. Who were you taking care of in Florida?
A. My grandmother.
Q. You were gone from when until when?
A. I want to say from the mid to end of 2007 until somewhere in the beginning of 2010.
Q. Was anyone running Sharp Printing during that period of time?
A. Mike McArtor.
Q. Did Sharp Printing have any customers for that three-year period?
A. Yes, they did.
Q. How many?
A. I'm not sure, without looking at the books.

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Q. Can you estimate what the yearly revenues were for Sharp Printing in the year 2007?
A. In 2007? I'd have to look at the books, to be honest with you.
Q. Was it more than $5,000?
A. Yes.
Q. Was it more than $100,000?
A. No.
Q. Was it more than $20,000?
A. Yes.
Q. Same line of questioning with respect to 2008. Do you know what the revenues were for Sharp Printing in '08?
A. Are you asking me what we reported or what we made and put into accounts for equipment?
Q. I'm asking you about revenues.
A. Total sales?
Q. Total revenues.
A. In two thousand...?
Q. 2008.
A. I'd have to go back and look.
Q. Can you estimate what they were?
A. No, because I wasn't there.
Q. Do you know how many customers the

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company had in 2008?
A. We had a few, I know that. I don't know how many. Mike was handling it and it got messed up.
Q. What types of customers did Sharp Printing have in 2007 and 2008?
A. What kind of customers?
Q. Right. What did you do?
A. We printed on t-shirts. We printed on CDs. We printed on anything that wasn't wet. We printed on glass, all different stuff.
Q. Were there any full-time employees of Sharp Printing in '07 and '08?
A. In '07 and '08, no.
Q. Just the owners?
A. Just the owners.
Q. Did all the owners operate the business?
A. Yes.
Q. Including your brother?
A. Yes.
Q. What were the yearly revenues of Sharp Printing in 2009?
A. I don't know.
Q. What about 2010, do you know?

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A. No.
Q. When did Sharp Printing start selling its equipment?
A. I put up the ad in August. I think August. I might be off by a month or two. August of 2011.
Q. Did you sell any equipment prior to August 2011?
A. No.
Q. What type of equipment did Sharp Printing, Inc. have or own?
A. Mostly textile screen printing equipment, but we had other screen printing stuff too. Paper.
Q. Where was the equipment located?
A. My home.
Q. Did you require a license to conduct this business out of your home?
A. We had what was called a temporary – we're in a rural area so we didn't have to have that.
Q. In any event, you didn't have a license, correct?
A. We had a license to do business there, yes.

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Q. In that location?
A. Yes.
Q. Did customers ever come to the shop?
A. Yes.
Q. Do you recall how many customers the business had in 2010?
A. Not in 2010.
Q. Was it more than five?
A. Yes.
Q. Was it more than 100?
A. It might be around that. I don't know, specifically.
Q. In 2010 you may have had 100 customers that you did t-shirt screen prints for?
A. Possibly. I'm not saying that is the number, but it's possible.
Q. Did Sharp Printing have any customers in 2011?
A. Mike was finishing up one customer's thing in the spring of 2011, yes. We don't – I'll give you – we don't typically get much work between January 1st and the first warm days of Spring. We sell t-shirts and not a lot of people buy during that period. They just don't.

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Q. You did not earn a salary from Sharp Printing, correct?
A. No.
Q. You did not earn an hourly wage, correct?
A. No.
Q. I think your interrogatory answers indicate you didn't take a profit or a draw, correct?
A. Correct.
Q. How much, if any, money did you earn from Sharp Printing in 2011?
A. Can I ask how to define that? In 2011 I didn't pull any.
Q. Did you earn any income whatsoever from Sharp Printing in 2010?
A. I don't think so.
Q. You were down in Florida for '07 to 2010?
A. Sometime in early 2010, yes.
Q. Did you earn any income from Sharp Printing from 2007 to 2010?
A. No.
Q. Were you working in Florida?
A. No.
Q. Is it fair to say you were unemployed

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from 2007 to 2010?
A. Yes. I was not officially collecting unemployment.
Q. You weren't an employee of any business or working for any individual, correct?
A. I did do some work for Mark. I did some traveling back and forth from Florida to Illinois back and forth during that time. When I was up here, I did do some work for Juskie Printing. Not much, though.
Q. What is Juskie Printing?
A. Juskie Printing is another one that I had listed as an employer in the underlying case.
Q. What are they?
A. Another print broker.
Q. Where are they located?
A. I don't know the exact address, but it's off of Chicago Avenue off of 355 going south.
MS. WILLIAMS: I think he's asking what city.
BY THE WITNESS:
A. I don't know how the cities break up down there.
BY MR. FLYNN:
Q. Somewhere in the western suburbs of

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Chicago?
A. Yes.
Q. How long did you have a relationship with Juskie Printing?
A. Since the early 2000s.
Q. What type of printing did Juskie do?
A. Offset, mostly.
Q. What does that mean?
A. Prints on paper.
Q. Did you have a set schedule at any time working for Juskie?
A. I don't know what you mean by "a set schedule."
Q. Did you have a particular number of hours per week?
A. No. The jobs I got were project based.
Q. How many projects did you have from 2007 to 2011 for Juskie?
A. Probably a few hundred quick little things, yeah. At least.
Q. Do you know what you earned from working at Juskie in 2007?
A. Not without looking at the returns, I don't know offhand.

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Q. How often were you in the Chicago area in 2007?
A. I didn't leave here until, I want to say, August or September of '07.
Q. And then thereafter?
A. I was not back that year.
Q. You didn't work for Juskie in 2008, correct?
A. I might have done some stuff.
Q. You're not sure?
A. I'd have to go back and look.
Q. Were you in Florida?
A. Part of the time, yeah.
Q. How often did you come back and forth between –
A. About every three months I tried to get back up here.
Q. For how long?
A. Sometimes a few weeks. Sometimes a month.
Q. Did you come back and work or did you take care of other things?
A. If I'd let Mark know I was back, "I've got something for you or I don't."

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Q. Who is Mark?
A. Mark owns Juskie Printing.
Q. I think your interrogatory answers indicated from 1999 through 2006 you were employed in a barter situation; is that right?
A. With Mark, yes.
Q. What does that mean, exactly?
A. Well, he would owe me money and he would give me printing equipment instead of cash.
Q. He owed you money for working for him?
A. Well, he owed both Sharp Printing and me, personally, money. They are two different things. But he would just pay by saying, hey, I've got this or I've got this paper cutter or this or that. It was a barter.
Q. So you worked for him from 1999 to 2006 but did not earn any income in the traditional sense?
A. No money changed hands.
Q. He gave you things to pay you for projects?
A. Correct.
Q. You gave a deposition in the underlying case on January 24, 2013. Does that sound right?

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A. If it says it on there, yes.
Q. You took an oath that day?
A. Yes.
Q. You told the truth?
A. I tried to, to the best of my knowledge, on that day, yes.
Q. You told the truth in response to all of the questions that day, correct?
A. I tried to, yes.
Q. You testified you were last employed prior to the accident in May of 2011?
A. That would be with Juskie, yes.
Q. It's accurate –
A. Actually, I wasn't employed. I was a 1099 so I was self-employment.
Q. When in May did you stop working for Juskie, whether it be as an employee or an independent contractor?
A. I believe it was the end of May.
Q. Then from the beginning of June until your accident on June 28, 2011, you were not employed; is that an accurate statement?
A. Correct.
Q. You were not even acting as an

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independent contractor for any business from that period of time, correct?
A. Not during that month, no.
Q. Your deposition testimony from 2013 is typed up on 175 pages. I don't intend to go back over each of those details.
A. Okay.
Q. It's fair to say you were injured, your arm was injured on June 28, 2011, correct?
A. Correct.
Q. Which arm was that?
A. My right arm.
Q. As a result of the injury, you hired the Popovich law firm to explore a recovery in the case?
A. I hired them to represent me, yes.
Q. You hired them to represent you and file a lawsuit against David Gagnon who was operating the chainsaw that injured you, correct?
A. He was one of them, yes.
Q. I'm asking you if you hired him to –
listen to the question, please.
David Gagnon was operating the chainsaw, correct?
A. Correct.

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Q. No one else was operating the chainsaw?
A. Correct.
Q. You also hired Popovich to sue Bill and Caroline McGuire, correct?
A. Correct.
Q. They were the land owners where your accident occurred?
A. They did own the land, yes.
Q. The accident occurred at their house, correct?
A. Correct.
Q. This was in the backyard, so to speak?
A. Yes.
Q. Hans Mast was the primary handling attorney at the Popovich firm for your case?
A. That's who I met with, yes.
Q. Did any other lawyer communicate with you while Popovich was handling your case?
A. The lady who sat in on my deposition. Ms. Freeman I think it is. I'm not sure about that.
Q. Generally speaking, Hans Mast, though, was the primary handling attorney?
A. Yes.
Q. Before you hired the Popovich firm in May

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of 2012, is that the correct time period?
A. I don't think so. I don't think they filed it until then, but I might be wrong. I'd have to go back and look.
Q. Was there a retainer agreement executed in May 2012?
A. I don't think I paid a retainer.
Q. Did you execute an attorney engagement agreement in May 2012?
A. I believe it was much earlier than that.
Q. You only executed one engagement letter or engagement agreement with Popovich, correct?
A. Yeah.
Q. Before you executed or came to an arrangement with Popovich, had you talked to any other lawyers about investigating –
A. One.
Q. Let me finish the question.
– investigating or filing the lawsuit?
A. Yes.
Q. Who was that?
A. I went back to the same firm that handled the car accident for me years earlier.
Q. What was the name of that firm?

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A. They changed names when I went back there. It was Weiss – I have to go back through paperwork and get you the actual name.
Q. They are known as a personal injury firm; is that right?
A. Yes.
Q. Why did you not hire them to take your case?
A. The man who handled my case previously with the car accident was no longer with the firm and they said go find somebody else.
Q. I'm not sure what one has to do with the other.
A. I don't either. I just said okay and I went and found somebody else.
Q. Did you meet with an attorney at that firm?
A. Yes.
Q. Did you tell them what happened with your incident?
A. Yes.
Q. They told you that they did not want to take the case; is that right?
A. Yes.

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Q. They declined the case?
A. They declined the case.
Q. Did they tell you why they declined the case?
A. No.
Q. You next went to the Popovich firm?
A. Yes.
Q. They took the case?
A. Yes.
Q. They, ultimately, filed a lawsuit against Gagnon and the McGuires on May 15, 2012; is that right?
A. Yes.
Q. You reviewed the lawsuit and approved it, correct?
A. I didn't – I never got anything to review.
Q. Did you ever read the lawsuit?
A. No. I was never given any paperwork.
Q. Back to the incorporation of Sharp. What interaction did you have with corporate lawyers when they were first retained?
A. McAndrews?
Q. Correct.

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A. What relationship?
Q. What experience did you have with McAndrews when you first retained them?
A. He was good.
Q. How often did you meet with him or speak to him?
A. Once a year.
Q. Did he file corporate returns or other documents for the company?
A. No. I had to file them. He just made sure they were all done right, I believe.
Q. Have you ever had occasion to hire a criminal lawyer?
A. I did in 1990. My mom and dad had to hire one. Not me.
Q. Did you hire a criminal lawyer for your mom and dad?
A. No. They hired one for me.
Q. Who was that?
A. Give me a second. You're digging back far in my memory. Driscoll was the last name.
Q. This was a McHenry County-based criminal lawyer?
A. No. Des Plaines.

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Q. What was the general nature of the reason for the need for a lawyer?
A. Drug possession.
Q. Were you convicted of it?
A. Yes. I pled guilty.
Q. That was a Cook County case, then?
A. No. It was a McHenry County case.
Q. The lawyer was in Des Plaines, though?
A. Yes.
Q. But he represented you in McHenry County in criminal court?
A. Yes.
Q. Throughout the case you met with the lawyer?
A. A few times.
Q. While Popovich represented you in the underlying personal injury case, did you ever communicate with any other lawyers about your case?
A. At the end, yes.
Q. Popovich withdrew sometime in March 2015?
A. Correct.
Q. And Brad Balke entered his appearance on March 19, 2015. Does that sound correct?
A. That is correct.

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Q. Popovich also withdrew that day, right?
A. I don't know if it was on the same day. I'd have to look at the paperwork.
Q. Besides Mr. Balke, had you talked to any other lawyers towards the end of the relationship with Popovich?
A. Yes.
Q. How many?
A. Hundreds.
Q. Hundreds of lawyers?
A. I'm not kidding. Yes.
Q. Did you ask those lawyers to take your case?
A. I asked them to review it.
Q. Did any of them take the case?
A. No.
Q. They all reviewed it, though?
A. Yes. Most took the time to review it.
Q. Did any of them tell you why they didn't want to take the case?
A. There were different reasons I got from various. Some people just didn't get back to me and some people wrote me letters. I think I gave you some of those. But I got various reasons back from

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attorneys.
Q. I don't recall seeing any lawyers, but I would ask you to search for those.
MS. WILLIAMS: We'll search for those. I'll make a note.
BY MR. FLYNN:
Q. As you sit here, do you recall the basis for any attorney declining to take your personal injury case over from Popovich?
A. Say that again.
Q. As you sit here today, do you recall any of the reasons why any attorney declined to take your personal injury case over from the Popovich firm?
A. Yes.
Q. What were those reasons?
A. I remember a few. One I was looking at local lawyers in McHenry County and I was told like – I can name them. My sister was married to him.
Anyway, I was told if Tom Popovich says you don't have a case, you don't have a case and we're not even going to look at it. That I got a lot of it.

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Q. That's one reason. Any others?
A. That I got locally a lot of. As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that.
Q. Who said that?
A. Sal Ferris.
Q. When did you speak to Sal Ferris?
A. I don't know the exact date.
Q. When did he –
A. He wasn't the only one.
Q. When did he say that to you, that you just described?
A. He said it in a letter and he said it on the phone and he sent me an e-mail, I think. I don't remember the ways that he contacted me. I'd have to go back and look.
MS. WILLIAMS: We'll find it.
BY MR. FLYNN:
Q. Besides Sal Ferris, can you recall any other attorney, specifically, that told you they wouldn't take the case because of your settlement with the McGuires?

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A. Yes.
Q. Who was that?
A. There was at least three firms downtown here right near the Daley Center that I came down to see and I don't remember their names, but they – I got the same thing out of all three of them.
Q. Did any of the lawyers give you any other reason for declining your case?
A. Mostly it was because they knew Popovich or it was the McGuire settlement.
Q. Did any lawyer tell you that they didn't want to take your case because there was questionable liability against David Gagnon?
A. No.
Q. Did any lawyer tell you that there was questionable liability against the property owners, the McGuires?
A. No.
Q. We're jumping ahead, but did you have different lawyers that handled a binding arbitration or binding mediation for you in the underlying case?
A. Yes.
Q. Their name was Baudin?
A. Yes.

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Q. Why did Brad Balke not handle the binding arbitration?
A. I fired him.
Q. When did you fire Brad Balke?
A. I'd have to look at the dates. I'm not sure, exactly.
Q. Why did you fire him?
A. Because he forced me to undergo the exact mediation at the McHenry County court in front of Judge Meyer that Hans Mast set up that I specifically said no to.
Q. When was this mediation?
A. I'd have to look at the dates again.
Q. Was it a pretrial conference?
A. Yes.
Q. You actually attended this pretrial conference?
A. Yes, I did.
Q. What happened?
A. I said no.
Q. You said no about what?
A. They offered an amount of money and I said no.
Q. The defendants offered an amount of

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money?
A. Yes.
Q. Was this before or after the McGuires settled out of the case?
A. They were settled.
Q. So there was an offer of settlement from David Gagnon or his insurer?
A. Yes.
Q. Do you recall what that amount of money was?
A. $50,000.
Q. You refused the offer?
A. Yes.
Q. Why did that cause you to fire Brad Balke?
A. He wouldn't take it any further than that and he agreed to when I hired him. He agreed that that was not going to be the end of it and then he changed his tune, and I said, you know what – and the other thing was, I finally got through to the Baudins who I wanted to take the case because they had helped my family – his dad helped my family many eons earlier.
Q. Did you ever talk to Brad Balke about the

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liability or lack of liability by the McGuires, the property owners in the case?
A. I don't think so. We were on the Gagnon case.
Q. You didn't discuss the McGuires?
A. There may have been a word or something, but that's not what he was there for.
Q. He never gave you an opinion one way or the other whether the settlement was appropriate?
A. I don't believe Brad did, no. Like I said – I don't think he did.
Q. At some point after your accident did you hire the Daley Disability Law Firm?
A. Yes.
Q. Was that for –
A. I didn't hire.
Q. I know you're anticipating what I'm saying.
A. I was trying to correct myself. I did not hire.
Q. Either way, let me try to get out my question before you raise any kind of response, just so she can take down –
A. Count before I answer.

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Q. That's a good idea.
Did you ever retain the Daley Disability Law Firm?
A. NO.
Q. Did you have any relationship with Daley Disability –
A. Yes.
Q. – Law? Let me finish it before you answer. I know you're anticipating what you think I'm going to say, but it might not come out the way you think. Either way, she can't take down both of us talking over each other.
What relationship did you ever have with the Daley Disability Law Firm?
A. They stepped in as a substitute counsel for the law firm that I did hire.
Q. You originally hired some other law firm to represent you in connection with social security disability?
A. Yes.
Q. What was the name of that original law –
A. The lady's ladies name was Margaret Bradshaw.
Q. You terminated your relationship with her

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one way or another?
A. No.
Q. Why did Daley Disability Law substitute in for her?
A. I was told by – I have to go back and look at the communications exactly how it happened, but I was told that, basically, they are going to be taking over the hearing part of it. I don't know why. I don't know whether they sub out work. I don't know how it works.
Q. Would it be fair to say that you first retained Ms. Bradshaw in 2012 sometime?
A. I'd have to go back and look.
Q. Is that approximately when you applied for social security?
A. It sounds like it.
Q. The Daley Disability Law Firm came in sometime in 2012 as well?
A. I don't know exactly when. I don't know.
Q. Would it be 2012 or 2013?
A. I know that they were there and – I know that something had to be signed when we went in for the hearings. Margaret Bradshaw had to sign something for the judge allowing Daley Disability to

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represent me at the hearings. I don't know when exactly they got involved. That's behind the scenes. I didn't have anything to do with that.
Q. Did you file for bankruptcy while your personal injury case was pending?
A. Yes.
Q. When did you file for bankruptcy?
A. I'd have to look at the paperwork again, but I don't believe that was until, I want to say, about eight or nine months, but I'm guessing, after the McGuire settlement.
MS. WILLIAMS: The question was what month and year.
BY THE WITNESS:
A. I don't know exactly. I'd have to go back and look at the paperwork.
BY MR. FLYNN:
Q. Did you hire a lawyer to represent you in a bankruptcy?
A. Yes.
Q. Who was that lawyer?
A. David Stretch.
MS. WILLIAMS: If it helps, we can stipulate to the date the bankruptcy was filed.

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MR. FLYNN: That's fine. I think we've got some e-mails that may reflect when it was. I just wondered if he knew offhand.
MS. WILLIAMS: I can stipulate, at least, that it was 2014.
BY MR. FLYNN:
Q. You filed for bankruptcy while the Popovich firm was still representing you –
A. Yes.
Q. – in the underlying case, correct?
A. Yes.
Q. Sometimes I'll still pause in my question so if you could please pause before you answer.
In the underlying case you answered written discovery; is that true?
A. I believe so.
Q. Then you later testified at your deposition January 24, 2013, correct?
A. If that's the date, yes.
Q. Ultimately, David Gagnon was also deposed, true?
A. Yes.
Q. Were you present for his deposition?
A. No.

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Q. Did Caroline McGuire give a deposition in that case?
A. I believe so, yes.
Q. Were you present for that dep?
A. No.
Q. What about Bill McGuire's deposition?
A. I was not present.
Q. Did you e-mail back and forth with Hans Mast a fair amount during the Popovich firm's representation of you?
A. By "fair amount," what do you mean?
Q. Did you regularly e-mail with Hans Mast?
A. Yes.
Q. Those e-mail communications have all been produced in this case?
A. Yes.
Q. On to the exhibits. This will be 1.
(WHEREUPON, a certain document was marked Exhibit No. 1, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Let me show you what's been marked as Exhibit 1. These are one set of your Answers to Interrogatories in our case, the current legal

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malpractice case you filed against the Popovich firm and Hans Mast.
Do you recognize this document?
A. Yes.
Q. We've been providing you with various copies of the signature page in the case that's been back and forth between me and your counsel.
I don't, frankly, know if this verification that's attached is the one that went with this document, but I'll just ask you, for the record, if these are your answers, that's your signature, and that this verification is accurate?
A. That is my signature on there, yes.
Q. What was the e-mail address you used in the communication with Hans Mast?
A. Primarily it was pdulberg@comcast.net.
Q. His address was hansmast@comcast.net?
A. And he switched it to at&t.net.
Q. Did you use some other e-mail address as well?
A. I may have accidentally e-mailed him a couple of times from a Yahoo account.
Q. In answering discovery in our case, the legal malpractice case, did you search through both

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of those e-mail accounts of yours?
A. I no longer have the Yahoo account.
Q. Did you search through the Comcast account?
A. Yes.
Q. Did you search for PDFs or attachments to those e-mails that you produced?
A. Everything that I got, I turned over. I had converted the e-mails to PDFs because Comcast started purging the e-mails after so many years, so I turned them all into PDFs.
MS. WILLIAMS: The question was what did you search in your in box.
BY THE WITNESS:
A. What did I search?
BY MR. FLYNN:
Q. Let me ask you a different question. You produced e-mails in this case?
A. Yes.
Q. You turned e-mails into PDFs and sent them to your lawyer; is that right?
A. Yes.
Q. Some of the e-mails I reviewed have an icon that indicates there was a PDF or some other

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attachment to the e-mail. Do you understand that?
A. Yes.
Q. Did you produce the attachments to each of the e-mails in this case?
A. We went through that. I produced the attachments that I still had.
Q. There were some that were not available, correct?
A. Yeah. When I looked at them, 99 percent of them were already part of some other document that we turned over. I think 100 percent of them.
Q. At some point in time while Hans was handling your case, did he start to communicate with you relative to his analysis of the McGuires' liability in the case?
A. Yes.
Q. Did he start to generally advise you that he didn't believe that there was a strong case for liability against the McGuires?
A. Yes.
Q. Is it fair to say that Hans' opinion was that the McGuires did not have liability in the case because they did not control the work that David Gagnon was doing?

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A. Yes.
Q. That's generally a fair summary of Hans' opinion?
A. Not quite exactly those words, but yeah.
Q. The McGuires' liability as property owners was questionable because based on Hans' analysis of the evidence, they did not control the work or the manner of work of David Gagnon on the date of the accident; is that a fair summary?
A. Depends on which time he said that.
Q. Did he say things like that over and over again?
A. He did say things like that, yes.
Q. Again, I don't want to go over the facts you already testified to with regards to the date of the accident. At some point in time was William McGuire swimming in the swimming pool?
A. Yes.
Q. Was that an above ground pool or –
A. Above ground.
Q. Was there a fair amount of time during the day that Mr. McGuire was inside the house watching television?
A. Maybe – he went inside the house for

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probably about 45 minutes before the accident happened. I don't know that he was watching television.
MR. FLYNN: Let's mark the next exhibit as 2.
(WHEREUPON, a certain document was marked Exhibit No. 2, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 2, which is an e-mail chain including e-mails from November 18, 2013, are these e-mails between you and Hans Mast?
A. It looks like it, yes.
Q. I think the time stamps on these e-mails go from the bottom, which would be page 2, to the top of the first page, correct?
A. It's backwards, yes.
Q. In the original e-mail at 1:28 p.m., did Hans Mast relay to you a $5,000 settlement offer from the McGuires?
A. Which – where are you at?
Q. We're on Exhibit 2, which is also labeled as Bates label POP 181. At the bottom of the page, does Hans relay to you a settlement offer for

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$5,000?
A. Yes.
Q. He was telling you that the McGuires' attorney offered to settle the case for $5,000?
A. Yes.
Q. Did you have an understanding that that was a settlement just for the McGuires, not including David Gagnon?
A. Yes.
Q. In the e-mail Hans says, quote, "As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now."
Is that an accurate reading?
A. Of that sentence, yes.
Q. Is it fair to say that he suggested that you take the $5,000 but didn't force you to take it?
A. It says, "So my suggestion is..."
Q. Then did you respond to the e-mail?
A. Yes.
Q. Hans replied again at 8:07 p.m. that same day, right?
A. Yes.

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Q. He said, "Paul, whether you like it or not, they don't have a legal liability for your injury because they were not directing the work."
Is that right?
A. Part of it, yes.
Q. Was my prior summary of Hans' legal analysis a fair summary in view of these e-mails and his opinion that he relayed to you?
A. I think it went further than this, and other things, but yes.
Q. As far as these e-mails, I've accurately –
A. This e-mail, yes.
Q. What else did he tell you about the McGuires and why he didn't think they would be found liable in the case?
A. I'm pulling out of memory because I can't quote which document it's off of.
Q. That's what we're here for.
A. I can only give you the gist.
Q. I'll ask you for the exact language, but if you don't have it –
A. At one point he defined what an independent contractor is for me and he said that

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David was an independent contractor and that the McGuires weren't liable because they had hired somebody outside even though it's their own son, he's an adult, outside to do the work and that they weren't responsible.
Q. By the way, how old was David at the time that this accident occurred?
A. I'm adding. If I was 41 – I don't know what his birthday is, but I'm assuming he would be 44, 45.
Q. Is it fair to say that there were two 40-plus-year-olds, a 41- and a 44-year-old trimming trees with a chainsaw in David's parent's backyard that day, correct?
A. I was not using it. There was one 44-year-old using a chainsaw.
Q. You, the 41-year-old was holding some branches for him?
A. Yes. Just before the accident, yes.
Q. Up until this point in time when Hans is providing this legal analysis to you, you had a fair number of occasions to interact with lawyers, as we've discussed today, correct?
A. At this point, the only lawyer that I

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interacted with was the first one.
Q. I'm talking about in your lifetime. You had a corporate lawyer, you had a criminal lawyer, another personal injury lawyer –
A. I didn't hire –
Q. Let me finish. You had experience with lawyers representing you up to this point in time?
A. Yes.
Q. Did you have an understanding that lawyers evaluate cases differently?
A. Yes.
Q. And judges evaluate cases differently?
A. Sure. That's fair.
Q. Would it be fair to say that some laws in our country are clearer and some are open to interpretation?
A. I think all of them are.
MS. WILLIAMS: Objection. Calls for speculation.
If you understand the question, you can answer it.
BY MR. FLYNN:
Q. Would you say, for example, that the tax code is a little more clearcut than common law

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that's created by cases and case precedent?
A. I'm not real familiar with tax law. I have accountants for that.
Q. How about an easier question. The stop sign means that you stop, and if you go through it, it's pretty clear that you're liable for a traffic violation?
A. I'll agree with that.
Q. The legal liability for a property owner in Illinois might be a little more complicated; is that a fair statement?
A. I don't know.
Q. Would it be fair to say, in your opinion or your knowledge of the law, the property owner isn't necessarily liable because somebody is injured on their property?
A. Are you talking about what I know now or what I knew back when this was?
Q. At any time.
A. What I know now is in the circumstances that we were in, they were very liable.
Q. I'm just asking if – just because somebody is injured on a property owner's property, they are not necessarily liable, correct? Other

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factors are required too.
MS. WILLIAMS: I'm going to object for – he's not an expert and can't testify to legal analysis.
BY MR. FLYNN:
Q. As you sit here today, do you know whether a premises liability case involves multiple factors to prove liability against the property owner?
A. I don't know. I'd say that's fair. You're asking the wrong person for that.
Q. It was Hans' opinion that the McGuires did not control the work based on the evidence, correct?
A. In my opinion?
Q. That's not what I'm asking.
Was it Hans' opinion –
A. I can't –
Q. Let me just finish.
Did Hans tell you that it was his opinion that the McGuires were not liable because they did not control the work?
A. He said that right there, yes.
Q. Do you believe that he truly felt that way? That was his legal opinion?

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A. Do you want the Monday morning quarterbacking version or at the time?
Q. I'm asking if at that time you felt that he truly believed that the McGuires did not have liability?
A. At the time I trusted him, yes. I hired him to represent me, and yeah.
Q. You believed that he was relying his honest legal opinion to you at that time?
A. Yes.
Q. Including on November 18, 2013?
A. Yes.
Q. You did not accept the settlement offer of $5,000 that he relayed to you on that day, correct?
A. Correct.
Q. Did you ultimately meet with Hans to discuss the settlement offer?
A. I think it was the day before this, but I'm not sure. It was either the day before or the day after.
MS. WILLIAMS: I think the question was, did you meet with him, at all, not the date.

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BY THE WITNESS:
A. Yes.
MR. FLYNN: Can we mark this as Exhibit 3, please.
(WHEREUPON, a certain document was marked Exhibit No. 3, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 3. Do you recognize this memorandum?
A. Yes.
Q. You may have seen it from the document production that we made in this case. This is a memorandum drafted by Hans Mast, which purportedly memorializes a meeting that he had with you on November 20, 2013.
Does this refresh your memory as to when you met with him or if you met with him?
A. If he took the memorandum on the same day, then sure.
Q. In the memo Hans says, "I met with Paul and his friend."
Do you see that?
A. Yes.

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Q. Did you meet with Hans and some third person –
A. Yes.
Q. – at or about this time regarding the case?
A. Yes.
Q. Who was that friend?
A. Tom Kost.
Q. Who is Tom Kost?
A. My brother.
Q. Not that it matters necessarily for privilege purposes, but can you tell me how Tom Kost is your brother?
A. We have the same mom.
Q. He was with you and observed the meeting between you and Hans?
A. Yes.
Q. The $5,000 settlement offer was discussed, correct?
A. Yes.
Q. At that time did Hans, again, relay his opinion as to the questionable liability about the McGuires – strike that.
Did he relay to you his opinion about the

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questionable nature of the McGuires' liability?
A. At the meeting with Tom, yes.
Q. He advised you they maintain they were not directing Dave's work. That was the McGuires' position, correct?
A. I don't know that he stayed on that at that meeting. At different times he gave different reasons.
Q. The next line says, "Paul maintains the McGuires controlled everything that Dave was doing."
Is that an accurate reflection of your opinion?
A. Yes.
Q. As you sit here today, do you know if that statement is consistent with your own deposition testimony from the underlying case?
A. Yes.
Q. We'll come back to that. Did you tell Hans that you wanted to read the depositions of the McGuires and David Gagnon's depositions?
A. Say that again.
Q. Did you tell Paul that you wanted to read the depositions of the McGuires and Dave Gagnon's depositions?

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A. Did I tell Paul?
Q. I'm sorry. Did you tell Hans that?
A. That I wanted to read the McGuires and David Gagnon's depositions?
Q. Yes.
A. Yes, I did.
Q. What was the purpose of your wanting to review those depositions?
A. Hans had told me that what they said in their depositions meant that they had no liability.
Q. You wanted to review the testimony to determine whether you wanted to consider the $5,000 settlement offer; is that correct?
A. Right.
Q. Did you do that?
A. Eventually, yes.
Q. Before you accepted the offer?
A. I think so.
Q. So sometime after this meeting on November 20, 2013 and before you accepted the settlement offer on January 29, 2014, did you review those three deposition transcripts?
A. I'll correct you. I did not accept the offer on January 20th. I signed a release on

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January 29th.
Q. Fair point. Did you read the depositions between those two dates, November 20, 2013 and January 29, 2014?
A. Yes.
Q. Those are –
A. I believe I asked him – I don't know – it may be a little earlier because I don't know that I asked him before or after the meeting. I don't remember. I'd have to go back in the e-mails to give the date.
Q. Some point in time between those two dates you read the deps?
A. I may have asked for them before. I don't know without seeing the e-mail. It was, roughly, in the last quarter of that year, yes. Or the first month. I don't remember the first time that I asked to read them. I don't remember off the top of my head.
Q. At any point in time did you ever grant Hans authority to make a settlement demand in the case?
A. No.
MR. FLYNN: Mark this as Exhibit 4.

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(WHEREUPON, a certain document was marked Exhibit No. 4, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 4. This is a copy of the original complaint in this instant case. It reflects a filing date of November 28, 2017.
Is this your original legal malpractice complaint against the Popovich firm and Hans Mast?
A. I believe so.
Q. Did you review and approve the allegations in this complaint?
A. For the most part. I wanted to reword some things, but the lawyer, they do their thing.
Q. At the time you were represented by the Gooch firm is when you filed this lawsuit, correct?
A. Yes.
Q. Directing your attention back to Exhibit 1, if you still have it. If you could turn to page 10.
The answer to Interrogatory No. 24 indicates that on November 4, 2013, Mast was granted authority to investigate a settlement but a specific

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dollar amount was never provided. Do you see that?
A. He was verbally granted authority to investigate, yes.
Q. Who did you want him to investigate a settlement with?
A. The McGuires.
Q. Just the McGuires or the McGuires and –
A. He wanted to do it. I didn't. I said, "If you want to look at that, go ahead."
Q. Did you grant him authority to investigate a settlement with David Gagnon as well?
A. I don't know if I did or not, off the top of my head, but that would have been much later.
Q. Eventually did you tell Hans that you would agree to accept the $5,000 settlement offer from the McGuires?
A. Eventually did I tell him that?
Q. Yes.
A. Yes.
Q. When did you tell him that?
A. I want to say just before Christmas in December of 2013.
Q. There's no doubt in your mind that you relayed your acceptance of the $5,000 settlement

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offer to Hans Mast before Christmas Day, which would be December 25, 2013?
A. Right.
Q. Then did Hans mail to you a settlement release by letter dated January 24, 2014?
A. I'd like to see the letter, but yeah, I believe so.
Q. I believe it's –
A. I believe he had to mail it a couple times because I didn't get it.
MR. FLYNN: Let's mark Exhibit 5.
(WHEREUPON, a certain document was marked Exhibit No. 5, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 5. I'll represent to you that this is a copy of the second amended complaint that you filed in this case by your new lawyers, your current lawyers. If I could direct your attention to Exhibit D attached to this Exhibit 5.
Is Exhibit D a January 24, 2014 cover letter from Hans Mast to you enclosing the general release and settlement agreement from defense

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counsel for Caroline and Bill McGuire?
A. That's what it says.
Q. In the letter did he ask you to – it looks like it might be a typo. It says, "Please release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience."
A. Right, but I believe it was just a release – it was all tied into one.
Q. This letter is unsigned. Did you receive the letter unsigned?
A. Did I receive this unsigned?
Q. Yes.
A. Yes.
Q. Have you ever seen a signed copy of this letter?
A. No.
Q. If I could direct your attention to the next page of Exhibit D. Is that page 1 of the general release and settlement agreement?
A. Exhibit D?
Q. Correct.
MS. WILLIAMS: Turn the page.

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BY MR. FLYNN:
Q. Is this what you received attached to the cover letter?
A. I don't think so. Let me see. Yes, this looks like it because it's got these things I remember.
Q. When did you receive this letter and the attachment?
A. I would say I wrote back on January 29th and I probably got it that day, signed it and sent it back.
Q. The copy of the release is also unsigned. It's attached as exhibit -- part of Exhibit D to your second amended complaint.
Do you see the signature lines and the notary signature here that's missing?
A. Yes.
Q. Is this the document that you signed and sent back to Hans Mast?
A. The document that I signed had my signature.
Q. I'm asking if this is the same document that you signed and sent back to him?
A. Yes.

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Q. Right now we don't have a signed copy. I don't know that I've seen one in the case.
MS. WILLIAMS: Can we go off the record for a second?
MR. FLYNN: Sure.
(WHEREUPON, discussion was had off the record.)
BY MR. FLYNN:
Q. Is there any doubt, in your mind, that Exhibit D is the letter and attachment that you received from Hans Mast?
A. No. I believe that this is it.
Q. You signed some copy of this release and sent it back to Hans on January 29; is that correct?
A. Yes.
Q. You accepted the settlement offer prior to Christmas and presumably defense counsel or Hans drafted the settlement release and then Hans mailed it to you, correct?
A. Yes.
Q. At any point in time from December 25th until you received this settlement release, did you contact any lawyer to discuss whether it would be appropriate to let the McGuires out for 5,000?

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A. I believe I contacted Hans again.
Q. Besides Hans, did you talk to anyone else?
A. No.
Q. Was there anything preventing you from seeking a second opinion from some other lawyer at that time?
A. No.
Q. Directing your attention to Exhibit E attached to the second amended complaint, the second amended complaint, again, being Exhibit 5. Is this an e-mail from you to Hans on January 29, 2014?
A. This is the e-mail chain between me and Hans, yes.
Q. Down below at the bottom of the page, January 29 at 10:51 a.m., it appears that you were questioning Hans regarding some of the language in the release, including social security disability check boxes. Do you see that?
A. Yes.
Q. Hans responded to you and then at the top of the page here at 1:59 p.m. it says, "Okay, it's signed and in the mail."
A. Correct.

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Q. What did you mean by that?
A. I signed it and mailed it.
Q. Did you -- where did you mail it from?
A. My home.
Q. How did you do that?
A. Put a stamp on the envelope and put it in the mailbox, put the flag up and waited for the mailman.
Q. Is the mailbox attached to your home or is it –
A. It's out on the street.
Q. You walked down there and you put the mail -- the envelope in the mailbox, put the flag up and –
A. That is correct.
Q. Your understanding of signing that release and sending it back to your lawyer was that you would agree to take the $5,000 settlement, correct?
A. Yes.
Q. Hans didn't deliver the letter to you personally. He mailed it to you, correct?
A. He mailed it to me?
Q. He mailed it to you.

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A. Correct. U.S. mail.
Q. Do you recall an allegation in your complaint or amended complaint or second amended complaint in this case alleging that you were pressured or alleging undue influence by Hans in urging you to accept the $5,000 settlement from the McGuires?
A. Yes.
Q. How is it, as you sit here today, can you tell me how Hans unduly influenced you to accept the $5,000 settlement offer?
A. I don't know what Hans was thinking. How did I feel influenced?
Q. Unduly influenced.
Let me put it this way. He didn't put a gun to your head?
A. No.
Q. He suggested that you take the settlement?
A. Correct.
Q. He didn't force you to take the settlement?
A. Correct.
Q. It was your decision?

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A. Correct.
Q. You signed it and you sent it back to him in the mail?
A. Yes.
Q. Aside from your e-mails with Hans on January 29, did you call him that day?
A. I believe so.
Q. Did you also discuss whether it was appropriate to accept the McGuires' $5,000 settlement offer at that time?
A. Yes.
Q. You deliberated on it and decided to take it, correct?
A. There wasn't much – it was take it or get nothing.
Q. You had the opportunity to deliberate on it, correct?
A. For that day, yeah.
Q. You had reviewed the transcripts of the McGuire depositions and David Gagnon's depositions in order to provide you with some information in order to determine whether to accept the settlement offer, correct?
A. I believe I did try to read those, yes.

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Q. Did you call Hans or e-mail him and question him with respect to the evidence, the testimony contained in those deposition transcripts?
A. Yes.
Q. What did you say to him and what did he say to you?
A. There were many conversations over the phone and I'm sure some through e-mails.
Q. He continued to tell you that it was his opinion that the liability on the McGuires is questionable because they did not control David Gagnon's work that day, correct?
A. It depends on which time. Sometimes he said because they didn't tell them how to squeeze the trigger. It depends which time you are talking about.
Q. Again, there was nothing preventing you from seeking a second opinion from some other lawyer at the time you signed the settlement release and sent it back to Hans, correct?
A. From the time I received it, signed it and sent it back?
Q. Right.
A. No. It was a matter of hours. I got it

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that morning.
Q. You decided to mail it that day, right?
A. He needed it. He said now or you're not going to get anything.
Q. There was nothing preventing you from seeking the advice of another attorney at that time?
A. At that time it was time. It was now or nothing.
Q. You were in the comfort of your own house when you received the letter, correct?
A. Yes.
Q. You had the ability to go find another lawyer and ask them to discuss the case at that time. You had done it hundreds of times earlier – strike that.
After the settlement with the McGuires, you continued to prosecute the case against Gagnon, correct?
A. Yes.
Q. Did you have an understanding as to what, if any, insurance coverage he had?
A. Yes.
Q. How much was that?
A. What time frame are you talking about?

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Q. What was your initial understanding as to the limits on David Gagnon's insurance coverage?
A. Hans Mast told me he had $100,000.
Q. Was that in an e-mail?
A. There were — not initially, no, but later on he reiterated that in e-mails, yes.
Q. Did you, ultimately, learn that there was some additional amount of coverage with respect to Gagnon's policy?
A. Long after Hans Mast was gone, not part of the case.
Q. How much was the coverage?
A. The Allstate coverage, I believe, was 300,000.
Q. We'll talk about the settlement later, but did you ultimately settle the case again Gagnon for 300,000?
A. I believe it went to binding mediation.
Q. Was there an award of $300,000 based on a high/low agreement?
A. Yes.
Q. Is it fair to say that if Hans made a mistake about the $100,000 in coverage, that that was corrected and there was never any harm done as a

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result of his —
A. No.
Q. Explain to me how you were harmed by the representation that there was $100,000 in coverage.
A. You want me to explain?
Q. Yes.
A. Had I known the value of the case, I would have not filed for bankruptcy.
Q. Explain to me why one has something to do with the other.
A. Is my family and me going to dump money into a black hole that we can't recover or is there a light at the end of the tunnel where I can pay them back.
Q. At the time that you filed for bankruptcy, had any settlement offer been made from David Gagnon or his lawyers to you?
A. At the time of when?
Q. When you filed for bankruptcy.
A. I don't think so. I'd have to check the dates, but I don't think so.
Q. As the case was progressing against David Gagnon, were your doctors deposed?
A. As the case progressed with David Gagnon,

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I believe they were deposed. I don't remember. I'd have to look at the dates.
Q. Discovery continued on in the case?
A. I believe one doctor was deposed after the McGuire settlement. I'm not sure, though.
Q. Did Hans continue to represent you for some period of time?
A. Yes.
MR. FLYNN: I'll have you mark this as Exhibit 6.
(WHEREUPON, a certain document was marked Exhibit No. 6, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 6. Do you recognize this e-mail chain?
A. Yes.
Q. This is from September 23, 2014. If we go from the bottom up, it appears that Hans said to you that he wanted to give you the option of finding other counsel at this point if you really want to take the case to trial, which I think ultimately will be necessary. Correct?
A. Are we at "before I proceed" or "that's

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the very reason"?
Q. "That's the very reason."
Is it fair to say he was suggesting you find another counsel in the case at that point?
A. Yes.
Q. He also said, "I just do not believe strongly that defense counsel will offer much in the way of settlement."
Do you see that?
A. Yes.
Q. That's his opinion regardless of what he believed the coverage limits to be; is that a fair statement?
A. Yes.
Q. You responded to him, he responded to you and then you wrote an e-mail to him at 8:25 p.m. that night?
A. Okay.
Q. Do you see that? Did you say, "First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw"?
A. Yes.
Q. Did you start to look for other lawyers to help you in your case against Gagnon at that

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point in time?
A. I believe I did, that summer. This is fall, September.
Q. You had already started looking for new lawyers?
A. I believe that Hans had told me to start looking for a new lawyer in April of that year.
Q. Did he say why?
A. We'd have to read his thing. He says why.
Q. Do you recall why he said that to you?
A. He did not feel that the case was provable against David. He did not feel the value of the case was worth it. He did not feel -- actually, this is 2014. The dates are rough.
Q. He thought the case against David was difficult, correct?
A. Yes.
Q. Have you ever described the case as a he said, she said with respect to the facts of the accident?
A. He described that to me many times.
Q. Have you also --
A. And I used that back, yes.

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Q. Have you ever described this case as a he said, she said case?
A. I may have. I don't know.
Q. It is your word against David Gagnon's as to what happened and whose fault it was that day?
A. That's what Hans explained to me as what the problem was.
Q. Did you ever describe the accident as a he said, she said?
A. I don't think I called David a "she said" or me a "she said." I don't know. Right here I do.
Q. What do you say there?
A. I said, "I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw."
Q. He was denying that he even cut you, correct?
A. No, he never denied that.
Q. What was your reason for writing this sentence in that way?
A. Because Hans said that he believed David over me.
Q. With respect to what fact at issue?
A. His deposition versus mine. He said that I didn't make a good witness.

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Q. With respect to what points?
A. All of it. He was dumping me and he was coming up with his own excuses.
Q. You and David were the only ones that witnessed this accident?
A. Correct.
Q. Based on your understanding of how the evidence came out in the case, would you agree that there were differences with respect to the version of events?
A. Oh, yeah.
Q. There were differences between what he said happened and what you said happened?
A. Oh, definitely.
Q. Would it be fair to say, then, it would be up to the trier of fact, whether it be a judge or a jury, to determine who they believed?
MS. WILLIAMS: Objection. Calls for a legal conclusion.
You can answer, if you understand.
BY THE WITNESS:
A. I believe it would be up to a judge or jury, sure.

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BY MR. FLYNN:
Q. At the bottom of Exhibit 7 you say, "Bottom line Hans... do the best you can with what you got."
I'm sorry. I didn't mark this one yet. My apologies.
(WHEREUPON, a certain document was marked Exhibit No. 7, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 7. Is this an e-mail chain between you and Hans?
A. I don't think it's a chain. I think it's one.
Q. Point is well taken. It's you writing to Hans?
A. Yes.
Q. At the bottom it sounds like you had been in the hospital with a migraine and then you wrote, "Bottom line, Hans... do the best you can with what you got."
A. Yes.
Q. What did you mean by that?

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A. He wanted to settle, and I can tell you right now this letter was written after a very traumatic experience and -- let me read it and refresh myself. I'm melting down in this letter.
Q. You said after a traumatic experience. Are you referring to the bankruptcy filing from that day?
A. That, in combination with migraines, yes.
Q. David Stretch was your lawyer that filed bankruptcy for you?
A. Yes.
Q. Did you meet with Mr. Stretch and discuss the bankruptcy process before you hired him?
A. Yes.
Q. How long did you meet with him?
A. I think I asked about it. I don't know. It may have been a couple of months or a couple weeks before it got filed. I wanted to learn about it.
Q. Did you, ultimately, list the case against David Gagnon as an asset in your bankrupt filing?
A. Yes, I did.
Q. Is that why the bankruptcy trustee became

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involved with the binding mediation?
A. Yes.
Q. Did you ever meet the bankruptcy trustee?
A. Yes. The first one.
Q. What was the name of that person?
A. The first one was Heeg was her last name. H-e-e-g, I think.
Q. Again, we established that Brad Balke became your lawyer in the case on March 19, 2015, correct?
A. Yes.
Q. Is it fair to say that your relationship with Hans Mast was deteriorating over the fall and beginning of the winter of 2015?
A. I would say it had been deteriorating long before that. You can see from the last exhibit I'm melting down and it was already started deteriorating.
Q. By the time you drafted Exhibit 7, had you talked to other lawyers about taking your case?
A. I have to go back and look, but probably. If he told me to look at other lawyers in April before this, yes.
Q. How many lawyers would you say you talked

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to between April and the time you drafted this e-mail on September 26?
A. I couldn't count that high, probably.
Q. Quite a few?
A. Yeah.
Q. Did any of them take your case?
A. No.
MR. FLYNN: Mark this as Exhibit 8.
(WHEREUPON, a certain document was marked Exhibit No. 8, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 8. Is this an e-mail from you to Hans Mast?
A. Yes. It's an e-mail chain, yes.
Q. On February 22, 2015 at 7:42 p.m. you wrote to Hans, correct?
A. Yes.
Q. Halfway down in that e-mail message you said, quote, "Now I'm left wondering... how hard it is to sue an attorney?"
A. That is true.
Q. You wrote that?
A. Yes.

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Q. The next line you wrote, "And yes, I am and have been looking for someone who will take this case..."
A. That is not in reference to suing the attorney. That was in reference to the Gagnon case.
Q. What did the reference to suing an attorney mean?
A. That was me being angry.
Q. With Hans?
A. Yes. I was seeing red.
Q. You're suggesting that you may sue him?
A. Yeah. I didn't know that I could. I'm wondering about it.
Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?
A. Yes.
Q. You, ultimately, sued him for legal malpractice, right?
A. Yes.
Q. Is that what you had in mind when you wrote this?
A. No. This was about dropping Gagnon. The malpractice is about dropping the McGuires.

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Q. This –
A. We're talking – this is 2015.
Q. In this 2015 e-mail you are suggesting to Hans that you may sue him because of the McGuire settlement; is that right?
A. No.
Q. Then what is it that you're saying to him?
A. That if he damaged the Gagnon case, I didn't know if he did or didn't, and I'm threatening because I'm angry. You can see, again, I'm melting down here. These are emotional outbursts, I guess.
Q. Moving up the page a little bit also on February 22, 2015 at 8:14 p.m., you say, "To be honest, you took this case knowing it was my word versus his."
A. Yes.
Q. He said, he said, right?
A. Yes.
Q. Is that a fair characterization of the case, your word against David's?
A. That's how Hans kept describing it. That's the way I put it back to him, yes.
Q. You didn't correct him or dispute his

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characterization, did you?
A. No. I used his characterization.
Q. You agreed with it?
A. He said – how did it go? We had conversations between these e-mails on the phone. Then we would hang up and I would get angry and type it in an e-mail, type whatever it was that bothered me so he had it.
Q. Let me ask another question, if that's okay.
Did you ever correct Hans if he called this a he said, he said case? Did you ever say it's more than that?
A. Do I ever say it's more than that?
Q. Did you ever correct him? If he said it's a he said, he said case, did you say no, that's not right?
A. He said there's no witnesses. I said, "I'm a witness."
Q. You're one of the hes. It's your word against David Gagnon's, as you said in this e-mail?
A. Yes.
MR. FLYNN: If I could have you mark that as Exhibit 9.

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(WHEREUPON, a certain document was marked Exhibit No. 9, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Exhibit 9, is that Brad Balke's substitute appearance that was filed on March 19, 2015 in the case against Gagnon?
A. It looks like it, yes.
Q. Back to Exhibit 5, which is the second amended complaint. If I could direct your attention to Exhibit F. This appears to be a more complete copy of another e-mail we just talked about. Is Exhibit F more of the February 22, 2015 e-mail chain?
A. I'm not sure if that's separate or the same. Oh, it looks like it.
Q. At 7:20 p.m. Hans wrote to you and said, "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case."
Right?
A. Yes.
Q. He says, "I've been telling you over a year now the problems with the case and you just

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don't see them."
Correct?
A. That's what it says.
Q. Obviously, a difference of opinion, right?
A. Yes. Are you talking about difference of opinion as to the value or difference of opinion of the problems within the case?
Q. Let's go on. He says, "You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear, it is not. My guess is that seven out of ten times you will lose the case outright. That means zero. That's why I've been trying to convince you to agree to a settlement. You clearly do not want to."
Did I accurately read that?
A. Just that part of that paragraph, yes.
Q. So Hans is telling you that in his opinion your case against Gagnon you're going to lose it seven out of ten times, correct?
A. In this one, yes.
Q. He's acknowledging that you may have a

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chance.
A. I think later on he says nine out of ten.
Q. In this e-mail he says seven out of ten you will lose.
A. Yes.
Q. He's recognizing three times out of ten you may win, right?
A. I don't know what Hans is thinking.
Q. Is that what he said?
A. He says seven out of ten times you lose.
Q. You understood that there are risks in taking the case to trial that you could lose?
A. There are unforeseen risks, yes.
Q. There are always risks, period, in taking a case to trial?
A. Yes.
Q. Before you hired Brad Balke and after Hans told you he couldn't represent you, did you talk to any other lawyers about taking your case?
A. Yes.
Q. How many?
A. I can't tell you. A lot.
Q. Did any of them tell you that they wouldn't take the case because they didn't think you

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could prevail against Gagnon?
A. No.
Q. Not one?
A. No.
Q. What are the names of any of the lawyers you talked to about taking your case over from Popovich?
A. I can't tell you without looking at documents who it was and what date it was, what it was between these two.
Q. I don't think documents I produced would help you in that regard.
I'll just ask you based on your memory the names of any lawyers you met with from the time Hans wrote this February 22 e-mail –
A. I believe –
Q. Let me finish.
A. I believe –
MS. WILLIAMS: He has not finished his question.
THE WITNESS: Sorry.
BY MR. FLYNN:
Q. From the time that Hans wrote this February 22 e-mail and the time that Brad Balke

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enters an appearance on March 19. Just the name of any lawyer you –
A. I believe that Sal Ferris that I was talking about was one of the lawyers that I talked to.
Q. You're not sure? You believe that he was?
A. In between this time and this time?
Q. Yes.
A. I believe it's right around then.
Q. What type of law practice does Sal Ferris have?
A. I believe personal injury.
Q. Did you ever talk to him about taking your case before that date?
A. Before the date of this e-mail?
Q. Yes.
A. I'd have to look at it.
Q. He wasn't one of the original attorneys that you spoke with at the beginning of the case?
A. No.
Q. Fair to say once Balke entered his appearance on March 19, 2015 that Mast and Popovich were no longer your attorneys, correct?

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A. When Balke enters his appearance?
Q. Yes.
A. I would believe that, yes.
Q. They were terminated and Balke stepped in?
A. Yes.
Q. Can you tell me how the binding mediation which proceeded on December 8, 2015 evolved and came to be.
A. I was ordered into it from a bankruptcy court.
Q. Why is that?
A. I believe that the trustee put a motion up. I don't know who did it. I assume it was the trustee and the court ordered that it be put into binding mediation.
Q. Did you appear at the mediation?
A. Yes.
Q. Do you recall the name of the mediator?
A. Not off the top of my head, no.
Q. One of the exhibits to your second amended complaint indicates it was retired Judge James Etchingham.
A. That sounds familiar.

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Q. Do you recall how long the mediation lasted?
A. All day.
Q. Do you know if the parties submitted mediation briefs or statements to the judge?
A. I believe both sides submitted a whole bunch of things.
Q. The Boudins represented you in this mediation?
A. Yes.
Q. Because you had fired Balke by this point?
A. Oh, yes.
Q. Directing your attention, again, to Exhibit 5, the second amended complaint and Exhibit G. Exhibit G is, apparently, a memorialization of the mediation award. Do you see that?
A. It's how the judge decided to break it down, yes.
Q. Do you see that there's an award for future medical expenses of $200,000?
A. Yes.
Q. Since that date of December 8, 2015, have you received any medical treatment relative to your

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injuries –
A. Yes.
Q. Let me finish. Strike the question.
Since that date, December 8, 2015, have you received any medical treatment for your injuries incurred on January 28, 2011?
A. You're asking since the date of the binding mediation?
Q. That's right.
A. Yes.
Q. What medical treatment have you received?
A. I do an ongoing with the neurologist for the dystonia.
Q. That's in your right arm?
A. Yes.
Q. Have you calculated the medical bills that you've incurred since that day?
A. No, I have not.
Q. Are they anywhere near $200,000?
A. It depends if you calculate with or without insurance. I know what I pay, but then I have to pay for the insurance that pays for that.
Q. How much have you paid out of pocket since that date for medical treatment on your arm?

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A. I don't know, offhand.
Q. Was there any doctor that opined that you would require $200,000 in future medical expenses?
A. I believe so.
Q. Who was that?
A. I believe that was Dr. Patel. I don't know that she said $200,000. She was the doctor that was handling it at the time.
Q. Did you discuss your injury with the mediator at the mediation?
A. He did ask me a few questions.
Q. How much time did you spend with him?
A. On and off. He would come in and ask me questions and then go away and then come in and would ask me questions and then go away.
I don't remember which one was the mediator, which one was the Allstate adjuster, which one was the – I don't remember.
Q. You're not sure which one was the mediator?
A. They came in and they said they are going to ask you some questions and I answered them.
Q. As you sit here today, you don't know how much face time you had with the mediator that day?

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A. I don't remember the face of which one is which.
Q. Did the issue of lost wages ever come up?
A. At the mediation with me?
Q. Yes.
A. I don't remember.
Q. Did you ever make a claim of lost wages of $250,000?
A. I may have.
Q. Do you know what that was based on?
A. Yeah.
Q. What is that based on?
A. Past and future.
Q. What past wages had you ever earned that could lead to an award of $250,000?
A. To me, that's not a very high number. I think I asked for more than that. It would be an average over a certain number of years plus benefits and that's all lost.
Q. Would it be fair to say that your income would be accurately reflected in the tax returns you've produced in this case, so I don't want to ask you about each one of them?
A. I would say my personal income, yeah.

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Q. Have you filed personal tax returns since 2015?
A. Tried.
Q. I didn't ask you if you tried.
A. No. They won't let me. They said I don't make enough anymore.
MR. FLYNN: I believe the next exhibit is 10.
(WHEREUPON, a certain document was marked Exhibit No. 10, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what's been marked as Exhibit 10. This is a six-page binding mediation agreement. The copy I have is unsigned.
Do you recognize this as the mediation agreement that governed your December 8, 2016 mediation?
A. Yes.
Q. If I could direct your attention to -- first, let me ask you.
Do you know why the bankruptcy trustee or the bankruptcy court ordered binding mediation as opposed to nonbinding?
A. I have no idea.

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Q. On page 4, section F, subsection B -- I'm sorry, 1B. It says, "The parties agree that for this mediation the minimum award to Paul Dulberg will be $50,000. Also, the maximum award to Paul Dulberg will be $300,000."
Do you see that?
A. Yes.
Q. Do you know why the parties agreed to this high/low agreement?
A. No.
Q. Do you recall alleging in your original complaint against Popovich that there was a high/low agreement?
A. There is. There was.
MS. WILLIAMS: Can you repeat the question, please.
(WHEREUPON, the record was read by the reporter as requested.)
BY THE WITNESS:
A. I don't know. I'd have to read it.
MS. WILLIAMS: I asked her to read it. And you had answered it previously.
BY MR. FLYNN:
Q. Directing your attention back to

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Exhibit 4, which is the original complaint in this case. Page 4, paragraph 16.
A. Okay.
Q. There's a sentence that begins with, "Unfortunately, a high/low agreement had been executed by Dulberg reducing the maximum account he could recover to $300,000 based upon the insurance policy available."
Do you see that?
A. Yes.
Q. It's not your position or testimony that Popovich had anything to do with the high/low agreement?
A. That was a mistake in there. No.
Q. You would agree that Popovich had nothing to do with the high/low agreement?
A. I believe that events that unfolded the way they did was due to Hans Mast's initial assessment of the value of the case.
Q. Let me ask it a different way.
Did Popovich have any idea that this high/low agreement existed when it was entered into?
A. I don't know.
Q. Do you have any reason to believe that he

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did?
A. I don't know. I don't know how much the Boudins were in contact with them because they worked together. I don't know.
Q. What do you mean, "they worked together"?
A. They worked together on all different cases. That's a small county out there.
Q. Did you ever write to Hans and accuse Popovich of having a conflict of interest because he may have gone to high school with David Gagnon?
A. I did learn that.
Q. Do you believe the fact that someone went to high school with another person may give rise to a conflict of interest in a lawsuit?
A. I was shooting in the dark and guessing why they didn't see this as a viable case.
Q. Do you think that was appropriate to send to your lawyer at the time?
A. When you're wondering why they are doing what they are doing and you learn that and they were pretty much in the same class and they all knew each other and it's a small town, let me ask you, are you friends with the guy I'm suing? That's an appropriate question.

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Q. You didn't say that. You asked if they went to school together.
A. Correct.
Q. Popovich did not enter into this high/low agreement on your behalf, correct?
A. Popovich, no.
Q. When I say "Popovich," I mean generally the Popovich firm and your lawyers.
A. This was years later. No.
Q. They had nothing to do with it, right?
A. I wouldn't say anything to do with it.
Q. Withdrawn.
Who drafted this high/low agreement that's contained in the mediation agreement?
A. I'm not sure who drafted it.
Q. Would it have been either the mediator, the bankruptcy trustee, your lawyers or the defense attorneys?
A. I assume that this would have been an agreement of all of them.
Q. You don't think Popovich had anything to do with drafting this high/low agreement, do you?
A. I don't know that he did or didn't.
Q. Do you have any reason to believe that he

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did?
A. At this point, no.
Q. Continuing on in Exhibit 4. Directing your attention to the bottom of page 4, paragraph 10.
A. Exhibit 4. Say it again.
Q. The bottom of page 4, paragraph 20. This is your complaint against Popovich and Mast.
A. This has been amended since then.
Q. I understand. Paragraph 20 reads, "Following the execution of the mediation agreement with the high/low agreement contained therein and the final mediation award, Dulberg realized for the first time that the information Mast and Popovich had given Dulberg was false and misleading and that, in fact, the dismissal of the McGuires was a serious and substantial mistake."
Do you see that?
A. Yes.
Q. Can you tell me, as you sit here today, what false and misleading information did Mast and Popovich give you?
A. That I realized on the day of the – following the execution of the mediation agreement?

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Q. Correct.
A. The liability of the McGuires.
Q. What was false about it?
A. What made them liable and what didn't.
Q. What is it you learned to dispute what you were told?
A. I learned from a reliability expert that had the report there that day that the McGuires provided the tools which made Gagnon an agent of the McGuires. He was working at their behest.
Q. Who was this liability expert?
A. What's his name?
Q. He's a doctor?
A. Yes.
Q. Continue on with that paragraph. "Following mediation, Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016."
Do you see that allegation?
A. Yeah.
Q. Who advised you to seek an independent opinion from an attorney handling legal malpractice matters?

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A. I believe that was Boudin.
Q. You believe that or you know that?
A. I know that.
Q. You alleged it in this complaint so it's important that we know who that was.
A. Yes, that was Boudin.
Q. Boudin told you to seek an independent opinion from an attorney that handles malpractice matters?
A. Yes.
Q. It says you received that opinion on or about December 16, 2016.
A. Yes.
Q. That's separate and apart from any opinion you may have received from a liability expert, a doctor, an expert on chainsaws?
A. Yes.
Q. Who was the lawyer that you received a legal opinion from on December 16, 2016?
A. I believe that would be Thomas Gooch.
Q. The drafter of this complaint?
A. I'd have to look at the dates because I think – December 8th was the mediation; is that right?

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Q. Correct.
A. So the 16th would sound about right to be meeting with Gooch, but I can get that date.
Q. You met with Gooch –
A. Soon, within weeks. It was quick.
Q. Now that the door has been opened, you fired Gooch in this case, correct?
A. Yes.
Q. He drafted this complaint and he's also the one that gave you an opinion about legal malpractice liability on the part of my clients?
A. Yes.
Q. What is it that he told you on December 16, 2016?
MS. WILLIAMS: Objection. I don't think we've waived that privilege, but – can we go off the record for a second?
MR. FLYNN: I don't want to go off the record. I've asked this interrogatory in about five different ways and it hasn't been answered appropriately.
The allegation was made in the complaint. That's why I drafted the interrogatory the way I did. I don't think that there's been a square

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answer to it. This is clear that you're talking about a legal opinion.
BY THE WITNESS:
Q. Is this the same wording as we have in the current complaint?
BY MR. FLYNN:
Q. It's not exactly.
A. What would this be valid for, then?
Q. You've raised a response to a statute of limitations defense in this case and placed your knowledge of the malpractice and the date of incurring of an injury at issue.
Because your discovery of malpractice has been placed at issue, it's our position that you've waived privilege anyhow with respect to this conversation on December 16, 2016.
A. I'm not sure –
MS. WILLIAMS: There's not a question pending. I'm going to make a standing objection as to privilege with Gooch.
If we can agree that that objection will stand, we can go through this line of questioning and then if we need to later, have a judge determine whether or not that line of questioning is

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admissible. Are you agreeable to that?
MR. FLYNN: I'm agreeable to continuing on for a few minutes. I want to explore. I'll try to lay foundation for – to confirm this wasn't anyone else, for starters. Why don't we continue on and if you need to raise it again, we can talk.
MS. WILLIAMS: Otherwise, I'm just going to raise it to every single question you ask. I just don't want to have to continue to make the objection as to – if questions are asked about advice given by a legal malpractice attorney, I'm going to raise an objection as to that.
MR. FLYNN: Okay. But this is why we had the 201K conferences, multiple 201K conferences. It was made clear, to me, that there was a waiver with respect to subsequent counsel.
MS. WILLIAMS: Tom Gooch isn't subsequent counsel.
MR. FLYNN: The allegation has been made in this complaint and apparently this is subsequent counsel subsequent to my client's representation.
MS. WILLIAMS: It is a different case. It's not subsequent counsel in the underlying case. It's a new case.

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MR. FLYNN: We'll get to the interrogatory in a few minutes. I'll pull that out.
BY MR. FLYNN:
Q. Let me ask you. Is there any other attorney besides Mr. Gooch that gave you an opinion that's referenced here on December 16?
A. No one that isn't privileged.
Q. Could it have been anyone else?
A. No.
Q. So Gooch is the only person that's being referenced here in this allegation that's in your complaint that's a public record?
I'm not asking you right now what the opinion is. I'm going to do that later. I'm asking you who gave it to you. It's not anyone besides Mr. Gooch, correct?
A. Yes. It was Thomas Gooch.
Q. He drafted the very complaint that that allegation is contained in?
A. Yes.
Q. Dr. Landford was the liability expert that you referenced earlier, correct?
A. Yes.
Q. Back to the allegation that Gooch and –

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that Popovich and Mast provided you false and misleading information. That information was simply their legal opinion on the McGuires' liability; isn't that correct?
A. No. There was nothing simple about that. That's a very complex series of things that go all the way back to before the McGuire settlement.
Q. They didn't lie to you, did they?
A. It depends on how you define lie.
Q. How do you define lie?
A. If you know better and you say something else, that's a lie. Omission is a lie.
Q. Did they provide you with anything other than a legal opinion as to the McGuires' liability?
A. Yes. They provided me with case laws. They provided me with all different stuff. Yes.
Q. Whatever the advice that was given to you on December 16, 2016, you felt that you were mislead by Popovich and Mast at that point in time, correct?
A. At that point in time it was confirmed to me that I had a valid case against Popovich.
Q. You had a valid malpractice case against Popovich?
A. Yes. I did not know before that.

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Q. As of December 16, 2016?
A. Yes.
Q. Why is it that you didn't file that lawsuit until nearly a year later on November 28, 2017?
A. I believe because Thomas Gooch had some health issues and then his wife had some health issues. It took a while.
(WHEREUPON, a certain document was marked Exhibit No. 11, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what has been marked as Exhibit 11. This is one set of your supplemental Answers to Interrogatories.
First, I'll ask you if that is your verification and signature at the end?
A. That is my signature.
Q. Again, I don't know if that verification was attached to this original document. It may have been. But there's been some confusion with respect to these verification pages. This is your signature and you answered these interrogatories, correct?
A. Yeah.

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Q. So this is a valid verification page with respect to this discovery document; is that a fair statement?
A. This is supplemental to original answers.
Q. That's your signature and you agree these are your answers?
A. I've reviewed them and we went over them and yes, I agree.
Q. And they are accurate?
A. As accurate as we can be.
Q. If I could direct your attention to Interrogatory No. 26. Do you see that?
A. Okay. Yes, I see it.
Q. This is similar to what we just talked about a few minutes ago. I'll read the interrogatory to you. "Identify and describe the false and misleading information Mast and Popovich provided to you and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake as alleged in paragraph 56 of your second amended complaint."
Do you see your supplemental answer here?

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A. I see it, yes.
Q. You reference the mediation award and then you state, quote, "At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning."
A. I do.
Q. Can you explain what that means because I don't quite understand it.
A. Hans Mast assured me – I want to go back to 2013, the Fall between October and the signature of the final release for the McGuires.
He assured me that, he said -- at that time he didn't tell me what anybody's policies were. He assured me that if we let the McGuires out of the case, Gagnon has enough insurance, you're going to get everything from him, so it doesn't matter that you're carrying the McGuires in the case.
Q. The next interrogatory is 27. "Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint including the identity of the expert, any opinions and any other information

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provided by the expert which caused you to learn in the summer of 2016 and became reasonably aware that Mast and Popovich did not properly represent you."

What does the summer of 2016 have to do with your discovery of malpractice?

A. Technically, I was sent Dr. Landford's report – I might be off a little by a couple months here, but I think in July of that year. And I read it, but I didn't – you don't catch everything the first time you read it.

It was not until later that I caught the part of the report that was brought to the attention – it caught my eye when I was sitting there and reading it.

Q. You didn't read any of this interrogatory or the original interrogatory as requesting legal opinions that you had alleged that gave you notice that there was a malpractice claim against Mast and Popovich?

A. Excuse me?

MR. FLYNN: Can you read that back.

(WHEREUPON, the record was read by the reporter as requested.)

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BY THE WITNESS:

A. The way she said it, I don't understand.

BY MR. FLYNN:

Q. I'll rephrase it.

We've known about this allegation in the original complaint since it was filed. You received some legal opinion in 2016. That's why you didn't know you had a malpractice case against Mast and Popovich.

We asked you in discovery answers a couple different ways what those legal opinions are. You didn't read 26 and 27 as requesting information about legal opinions?

A. I don't know that an expert witness would be considered a legal opinion. Wouldn't that be more like an attorney?

Q. I'll ask you again. Why is it that you first became aware of a legal malpractice matter against Mast and Popovich on or about December 16, 2016?

A. December 16th I was talking to a legal malpractice attorney.

Q. You were told that there was a case against –

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A. A valid case, yes.

Q. – Mast and Popovich?

A. Yes.

Q. Why is it you didn't know about this valid case prior to that date?

A. Because I hadn't talked to anybody that was a lawyer that specialized in that area.

Q. Whatever it is that he said to you gave you the basis for believing you had a valid case against Mast and Popovich?

A. Very much so, yes.

Q. You're withholding that information from me right now, as we sit here. You won't tell me what that expert said, correct?

MS. WILLIAMS: Repeat the question.

(WHEREUPON, the record was read by the reporter as requested.)

MS. WILLIAMS: I'm asserting attorney-client privilege on behalf of my client for Gooch's advice on December – in December of 2016.

However, because I want to move forward with this deposition, if he can answer the question, I believe we should go ahead and move forward and have him answer the question.

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I'll assert the privilege with the understanding that this may have to be briefed later.

MR. FLYNN: To be stricken later?

MS. WILLIAMS: Right.

MR. FLYNN: The substance of the answer he can put on the record. You're just saying you may move to strike it later?

MS. WILLIAMS: Right. I want to maintain the privilege with the objection, but I don't want to have to call the judge right now. I don't think it's something we should have to call the judge about right now.

MR. FLYNN: Just for the record, I believe it's been placed at issue by virtue of the first amended complaint. The responses to the statute of limitation defenses that were raised in very dispositive motions before Gooch withdrew from the case, the gist of that is the discovery rule has been raised and, therefore, it's our position that the date of discovery has been placed at issue and, accordingly, any legal opinions that were provided to this plaintiff have been exposed and that we're entitled to know what those are.

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MS. WILLIAMS: Can I also note one more thing?
MR. FLYNN: Sure.
MS. WILLIAMS: In the supplemental – in the request it specifically refers to paragraph 57 of the second amended complaint, which is different.
MR. FLYNN: It is different. I'll acknowledge that. I believe that the prior original interrogatories asked for any opinions relative to the discovery of the malpractice. I could be wrong. There was a reason I asked this and that's why I believe that's what it was about.
MS. WILLIAMS: So –
MR. FLYNN: That particular one I agree with you is not phrased as calling for –
MS. WILLIAMS: Right. That's the question that was asked. We answered the question that was asked, which that particular paragraph does not refer to a legal expert. It just merely – I'll read it out loud. "It was not until the mediation in December of 2016 based on the expert's opinion that Dulberg retain for mediation that Dulberg became reasonably aware."
I just want it clear that he did answer the question that was asked. I understand your line

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of questioning and we'll agree to move forward.
MR. FLYNN: I believe there were other discovery requests that did point to that and I think we can take a break here and I can find them fairly quickly because I think we're getting close to the end anyway.
MS. WILLIAMS: Okay.
BY MR. FLYNN:
Q. Did you ever receive any money from the mediation award?
A. No. I received money from the bankruptcy itself. It was a surplus bankruptcy.
Q. There was a $300,000 award given in the mediation.
A. That did not go to me. That went to bankruptcy.
Q. It was collected on your behalf and paid to the bankruptcy trustee, correct?
A. Correct.
Q. All $300,000?
A. I don't know that because I think – I don't know how exactly it works. I heard attorneys have a lien that's special. I don't know how they break it up. I assume it goes to the trustee.

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Q. The Boudins weren't working for free. They got something out of it, right?
A. Yes.
Q. The trustee took the remainder and paid off some of your creditors, correct?
A. Correct. All of them.
Q. But the award was paid to the trustee on your behalf?
A. I believe so. I don't know how it worked.
Q. How much was the surplus after your creditors were paid?
A. After just the creditors?
Q. How much did you get?
A. How much did I get?
Q. Yes.
A. A third.
Q. I'm asking how much money did you get?
A. A third of the award.
Q. Dollars. How much money did you get?
A. Roughly a hundred.
Q. $100,000?
A. I don't know the exact number. It's roughly a hundred.

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Q. Was there a check that was issued to you?
A. By the trustee, yes.
Q. Did you cash it?
A. Yes.
Q. At what bank?
A. McHenry Bank & Trust.
Q. Do you still have an account there?
A. Yes.
Q. Do you have a copy of the canceled check?
A. I'm sure the bank has a photo thing.
Q. You can request a copy of the check, correct?
A. I could. I could see if they got it.
Q. I would ask you to do that. If you have any other documentation relative to the payouts that were made by the bankruptcy trustee on your behalf, we are requesting that information.
MR. FLYNN: Why don't we take a break and I'm going to look for one document and then we're just about done here.
(WHEREUPON, a recess was had.)
MR. FLYNN: Mark these as the next two.

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(WHEREUPON, a certain document was marked Exhibit No. 12, for identification, as of 02/19/2020.)
(WHEREUPON, a certain document was marked Exhibit No. 13, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm going to show you what I've marked as Exhibits 12 and 13. Twelve are your answers to Hans Mast's interrogatories. Thirteen is your responses to Popovich's request for production.
Interrogatory No. 1 from Mast asks, "Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach."
Do you understand that?
A. Yes.
Q. So how is it they committed malpractice?
A. May I see it?
Q. I'm going to show it to you in a second. I only have one copy.
This is basically, how did you first become aware that they committed malpractice?

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That's the essence of that interrogatory.
Here is your response. I can show that to you. It doesn't reflect any discussion with any malpractice lawyer in December of 2016.
Tell me –
A. Let me read it again. We're talking about No. 1 on this?
Q. Correct.
A. Okay.
Q. You understand it?
A. Yes.
Q. Would you agree that the legal opinion you received on December 16, 2016 is responsive to that interrogatory, whatever it is that you were told?
A. Yes.
Q. You didn't identify this December 16, 2016 discussion in the answer to that interrogatory, correct?
A. Say that again.
Q. Your discussion with Mr. Gooch on December 16, 2016, that's referenced in your original complaint, you didn't respond and identify it in this answer to the interrogatory, correct?

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A. This asks for every way Popovich or Mast breached the duty of care. It didn't ask for Gooch's opinion.
Q. How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?
A. Yes.
Q. That's what you've alleged here in this complaint.
A. Yes.
Q. Here I'm asking you, each and every way that they ever breached a duty of care to you. I covered the waterfront. You didn't answer --
A. On the McGuire case it was between October 2013 and January 2014. Yes. There's a multitude of things and that's why I listed a range.
Q. I'm asking when you became aware of it, in that interrogatory. Do you see that?
A. I became aware of that when Thomas Gooch read them and said there's a problem here.
Q. That's not the way you answered the interrogatory, correct?
A. I answered the first part. I did not answer after the comma and the and.

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Q. There's no objection and indication that any information is being withheld, correct?
A. Excuse me?
Q. There's no objection and an indication that you're withholding –
A. I was not withholding.
Q. I'll show you Exhibit 13. It asks – Exhibit 13 are the production requests to you. Number 8 asks for you to produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created and the date the recipient received the document.
The answer is, "The plaintiff is only withholding attorney-client communication between his successor counsel."
Is that your answer to the production request and did I accurately read No. 8?
A. May I consult with her for a minute?
Q. Sure.
THE WITNESS: Can we go off the record?
MS. WILLIAMS: If you can answer the question, answer the question first.

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BY THE WITNESS:
A. It's been a while since I've done this, so I'm not sure who the successor counsel is. Is it her or is it the Boudins or Balke?
BY MR. FLYNN:
Q. I think successor counsel, we can both agree, the successor counsel in the underlying case which would be Balke and then Boudin.
You didn't identify any documents withheld other than documents between you and successor counsel, correct?
THE WITNESS: I believe we waived those, didn't we, for Balke and Boudin?
MS. WILLIAMS: For Balke and Boudin we can represent that we waived those.
BY MR. FLYNN:
Q. Let me ask a different question.
Did Gooch communicate with you in writing relative to his opinion that you had a legal malpractice case against Mast and Popovich?
A. In writing?
Q. Yes.
A. I suppose the agreement between us that he would represent me because I had the case is a

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document in writing.
Q. Did he tell you – strike that.
The discussion that you reference in the complaint, paragraph 20 of December 16, 2016, was that a face-to-face communication with Gooch?
A. What number is that?
Q. Exhibit 4, paragraph 20. The legal opinion you received, was it verbal, was it written?
A. I believe it was verbal.
Q. Now, I'm going to ask you what he said. There was an objection and that will be addressed by the Court later. Please tell me what Gooch told you.
A. He read what I brought him, looked through some things, and I don't remember if it was the same day that we talked to him or he took a day or two. I don't remember. He got back to me and he said, "You have a case here. You have a valid case."
Q. Did he say why?
A. On the basis of what I brought to him. Yes.
Q. Specifics, though. I don't want to talk about generalities. Did he tell you what Mast and

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Popovich did wrong and how it injured you?
A. How it injured me? Yeah.
Q. The first part of my question was, did he tell you exactly what they did wrong in connection with your – their representation of you?
A. He probably did. I'm not recalling it right now. I'm pulling a blank.
The parts of the conversation I'm remembering, and for some reason I'm not pulling it. We've been at this a while and this is a long thing. Yes, he said based on what he saw, he saw reason for malpractice.
Q. You don't remember any details, as you sit here? Did you discuss the liability of property owners in Illinois?
A. Well, if they were just property owners in the case, that would be one thing, but they weren't just property owners.
Q. That wasn't my question. I'm asking if you discussed it?
A. Certainly.
Q. You and Gooch discussed the liability of the McGuires in the case?
A. Yes.

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Q. What did you say to him and what did he say to you?
A. I showed him the expert opinion.
Q. The chainsaw expert?
A. Yes.
Q. Did you show him any deposition transcripts?
A. Yes.
Q. Which ones?
A. All of them.
Q. And he read them before you talked?
A. I don't remember. Like I said, it may have been a few days between our initial meeting and bringing the whole file that I had and trying to get what the Boudins had and letting him go through it. I don't remember how long that took.
Q. How did you transmit the documents to him –
A. My brother carried them.
Q. Let me finish.
How did you transmit the documents to Mr. Gooch, including the deposition transcripts?
A. I believe we brought him a box.
Q. So you physically handed the documents to

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him?
A. I didn't physically hand them. My brother did.
Q. Did you communicate with Mr. Gooch by e-mail, at all, leading up to this meeting?
A. No.
Q. Did he ever write you any letters?
A. An e-mail or regular mail or what are you talking about?
Q. Any letters whatsoever.
A. Throughout the course of his representation, yes.
Q. What about in December of 2016?
A. I believe we started communicating in December, yes.
Q. But in writing?
A. In e-mails, sure.
Q. Did he discuss –
A. We may have. I'm not – whenever we started – whenever he started sending me things and going back and forth, I don't remember the exact date, but it was right after he started representing me, sure, we exchanged e-mails and started, yes.
Q. When did Gooch begin representing you?

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A. The day that he agreed to represent me. I believe it would have been the day that he decided that he had a case.
Q. On or about December 16?
A. Yes.
Q. At that point in time, or shortly thereafter, he communicated with you in writing the details of the breach of the standard of care committed by Popovich and Mast; is that correct?
A. I believe he started to detail those out in the complaint and we were working it back and forth trying to get it right.
Q. When did you first exchange drafts of the complaint?
A. I'd have to look back in the e-mails. I don't remember the dates.
Q. Did you look for any of these e-mails in connection with my discovery requests in this case?
A. At the time I think we thought they were privileged.
Q. That privilege objection wasn't exactly made. My question is, did you look for them?
A. Did I look for them? I have them.
Q. I would ask that you preserve each and

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every communication between you and Mr. Gooch, all written communications, even phone records that might reflect the dates and times of your phone communications, if any. Did you use a cell phone back then?
A. I used VOIP over a data line.
Q. Who was your carrier?
A. Comcast.
Q. Is that still your carrier?
A. Yes.
Q. Do you have the same phone that you utilized?
A. Same phone number for 50 years, yes.
Q. What else could you remember that Gooch told you on or about the 16th of December 2016 about Mast and Popovich breaching the standard of care and how it damaged you?
A. Say that again.
Q. What, if anything, else do you recall about your discussions with Gooch on December 16 regarding the breach of the standard of care by Popovich and Mast and how it injured you?
A. We discussed the whole scenario between October and January and what happened. It was

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pretty detailed. We discussed everything that you see that's been communicated in the e-mails. He didn't have much else to go on other than the documents and the e-mails.
Q. You're talking about the e-mails between you and Hans from the fall of 2013?
A. Yes.
Q. Ultimately leading to the $5,000 settlement?
A. Yes.
Q. Other than you have a case, what did Gooch say to you?
A. He said that they definitely committed malpractice.
Q. Did he ever put this in writing?
A. Did he ever put it in writing? I think he backed it up by filing a suit. That's documented.
Q. Again, the suit wasn't filed until November of 2017.
A. Yes, he had some health problems and then his wife had some health problems. Believe me, I was pushing for him to get that done.
Q. From December of 2016 until the complaint

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was filed, you exchanged some drafts of complaints with him?
A. I believe he let me see what he wanted to put in the complaint. I got to review some things. Of course I had, do this or that's not right. In fact, a couple of these things in here we had to definitely – you caught one. He totally worded it wrong. It was wrong. We had to amend.
MS. WILLIAMS: His question was, did he give you drafts for you to review?
THE WITNESS: Yes.
BY MR. FLYNN:
Q. These were exchanged by e-mail?
A. I believe so, yes.
Q. So you would have records of them?
A. Yes.
Q. Any comments with respect to the pleadings, as well, did you ever ask him questions? Did he explain to you the basis for the allegations in the draft complaints, similar to what you did with Hans?
A. Over many times, yes.
Q. This is all reflected in e-mails?
A. Yes.

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Q. Ultimately, you didn't file until November of 2017?
A. Correct.
Q. Popovich ceased being your lawyer March 19 of 2015, correct?
A. That sounds about right.
Q. Until December 16, 2016, you didn't have any reason to believe there was a malpractice case against –
A. Say the date again.
Q. Until December 16, 2016, you didn't have any other reason to believe there was a malpractice case against Popovich and Mast?
A. I did not know that I had a case, no.
Q. You threatened one with respect to the Gagnon case –
A. Yes.
Q. – at another point in time, correct?
A. I think I threatened him a few times in there. Yeah. I was actually nice to what I really wanted to say.
Q. Subject to the ruling on these objections, you don't recall any other specific details that you discussed with Popovich – I'm

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sorry – Gooch on December 16, other than what we already talked about?
A. I discussed the exact same things that you – the same documents that you already have. We went over the case that Mast and Popovich had against the McGuires. He followed through all the way to the end. We went over the whole case. You see as much as he did.
Q. Did Gooch ever explain to you why the McGuires would have been liable any more than Mast explained to you that they wouldn't be liable?
A. He said he agreed right away. He said that's obvious.
Q. Did Gooch ever provide you with any cases or statutes?
A. Provide to me, maybe. Maybe. I don't know.
Q. Would that be by e-mail?
A. It could be. I was in his office quite a few times. He may have.
Q. As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to

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the McGuires' liability?
A. That they were definitely liable. He tried to say that – like Popovich and Mast were first- or second-year lawyers and that they may have made a mistake here.
I said they've got 20 years in this. You think they'd know the difference. That's the kind of thing. He agreed with me. Twenty years, yeah, they should have known better.
Q. Did you ever discuss the specifics of the McGuires' potential liability with Gooch?
A. Liability with Gooch?
Q. With Gooch, did you ever discuss the specifics of the McGuires' liability other than he thinks you have a case?
A. Yes.
Q. Did he ever tell you why? What was it?
A. Because he agreed with the expert's opinion.
Q. The expert on the chainsaw?
A. Yes. The liability expert.
Q. The expert said you should use safety goggles and gloves and things like that?
A. He said more than that, but yes.

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Q. Do you know who commissioned that expert report?
A. Boudins.
Q. Do you know when the first draft of that doctor's expert report was circulated?
A. I heard that Boudin got it in February, maybe. I don't think I got it until July, but I'm not sure about that.
Q. July of what year?
A. The same year as the mediation.
Q. Of 2016?
A. Yeah.
Q. So you actually read it in advance of the mediation?
A. I talked about this earlier. I said yes. You don't catch everything the first time you read it. I was sitting there at the mediating table and I was reading it and I caught it and I turned to Randy and I said, after it was over, does this mean – that means.
Q. Means what?
A. Does this mean the McGuires are liable? Yeah, that means they are liable. He said, call my office after everything and I'll give you a name for

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an attorney you should go see.
MR. FLYNN: Any follow-up, Julia?
MS. WILLIAMS: I have two follow-up questions.

EXAMINATION

BY MS. WILLIAMS:
Q. Did you ever give Hans authority to make a settlement demand regarding Mr. Gagnon?
A. I think at one time in one of my meltdown letters I said get whatever you can, but no, I never actually signed anything saying you have the right to offer a settlement.
Q. Did you ever give Hans authority to make a settlement demand with regard to the McGuires?
A. A demand, no. He said he was going to probe and see what was out there, and I said, if you want to do that, that's fine.
MS. WILLIAMS: I have no further questions.
MR. FLYNN: Signature?
MS. WILLIAMS: We can waive signature.
THE REPORTER: Are you ordering this?
MR. FLYNN: Yes.
THE REPORTER: Regular delivery, e-tran?
MR. FLYNN: Yes.
THE REPORTER: Copy?

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MS. WILLIAMS: Yeah.
THE REPORTER: Regular delivery, e-tran?
MS. WILLIAMS: PDF.
(WHEREUPON, at 4:00 p.m., the deposition of PAUL DULBERG was concluded.)
* * * * *

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STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)

I, KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify:

That previous to the commencement of the examination of the witness, the witness was duly sworn to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction, and constitutes a true record of the testimony given and the proceedings had;

That the said deposition was taken before me at the time and place specified;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto

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set my hand and affix my seal of office at Chicago, Illinois this 3rd day of March, 2020.

Karen Piloggi

Notary Public, DuPage County, Illinois.
My commission expires 1/2/24.

CSR Certificate No. 84-3404

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EXAMINATION

	Page	Line
PAUL DULBERG		
Examination by Mr. Flynn	3	6
Examination by Ms. Williams	142	4

E X H I B I T S

Deposition Exhibit	Page	Line
Exhibit No. 1	47	19
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Exhibit No. 3	60	6
Exhibit No. 4	65	2
Exhibit No. 5	67	13
Exhibit No. 6	79	12
Exhibit No. 7	84	8
Exhibit No. 8	87	10
Exhibit No. 9	91	2
Exhibit No. 10	101	9
Exhibit No. 11	114	10
Exhibit No. 12	125	2
Exhibit No. 13	125	5

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANT HANS MAST'S
INTERROGATORIES TO PLAINTIFF PAUL DULBERG

NOW COMES Defendant, Hans Mast, by and through his attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 213, propounds the following interrogatories on Plaintiff, Paul Dulberg, to be answered under oath within 28 days:

DEFINITIONS & INSTRUCTIONS

The pronoun "you" refers to Plaintiff, Paul Dulberg, to whom this production request is addressed, as well as their agents, representatives, employees, anyone acting on his behalf, and unless privileged, his attorneys.

The term "document" as used herein means all records, papers, and books, transcriptions, pictures, drawings, or diagrams of every nature, whether transcribed by hand or by mechanical, electronic, photographic, or other means, as well as sound reproduction of oral statements or conversations by whatever means made, whether in your actual or constructive possession or under your control or not, relating or pertaining in any way to the subject matters in connection with which it is used, and includes originals, all file copies, and all other copies, no matter how prepared, and all drafts prepared in connection with such writing, whether used or not, including by way of

EXHIBIT D

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illustration and not by way of limitation, the following: books, records, contracts, agreements, expense accounts, canceled checks, catalogues, price lists, sound and tape recordings, memorandum (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts, and activities), minutes, diaries, calendar or desk pads, scrapbooks, notebooks, correspondence, emails, bulletins, circulars, forms, pamphlets, notices, statements, journals, postcards, letters, telegrams, reports, intra-office communications, photographs, microfilm, maps, and deposition transcripts, whether prepared by you for your own use or for transmittal or received by you.

INTERROGATORIES

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER:

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

ANSWER:

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

ANSWER:

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4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than $100,000?

ANSWER:

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

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** FILED ** Env: 9649054
McHenry County, Illinois
17LA000377
Date: 7/2/2020 9:30 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

PLEASE TAKE NOTICE that on the 2nd day of July 2020 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:

- **Supplemental Requests for Production to Plaintiff;**

a copy of which is attached hereto and herewith served upon you.

Dated this 2nd day of July 2020.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: */s/ George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
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gflynn@karballaw.com

EXHIBIT E

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing DEFENDANT'S NOTICE OF SERVICE OF DISCOVERY DOCUMENT was served upon:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
312-357-1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

by email on July 2, 2020.

/s/ George K. Flynn
One of their Attorneys

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION TO PLAINTIFF

NOW COMES Defendant, The Law Offices of Thomas J. Popovich, P.C. by and through its attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 214, respectfully requests Plaintiff, Paul Dulberg, to produce within 28 days at the law offices of Karbal, Cohen, Economou, Silk & Dunne, LLC, 150 South Wacker Drive, Suite 1700, Chicago, Illinois 60606, the following photographs, documents, objects, and other tangible things:

SUPPLEMENTAL PRODUCTION REQUESTS

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

RESPONSE:

2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

RESPONSE:

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3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

RESPONSE:

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their representation of you or provision of legal services to you.

RESPONSE:

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

RESPONSE:

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition from February 19, 2020.

RESPONSE:

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

RESPONSE:

Respectfully submitted,

/s/ George K. Flynn

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GEORGE K. FLYNN
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George Flynn

From: George Flynn
Sent: Thursday, September 17, 2020 4:06 PM
To: Paul Dulberg
Subject: RE: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Thank you.

Pursuant to Illinois Supreme Court Rule 201(k), please advise when the supplemental discovery answers and documents will be served. As I indicated in court on September 10, I plan to file a motion to compel very soon if we do not receive the sworn answers and all responsive documents.

Best regards,

-----Original Message-----
From: Paul Dulberg <Paul_Dulberg@comcast.net>
Sent: Thursday, September 17, 2020 11:19 AM
To: George Flynn <gflynn@karballaw.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear Mr Flynn,

Please find the attached files named 2020-09-17_Appearance Pro se.pdf and 2020-09-17_ProofOfDelivery.pdf

I have filed these with the McHenry County Clerk via the i2file web site.

Thank you,
Paul

Paul Dulberg
847-497-4250

GROUP EXHIBIT F

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

George Flynn

From: George Flynn
Sent: Saturday, August 29, 2020 8:59 PM
To: Julia Williams
Cc: Ed Clinton; Mary Winch; Linda Walters
Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Julia:

I write pursuant to rule 201(k) and rule 219(c). Mr. Dulberg is late in responding to discovery pursuant the the extension you requested, and to which I agreed.

It is finally time for Mr. Dulberg to properly answer discovery in conformity to his allegations, and relative to the matters which he has placed at issue.

Once the Gooch discovery is produced, I would like to immediately depose Dulberg and Gooch. Please pass this along to your client.

You and your firm have been nothing but professional and it was a pleasure working with you.

Best regards,

> On Aug 18, 2020, at 2:13 PM, George Flynn <gflynn@karballaw.com> wrote:
>
> Julia:
>
> This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k).
>
> I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated.
>
> I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved).
>
> The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020.
>
> Please feel free to contact me if you would like to discuss this matter.
>
> Very truly yours,

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Thursday, July 30, 2020 10:07 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
Subject: Fwd: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Begin forwarded message:

From: Linda Walters <lwalters@KARBALLAW.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)
Date: July 2, 2020 at 11:11:39 AM CDT
To: "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<image001.jpg>

P: (312) 431-3641

<image002.png>

F: (312) 431-3670

<image003.png>

E: lwalters@KARBALLAW.com

CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

George Flynn

From: George Flynn
Sent: Thursday, July 30, 2020 10:12 AM
To: Julia WIlliams
Cc: Ed Clinton; Mary Winch
Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Hi Julia. Yes, agreed.

On Jul 30, 2020, at 10:07 AM, Julia WIlliams <juliawilliams@clintonlaw.net> wrote:

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Begin forwarded message:

From: Linda Walters <lwalters@KARBALLAW.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)
Date: July 2, 2020 at 11:11:39 AM CDT
To: "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg>

P: (312) 431-3641

<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png>

F: (312) 431-3670

<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png>

E: lwalters@KARBALLAW.com

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<2691756v1 - Supplemental Request for Prod. to Plaintiff.PDF>
<2691837v1 - Notice of Service of Discovery Documents -- Supplemental RTP to Plaintiff (FS).PDF>

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

George Flynn

From: George Flynn <gflynn@karballaw.com>
Sent: Tuesday, September 1, 2020 10:31 AM
To: Julia Williams
Cc: Ed Clinton; Mary Winch; Linda Walters
Subject: RE: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Julia:

Thank you. I understand the position you and your firm are in. I will plan to either file a motion to compel, or advise the court of our intentions to file a motion on September 10.

Stay safe.

Very Truly Yours,

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

CONFIDENTIALITY NOTE:
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From: Julia Williams <juliawilliams@clintonlaw.net>
Sent: Monday, August 31, 2020 8:45 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>; Linda Walters <lwalters@KARBALLAW.com>
Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

I will certainly pass this along to our client.

Unfortunately, because we are withdrawing, we are not comfortable answering discovery when another counsel may be appearing. Mr. Dulberg is seeking new counsel and would like to have his new counsel answer. I expect that we will be withdrawing on September 10, 2020. The court will grant Mr. Dulberg 21 days to find alternative counsel. Based upon this, it is unlikely that any answers to supplemental discovery will be prepared prior to the end of September.

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

Thank you again for your time and courtesy in this case. It has been nice to work with you as well.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Aug 29, 2020, at 8:58 PM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

I write pursuant to rule 201(k) and rule 219(c). Mr. Dulberg is late in responding to discovery pursuant the the extension you requested, and to which I agreed.

It is finally time for Mr. Dulberg to properly answer discovery in conformity to his allegations, and relative to the matters which he has placed at issue.

Once the Gooch discovery is produced, I would like to immediately depose Dulberg and Gooch. Please pass this along to your client.

You and your firm have been nothing but professional and it was a pleasure working with you.

Best regards,

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

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On Aug 18, 2020, at 2:13 PM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k).

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated.

I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved).

The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020.

Please feel free to contact me if you would like to discuss this matter.

Very truly yours,

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Sent: Thursday, July 30, 2020 10:07 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
Subject: Fwd: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Begin forwarded message:

From: Linda Walters <lwalters@KARBALLAW.com>

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)
Date: July 2, 2020 at 11:11:39 AM CDT
To: "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<image001.jpg>

P: (312) 431-3641

<image002.png>

F: (312) 431-3670

<image003.png>

E: lwalters@KARBALLAW.com

CONFIDENTIALITY NOTE:
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<image002.png><image003.png><image001.jpg>

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

** FILED ** Env: 14019112
McHenry County, Illinois
17LA000377
Date: 7/13/2021 1:29 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO SUPPLEMENT DEFENDANTS' MOTION TO COMPEL AND TO REQUEST HEARING ON PLAINTIFF'S COMPLIANCE WITH APRIL 6, 2021 ORDER ON DEFENDANTS' MOTION TO COMPEL

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for their Motion to Supplement Defendants' Motion to Compel and To Request Hearing on Plaintiff's Compliance with April 6, 2021 Order on Defendants' Motion to Compel, state as follows:

1) Defendants are bringing this motion to supplement their prior Motion to Compel and request a hearing on Plaintiff's compliance with the Court's April 6, 2021 Order (attached as Ex. A).

2) The Defendants never received a file-stamped copy of the draft order which their counsel submitted to the Court for entry on April 2, 2021 (see Group Ex. B, April 2, 2021 email from Linda Walters, and attached Order). Defendants never received a response, nor received electronic notice of the entry of the Order on April 6, 2021, and accordingly did not diary the June 14, 2021 hearing, and thus did not appear.

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

3) In the Court's April 6, 2021 Order granting Defendants' motion to compel, the Court ordered the Plaintiff to serve a supplemental answer to Mast's Interrogatory No. 1, and amend its responses to Popovich's Supplemental Request. The Court further ordered, "Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

4) On June 1, 2021, the Plaintiff served Exhibit C (Plaintiff's Amended Additional Answer to Defendant Hans Mast's Interrogatory to Plaintiff Paul Dulberg), and Exhibit D (Plaintiff's Amended Additional Response to Defendant The Law Offices of Thomas J. Popovich, P.C.'s Supplemental Request for Production). Dulberg also produced fourteen pages of bates labeled records (See Ex. E).

5) The Plaintiff has not complied with the Court's April 6, 2021 Order. Accordingly, Defendants respectfully request that the Court strike the non-responsive portions of Exhibits C, D, and E and close written discovery.

6) With respect to Exhibit C, Dulberg provide a "non-answer." Dulberg was ordered to specifically answer each discovery request. Mast's Interrogatory No. 1 states as follows: Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach. Dulberg's amended additional answer does not describe how there was a breach of the standard of care, he simply identifies a discovery date (December 12, 2016) based upon a binding mediation order. He does not describe the breach of the standard of care, or how, specifically, he became aware of it. He simply writes, "He knew the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016." He does not describe the

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
Page 424 of 464

discussion or explain how the standard of care was breached, or why his discussion with Tom Gooch enlightened him as to the breach.

7) Moreover, Popovich's supplemental requests for production are aimed specifically at identifying how Dulberg "discovered" his breach of the standard of care, and when he recognized damages as a result of same. In Exhibit D, Dulberg's amended additional response, Dulberg simply attaches various pages from pleadings in this case. He does not attach any discoverable materials, such as emails, letters, etc. Instead, he is simply regurgitating his position in this case. As previously argued in Defendants' Motion to Compel and at hearing, if Dulberg has no documents responsive to the discovery requests, and he has no basis for a tolling of the statute of limitations in this case, then his answer should simply state, "none." Enough is enough. Dulberg's non-responses to this discovery requests should be stricken, and he should be barred attempting to present any additional evidence in support of his tolling theory.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court grant their Motion to Supplement Defendants' Motion to Compel and set hearing on Plaintiff's compliance with April 6, 2021 Order on Defendants' Motion to Compel, and for any and all further relief this Court deems just and appropriate.

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

FILED
APR - 6 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

ORDER

This matter coming to be heard for status and continued hearing on Defendant's Motion to Compel, the court having heard argument, it is hereby ordered:

1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

2) Plaintiff's objections of "undue burden" raised in its initial responses to Popovich's Supplemental Requests for Production numbers 1-7 are overruled.

3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.

Prepared by:

Atty. No.	**George K. Flynn ARDC #6239349**
Name:	**Karbal, Cohen, Economou, Silk & Dunne, LLC**
Attorney for:	**Defendants**
Address:	**150 S. Wacker Drive, Suite 1700**
City:	**Chicago, IL 60606**
Telephone:	**(312) 431-3700**
E-Mail:	**gflynn@karballaw.com**

....., 2021

ENTER:

..... Thomas A. Meyer

eSigned by THOMAS A. MEYER 04/06/2021 09:09:24 RNOhbggY

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

EXHIBIT A

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

Linda Walters

From: Linda Walters <lwalters@karballaw.com>
Sent: Friday, April 2, 2021 10:17 AM
To: proposedorders
Cc: contact@lawofficeofalphonsetalarico.com; George Flynn
Subject: RE: Paul Dulberg v. The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (Circuit Court of McHenry County, IL Case No.: 17 LA 000377)
Attachments: 2868280v1 - Proposed Order (4-2-21).PDF; 2867639v1 - Proposed Order (4-2-21).DOCX

On behalf of George Flynn, attached is a copy of a proposed order in both word and pdf format relative to the above. All counsel of record have been copied on this email.

Thank you.
Linda Walters
Asst. to George Flynn

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@karballaw.com

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Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@karballaw.com

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GROUP EXHIBIT B

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

ORDER

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1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

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3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.

Prepared by:
Atty. No. George K. Flynn
ARDC #6239349
Name: Karbal, Cohen, Economou, Silk & Dunne, LLC
Attorney for: Defendants
Address: 150 S. Wacker Drive, Suite 1700
City: Chicago, IL 60606
Telephone: (312) 431-3700
E-Mail: gflynn@karballaw.com

....., 2021
ENTER:

.....
Judge **Judge's No.**

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S AMENDED ADDITIONAL ANSWER TO DEFENDANT HANS MAST'S INTERROGATORY TO PLAINTIFF PAUL DULBERG

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Amended Additional Answer to Defendant Hans Mast's Interrogatory #1 states as follows:

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER: Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

EXHIBIT C

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Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

AMENDED ADDITIONAL ANSWER: Dulberg discovered the pecuniary injury on December 12, 2016 based upon a binding mediation award and knew he had a legal malpractice case on December 16, 2016. He knew that the Defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

Dulberg discovered in the defendants' document disclosure, POP 000192, that Mast had in fact sent the McGuires' attorney a $7,500.00 offer on October 22, 2013 without Dulberg's knowledge and that was before the November 4, 2013 meeting in Mast's office when Mast first asked Dulberg if Mast could probe and see what was on the table for a possible settlement with the McGuires.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

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VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily belies the same to be true.

Paul Dulberg

June 1, 2021

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S AMENDED ADDITIONAL RESPONSE TO DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Amended Additional Response states as follows:

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016, 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

Objection-privileged Bates stamped e-mail string 8744-8746

EXHIBIT D

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2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016 and 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

RESPONSE: Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

Bates stamped document 8709-8710 previously enclosed.

Objection-privileged Bates stamped e-mail string 8744-8746

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 006502. (attached)

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their

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representation of you or provision of legal services to you.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931, 003133, and 004884. (attached)

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708

Misstates Plaintiff Paul Dulberg's contention was that he discovered the injury on December 16, 2016.

Dulberg actually discovered the pecuniary injury on December 12, 2016 and actually discovered he had a legal malpractice case on December 16, 2016.

2020 IL App (1st) 191953 Nos. 1-19-1953 & 1-19-1973 (consol.) Opinion filed November 30, 2020 Modified upon denial of rehearing December 31, 2020 which is equally available to all parties.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931.(Please see above)

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition

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from February 19, 2020.

RESPONSE:

Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF COMPLETENESS

The undersigned, Paul Dulberg, being first duly sworn and under oath, deposes and states as follows:

1. I am the Plaintiff in the above-captioned action.

2. I have personal knowledge of the matters and facts set forth in this Affidavit and, if sworn as a witness, I can testify competently to those matters and facts.

3. The documents that I produced in response to the Court ordered Amended Additional Supplemental Requests for Production propounded by Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C are complete in accordance with the Court Order and Supplemental Requests for Production.

4. Plaintiff Paul Dulberg reserves the right to supplement his response to Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'s Supplemental Requests for Production as additional documents become known to me or come into my possession, custody, or control.

VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

that he verily belies the same to be true.

Paul Dulberg June 1, 2021

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LA 178. (Exhibit 2, ¶ 9, and Exhibit 2B)[1]. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of $5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 2, ¶ 18 and Exhibit 2D). Defendants continued to represent Dulberg until March 2015. (Exhibit 2, ¶ 21). Dulberg retained successor counsel and proceeded to a binding mediation and received a mediation award (Exhibit 2, ¶ 24 and Exhibit 2G). After the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 2, ¶ 28-29).

B. Alleged Acts of Negligence

Popovich's and Mast's alleged malpractice revolves around the settlement of the underlying case between Dulberg and McGuires. The allegations of a breach of the standard of care are all contained in ¶ 31, subsections a) through o) inclusive. Paragraph 31 states as follows:

> 31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:
>
> a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;
>
> b) Failed to thoroughly investigate liability issues against property owners of the subject property;

[1] The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 2A, 2B, 2C, 2D, 2E, 2F, and 2G.

EXHIBIT E

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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

Received 06-07-2018 01:29 PM / Circuit Clerk Accepted on 06-07-2018 03:53 PM / Transaction #17111166062 / Case #17LA000377
Page 6 of 24
Dulberg 001809

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fact." *(Emphasis added)* (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." *See* 735 ILCS 5/13-215.

45. DULBERG's Complaint states that DULBERG discovery the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

46. Therefore DULBERG would have until December 2021 to file his claims under fraudulent concealment. DULBERG filed his claims well within the five-year fraudulent concealment statute.

CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants' Combined Motion to Dismiss, and for all other relief this Honorable Court

Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
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fact." *(Emphasis added)* (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." *See* 735 ILCS 5/13-215.

45. DULBERG's Complaint states that DULBERG discovery the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

46. Therefore DULBERG would have until December 2021 to file his claims under fraudulent concealment. DULBERG filed his claims well within the five-year fraudulent concealment statute.

CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants' Combined Motion to Dismiss, and for all other relief this Honorable Court

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Page 13 of 32

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000377 Dulberg 009016
Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
Page 30 of 32
Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

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b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

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Page 443 of 464

LAW OFFICES
FERRIS, THOMPSON & ZWEIG, LTD.

SAUL M. FERRIS
GARY R. THOMPSON
MICHAEL L. ZWEIG*

RAFAEL J. GUZMÁN
ATTORNEYS AT LAW
*Licensed in IL & NY

103 S. GREENLEAF AVENUE, SUITE G
GURNEE, ILLINOIS 60031

TELEPHONE (847) 263-7770
FAX (847) 263-7771
www.ftzlaw.com

March 4, 2015

Mr. Paul Dulberg
3416 W. Elm Street
McHenry, IL 60050

RE: Your accident of January 24, 2013

Dear Mr. Dulberg:

Thank you for consulting with our firm on December 31, 2014 in regards to your personal injury case. Unfortunately, we have decided not to accept your case. Therefore, on behalf of Ferris, Thompson & Zweig, Ltd., we will not be taking any further action on your behalf as it relates to this matter. I believe you should not have settled with the property owners for $5,000.00. There are other reasons for my decision.

This is merely our professional opinion and does not mean you do not have a case. We recommend that you attempt to settle the case at the upcoming pretrial conference with your current attorney.

Sincerely,

Saul M. Ferris

SMF/cl

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

From: Randy Baudin II <randybaudin2@gmail.com>
Subject: award
Date: December 12, 2016 7:34:42 PM CST
To: pdulberg@comcast.net
1 Attachment, 45.2 KB

Congrats!!



W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham. (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P/S	75,000.
L N L	75,000.

Dulberg 002928

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

The Honorable James P. Etchingham, (Ret.)

ADR Systems • 20 North Clark Street • Floor 29 • Chicago, IL 60602
312.960.2260 • info@adrsystems.com • www.adrsystems.com

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: award**
Date: December 13, 2016 10:48:50 AM CST
To: paul_dulberg@comcast.net
1 Attachment, 45.2 KB

Paul Dulberg
847-497-4250
Sent from my iPad

Begin forwarded message:

From: Randy Baudin II <randybaudin2@gmail.com>
Date: December 12, 2016 at 7:34:42 PM CST
To: pdulberg@comcast.net
Subject: award

Congrats!!

Click to get my LinkedIn Profile

W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Dulberg 002930

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

Comments/Explanation Medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P/S	75,000.
L/L	75,000.

The Honorable James P. Etchingham, (Ret.)

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ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: award**
Date: December 13, 2016 10:46:50 AM CST
To: paul_dulberg@comcast.net
1 Attachment, 45.2 KB

Paul Dulberg
847-497-4250
Sent from my iPad

Begin forwarded message:

From: Randy Baudin II <randybaudin2@gmail.com>
Date: December 12, 2016 at 7:34:42 PM CST
To: pdulberg@comcast.net
Subject: award

Congrats!!

Click to get my LinkedIn Profile

W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

Paul Dulberg	)	
	)	
	)	
	)	
v.	)	ADR Systems File # 33391BMAG
	)	
	)	
David Gagnon	)	

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Dulberg 004884

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

Comments/Explanation	
Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.S	75,000.
L N L	75,000.

The Honorable James P. Etchingham, (Ret.)

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, Defendants.	No. 17 LA 377

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 19th day of July, 2021, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by
MR. ALPHONSE A. TALARICO (via Zoom)

On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN

On behalf of the Defendants.

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THE COURT: Counsel?

MR. FLYNN: No. 10, your Honor. I see Mr. Talarico. George Flynn on behalf of defendant/movant.

THE COURT: Dulberg versus Mast?

MR. FLYNN: Yes.

THE COURT: Okay. I saw Mr. Talarico. All right. Mr. Talarico?

MR. TALARICO: Yes, Judge. Good morning.

THE COURT: All right. Counselor here in court, what's going on?

MR. FLYNN: Good morning, your Honor. We brought a motion to supplement our motion to compel. The Court ruled on April 6th and granted defendant's motion to compel and set a June 14 compliance date.

THE COURT: Okay.

MR. FLYNN: I'm sorry. June 1st compliance date with a June 14 hearing. Somehow I don't believe we got a copy of the file stamped order and it didn't get diaried, so I believe the case was called on June 14 --

THE COURT: Okay.

MR. FLYNN: -- and a continue date August 19th.

THE COURT: You got inadequate compliance, is

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that ultimately --

MR. FLYNN: That's our position, yes.

THE COURT: All right. I'm going to pass this. We'll come back to it. And let me see if I can take a look at the compliance at issue.

Mr. Talarico, just hang in there. I'll be back at the end of the call.

MR. FLYNN: Thank you, your Honor.

(Whereupon the afore-captioned cause was recalled.)

THE COURT: Let's go to Dulberg. All right. Plaintiff's counsel for the record, if you could identify yourself.

MR. TALARICO: Good morning, your Honor. My name is Alphonse Talarico. I represent Paul Dulberg.

MR. FLYNN: And good morning again, your Honor. George Flynn on behalf of Popovich and Mast.

THE COURT: All right. So tell me what the issue is.

MR. FLYNN: Again, your Honor, the Court ruled on April 6th that the plaintiff was directed to provide the specific answers and responses to each interrogatory and production request. So we did

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receive supplemental production responses and a supplemental interrogatory answer. With respect to the supplemental production, there is one document that I consider to be responsive and that is new.

THE COURT: I'm sorry?

MR. FLYNN: There is one document that was produced and I consider it to be responsive and a new production. The rest of the documents that were produced, it's unusual. There are actual pleadings from this case that were attached as responsive documents to my discovery requests. I don't see how those -- which basically just set forth the plaintiff's position in this case in response to the various arguments we've made in motions.

THE COURT: Well, what is it you're looking for? What didn't you get?

MR. FLYNN: I'm looking to strike any of those documents --

THE COURT: Okay.

MR. FLYNN: -- that are not responsive.

THE COURT: Is it -- I mean, really is it necessary to go to the trouble of striking them if they're -- I mean, ultimately they're not going to be relevant as a discovery response.

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MR. FLYNN: Only -- I just want to make sure there aren't any additional documents that were --

THE COURT: Are there any additional documents, Mr. Talarico?

MR. TALARICO: Judge, I have no idea if -- it's our position we complied completely. We filed our answers on June 1st. If the Court had -- I don't know if the Court remembers, you had ordered us, plaintiff and defendant, to talk up through June 14th to see if there were any issues. The only response I got from the defendants was an e-mail with one word. As I told you on June 14th, the only word was, Thank you. Now I am totally surprised, 73 days later, Judge, and I don't know what else -- I want time to respond in writing, Judge. This is --

THE COURT: I don't -- I don't want to do that.

MR. TALARICO: This has been difficult.

THE COURT: This is --

MR. FLYNN: Yes, it has, Judge.

THE COURT: So what is it you -- what is it you are looking for? Because I have a representation on the record -- and I'm assuming there's an affidavit of compliance.

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MR. TALARICO: There is.

THE COURT: Okay. Then -- and he says, I've given you everything.

MR. FLYNN: That's fine with respect to the production response. Now there's the interrogatory answer.

THE COURT: All right. Tell me -- we're moving on to the interrogatory.

MR. FLYNN: And again, this goes to the statute of limitations on a legal malpractice case. The plaintiff is claiming that he didn't discover it until after the 2 years --

THE COURT: Could you keep your voice up a little?

MR. FLYNN: Sure. Plaintiff is arguing for a tolling of the statute of limitations on a legal malpractice case. He was asked in Interrogatory No. 1, Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

His response -- his amended additional response discusses his pecuniary injury, that only addresses damages. With respect to the breach of

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the standard of care and how he discovered it, he simply says he knew that the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

THE COURT: Okay.

MR. FLYNN: That describes the date. It doesn't describe how he became aware of it, what Gooch told him. Now, again, I know your Honor is aware of the deposition testimony in this case regarding that December 16 time period. If the answer is that Dulberg doesn't remember what Mr. Gooch told him, if Gooch said simply, You have a case, that's fine. That's what they should say. But I've already taken his deposition. There are no specifics that explain to me why Mr. Gooch crystallized this breach of the standard of care on December 16. But if this is all they have, then that's what he should say, is that I don't remember what Mr. Gooch told me.

THE COURT: I mean, he's -- I think he's complied. I'm not sure --

MR. FLYNN: What is the breach of the standard of care?

THE COURT: I'm sorry?

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MR. FLYNN: And what is the breach of the standard of care? That's what I've asked in the interrogatory. They don't say.

THE COURT: Well, I think that -- all right. I guess that is -- my reading on it, it's implied it's a statute of limitations. But --

MR. FLYNN: No, the statute of limitations is the issue in this case.

THE COURT: All right. What is the --

MR. FLYNN: The underlying personal injury case --

THE COURT: What is the breach? Did Mr. Gooch advise him what the breach was?

MR. TALARICO: Judge, all that Mr. Dulberg recalls was relayed in the responses. There were no recordings that were going on. Nothing was done in writing. I'm not sure how I can possibly respond anymore, to give anymore.

THE COURT: I have a representation that this is all there is.

MR. FLYNN: That's satisfactory to me. As long as when I file my summary judgment motion there's not some new discovery discussion as to --

MR. TALARICO: Judge --

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MR. FLYNN: -- what the breach was and what --

MR. TALARICO: I'm sorry. I hate to interrupt. Judge?

THE COURT: Yeah.

MR. TALARICO: We -- again, we were -- our response, I believe is in total compliance with the Court order of June 6th and your instructions on that day from the court record. And I'd like to respond in writing to establish that we did that.

THE COURT: No. No. I mean, you're -- you only need to respond in writing if we're going to have a hearing. If you want to file a brief that -- just in the file, that's fine, but I think we have a resolution today and I don't want to spend more time reading briefs resolving an issue that's moot. So I think this is resolved. What else is outstanding?

MR. FLYNN: I think that does resolve -- the representation resolves both issues, so --

THE COURT: I have -- you have advised -- well, you've advised that's all there is, so I'm finding you in compliance.

MR. TALARICO: Thank you, your Honor.

THE COURT: Okay. Is there anything else we need to do?

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MR. FLYNN: I suppose with respect to the summary judgment motion that I anticipate, Judge, there was one document that was produced in order to avoid a second deposition of Mr. Dulberg to authenticate this document, which is a letter from Attorney Thompson -- I'm sorry -- Attorney Ferris -- that goes to the issue of the statute of limitations. If Mr. Talarico would stipulate to the authenticity of this March 4, 2015 letter on the record, I don't need to send a request to admit for --

THE COURT: Can you hear all that?

MR. TALARICO: I heard it, Judge, but I'm not familiar with that document. A request to admit would be welcome.

MR. FLYNN: Fair enough.

MR. TALARICO: Just so I can see what it is.

THE COURT: That's fine. We're back again on August 19th. Do you want to delay that date in light of the fact you may be issuing a request to admit?

MR. FLYNN: I think that would make sense.

THE COURT: All right. So let's strike August 19th and tell me when it makes sense to come

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back.

MR. FLYNN: I'll need at least 30 days, so --

THE COURT: 60 days?

MR. FLYNN: A 60-day date would be great.

THE COURT: How's September 17th? That's a Friday.

MR. TALARICO: Fine with me, Judge.

MR. FLYNN: That works for me.

THE COURT: All right. So that will be at 8:45 and then we'll see what you guys want to do when you come back. And are you withdrawing your motion or ...

MR. FLYNN: I think that --

THE COURT: Or do you want me expressly to find compliance based on representations in open court?

MR. FLYNN: I'm not requesting a hearing any longer. I think we resolved the matter. So yeah, I'll withdraw it.

THE COURT: All right. Motion's withdrawn. The record still stands. I did find that you were in compliance and we'll deal with the next step whenever it comes up. But I will see you September 17th and if you could draft the order.

MR. FLYNN: I will. Thank you, your Honor.

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THE COURT: All right. Thank you.

Mr. Talarico, anything else?

MR. TALARICO: No, Judge, thank you for your time.

THE COURT: All right. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, CRISTIN M. KELLY, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Cristin M. Kelly
Certified Shorthand Reporter
License No. 084-004529
Date: August 24, 2021

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** FILED ** Env: 21713475
McHenry County, Illinois
2017LA000377
Date: 3/3/2023 10:55 AM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

Instructions

Check the box to the right if your case involves parental responsibility or parenting time (custody/visitation rights) or relocation of a child.

Just below "Appeal to the Appellate Court of Illinois," enter the number of the appellate district that will hear the appeal and the county of the trial court.

If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that name. Below that, enter the names of the parties in the trial court, and check the correct boxes to show which party is filing the appeal ("appellant") and which party is responding to the appeal ("appellee").

To the far right, enter the trial court case number, the trial judge's name, and the Supreme Court Rule that allows the appellate court to hear the appeal.

☐ **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

APPEAL TO THE APPELLATE COURT OF ILLINOIS

SECOND **District**

from the Circuit Court of

McHenry **County**

In re

Paul R. Dulberg

Plaintiffs/Petitioners *(First, middle, last names)*

☑ **Appellants** ☐ **Appellees**

v.

Hans Mast and The Law Offices of Thomas J. Popovich, P.C.

Defendants/Respondents *(First, middle, last names)*

☐ **Appellants** ☑ **Appellees**

Trial Court Case No.:

17LA000377

Honorable

Joel D. Berg for S.J. only

Judge, Presiding

Supreme Court Rule:

303

NOTICE OF APPEAL (CIVIL)

In **1**, check the type of appeal.

For more information on choosing a type of appeal, see *How to File a Notice of Appeal.*

1. Type of Appeal:

☑ Appeal
☐ Interlocutory Appeal
☐ Joining Prior Appeal
☐ Separate Appeal
☐ Cross Appeal

In **2**, list the name of each person filing the appeal and check the proper box for each person.

2. Name of Each Person Appealing:

Name: Paul (*First*) R. (*Middle*) Dulberg (*Last*)

☑ Plaintiff-Appellant ☐ Petitioner-Appellant

☐ Defendant-Appellant ☐ Respondent-Appellant

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Name: _____
First *Middle* *Last*

☐ Plaintiff-Appellant ☐ Petitioner-Appellant

OR

☐ Defendant-Appellant ☐ Respondent-Appellant

In **3**, identify every order or judgment you want to appeal by listing the date the trial court entered it.

3. List the date of every order or judgment you want to appeal:

05/10/2018
Date

11/13/2018
Date

02/25/2019
Date

05/30/2019
Date

09/05/2019
Date

11/04/2019
Date

02/03/2020
Date

11/24/2020
Date

01/06/2021
Date

02/11//2021
Date

03/16/2021
Date

04/06/2021
Date

06/14/2021
Date

09/07/2021
Date

01/04/2022
Date

05/02/2022
Date

06/10/2022
Date

07/11/2022
Date

11/09/2022 (08:20 AM)
Date

11/09/2022 (08:27 AM)
Date

12/06/2022
Date

12/21/2022
Date

02/01/2023
Date

Received 03-03-2023 11:49 AM / Circuit Clerk Accepted on 03-03-2023 12:06 PM / Transaction #21713475 / Case #2017LA000377

4. State your relief:

In **4**, state what you want the appellate court to do. You may check as many boxes as apply.

☑ reverse the trial court's judgment *(change the judgment in favor of the other party into a judgment in your favor and* ☑ send the case back to the trial court for any hearings that are still required;

☐ vacate the trial court's judgment *(erase the judgment in favor of the other party)* and ☐ send the case back to the trial court for a new hearing and a new judgment;

☑ change the trial court's judgment to say: Defendants' Motion for Summary Judgment is Denied

☑ Order the trial court to: transfer this case to the first district (Cook County Law Division) for reassignment; order Defendants to answer the Discovery filed and served by Plaintiff's attorney Thomas W. Gooch;

☑ other: Judge Thomas Meyer should have self-recused because he knows the parties, was the Judge in the underlying matter 12 LA 178 and is friends with one of the Defendants. Therefore all orders should be reviewed; have Case Management Conferences and Case Management Orders; reopen F(1) discovery; Plaintiff's privileged discussions with his attorney Thomas W. Gooch after retention regarding when he knew that Defendants actions were malpractice should be removed from the record; find that Plaintiff's objections of "undue burden" to Defendants" Supplemental Requests should be ruled/treated the same as Defendants' discovery objections of undue burden; determine whether a hearing on Plaintiff's objections made at Plaintiff's deposition were valid; have all Court orders redesignated to match the enter date to the file date and to the hearing date; strike all motions instigated by the Court; all stipulations must be signed by the party making the stipulation; proposed order not agreed to by the Plaintiff should not have been sent to this Honorable Court and should not have been entered; Plaintiff, a Party with a Pro Se appearance previously filed, should have been allowed to hear and speak at the Zoom proceedings when his attorney was hospitalized; oral motions not filed or noticed should not be allowed; the Judge should not be allowed to make an oral motion and grant his own oral motion; depositions that violate (multiple) Supreme Court rules should be stricken; Zoom depositions with missing exhibits should be stricken, Zoom depositions where the officer authorized to administer oaths was never given all exhibits used should be stricken; Defendants' ex parte communication on November 9, 2022 between non-attorney Ms. Wang and Plaintiff's former attorney Julie C. Williams (formerly Julia C. Floyd) and any other ex parte communication between: this Honorable Court; Plaintiff's former attorneys and Defendants' former offices should be revealed; the Order entered on December 6, 2022 should be stricken and a corrected Order should replace it because: there was no order entered on November 11, 2022 (VETERANS DAY); allow the contemporaneous audio recording of Defendant Hans Mast deposition made by the officer authorized to administered oaths be entered in to the record as evidence for the purpose of proof that the Deposition Of Defendant Hans Mast contained numerous major violation of Supreme Court Rules ;strike the Zoom Deposition of Defendant Hans Mast completed in violation of numerous Supreme Court Rules without the waiver of said violation by the Parties; grant Plaintiff's motion to Depose Defendant Hans Mast; deny Defendants' Motion for Summary Judgment based upon the Zoom deposition of Defendant Hans Mast and disregarding the Law of the State of Illinois regarding the Statute of Limitation for Legal Malpractice and the requirement of pecuniary loss as determined by the Illinois Supreme Court in 2022 IL 126935 SUBURBAN REAL ESTATE SERVICES, INC., et al., Appellees, v. WILLIAM ROGER CARLSON JR. et al., Appellants; upon remand to consider Plaintiff's additional vicarious pecuniary losses stemming from Defendants erroneous settlement advice in the underlying case to release the homeowners for $5,000.00 (the McGuires in the underlying

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case

and grant any other relief that the court finds appropriate.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name. Fill in your address, telephone number, and email address, if you have one.	/s/ Paul R Dulberg *Your Signature*	4606 Hayden Ct. *Street Address*	
	Paul R Dulberg *Your Name*	McHenry, Illinois, 60051 *City, State, ZIP*	
	pdulberg@icloud.com *Email*	(847) 497-4250 *Telephone*	*Attorney # (if any)*
All appellants must sign this form. Have each additional appellant sign the form here and enter their complete name, address, telephone number, and email address, if they have one.	**Additional Appellant Signature** /s/ *Signature*	*Street Address*	
	Name	*City, State, ZIP*	
	Email	*Telephone*	*Attorney # (if any)*

GETTING COURT DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

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PROOF OF SERVICE ***(You must serve the other party and complete this section)***

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

In **1b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

1. I sent this document:
   a. To:
      Name: George (*First*) K. (*Middle*) Flynn (*Last*)
      Address: 200 S. Wacker Drive #2550 (*Street, Apt #*), Chicago (*City*), Illinois (*State*), 60606 (*ZIP*)
      Email address: gflynn@karballaw.com
   b. By:
      ☑ An approved electronic filing service provider (EFSP)
      ☐ Email *(not through an EFSP)*
      Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.
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         ☐ The party
         ☐ The party's family member who is 13 or older, at the party's residence
         ☐ The party's lawyer
         ☐ The party's lawyer's office
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In **c**, fill in the date and time that you sent the document.

   c. On: March 3, 2023 (*Date*)
      At: _____ (*Time*) ☐ a.m. ☐ p.m.

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      Name: _____ (*First*) (*Middle*) (*Last*)
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      Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.
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         ☐ The party
         ☐ The party's family member who is 13 or older, at the party's residence
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   c. On: _____ (*Date*)
      At: _____ (*Time*) ☐ a.m. ☐ p.m.

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☐ Mail or third-party carrier

c. On: _____
Date

At: _____ ☐ a.n ☐ p.m.
Time

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name.

I certify that everything in the Proof of Service is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
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6184530
Attorney # (if any)

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From: Paul Dulberg
4606 Hayden Ct.
McHenry, IL. 60051

To: Roona N. Shah
One Prudential Plaza
130 E. Randolph Dr., Ste. 1500
Chicago, IL 60601-6219
srenfroe@iardc.org

Date: November 20, 2023

Dear Ms. Roona N. Shah,

This reply is in response to the letter of Edward Clinton and Julia Williams dated November 1, 2023.

Since first filing ARDC Complaints against Edward X. Clinton and Julia C. Williams on July 27, 2023 we have submitted 7 more ARDC Complaints. To date we have submitted:

Edward X. Clinton No. 2023IN02517 (submitted on July 27, 2023)

Julia C. Williams No. 2023IN02518 (submitted on July 27, 2023)

Thomas J. Popovich No. 2023IN03135 (submitted on September 15, 2023)

Hans Mast No. 2023IN03136 (submitted on September 15, 2023)

Brad J. Balke (submitted on November 8, 2023)

Kelly J. Baudin (submitted on November 8, 2023)

William Randall Baudin II (submitted on November 8, 2023)

Thomas W. Gooch (submitted on November 8, 2023)

Sabina Walczyk (submitted on November 8, 2023)

The Complaints submitted November 8, 2023 have footnotes with hyperlinks to exhibits. The Complaints submitted on July 27, 2023 and September 15, 2023 do not have links to exhibits in the footnotes.

Since all these complaints are interrelated and since hyperlinks to exhibits help the reader considerably, we've also produced the following 5 documents that are regularly updated and have full hyperlink features:

Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation

Evidence of Fraud on the Court in 12LA178 During Balke Representation

Evidence of Fraud on the Court in 12LA178 During Baudins Representation

Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation

Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation

All 5 documents linked above have exhibits placed in a shared single folder. All exhibits are password protected. Please use the following to see hyperlinks and exhibits:

username: ardc5
password: _~5z{se(SKVN

If you need other usernames and passwords, please let us know.

We also use hyperlinks to exhibits in this letter so evidence is easy to view.

Dulberg is providing evidence that the accused attorneys act as a network. Dulberg's legal malpractice attorneys protected Dulberg's personal injury attorneys from being discovered committing fraud against Dulberg. They used a sophisticated system of document and information suppression against their own permanently disabled client. The legal malpractice attorneys shielded the PI attorneys from liability after the PI attorneys committed fraud.

If sued, the PI attorneys use the protection of the legal malpractice attorneys to defend themselves from Dulberg. The PI attorneys claim the 2 year statute of limitations has already passed. But during this same 2 years the PI attorneys were being protected by Dulberg's legal malpractice attorneys (who were actively suppressing documents and information while working against their own client Dulberg).

This is in fact what happened when Dulberg initiated a legal malpractice claim against Popovich and Mast (17LA377). It also happened when Dulberg initiated a legal malpractice claim against the Baudins (22L010905). In both cases defendants Popovich and Mast and the Baudin defendants moved to be dismissed since they claimed more than 2 years had passed since Dulberg "first knew" of any "injury". During those same 2 years they were being protected by Dulberg's own legal malpractice attorneys Gooch-Walczyk and Clinton-Williams who used a sophisticated system of document and information suppression against their permanently disabled client.

This is why what Clinton-Williams and Gooch-Walczyk did to Dulberg cannot be understood in its entirety without looking at what Popovich and Mast (and others) also did to Dulberg. Dulberg's own legal malpractice attorneys were protecting Popovich and Mast (and others) against Dulberg.

The ARDC Complaint against Popovich and Mast describes how Popovich and Mast:[1]

- Redirected medical lien liability from the Defendants to Plaintiff
- Forged documents and destroyed evidence (at least 15 examples)
- Corrupted the interrogatory and document production process to sabotage client's case and to benefit defendants (in collaboration with opposing attorneys)
- Suppressed information on mental health issues related to Dulberg's injury
- Corrupted the deposition process to sabotage client's case and to benefit defendants in collaboration with opposing attorneys (9 out of 10 depositions have no valid certification pages)
- Knew Defendant Gagnon effectively admitted to negligence for Dulberg's injury
- Knew Defendant Gagnon committed perjury
- Knew Defendant Carolyn McGuire committed perjury
- Committed settlement fraud
- Violated federal bankruptcy laws

1 All listed items are linked to supporting evidence on page 1 of 'ARDC Complaint Against Thomas J. Popovich and Hans Mast' and page 1 of Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation

The ARDC Complaint against Balke describes how Balke:[2]

- Contracted with Dulberg and not with the Bankruptcy Trustee (who had standing as plaintiff)
- Told Dulberg (about 11 weeks later) he would withdraw counsel if Dulberg does not settle with Allstate for $50,000
- Violated federal bankruptcy laws

The Baudins were retained by Dulberg after Dulberg fired Balke. The ARDC Complaint against the Baudins describes how the Baudins:[3]

- Contracted with Dulberg instead of with the Bankruptcy Trustee
- Knew or should have known Defendant Gagnon effectively admitted to negligence for Dulberg's injury as early as March, 2013
- Moved to cap the value of PI case 12LA178 (with defendants Allstate alone)
- Closed the deal with an upper cap of $300,000 (in violation of the automatic stay)
- Coerced Dulberg to agree and misinformed him of where the 'upper cap' came from
- Moved to contract with Bankruptcy Trustee only after capping value of 12LA178
- Misled Bankruptcy Judge that Dulberg wanted Binding Mediation (about 11 weeks after the deal was closed)

Additionally:

- Dulberg's signature was forged onto the ADR Binding Mediation Agreement
- Dulberg was coerced into signing Allstate Release

After these horrendous experiences with PI attorneys, Dulberg retained legal malpractice attorney Gooch (who was recommended by the Baudins). After firing Gooch-Walczyk Dulberg then retained legal malpractice attorneys Clinton-Williams.

- The legal malpractice attorneys Gooch-Walczyk and Clinton-Williams collaborated with opposing counsel to conceal from Dulberg what the personal injury attorneys did to Dulberg. The Baudins covered for Popovich, Mast and Balke.
- Legal malpractice attorneys Gooch-Walczyk then covered for Popovich, Mast, Balke, and the Baudins.
- Legal malpractice attorneys Clinton and Williams then covered for Popovich, Mast, Balke, the Baudins and Gooch-Walczyk.

It is a snowball of fraudulent concealment that keeps growing. For this reason it is not possible to fully understand what Popovich and Mast did (and how they get away with it) without understanding that Dulberg's retained legal malpractice attorneys Clinton-Williams and Gooch-

2 All listed items are linked to supporting evidence on page 1 of 'ARDC Complaint Against Brad J. Balke' and page 1 of Evidence of Fraud on the Court in 12LA178 During Balke Representation

3 All listed items are linked to supporting evidence on page 1 of 'ARDC Complaint Against Kelly N. Baudin and William Randall Baudin II' and page 1 of Evidence of Fraud on the Court in 12LA178 During Baudins Representation

Walczyk were covering for Popovich and Mast, Balke and the Baudins (Dulberg's former personal injury attorneys) and how they did it.

'ARDC Complaint against Edward X. Clinton and Julia C. Williams' describes how Clinton and Williams collaborated with opposing counsel to benefit the defendants and sabotage Dulberg's case by suppressing large numbers of documents and playing 'hoaxes' on Dulberg including:[4]

- Document dump hoax[5]:
  where an attorney dumps over 6000 documents on their permanently disabled client just before resigning as counsel. The large dump is designed to hide the fact that many of these documents were being released for the first time (because they were being suppressed until then).
- Repeating document hoax[6]:
  where an attorney hides documents behind thousands of pages of duplicated, useless and dizzying material. In this case the attorney uses nearly the exact same list of documents arranged in alphabetical order that were released about 14 months earlier and releases them again, also in the exact same alphabetical order, with new bates-stamps claiming they may be new documents but they "aren't sure". This is a great way to appear to give thousands of new pages of documents to opposing counsel without providing a single new document in reality.
- Email hoax[7]:
  where an attorney horrendously butchers their own client's emails repeatedly before having them bates-stamped and turned over to opposing counsel.
- Lawyer emails by date hoax[8]:
  In this hoax an attorney receives the same email collection they already turned over to opposing counsel (which the client organized by month and year only for his own reference). The attorney treats it as a new release of documents to opposing counsel. The emails are then butchered before being bates-stamped and released to opposing counsel as 'new documents'.

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4 All listed items are linked to supporting evidence on page 1 of 'ARDC Complaint against Edward X. Clinton and Julia C. Williams' and page 1 of Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation (The listed items are Chapter 2, Sections A though K in both documents)

5 Visual Aid 1 - Sources of bates order.png and paragraph 40 of 'ARDC Complaint against Edward X. Clinton and Julia C. Williams' and paragraph 40 of Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation

6 Visual Aid 10 - Duplicating long alphabetical list hoax.png and paragraph 48 of 'ARDC Complaint against Edward X. Clinton and Julia C. Williams' and paragraph 48 of Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation

7 Visual Aid 5 - Email hoax.png and paragraph 42 of 'ARDC Complaint against Edward X. Clinton and Julia C. Williams' and paragraph 46 of Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation

8 Visual Aid 6 - Lawyer Emails by date hoax.png and 'ARDC Complaint against Edward X. Clinton and Julia C. Williams', paragraph 42 and Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation paragraph 42

- Hiding key evidence hoax (Tilschner)[9]:
  This hoax directly targets and suppresses a key piece of evidence. Even though an attorney downloads 3 documents together with very similar names, somehow the key document is 'mistakenly' placed in the wrong folder and is never given to opposing counsel or bates-stamped at all. Then, somehow, one of the accompanying documents is copied, given a new name, and placed back with the group to appear to substitute for the 'misplaced' document.
- 17LA377 document insertion hoax[10]:
  This is where an attorney takes many documents from the Common Law Record of the current case (that don't need to be bates-stamped and turned over to opposing counsel) and separates them from the others, renames all of them, and then adds them (in alphabetical order) to the documents that the attorney will bates-stamp and turn over to opposing counsel. This is a way to pad your bates-stamped documents with hundreds of pages of useless documents to further confuse your permanently disabled client.

Clinton and Williams used a sophisticated system of document and information suppression against their permanently disabled client to:

- Conceal Dulberg's bankruptcy (from the 17LA377 Common Law Record and Reports of Proceedings)
- Suppress emails from Saul Ferris
- Suppress key evidence (Tilschner v Spangler certified slip ruling)
- Suppress large numbers of emails from Brad Balke
- Collaborate with opposing attorney to flood Dulberg with over 6,000 documents just before Clinton-Williams withdrew as Dulberg's counsel
- Suppress all information on what the Baudins did to Dulberg
- Suppress evidence that Defendant Gagnon effectively admitted negligence for Dulberg's injury as early as March, 2013.
- Collaborate with opposing counsel to suppress Barch documents before Dulberg's deposition
- Collaborate with opposing counsel to weaken verification pages of discovery production
- Collaborate with opposing counsel during the deposition of Hans Mast and after

In addition, the ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk describes how Gooch-Walczyk and Clinton-Williams 'teamed-up' to:[11]

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9 Visual Aid 4 - Tilschner hoax.png and Chapter 2 Section C and K of 'ARDC Complaint against Edward X. Clinton and Julia C. Williams' and same sections in Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation

10 Visual Aid 3 - 377 document insertion hoax.png and paragraph 9 of 'ARDC Complaint against Edward X. Clinton and Julia C. Williams' and paragraph 9 of Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation

11 All listed items are linked to supporting evidence on page 1 of 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', and page 1 of Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation. (They are "TEAM-WORK" Examples 1 through 5)

- Conceal key evidence in collaboration with each other (Tilschner v Spangler certified slip ruling)
- Conceal admission of negligence of Defendant Gagnon for Dulberg's injury in underlying case 12LA178 in collaboration with each other
- Conceal Bankruptcy and Violations of Federal Bankruptcy Laws (automatic stay, loss of standing to pursue claim, capping value of assets in BK estate, etc) in collaboration with each other
- Conceal true sources of $300,000 upper cap on the value of the PI claim in collaboration with each other
- Intentionally confuse Statute of Limitations toll date, date of "injury", and placing Dulberg's privileged attorney-client communications at issue in collaboration with each other

Duhlberg hoax[12] shows a common 'inside joke' of mocking Dulberg by referring to him as 'Duh'-lberg. The 'inside joke' began with Popovich-Mast and was continued by legal malpractice attorneys Gooch-Walczyk and Clinton-Williams. A court reporter also shared the inside joke[13] by mocking Dulberg when naming a court document.

What Popovich and Mast did to Dulberg has to be looked at to fully understand what Clinton-Williams and Gooch-Walczyk did to Dulberg. The malpractice attorneys were intentionally deceiving Dulberg to hide from Dulberg what the PI attorneys did to him. The legal malpractice attorneys also set up conditions which allowed the defendants to claim Dulberg did not file a complaint within 2 years of when he "knew" or "should have known" of any "injury" done to him by the PI attorneys. They even shared the same inside jokes, both referring to their permanently disabled client as 'Duhlberg'. The PI attorneys then claimed it was 'too late' for Dulberg to file a lawsuit since he "first knew" or "should have known" of a possible "injury" more than 2 years earlier (while the legal malpractice attorneys hid from Dulberg all the acts of fraud). This is how the network is intentionally designed to work: The legal malpractice attorneys help set up a 2 year statute of limitations Summary Judgment 'escape hatch' for the Defendants so that any cases against them will be dismissed.

The overall methods of how Dulberg's legal malpractice attorneys worked together to sabotage Dulberg's legal malpractice case 17LA377 against Popovich and Mast can also be seen in a series of 9 tables.

Table 1 shows[14] 4 different efforts that Popovich, Mast, Balke and the Baudins made to place an 'upper cap' on the value of Dulberg's PI case 12LA178. Dulberg reacted to the first effort by filing for bankruptcy. The next 3 attempts were made after Dulberg declared bankruptcy and in

12 Visual Aid 11 - Mocking client.png Gooch once again referred to his permanently disabled client as 'Duhlberg' in an angry letter Gooch sent to Dulberg (see 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', paragraph 93 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation paragraph 93)

13 Group Exhibit 42_17LA377 purchased by Dulberg/Reports of Proceedings_Folders-Year-Month-Day-Case_Original file names/2018-11-13_17LA377_Duhlberg/

14 'ARDC Complaint Against Kelly N. Baudin and William Randall Baudin II', page 22 and Evidence of Fraud on the Court in 12LA178 During Baudins Representation page 22

violation of the automatic stay and without informing the bankruptcy trustee. The 4th and final attempt place an 'upper cap' on the value of PI case 12LA178 was done successfully by the Baudins and Defendants Allstate, acting alone on or before August 10, 2016. Joseph Olsen, who first received permission to retain the Baudins about 11 weeks later, wasn't even appointed the bankruptcy trustee until August 31, 2016.

Table 2 shows[15] strategies and methods of 5 law firms retained by Dulberg. All successive attorneys to the same (fully disabled) client used the same overall strategy: To intentionally weaken or sabotage their own client's case.

All three personal injury attorneys retained by Dulberg acted in violation of the automatic stay. They continued to appear in the 22nd Judicial Circuit Court (which operated for approximately 25 months in violation of the automatic stay) claiming to represent Dulberg (who had no standing as plaintiff). All 3 PI attorneys made efforts to place a cap on the remaining case without having any authority from the Bankruptcy Court to do so. Both legal malpractice attorneys suppressed all information of how all 3 PI law firms violated federal bankruptcy laws from Dulberg and from the complaints.

All five law firms (3 personal injury law firms and 2 legal malpractice law firms) knew or could easily have discovered that personal injury defendant (who was operating the chainsaw that injured Dulberg) Gagnon effectively admitted negligence for Dulberg's injury as early as March, 2013. None of the 5 law firms ever informed Dulberg of this. The original defendant and operator of the chainsaw, Gagnon, admitted to being negligent:

About 10 months before Dulberg was coerced into settling with the owners of the property (the McGuire's) on which the accident occurred and for whom Gagnon was working.

About 21 months before Dulberg declared bankruptcy.

About 39 months before any binding mediation agreement with Gagnon was mentioned.

About 40 months before any cap was placed on any binding mediation award from Gagnon.

There was no reason for any of these activities to take place if the defendant who operated the chainsaw already admitted to being negligent.

Table 3 shows[16] 5 incorrect versions of the origin of the $300,000 'upper cap' placed on the value of PI case 12LA178 given by Dulberg's own attorneys. None of the 5 versions are what Dulberg told his attorneys. In addition, the true origin of the 'upper cap' is clearly documented in 17LA377 Reports of Proceedings from June 13, 2016 to August 10, 2016. The 'upper cap' was placed on the value of 17LA377 by the Baudins and Defendants Allstate acting alone and over 7 weeks before the Baudins were authorized by the Bankruptcy Court to act on behalf of the bankruptcy estate. The Baudins and Defendants Allstate acted alone to set a $300,000 'upper cap' on the value of PI case 12LA178 about 3 weeks before bankruptcy trustee Olsen was appointed as bankruptcy trustee.

15 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 3 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation, page 3

16 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 36 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 36

Table 4A shows[17] 3 incorrect versions of when Dulberg "first knew" of an "injury" given by Dulberg's counsel. Table 4B shows Table 4A in a simpler form.[18] Evidence shows that Gooch was already setting Dulberg up to lose on a 2 year statute of limitations argument during their first meeting together.[19]

Tables 3, 4A and 4B taken together show the methods used by Dulberg's own legal malpractice attorneys to attempt to discredit Dulberg and sabotage his case against Popovich and Mast. They simply made multiple contradictory and untrue statements in the 17LA377 Common Law Record and in the Records of Proceedings on behalf of Dulberg without his permission or knowledge. Tables 3, 4A and 4B show the base logic Gooch-Walczyk and Clinton-Williams used to set Dulberg up to fail.

The logic used in Tables 3, 4A and 4B led to the claims of statute of limitations toll dates shown in Tables 5A and 5B. Table 5A shows[20] toll dates given by opposing counsel Flynn. Table 5B shows[21] toll dates given by Dulberg's own attorneys Gooch-Walczyk and Clinton-Williams.

Table 6 shows[22] how key elements of opposing counsel Flynn's Summary Judgment arguments in 2022 were set up with the help of Dulberg's own legal malpractice attorneys since 2016. Flynn's Summary Judgment argument is broken down into 29 key elements. Elements are shown to be directly related to something Dulberg's own legal malpractice attorneys did to Dulberg. Table 6 shows how Dulberg was set up to fail by his own legal malpractice attorneys from the first day Dulberg met Gooch.

Table 7 shows[23] how current Illinois law was applied by Officers of the Court in 17LA377 to Dulberg's case. The key statements made in defense of granting Summary Judgment to Defendants Popovich and Mast are gathered and compared.

Table 8 shows[24] patterns of collaboration between Gooch-Walczyk and Clinton-Williams on numerous issues. Dulberg retained Clinton-Williams almost 2 years after first retaining Gooch. It was not possible for Clinton-Williams to successfully suppress key documents unless Gooch-Walczyk suppressed the same key documents before them. They both did so to benefit Popovich and Mast among others.

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17 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 41 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 41

18 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 42 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 42

19 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', from first paragraph and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation from first paragraph

20 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 65 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 65

21 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 67 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 67

22 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 69 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 69

23 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 84 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 84

24 'ARDC Complaint against Edward X. Clinton and Julia C. Williams', page 139 and Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation page 139

Table 9 shows[25] 3 different cases of fraud on the court committed at Dulberg's expense. The first was during personal injury case 12LA178. When Dulberg was pressured to settle the remainder of the case for a low amount Dulberg reacted by declaring bankruptcy which opened a federal bankruptcy case in addition to PI case 12LA178. When Dulberg was later forced to accept an 'upper cap' of $300,000 on the value of the PI case Dulberg reacted by initiating legal malpractice claim 17LA377 against Popovich and Mast.

In addition to committing fraud against Dulberg, the named attorneys participated in a series of frauds on the judicial mechanism of the court.[26]

> "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."[27]

The 7th Circuit further stated:

> "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."[28]

Fraud on the court is a fraud:

> "directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents . . . . It is thus fraud where . . . the impartial functions of the court have been directly corrupted."[29]

Interestingly, the term "fraud on the court" is only mentioned in Rule 60(d)(3) of the Federal Rules of Civil Procedure, yet courts have also used this doctrine to order dismissal or default under other rules where a litigant has stooped to the level of fraud on the court.[30]

Clinton and Williams claimed: *"During the time the Clinton Law Firm represented Paul Dulberg, they did so with the competence and diligence required of attorneys in Illinois.... It betrays common sense that a law firm, as Mr. Dulberg alleges, would intentionally jeopardize its own client's cause of action, especially when its own recovery was contingent upon any recovery it obtains on behalf of its client."*

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25 'ARDC Complaint against Edward X. Clinton and Julia C. Williams', page 144 and Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation page 144

26 Fraud on the Court quotes from "Fraud on the Court and Abusive Discovery" (2016) David R. Hague, St. Mary's University School of Law

27 Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, Â¶ 60.23.

28 Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, Â¶ 60.23

29 (Robinson v. Audi Aktiengesellschaft, 56 F.3d 1259, 1266 (10th Cir. 1995) (emphasis added) (citation omitted))

30 See, e.g., Combs v. Rockwell Int'l Corp., 927 F.2d 486, 488 (9th Cir. 1991) (relying on Rule 11 where counsel made thirty-six changes on a deposition errata sheet after the client advised that the transcript was accurate and the testimony was correct); Brockton Sav. Bank v. Peat, Marwick, Mitchell & Co., 771 F.2d 5, 11–12 (1st Cir. 1985) (affirming district court's entry of default judgment under court's inherent powers in response to defendant's abusive litigation practices); Wyle v. R.J. Reynolds Indus., Inc., 709 F.2d 585, 589 (9th Cir. 1983) ("[C]ourts have inherent power to dismiss an action when a party has willfully de- ceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice."); Eppes v. Snowden, 656 F. Supp. 1267, 1279 (E.D. Ky. 1986) (finding that where fraud is committed upon the court, the court's power to dismiss is inherent "to protect the integrity of its proceedings").

We have provided evidence of 5 consecutive law firms retained by Dulberg doing just that, the Clinton Law Firm being the 5th in a row. We have provided detailed evidence of how Clinton and Williams suppressed Dulberg's documents step by step. After having been the targets of these attacks for over 1 decade, we've found the process is not that difficult to understand. What follows is a simple 13 step approach a legal malpractice attorney can take to sabotage their own client's case that is simple enough for an average person to understand. (This approach matches point for point what Dulberg experienced with Gooch-Walczyk and Clinton-Williams.)

1) **bury key evidence**:
   This is the legal equivalent of 'crippling' ones own client.

2) **bury fraud**:
   Bury all evidence of defendant committing fraud on your client.

3) **prepare escape hatch**:
   A 2 year SoL dismissal is pre-planned into the system. Dulberg was being intentionally set up for it during his first meeting with Gooch.

4) **choke client**:
   Not all documents are suppressed equally. The documents sent directly from the client to the legal malpractice attorney are primary targets of suppression.

5) **give some, keep some, ghost some:**
   This is a sophisticated system of document and information suppression described in Chapter `1 of 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams'. [31]

6) **mince emails:**
   Methods used against Dulberg are described from paragraph 42 of 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams'.

7) **bury troublesome issues**:
   How to do it: Make multiple contradictory and untrue statements on the issues on behalf of ones client in the Common Law Record and in Reports of Proceedings. These statements are intended as gifts for the defendants. They were created by the legal malpractice attorneys but they are credited to Dulberg (as if the attorney received the information from Dulberg). The defense will use the multiple statements later to claim your client is 'being evasive' and 'changing his story' by 'fiddling' with his answers. An excellent example is shown in Table 3. Other excellent examples are Table 10 (page 12) and Table 11 (page 14).

8) **target depositions:**
   From our experience depositions are a prime target of an attorney that wants to destroy your case. In the underlying PI case 12LA178 there are no valid certification page for 9 out of 10 depositions. Evidence of forgery exists in many of the alleged certification pages. The strange deposition of Mast is described in 'ARDC Complaint Against Edward X Clinton and Julia C. Williams', Chapter 2, Section 2-K, in which key evidence disappears. The history of the key evidence which disappeared is described in Chapter 2, Section 2-C of the same complaint and Table 10 (page 12).

31 Also in Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation Chapter 1

9) **strip case law**:

when dealing with client misinterpret and misrepresent case law. An example is when Mast used Tilschner v Spangler as the reason the McGuires were not liable for Gagnon's injury during a meeting with Dulberg and Thomas Kost on November 20, 2023. Another example: The relevant case law in 17LA377 which applies to Dulberg's case (***Suburban*** and related cases) was never brought up to Dulberg by Gooch-Walczyk or Clinton-Williams.

10) **starve and flood**:

Just before quitting as counsel, dump a waterfall of documents on your permanently disabled client. Hide most of the documents you have been suppressing until then near the bottom of the pile. Continue to suppress certain key documents and never give them a bates-stamp or turn them over to opposing counsel. Overload your client and head to the door. Described in 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams', Chapter 1, beginning on paragraph 35.[32]

11) **set up accused**:

Described in detail in Table 6 [33]

12) **throw privilege under a bus**:

This is demonstrated step by step in 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk' from paragraph 1.[34] Give the defense grounds to demand your client's privileged attorney-client communications. This is done by setting the client up to make the claim that they "first knew" of an "injury" through communications with their legal malpractice attorney. (This is what Gooch did to Dulberg at their first meeting together.)

13) **run for cover stories**:

Stellar examples of this are claims made by Clinton and Williams in the letter of November 1, 2023 and examined in this reply.

This is a basic 13 step outline which matches (step by step) what Gooch and Walczyk and later Clinton and Williams actually did to Dulberg.

Complications in Dulberg's case:

What if the targeted client declares bankruptcy during his PI case as a natural reaction to loosing all financial hope? Federal bankruptcy laws add a number of complications to finishing off your client. This is what happened to Dulberg during PI case 12LA178.

A way to solve it:

a) Ignore bankruptcy court and bankruptcy court trustee.

b) Make repeated efforts to place an 'upper cap' on the value of PI case 12LA178.

c) Do not inform the bankruptcy trustee until an 'upper cap' is already in place and treated as

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32 Also in Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation Chapter 1, beginning on paragraph 35

33 ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 69 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 69

34 Also in Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation from paragraph 1

a ‘done deal’.

d) Hide the origins of the ‘upper cap’ from your client.

This is what happened to Dulberg point by point. In short, ***ram it through anyway***.

Clinton and Williams claimed: “*Mr. Dulberg subsequently sued his attorneys in the personal injury matter, Thomas Popovich and Hans Mast, alleging that they should not have recommended settlement and claimed that the settlement amount was insufficient.”*

Dulbergs emails with Clinton and Williams and email attachments are available at these links:

Emails_Clinton Firm-Dulberg

email attachments

Table 10 below shows the number of times Dulberg informed his legal malpractice attorneys about the importance of Tilschner v Spangler with links to evidence:

When Informed		**How Informed**
2016-12-16	first meeting with Gooch	document handed Gooch
2018-10-01	letter to Gooch (that led to Gooch firing)	email linked (on page 30) attached document: second_amended_complaint_comments.txt
2018-10-10	preparing for first meeting with Clinton-Williams	email linked attached folder: Duberg Complaint document: second_amended_complaint_comments.txt
2018-10-12	first meeting with Clinton-Williams	Text document and problems with Gooch were explained at meeting[35]
2018-12-04	preparing Second Amended Complaint	email linked attached documents: Working.pdf comment on complaint.txt
2018-12-05	preparing Second Amended Complaint	email linked attached document: comments on Dulberg Second Amended Complaint REDLINED 2018 Dec .txt
2019-03-18	preparing discovery documents	email linked document: IndependantContractor-CaseLaw1_Mast.pdf
2019-07-08	inspecting defendants documents	email linked attached folder: To Julia documents: questions_for_mast.txt timeline_of_mcguire_settlement.txt
2019-07-22	inspecting defendants documents	email linked attached folder: To Julia documents: questions_for_mast.txt timeline_of_mcguire_settlement.txt
2019-11-19	updating information	email linked attached document: 2109-11-19_updated_timeline_of_mcguire_settlement.txt

35 On October 19, 2018 PDF files were created by Clinton or Williams in “Dulberg Master File” concerning the Tilschner case: Shown in Visual Aid 4 - Tilschner hoax.png

When Informed		How Informed
2020-02-06	preparing for Mast deposition	email linked attached documents: questions_for_mast.txt timeline_of_mcguire_settlement.txt
2020-02-08	preparing for Mast deposition	email linked attached documents: 2109-11-19_updated_timeline_of_mcguire_settlement.txt questions_for_mast.txt
2020-06-18	preparing for Mast deposition	email linked attached document: evidence_list.txt questions_for_mast.txt
2020-06-24	preparing for Mast deposition	email sent at 1:56AM linked attached documents: 2020-06-23_updated_timeline_of_mcguire_settlement.txt email sent at 10:05AM linked attached documents: 2020-06-23_updated_timeline_of_mcguire_settlement.txt
2020-06-24	meeting before Mast deposition	Clinton and Williams were told by Thomas Kost of the importance of Tilschner v Spangler in proving 'intentional tort' and 'fraud' during the meeting

Table 10 demonstrates that Clinton and Williams actively blocked what Dulberg told them, suppressed documents and information, and substituted whatever they wanted Dulberg to 'allege'. They then claimed it came from Dulberg. When Clinton and Williams claim that "Dulberg alleges...", what follows is ***whatever they (and Gooch-Walczyk) wished to force on Dulberg***.

Clinton and Williams claimed: "*He further alleged that Messrs. Popovich and Mast failed to properly investigate his claims, failed to apply relevant case law, and failed to determine an appropriate strategy for recovery."*

After reviewing the opposing party's May 29, 2019 document disclosure for the first time, on June 8, 2019 Dulberg sent this folder to Williams: To Julia
The folder contains a file called _READ_ME.txt which states:

> "The opposing counsel has released one "smoking gun" document that we've never seen before. It is (pop 192). Paul never gave Mast authorization to make this offer. We have ample evidence that Paul never authorized the offer made in (pop 192) and he knew nothing about it until seeing it last week. Note that it is not in the box of files we gave to you. It is not in the box of files that Mast gave to Paul when Mast withdrew from counsel. Also, the Baudin law firm and the Gooch law firm never saw this document."
>
> "Since we were never able to see (pop 192) until now, we never understood the details of how Mast tricked Paul into such a small settlement. The fact that Mast initiated the settlement process through (pop 192) without Paul's knowledge or permission is proof that this case is about more than Mast's negligence. It is about willful intent or malicious intent to deceive his client.
>
> Of course you will need convincing proof that (pop 192) was initiated without Paul's knowledge. We have that proof. As I fill in the timeline more and more, the evidence will be stronger and stronger."

Dulberg called for a meeting on July 8, 2019 (in the same email) to discuss this new

development. Dulberg was ignored for almost 1 year. Clinton and Williams finally met with Dulberg and Thomas Kost by phone on June 24, 2020 (one day before the deposition of Mast).

Table 11 below shows the number of times Dulberg informed his legal malpractice attorneys about "overwhelming evidence" of intentional tort or fraud since first discovering evidence in the first week of July, 2019:

When Informed		**How Informed**
2019-07-08	after first receiving defendants document disclosure	email linked attached folder: To Julia documents: _READ_ME.txt timeline_of_mcguire_settlement.txt questions_for_mast.txt
2019-07-22	reminding Williams	email linked attached folder: To Julia documents: _READ_ME.txt timeline_of_mcguire_settlement.txt questions_for_mast.txt
2019-11-19	reminding Williams again	email linked attached document: 2109-11-19_updated_timeline_of_mcguire_settlement.txt
2020-02-06	preparing for Mast deposition	email linked attached documents: questions_for_mast.txt timeline_of_mcguire_settlement.txt
2020-02-08	preparing for Mast deposition	email linked attached documents: 2109-11-19_updated_timeline_of_mcguire_settlement.txt questions_for_mast.txt
2020-06-18	preparing for Mast deposition	email linked attached document: evidence_list.txt questions_for_mast.txt
2020-06-24	preparing for Mast deposition	email sent at 1:56AM linked attached documents: 2020-06-23_updated_timeline_of_mcguire_settlement.txt email sent at 10:05AM linked attached documents: 2020-06-23_updated_timeline_of_mcguire_settlement.txt
2020-06-24	meeting before Mast deposition	At meeting Thomas Kost (after waiting about 1 year for meeting) explained to Clinton and Williams that there is "overwhelming evidence" that Popovich and Mast committed fraud and intentional tort.

Dulberg was alleging Popovich and Mast intentionally committed fraud from July 8, 2019 onward to Clinton and Williams (while claiming to have a 'smoking gun' document he found that proved it). Dulberg tried to set up a meeting with Clinton and Williams for about 1 year to discuss the consequences of the new discovery of fraud on the case.

At the June 24, 2020 meeting Thomas Kost (after waiting about 1 year to do so) explained to Clinton and Williams that there is "overwhelming evidence" that Mast and Popovich committed intentional tort and fraud. Thomas Kost explained that the 6 points listed in the document evidence_list.txt provides "overwhelming evidence" that Mast and Popovich committed intentional tort and fraud. Clinton made no comment after Thomas Kost explained this.

This information was suppressed and ignored by Clinton and Williams since July 8, 2019. They "choked the client" to "bury fraud" or they would have lost the 2 year SoL 'escape hatch' for defendants Popovich and Mast. What they did can be understood as: **choke client** to **bury key**

evidence, **bury fraud**, and **set up escape hatch**.

Clinton and Williams claimed: "*Mr. Dulberg's settled his claim with the McGuires for $5,000, and was awarded a gross amount of $660,000 in his claim against Mr. Gagnon after binding mediation in December 2016."*

Clinton and Williams claimed: "*Mr. Dulberg collected $300,000 from the insurance company and was unable to collect from Mr. Gagnon personally."*

Table 3 shows[36] that this statement by Clinton and Williams is the 5th contradictory and incorrect statement made by Dulberg's legal malpractice attorneys on behalf of Dulberg on the subject of the $300,000 'upper cap' that was plaed on the value of PI case 12LA178. None of the 5 statements in Table 3 were made by Dulberg. All 5 statements were made by Dulberg's attorneys. None of the 5 statements are accurate. They were made to set Dulberg up. Court records (12LA178 ROP from June 13, 2016 to August 10, 2016) unambiguously prove **who** placed an 'upper cap' on the value of 12LA178, **when** they did it and **where** they did it. The evidence was easily available to both Gooch-Walczyk and Clinton-Williams the entire time. This information was concealed from Dulberg by his own attorneys. Instead, they blamed Dulberg for the 'upper cap' or ignored it (which protected the Baudins and Allstate).

a) **Who** placed a $300,000 upper cap on the value of the personal injury case (***The Baudins and Allstate alone***)

b) **When** the agreement was made (***On or before August 10, 2016 in violation of the automatic stay***)

c) **Where** the agreement was made (***In the 22nd Judicial Circuit Court***)

This is then blamed on Dulberg or ignored. They are then called 'claims' of Dulberg. ('**bury troublesome issues**')

Clinton and Williams claimed: "*Mr. Dulberg retained Thomas Gooch of The Gooch Firm, who filed on behalf of Mr. Dulberg the initial complaint for legal malpractice on November 28, 2017 (Exhibit 2), followed by a first amended complaint. (Exhibit 3) ... The Clinton Law Firm represented Paul Dulberg in a legal malpractice claim from November 8, 2018, to September 10, 2020, in a case then-pending in the Circuit Court for the 22 nd Judicial Circuit, McHenry County. The matter is docketed as Dulberg v. the Law Office of Popovich, P.C. and Hans Mast, 2017 LA 377."*

In all 3 filings of a Complaint (Complaint at Law by Gooch-Walczyk, the Amended Complaint by Gooch-Walczyk, and the Second amended Complaint by Clinton-Williams) only 2 defendants were named:

Hans Mast

The Law Office of Thomas J. Popovich

Thomas J. Popovich was never named as a defendant by either Gooch-Walczyk or Clinton-

36 ARDC Complaint against Thomas W.Gooch and Sabina Walczyk page 35-36 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 35-36

Williams. The Baudins were never named or mentioned by name in any Complaint. Balke was never named or mentioned by name in any Complaint. They were protected.

Clinton and Williams claimed: "*At the time of CLF's involvement, the legal malpractice matter was still in discovery, and much of CLF's efforts during its representation of Mr. Dulberg was focused on discovery: it issued and responded to written discovery requests, took and defended depositions of fact witnesses, and address issues concerning privilege."*

How Clinton and Williams conducted discovery is documented in detail in Chapter 1 and Chapter 2, Sections A through L of 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams'.

Clinton and Williams claimed: "*The defendants' primary defense was that Mr. Dulberg's legal malpractice claims were barred by the applicable two-year statute of limitations."*

This is the 'escape hatch' which Dulberg's legal malpractice attorneys gave the defendants as a gift and which Gooch set up since his first meeting with Dulberg on December 16, 2016. When Dulberg raised the issue of Intentional Tort and Fraud on July 8, 2019 onward, Clinton and Williams ignored and suppressed it to keep this escape hatch open ('**bury fraud**').

Clinton and Williams claimed: "*As such, the issue of when Mr. Dulberg discovered his claims became relevant in the litigation. Mr. Dulberg claimed that he did not discover the injury until consulting with Mr. Gooch in December 2016."*

This is what Gooch told Dulberg at their first meeting. It is a statement that has been attributed to Dulberg and blamed on Dulberg ever since (from December 16, 2016 to the letter of November 1, 2023 by Clinton and Williams to the ARDC).

Tables 4A and 4B show Gooch-Walczyk and Clinton-Williams attributed the statement Gooch made to Dulberg on December 16, 2016 to Dulberg himself. The statement was first made by Gooch the legal malpractice attorney with authority and an air of certainty to the client during their first meeting together. The statement was later transferred to the client and blamed on the client himself .

Gooch asserted the statement, not Dulberg. Gooch informed Dulberg that Gooch is considered an expert on such matters and their first meeting together is when the statute of limitations is tolled. This was later changed to 'Dulberg's claim'.

Does the Clinton and Williams statement above pass a basic reality check?

Gooch is a legal malpractice attorney with over 20 years experience. Clinton is a legal malpractice attorney with over 20 years experience. Yet both imply that it was Dulberg that unilaterally decided that the toll starts at his first meeting with Gooch. Some reality checks:

- Did Gooch have any theory of when the statute of limitations begins to toll? What was it?
- How did Dulberg come up with the idea that the statute of limitations begins to toll from his first meeting with Gooch? How and when did the idea first enter his head?
- After more than 20 years of experience as a legal malpractice attorney in Illinois, where did Gooch get the idea that the statute of limitations begins to toll when a client has their

first meeting with a legal malpractice attorney?

- Does Gooch have a history using the same theory with other clients?
- Wouldn't Gooch already know that this claim puts Dulberg's attorney-client privileged communication with him at issue?
- Has Gooch put the attorney-client privileged communication of other clients at issue using the same theory?
- If so, why did he do it again?
- If not, why is this the first time in his career he encountered this situation?

Clinton-Williams were aware that Gooch set up Dulberg with the claim of "first knowing" of an "injury" during Dulberg's first meeting with Gooch on December 16, 2016. Clinton-Williams attributed the claim to Dulberg personally. This is how the game is played.

Clinton and Williams claimed: "*Thus, his communications with Mr. Gooch became relevant to the litigation."*

Clinton and Williams state this in a way that gives the appearance this was Dulberg's fault. Gooch set Dulberg up on December 16, 2016. Years later both Clinton and opposing counsel Flynn use the original set-up as an alibi for their own respective claims and as a way to imply that Dulberg is to blame. This is true teamwork in action: Both of Dulberg's legal malpractice attorneys working seamlessly with opposing counsel Flynn (all effectively in agreement) to benefit Popovich and Mast at Dulberg's expense.

Clinton and Williams claimed: "*CLF was concerned about preserving confidentiality and work product privileges surrounding the strategies that were discussed prior to CLF's involvement in the case, and asserted those privileges on behalf of Mr. Dulberg during his deposition."*

Dulberg's deposition was on February 19, 2020. Clinton and Williams resigned on July 27, 2020. Clinton and Williams did no discernible work related to Gooch emails from the day of Dulberg's deposition until resigning as counsel.

On July 29, 2020 at 1:56 PM, 2 days after Clinton and Williams sent a letter of resignation to Dulberg, Dulberg sent an email to Ed Clinton and Julia Williams with the subject "Need clarification on outstanding issues before your departure" stating:[37]

> "... Outstanding questions on open issues for Clinton firm before departure:
>
> ...
>
> 2. What happened with the objections raised during Dulberg's deposition when Dulberg was questioned about conversations with Dulberg's former counsel Gooch? Did you get a ruling or does that still need to be argued before judge Meyer? ..."

Williams answered:

> "... There has been no motion practice on the issue and thus, there is no ruling. Your future counsel will need to bring that before the Judge at some point. ..."[38]

37 Exhibit 138_Need clarification on outstanding issues before your departure.pdf (page 1)
38 Exhibit 138_Need clarification on outstanding issues before your departure.pdf (page 2)

Dulberg also asked:

> "... 3. Similar to the last question, Have the objections in the Mast deposition been worked out or ruled on by judge Meyer? ..."

Williams answered:

> "... There has been no motion practice on the issue and thus, there is no ruling. Your future counsel will need to bring that before the Judge at some point. ..."

They did no work on the issue and resigned, leaving their permanently disabled client to take care of it.

This once again demonstrates why it is not possible to understand what Clinton and Williams did to Dulberg without also understanding what Gooch and Walczyk did to Dulberg. Gooch and Walczyk provide cover for Clinton and Williams. Clinton and Williams provide cover for Gooch and Walczyk. They hide behind each other.

Clinton and Williams claimed: "*On August 18, 2020, CLF filed its motion to withdraw from the legal malpractice matter. On September 10, 2020, the court granted CLF's motion to withdraw (Exhibit 6), and its representation of Mr. Dulberg reached a conclusion."*

The first evidence[39] of withdrawal was on June 19, 2020 (6 days before the deposition of Hans Mast).

A draft withdrawal letter dated July 2, 2023 is in the electronic case file Clinton and Williams gave to Dulberg and Dulberg's new attorney.

On July 10, 2020 Williams turned over more than 6000 newly bates-stamped documents to Dulberg and to opposing counsel.

The evidence demonstrates Clinton and Williams helped set up the 'escape hatch' for Popovich and Mast to be dismissed from the case and then Clinton and Williams resigned.

Clinton and Williams claimed: "*CLF chose to withdraw after reassessing the merits of Mr. Dulberg's claim and the defenses raised by the defendants."*

What Clinton calls "Mr Dulberg's claim" is whatever they want to state Dulberg claimed, as is demonstrated in Tables 10 and 11. What Clinton calls "Mr Dulberg's claim" is also listed in Tables 4A and 4B. None of the statements in Table 4A or Table 4B were made by Dulberg. They were all made by Gooch-Walczyk and Clinton-Williams. They were made to set Dulberg up. They are then called 'claims' of Dulberg.

What Clinton calls "Mr Dulberg's claim" is also listed in Table 3. None of the 5 statements in Table 3 were made by Dulberg. All 5 statements were made by Dulberg's legal malpractice attorneys. None of the 5 statements are accurate. They were made to set Dulberg up. Court records (12LA178 ROP from June 13, 2016 to August 10, 2016) unambiguously prove **who** placed an 'upper cap' on the value of 12LA178, **when** they did it and **where** they did it. This is

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39 'ARDC Complaint Against Julia C. Williams and Edward X. Clinton', starting paragraph 31 and Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation paragraph 31 onward

then blamed on Dulberg or ignored. They are then called 'Dulberg's claims'.

Dulberg's actual claims to Williams and Clinton are documented in detail in complete emails and email attachments to Clinton and Williams. We give up attorney-client privilege over them to allow others to view what Dulberg actually told his attorneys and when.

The emails and attachments sent to Clinton and Williams and Gooch can also be compared to Tables 3, 4A and 4B. They demonstrate that:

- Dulberg's attorneys ignored what Dulberg actually told them.
- Dulberg's attorneys wrote whatever they wanted to write.
- Dulberg's attorneys then attributed all these claims to Dulberg.

They did this to set Dulberg up.

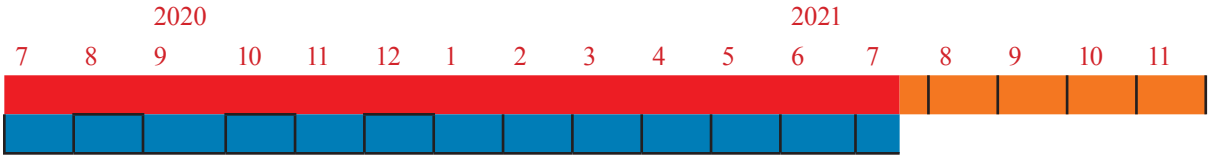
Table 10 and Table 11 both demonstrate the same pattern.

Clinton and Williams claimed: "*Shortly after CLF withdrew its appearance, Mr. Dulberg retained new counsel, Alphonse Talarico. (Exhibit 8) The case continued to be litigated for over a year.*"

Opposing counsel took full advantage[40] of the documents and information suppressed by Clinton-Williams (and by Gooch-Walczyk) during that time to:

1) Demand for detailed supplimental production responses (from the 2020-07-09 flood of over 6000 documents)
2) Demand to be given Dulberg's privileged attorney-client communications with Gooch
3) Pressure Dulberg to admit receiving in the mail a partially forged declination letter from attorney Saul Ferris. (The letter was actually addressed to Flynn's own client Popovich.

The following graphic shows over how many months these 3 forms of pressure were applied to Dulberg by Flynn as Clinton and Williams withdrew as Dulberg's counsel.



The **demand for detailed supplemental discovery answers** (shown in red above) lasted until July 19, 2021 (about 12 months). The **demand for access to Dulberg's attorney-client privileged communication** (shown in blue above) lasted until July, 2021 also (about 12 months). This is when **pressure for Dulberg to admit untrue statements about an alleged letter from Saul Ferris** (which was actually addressed to Popovich, shown in orange above) began and lasted for 4 more months.

40 How opposing counsel maintained pressure on Dulberg is described in 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams', Chapter 1 and Chapter 2, Section 2B THE EXAMPLE OF SAUL FERRIS and Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation same sections and 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', paragraphs 155 to 171 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation paragraphs 155 to 171

Pressure was applied to Dulberg as pro-se and to Dulberg's new attorney (since Clinton and Williams had already made secret plans to withdraw as Dulberg's counsel by late June, 2020).[41] The 3 ways Dulberg was pressured are directly related to documents and information suppressed by Clinton-Williams. They set Dulberg up to be subject to all 3 forms of pressure.

Clinton and Williams claimed: "*On February 1, 2023, the court entered an order granting the defendants' motion for summary judgment, dismissing the case with prejudice. The court's order is attached as Exhibit 9."*

In Table 6 Flynn's key accusations[42] against Dulberg in his 2022 Summary Judgment are listed in Column 1. Column 2 shows how most every accusation made by Flynn against Dulberg in 2022 were set up and reinforced years earlier by Dulberg's own counsel (acting in collaboration with opposing counsel) to sabotage Dulberg's claims.

Dulberg's current attorney Mr Talerico is on the record since February 10, 2021 (Mr Talerico was retained on October 23, 2020) explaining the application of ***Suburban Real Estate v Carlson*** to Dulberg's case in order to claim that the statute is counted from December 12, 2016. Mr Talerico explained that Suburban Real Estate v Carlson makes clear that if Dulberg filed a legal malpractice suit against Popovich and Mast at any time before December 12, 2016 his filing would have been ruled premature. Mr Talerico explained Illinois law is clear that the first day that Dulberg had standing to file a legal malpractice suit against Popovich and Mast was December 12, 2016 and not one day sooner.

The arguments in ***Suburban Real Estate Servs. v. Carlson, 2020 Ill. App. 191953 (Ill. App. Ct. 2020)*** reference 5 other key cases:

Successful Appellant ***Suburban Real Estate*** relied on ***Lucey***[43] and ***Warnock***[44] (and ***Northern Illinois Emergency Physicians***[45])

Unsuccessful Appellee ***Carlson*** relied on ***FagelHaber***[46] and ***Nelson***[47] (and ***Goran***[48])

The notion of a "financial injury" on December 12, 2016 consistent with Illinois law in Suburban Real Estate v Carlson was never explained to Dulberg by Gooch, Clinton, or Williams, not even as a suggestion or possibility. Opposing counsel Flynn found no relevance in Suburban Real Estate v Carlson. It was not used or referenced in any of the 14 items in Table 5A and 5B. There is no notion of financial injury or application of Illinois law Suburban Real Estate v Carlson in any of the versions in Table 4A nd 4B. Neither Judge Meyer or Judge Berg saw any relevance in Suburban Real Estate v Carlson and did not recognize any notion of a 'financial injury' occurring

41 'ARDC Complaint Against Julia C. Williams and Edward X. Clinton', Chapter 1, starting paragraph 31 and Chapter 2, Section 2E and
Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation same sections

42 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk'. page 69 and
Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 69

43 Lucey v. Law Offices of Pretzel & Stouffer, Chartered, 301 Ill. App. 3d 349 (1998)

44 Warnock v. Karm Winand & Patterson, 376 Ill. App. 3d 364 (2007)

45 Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd., 216 Ill. 2d 294, 306 (2005)

46 Construction Systems, Inc. v. FagelHaber, LLC, 2019 IL App (1st) 172430

47 Nelson v. Padgitt, 2016 IL App (1st) 160571

48 Goran v. Glieberman, 276 Ill. App. 3d 590, 595-96 (1995)

on December 12, 2016 consistent with Suburban Real Estate v Carlson in Dulberg's case.

Table 7 lists[49] statements of each of these 17LA377 Officers of the Court when applying Illinois case law to 17LA377. None of the statements in Table 7 made by Judge Meyer, Judge Berg, Defendants Popovich and Mast, Dulberg's former attorneys Gooch, Clinton and Williams reference or are based on any of the case law cited in in Suburban (which is current Illinois law applicable to Dulberg's case).

Clinton and Williams claimed: "*Upon information and belief, defendants raised, and ultimately prevailed, on the argument that Mr. Dulberg's legal malpractice claim was barred by the statute of limitations based upon when he knew or should have known of his alleged injury. (See Exhibit 10, Motion for Summary Judgment)"*

This means that Popovich and Mast successfully hid behind Dulberg's own legal malpractice attorneys. This was the plan from the first time Dulberg met Gooch on December 16, 2016. Tables 1, 2, 3, 4A, 4B, 5A, 5B, 6, 8, 9, 10 and 11 show how the game is played from start to finish. Comments made by Gooch to Dulberg and Thomas Kost (full trustee of the Paul R. Dulberg Revocable Trust) at Dulberg's first meeting with Gooch on December 16, 2016 directly set up Flynn's Summary Judgment arguments in 2022. This went according to plan. Gooch-Walczyk set Dulberg up and Clinton-Williams helped finish the job.

Clinton and Williams claimed: "*CLF is not aware of whether the privileges it asserted was maintained, waived, or addressed by the court subsequent to its withdrawal."*

Dulberg gives up all attorney-client privilege with Clinton-Williams and with Gooch-Walczyk. There is evidence that we had no secrets from the defendants anyway, since whatever we turned over to Gooch-Walczyk and Clinton-Williams was probably shared with opposing counsel by our own attorneys.

Clinton and Williams claimed: "*Mr. Dulberg has appealed the decision to the Second District Appellate Court. (Exhibit 11) That appeal is currently pending."*

The appeal currently pending serves as a demonstration of how centrally important the document and information suppression systems used by Gooch-Walczyk and Clinton-Williams against Dulberg are to the outcome of Dulberg's case. The systems of document and information suppression are central to the claims of Popovich and Mast as shown in Table 6.[50]

The key evidence Tilschner v Spangler (Table 10, page 12) and Dulberg's claims of Popovich and Mast committing Intentional Tort and Fraud (Table 11, page 14) show how important the document and information suppression system that Clinton-Williams used against Dulberg is in Flynn's current arguments. It also shows how teamwork between Gooch-Walczyk and Clinton-Williams was essential to completely suppress key evidence for over 6 years.

Clinton and Williams claimed: "*CLF's withdrawal was accomplished without material adverse*

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49 ARDC Complant Against Thomas W. Gooch and Sabina Walczyk page 84 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 84

50 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk'. page 69 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 69

effect on Mr. Dulberg and was consistent with Rule 1.16 of the IRPC."

Clinton and Williams claimed: "*Mr. Dulberg's request for investigation against Edward Clinton and Julia Williams lacks merit on its face and his charges are not supported by evidence."*

All allegations are supported with evidence. We made specific claims of large scale systematic document and information suppression in Chapter 1 and showed, step by step, how it was done. Clinton's response does not address any of it. They effectively ignored Chapter 1 of the complaint.

We made detailed claims of document and information suppression in collaboration with opposing counsel on at least 12 specific issues in Chapter 2, Sections A through L. Not one of the (at least) 12 specific issues raised in Chapter 2, Sections A through L was addressed or acknowledged by Clinton or Williams in their reply. They effectively ignored Sections 2A through 2L of the complaint.

After ignoring every specific point made in every specific claim in a 140 page complaint, respondents inexplicably state claims "are not supported by evidence".

Thank you for your help with this matter and feel free to contact us if you need any additional information.

/s/ Paul Dulberg
Paul Dulberg

/s/ Thomas Kost
Thomas Kost
Full Trustee of the Paul R. Dulberg Revocable Trust

ARDC COMPLAINT AGAINST THOMAS J. POPOVICH AND HANS MAST

CHAPTER 1: POPOVICH AND MAST CONTROL OF DULBERG'S PERSONAL INJURY CASE 12LA178

CHAPTER 2: CLAIMS AGAINST POPOVICH AND MAST

COUNT 1: DISCOVERY ABUSE

- **1-A: Redirected medical lien liability from the Defendants to Plaintiff**
- **1-B: Evidence destruction and fabrication, forgery**
- **1-C: Corrupted the interrogatory and document production process to sabotage client's case and to benefit defendants (in collaboration with opposing attorneys)**
- **1-D: Suppressed information on mental health issues related to Dulberg's injury**
- **1-E: Corrupted the deposition process** to sabotage client's case and to benefit defendants (in collaboration with opposing attorneys)
- **1-F: Knew Defendant Gagnon effectively admitted to negligence** for Dulberg's injury
- **1-G: Knew Defendant Gagnon committed perjury**
- **1-H: Knew Defendant Carolyn McGuire committed perjury**

COUNT 2: SETTLEMENT FRAUD to sabotage client's recovery and benefit defendants

COUNT 3: VIOLATION OF FEDERAL BANKRUPTCY LAWS to sabotage client's recovery and benefit defendants

APPENDIX A: An analysis of Tilschner v Spangler. Was Tilschner sabotaged, too?

Chapter 1: Popovich and Mast Control of Dulberg's PI case 12LA178

Relevant Facts

1-1. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("William") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in trimming long branches of a pine tree on the McGuires" property.

1-2. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry Township, McHenry County, Illinois ("the Property").

1-3. David Gagnon is Caroline's son and William's stepson.

1-4. Paul Dulberg (Dulberg) lives in the next neighborhood over from the McGuire family.

1-5. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

1-6. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

1-7. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches and cut down the tree.

1-8. William physically assisted with removing the cut branches from the work area while supervising Gagnon's actions.

1-9. Caroline physically assisted by retrieving and providing any and all tools requested by William McGuire and David Gagnon while supervising Gagnon's and William's actions.

1-10. Gagnon was acting on behalf of the McGuires' under their supervision and at the McGuires' direction.

1-11. Caroline, William, and Gagnon all knew, or should have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

1-12. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

1-13. The safety information indicated that the failure to take appropriate caution and safety measures could result in serious injury.

1-14. The safety information indicated that the likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

1-15. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

1-16. Caroline McGuire, William McGuire, and David Gagnon had notice of the potentially dangerous conditions by acquiring a chain saw that was provided with attached warnings and safety information implying that a reasonable person should exercise appropriate caution and follow the safety instructions for the chainsaw.

1-17. Caroline, William, and Gagnon failed to act as reasonable persons by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

1-18. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being trained in operating the chainsaw.

1-19. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

1-20. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

1-21. Caroline and Gagnon asked Dulberg to assist.

1-22. Caroline, William and Gagnon failed to provide Dulberg with any of the safety Information outlined in the owner's manual.

1-23. Caroline and William McGuire failed to provide Gagnon or Dulberg with any of the protective equipment necessary for the type of work to be performed as written within the safety measures outlined in the owner's manual.

1-24. Gagnon operated the chainsaw in close proximity to Dulberg and it struck Dulberg in the right arm, Dulberg's dominant arm, cutting him severely requiring medical attention to save Dulberg's life.

1-25. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm which resulted in a finding of permanent disability by Social Security Administration on April 20, 2017[1]; current and future medical expenses in amount in excess of $260,000.00; Dulberg's lifelong career in photography, graphic design, and commercial printing; lost wages in excess of one million dollars; and other damages.

1-26. On December 1, 2011 Dulberg hired Mast, Popovich, and Thomas J. Popovich, individually to represent him in prosecuting his claims against Gagnon and the McGuires.[2]

1-27. Mast, Popovich, and Thomas J. Popovich, individually entered into an attorney client relationship with Dulberg.

1-28. Based upon the attorney client relationship, Mast, Popovich, and Thomas J. Popovich, individually owed professional duties to Dulberg, including a duty of care.

1-29. At the December 1, 2011 Attorney-Client Engagement meeting Dulberg brought and submitted for safekeeping the folder from the Law Firm of Botto, Gilbert, Schottland & Andrle which contained Defendant David Gagnon's home address. Dulberg also submitted his originals of all relevant documentation including Walgreens RX receipts. The original documents that Hans A. Mast collected from Dulberg on December 1, 2011 are as follows:

Caroline McGuires hand-written insurance information[3]

Release papers from the Hospital[4]

1 Exhibit 1_2017-04-20_SSA-Notice of Decision_Fully Favorable_Redacted.pdf
2 Exhibit 2_2011-12-01_Contract for Legal Services with Popovich-Mast_Removed Bates Stamp.pdf
3 Group Exhibit 1: 2011-06-28_Carolyn McGuire address claim adjuster phone number_POP000399.pdf
4 Missing

McGuire's home address[1]

David Gagnon's home address[2]

All the paperwork from Botto Gilbert Schottland Lancaster, P.C.[3]

MEDICAL DOCUMENTS:

2 Original Walgreens Rx Pharmacy receipts with timestamps[4]

Meijer Receipt for medical supplies[5]

CENTEGRA NORTHERN ILLINOIS MEDICAL CENTER - 07/02/2011 - SUMMARY OF CHARGES - $1,323.75[6]

Northern Illinois Medical Center Lien delivered to Dulberg's home on 07/06/2011 $1,323.75[7]

UB-04 Billing Statement[8]

2011-07-06 Centegra Health System Medical Records Requests - Reference Account Number B1117900323[9]

Centegra Northern Illinois Medical Center - 08/05/2011, 09/04/2011 Billing Statements - $1,323.75[10]

NORTHERN ILL MED CTR - Billing Statements - $1,323.75[11]

MORAINE EMERGENCY PHYSICIANS - 07/16/2011 Billing Statement - $1,346.00[12]

MORAINE EMERGENCY PHYSICIANS - 08/18/2011 Billing Statement - $1,346.00[13]

Radiologists Imaging Associates - 07/07/2011 Billing Statement - $50.00[14]

Dr Frank W. Sek - 07/01/2011, 07/08/2011 Receipts for Payments - $160.00[15]

Dr Frank W. Sek - 07/01/2011 Receipts for Payments - $80.00[16]

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1 Missing
2 Missing
3 Group Exhibit 1: 2011-11-28_Botto Gilbert declination letter_POP000391-POP000393.pdf
4 Group Exhibit 1: 2011-06-28_Walgreens Prescriptions.pdf
5 Group Exhibit 1: Meijer receipt
6 Group Exhibit 1: 2011-07-20_Centegra bill_POP000737.pdf
7 Group Exhibit 1-POP 000600 - POP 000601
8 Group Exhibit 1: 2011-07-05_Centegra UB-04 bill_POP000722.pdf
9 Group Exhibit 1-POP 000833
10 Group Exhibit 1: 2011-08-05_Centegra bill_POP000735-POP000736.pdf
11 Group Exhibit 1: 2011-07-05_Centegra UB-04 bill_POP000722.pdf
12 Group Exhibit 1: 2011-07-16_Moraine Emergency Physicians bill_POP000811.pdf
13 Group Exhibit 1: 2011-08-18_Moraine Emergency Physicians bill_POP000734.pdf
14-Group Exhibit 1: 2011-07-11_McHenry Radiologist billing_POP000817.pdf
15 Group Exhibit 1: 2011-07-01_sek_bill_80_dollars_POP000819.pdf
16 Group Exhibit 1: 2011-07-01_sek_bill_80_dollars_POP000819.pdf

Receipt for Payment - $105.00[1]

ASSOCIATED NEUROLOGY SC - 07/31/11 Billing Statement - $90.00[2]

ASSOCIATED NEUROLOGY SC - 08/10/2011 Payment receipt $90.00[3]

ASSOCIATED NEUROLOGY SC - 08-31-2011 Billing Statement - $930.00[4]

ASSOCIATED NEUROLOGY SC - 10/31/2011 Billing Statement - $930.00[5]

A list of all Doctors that Dulberg has seen since the hospital , their contact information, upcoming appointment dates[6]

1-30. On December 5, 2011 Hans Mast caused to be sent two letters, one (not by certified mail) to David Gagnon[7] and one (by certified mail) to Thomas Malatia[8], Adjuster for Auto Owners Insurance concerning "your insured" Caroline and Bill McGuire. Lien[9]

1-31. Sometime soon after the MEMORANDUM[10] of December 5, 2011 from Defendant Hans Mast to his supervisor Defendant Thomas J. Popovich and associates Maria, Diana, and Alarie Dullum, Thomas J. Popovich wrote on the aforesaid MEMORANDUM advising and instructing Hans Mast regarding who is available to pay the damages.

1-32. There is a draft of a letter to Centergra dated December 5, 2011 among the Popovich bates-numbered documents.[11]

1-33. Popovich was in possession of Centegra medical documents labelled "SJS0422"[12] and printed on December 8, 2011.

1-34. On December 28, 2011 Thomas Malatia, Claims Representative for Auto-Owners Insurance wrote[13] to Thomas J. Popovich individually, on behalf of Defendants William & Carolyn McGuire seeking required information about injured Plaintiff Paul Dulberg.

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1 Group Exhibit 1: 2011-07-01_sek_bill_105_dollar_POP000882.pdf
2 Group Exhibit 1: 2011-07-31_Associated Neurology bill_POP000740.pdf
3 Group Exhibit 1: 2011-08-10_Associated Neurology receipt_POP000733.pdf
4 Group Exhibit 1: 2011-08-31_Associated Neurology bill_POP000730.pdf
5 Group Exhibit 1: 2011-10-31_Associated Neurology bill_POP000741.pdf
6 Missing
7 Exhibit 3_2011-12-05_LTR_Mast to Gagnon_RE Injury to Dulberg-forward this LTR_to your insurance company_POP 000381.pdf
8 Exhibit 4_2011-12-05_CERTIFIED MAIL-LTR_Mast to AutoOwners-Tom Malatia_MISSING Encloseure-NOTICE OF ATTORNEYS LIEN_POP 000384.pdf
9 Exhibit 5_2011-12-05_1700 PM_LTR_Mast to AutoOwners-Tom Malatia_NOTICE OF ATTORNEYS LIEN_ doesnt say Certified Mail_POP 000386.pdf
10 Group Exhibit 2 _2011-12-05 memo
11 Exhibit 6_2011-12-06_draft of letter to Centegra for medical records_POP000389.pdf
12 Exhibit 7_Extracted pages from Exhibit 43_2012-09-14_Letter to Centegra NMCI Medical Records Custodian From Barch 9.4.12.pdf
13 Exhibit 8_2011-12-28_LTR_AutoOwners-Malatia to Thomas J Popovich_additionally asks for theory of liability_POP 000379.pdf

1-35. On January 3, 2012 Defendant Hans Mast responded[1] on behalf of Thomas J. Popovich, individually to the December 28, 2011 inquiry by Thomas Malatia, Claims Representative for Auto-Owners Insurance regarding "Your insured: Caroline and Bill McGuire Claim No.: 13-2779-11.

1-36. On or around January 24 Mast told Dulberg to go to NIMC and obtain medical records from them (even though they already had NIMC medical records). Dulberg signed an authorization[2] for the documents to be released and obtained a second set of records[3] with a CD containing xray images. Dulberg gave this second set of records to Mast. Mast said he did not want the CD. The second set of Centegra records that Dulberg obtained on 2012-01-24 do not exist in any version of the case file that Mast provided to subsequent counsel.

1-37. On March 19, 2012 the Defendant Law Office of Thomas J. Popovich P.C. (author uncredited) created "MEDICAL EXPENSE REPORT PAUL DULBERG DATE OF ACCIDENT: JUNE 28, 2011 DATE OF REPORT: MARCH 19, 2012"[4]

1-38. On March 21, 2012 Plaintiff Paul Dulberg and Defendant Hans Mast engage in a series of (3) three emails[5] to determine their next face to face meeting.

1-39. On April 4, 2012 Plaintiff Paul Dulberg and Defendant Hans Mast next met to discuss the status of the case. During this meeting Defendant Han's Mast informed Plaintiff Paul Dulberg that David Gagnon had not responded to Hans Mast's December 5, 2011 letter, that they did not know if Gagnon was insured for the Dulberg injury, and that Dulberg should drive to Gagnon's home to confirm David Gagnon's correct address.

1-40. In Hans Mast's MEMORANDUM to file dated April 5, 2012 he stated[6]:

> "I suggested that maybe we will file suit immediately so we can at least get the case in suit and proceeding forward until we know how and when we will be able to settle the case."

1-41. On April 10, 2012, 131 days after Defendants Hans Mast, Thomas J. Popovich and The Law Offices of Thomas J. Popovich, P.C. were retained to represent Plaintiff Paul Dulberg, Defendant Hans Mast created a MEMORANDUM[7] to Alarie Dullum with a copy to file stating:

> " I want to sue the McGuire's too for failure to supervise the cutting down of the tree and failure to provide proper equipment, etc. so that it can be done safely without injuring our client."

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1 Exhibit 9_2012-01-03-c_LTR_Mast to AutoOwners-Malatia_Mast does not provide theory of liability_POP 000380.pdf
2 Exhibit 10_2012-01-24_Centegra authorization for document release.jpg
3 Exhibit 11_2012-01-24_Centegra-Medical Records and authorization for release.pdf
4 Exhibit 12_2012-03-19_MEDICAL EXPENSE REPORT-7.333k_POP 000714 - POP 000716.pdf
5 Exhibit 13_DUL000001 to DUL008708.pdf: DUL001245
6 Exhibit 14_2012-04-05_Memorandum_POP000958.pdf
7 Exhibit 15_2012-04-10_Memorandum_POP000957.pdf

1-42. On April 10, 2012 Plaintiff Dulberg emailed to Defendant Mast stating:[1]

> "Here is David Gagnon's address: 39010 90th PL Powers Lake Wisconsin, 53159 Attached below is a photo of David taken yesterday in front of his house with the address on the outside. ... Apparently you already have his address because the first thing he said was, "I stopped talking to you a few months back when I received a letter at my house from your lawyer at Popovich. It really really really ..... me off to have anything come to my house about this."

1-43. The email exhibit above has "a placeholder" and does not display the photo that was taken on April 9, 2012 of David Gagnon showing his address mounted on the wall, confirming the address Hans Mast had been previously given on December 1, 2011.

1-44. On April 11, 2012 Minuteman Press printed (6) six copies of a partial/cropped image of the picture[2] sent by Plaintiff Dulberg to Defendant Mast that is referenced as "a placeholder" above.

1-45. On September 17, 2022 Dulberg recovered the original image[3] from an old broken (i-pad) computer and it was not cropped like the photos Mast had provided to opposing counsel and used as an exhibit.

1-46. On April 11, 2012 Plaintiff Paul Dulberg sent an email[4] to Defendant Hans Mast about the Complaint to be filed against Defendants David Gagnon and the McGuires inquiring:

> "Do I need to come in and sign anything?".

1-47. Neither Defendant Hans Mast nor anyone from Defendant Law Offices of Thomas J. Popovich, P.C. replied to this question.

1-48. On April 11, 2012 Hans Mast sent a second letter[5] to David Gagnon requesting that David Gagnon notifies his homeowner's liability insurance carrier and requesting a conversation to avoid the necessity of filing suit.

1-49. On April 12, 2012 Plaintiff Paul Dulberg sent an email to Defendant Hans Mast stating[6]:

> "...I just received a call from David Gagon. He was a bit upset because he received another letter at his house from you asking for his homeowner's insurance. When he got to the part about calling you if he had any questions, I told him to please do so...Wish I had a tape recorder for you to hear these conversations."

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1 Exhibit 16_POP000057-POP000059.pdf
2 Folder B7: all photos labelled "cropped image"
3 Folder B7: original photo.JPG
4 Exhibit 17_POP000056.pdf
5 Exhibit 18_2012-04-12_LTR_Mast to Gagnon_POP000371.pdf
6 Exhibit 19_POP000367.pdf

1-50. On April 13, 2012 Defendant Hans Mast originated a MEMORANDUM[1] to file which purports to be an incomplete written rendering of "Subject: PAUL DULBERG-RECORDED PHONE STATEMENT FROM DEFENDANT, DAVID GAGNON"

1-51. On April 13, 2012 Defendant Hans Mast sent an email to Plaintiff Paul Dulberg stating[2]:

> "You can cool him down by saying we need to do it for insurance purposes."

1-52. On April 16, 2012 Plaintiff Paul Dulberg sent an email to Defendant Hans Mast stating[3]:

> "David Gagnon did get a hold of me again today. Said that he had talked to you and now he wanted to talk to me."

1-53. On April 16, 2012 Plaintiff Paul Dulberg sent another email to Defendant Hans Mast stating[4]:

> "One more thing to add. He said he would give us a copy of his policy if we need it."

1-54. On May 14, 2012 Defendant Hans Mast again sent Plaintiff Paul Dulberg to personally meet with Defendant David Gagnon at David Gagnon's residence in the State of Wisconsin to obtain through personal attendance and discussion Defendant David Gagnon's homeowner's insurance information.[5]

1-55. On May 15, 2012 at 02:19 AM Plaintiff Paul Dulberg responded to Defendant Hans Mast's email communicating the requested Gagnon homeowner's insurance information.[6]

1-56. On May 15, 2012 on or about 3:30 PM Defendants Mast, Popovich, and Thomas J. Popovich, individually on behalf of Dulberg filed an unverified Complaint[7] and Summons[8] against Gagnon and the McGuires numbered 12 LA 178 wherein David Gagnon's Homeowner's Insurance Policy information was not utilized or stated.

1-57. The unverified claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent David Gagnon.

1-58. The Complaint was filed without review, signing and verification by Party/Plaintiff Paul Dulberg.

1-59. Complaint 12 LA 178 included an Illinois Supreme Court Rule 222(b) Affidavit re

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1 Exhibit 20_2012-04-13_Memorandum_POP001318-POP001319.pdf
2 Exhibit 21_POP000369.pdf
3 Exhibit 21_POP000369.pdf
4 Exhibit 21_POP000369.pdf
5 Exhibit 22_POP0000361-POP0000362.pdf
6 Exhibit 22_POP0000361-POP0000362.pdf
7 Group Exhibit 3: 2012-05-15_complaint_POP001163-POP001169.pdf
8 Group Exhibit 3: summons_POP001184-POP001188.pdf

Damages Sought.[1]

1-60. The included Illinois Supreme Court Rule 222(b) Affidavit re Damages Sought was not signed by Party/Plaintiff Paul Dulberg but was signed by Defendant Hans Mast.

1-61. The Illinois Supreme Court Rule 222(b) Affidavit re Damages Sought stated "2. That on behalf Plaintiff, PAUL DULBERG, I am hereby requesting money damages in an amount not to exceed $50,000.00, together with the costs of this action, against each of the above-named Defendants."[2]

1-62. Popovich never asked the judge to approve a change to over $50,000 during his representation of Dulberg even as the medical bills alone grew and came to exceed $60,000.

1-63. Hans A. Mast had the clerk send summons to all defendants on May 15, 2012 with "Amount Claimed $50,000.00+"[3]

1-64. On May 16, 2012 Defendant Hans Mast caused to be sent by U.S. mail to Plaintiff Paul Dulberg a letter[4] informing Plaintiff Dulberg that suit was filed on his behalf without indicating when it was filed and without including or offering Plaintiff Paul Dulberg an opportunity after filing to read the Complaint.

1-65. On May 18, 2012 Plaintiff Paul Dulberg sent an email to Defendant Hans Mast inquiring[5]:

> "...if David Gagnons home owners insurance policy number checked out? Thereafter Defendant Hans Mast responded " Paul, it's a fair concern. But until the suit is served on him and his insurance appears in the case, Im not gonna be able to tell you anything. Also, be aware that **many policies have only $100,000 in coverage. So we need to find this out first**..." [Emphasis Added]

1-66. On June 3, 2012 Defendants Caroline (Carolyn) McGuire and Bill (William) McGuire were served with Summons-30 Day.[6]

1-67. On June 11, 2012 Thomas J. Popovich, individually received a letter from Attorney Ronald A. Barch indicating that Mr. Barch had been requested by Auto-Owners Insurance Company to appear and defend Mr. and Mrs. McGuire.[7]

1-68. On June 12, 2012 Plaintiff Paul Dulberg sent medical scheduling information that will take place at Northwest Community Hospital.[8]

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1 Group Exhibit 3: 2012-05-15_affidavit_POP001170.pdf
2 Group Exhibit 3: 2012-05-15_affidavit_POP001170.pdf
3 Group Exhibit 3: summons_POP001184-POP001188.pdf
4 Exhibit 23_2012-05-16_LTR_Mast to Dulberg_DUL001679.pdf
5 Exhibit 24_POP000358.pdf
6 Exhibit 25-2012-06-07_12LA178_SUMMONS_Caroline McGuire.pdf
7 Exhibit 26_2012-06-11_LTR_Barch to Mast_POP000349.pdf
8 Exhibit 27_POP000350.pdf

1-69. On June 18, 2012 Defendant David Gagnon was served with Summons-30 Day.[1]

1-70. On June 21, 2012 at 09:05 AM Defendant Hans Mast received a fax from MidAmerica Orthopaedics by way of what is currently listed as an unallocated phone number (847-321-2043) consisting of 6 pages of which only the last 5 pages have been located.[2]

1-71. In the first full paragraph of the section titled "History & Physical" of the third page at lines 3-5 of the fax Marcus G. Talerico, M.D. stated:

> "**He apparently was using a chain saw** when he accidentally struck the volar medial aspect of his right forearm in roughly the mid forearm range with a chain saw" [Emphasis Added]

1-72. On June 21, 2012 at 9:05 AM Defendant Hans Mast caused to be sent an email[3] to Plaintiff Paul Dulberg stating:

> "Paul, just a quick note. I saw records come in from MidAmerica Hand and Shoulder Clinic- Dr. Talerico. **The history of your injury suggests you were operating the chain saw yourself -not someone else**.[Emphasis Added] This might be troublesome unless you clear that up with Dr. next visit. thanks"

1-73. On June 21, 2012 at 3:10 PM Plaintiff Paul Dulberg sent an email to Defendant Hans Mast stating[4]:

> "I just called the libertyville office for MidAmerica Hand and Shoulder Clinic. Talked with Gabby. She told me she could not change the record but would make an addendum to the record to clarify that I was not the one operating the chainsaw. She apologized for the confusion and said that it was lost between the Dr.'s notes and the person who transcribes the records. She is going to call your office and fax over the addendum. Please let me know if you get the addendum and if it is ok"

1-74. On June 25, 2012 Northwest Community Healthcare sent a fax[5] to Defendant Hans Mast requesting the name and address of the homeowners insurance, claim number, name of responsible party and date of incident.

1-75. On June 25, 2012 Defendant Hans Mast causes to be made a MEMORANDUM[6] to Alarie C; File regarding the need to have Plaintiff Paul Dulberg's medical expense report updated.

1-76. On June 27, 2012 Defendant Hans Mast responded to the June 25, 2012 request by failing to give the requested information.[7] Mast wrote:

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1 Exhibit 28-2012-06-18_12LA178_SUMMONS_David Gagnon.pdf
2 Exhibit 29_2012-06-21_fax from Talerico DUL002189-DUL002193.pdf
3 Exhibit 30_POP000348.pdf
4 Exhibit 30_POP000348.pdf
5 Exhibit 31_2012-06-25_fax_NCH Catie Harrison to Mast_POP000620-POP000621.pdf
6 Exhibit 32_2012-06-25_Memorandum_POP000953.pdf
7 Exhibit 33_2012-06-27_fax_Mast answer to NCH_POP000345-POP000346.pdf

"Unfortunately, we just filed suit and it is still relatively early on and I have not yet obtained the adverse parties insurance information. I would be happy to provide that to you shortly.

In the meantime, please feel free to forward a lien to my attention and I would be happy to honor it for purposes of settlement and/or recovery obtained in this case."

1-77. Note that Mast's request is contrary to Illinois law. Mast is informing the NCH representative to:

a) Serve the lien notice with information on the injured party only

b) Serve the lien notice by sending it to the attorney of the injured party

c) Serve the lien notice without having the required information on the party responsible for the injury

1-78. A Northwest Community Hospital universal billing form UB-04[1] dated July 17, 2012 (in Box 38) has the responsible party listed as: AUTO OWNERS INS 6000 TALLGATE SUIT D ELGIN IL and (in Box 50) has the payer listed as: AUTO OWNERS INS and (in Box 60) has the INSURED'S UNIQUE ID listed as CLM#13-2779-11.

1-79. On June 27, 2012 Defendant Hans Mast causes to be filed with the Clerk of Circuit Court a PROOF OF SERVICE with the Document Description: PLAINTIFF'S REQUEST FOR PRODUCTION TO DEFENDANTS, BILL McGUIRE AND CAROLINE McGUIRE, PLAINTIFF'S INTERROGATORIES TO DEFENDANTS, BILL McGUIRE AND CAROLINE McGUIRRE, RULE 237(b) NOTICE TO PRODUCE AT TRIAL AND/OR ARBITRATION TO DEFENDANTS, BILL McGUIRE AND CAROLINE McGUIRE AND NOTICE OF DEPOSITION S OF DEFENDANTS[2] addressed to Counsel for Defendants Caroline and Bill McGuire.

1-80. On July 19, 2012 "RELEASE OF INFORMATION PREBILL"[3] was sent to Thomas J. Popovich from Northwest Community Hospital.

1-81. On July 24, 2012 Mast sent a letter to Ronald A. Barch stating:[4]

"See medical expense report itemizing bills (with bills attached) in the amount of $7,313.43. Plaintiff is still treating and bills are coming treaters including Associates in Neurology, Dr. Frank Sek, Fox Lake Dynamic Hand Therapy, Hand Surgery Associates and Dr. Sagerman/Biafora, Mid-America Hand to Shoulder Clinic and Dr. Talerico, Northern Illinois Medical Center and Northwest Community Hospital. Investigation continues."

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1 Exhibit 34_2012-07-17_NCH UB-04_DUL002358.pdf
2 Exhibit 35_2012-06-27_12LA178_PROOF OF SERVICE_Plaintiff Request for Production-Interrogatories-Rule 237b-Depositions-McGuires_Mast copy-OCR.pdf
3 Exhibit 36_2012-07-19_RELEASE OF INFORMATION PREBILL NCH to Popovich_POP000626p.pdf
4 Exhibit 37_2012-07-24_LTR_Mast to Barch_DUL004204-DUL004205.pdf

"Medical records are attached obtained thus far from Drs. Karen Levin at Associated Neurology, Northern Illinois Medical· Center, Mid-America Hand to Shoulder Clinic and Open Advanced MRI. Investigation continues."

1-82. Sometime between July 9, 2012 and August 6, 2012 The Law offices of Thomas J. Popovich P.C. sent the following to the McGuires:

"PLAINTIFF'S INTERROGATORIES TO DEFENDANTS, BILL McGUIRE AND CAROLINE McGUIRE"[1]

"PLAINTIFF'S REQUEST FOR PRODUCTION TO DEFENDANTS, BILL McGUIRE AND CAROLINE McGUIRE"[2]

1-83. On August 6, 2012 The McGuires send to Hans A. Mast the following:

"ANSWER TO PLAINTIFF'S INTERROGATORIES TO DEFENDANTS BILL McGUIRE AND CAROLYN McGUIRE"[3]

"ANSWER TO PLAINTIFF'S REQUEST TO PRODUCE BY DEFENDANTS BILL McGUIRE AND CAROLINE McGUIDRE"[4]

Note: Dulberg did not have access to these documents until July 16, 2015 (Mast never showed them to Dulberg).

1-84. On August 8, 2012 Defendants Carolyn McGuire and Bill (William) McGuire served Answers to Plaintiff's Written Interrogatories and "Responses to Plaintiff's Production" **ON PLAINTIFF**. [EMPHASIS ADDED][5]

1-85. On September 5, 2012 Defendant David Gagnon's Appearance[6] was filed by attorney Perry Accardo (around 78 days after Gagnon was served with a summons 30 day).

1-86. On September 04, 2012 McGuire attorney Barch subpoenaed the records of NIMC

1-87. The only existing representation of the Barch subpoenaed documents[7] are in:

Gooch Thumbdrive/Dulberg Paul Dulberg Files from Client/ TJP & Attorney Documents/ Letter to Centegra NMCI Medical Records Custodian From Barch 9.4.12.pdf

1 Exhibit 38_PLAINTIFF'S INTERROGATORIES TO MCGUIRES_DUL001980-DUL001986.pdf
2 Exhibit 39_Plaintiff's RTP to McGuires_DUL001991-DUL001993.pdf
3 Exhibit 40_2012-08-06_ANSWER TO PLAINTIFF'S INTERROGATORIES TO MCGUIRES_DUL000162-DUL000175.pdf
4 Exhibit 41_McGuire RTP Response_DUL000156-DUL000161.pdf
5 Exhibit 42_2012-08-08_12LA178_NOTICE OF SERVING DISCOVERY-Answers to Plaintiffs Interrogatories & Response to Production_CERTIFICATE OF SERVICE_Barch-McGuires copy-OCR.pdf
6 Exhibit 43_2012-09-05_12LA178_APPEARANCE_Accardo-Gagnon.pdf
7 Exhibit 44_2012-09-14_Letter to Centegra NMCI Medical Records Custodian From Barch 9.4.12.pdf

1-88. Pages 2, 3, 4,[1] and 5[2] of the alleged 35 page reply were documents with billing information and a certification page. The documents appear to be a construction of information taken from a Centegra form UB-04[3] but the UB-04 is not included. It appears someone was trying to craft documents with UB-04 billing information. The original UB-04 later appears in 2019 among the Popovich bates-numbered documents.

1-89. The 3 documents are not included among the documents subpoenaed from Barch's office. When Barch was subpoenaed for all documents related to case 12LA178 Barch produced a list of file names of his medical records only:

List of Medical Records and Bills.2.19.20.pdf[4]

1-90. A list of medical documents included in the Barch subpoena claims Barch is in possession of Centegra medical records but not Centegra billing.

1-91. The documents that appear to be reconstructed from the Centegra UB-04 are located in Popovich construction of NIMC documents produced responding to the Barch subpoena. Either:

(a) Barch is the source of the altered documents or

(b) Popovich arranged his case file to make it look as if Barch sent him a 35 page fax with the documents subpoenaed from Centegra.

1-92. On October 1, 2012 Defendant Hans A. Mast sent to Perry Accardo, Law Office of M. Gerard Gregoire, attorney for Defendant David Gagnon the previously filed Discovery Responses[5] that were served upon and answered by Plaintiff before Defendant David Gagnon appeared.

1-93. On October 3, 2012 Mast filed Proof of Service[6] of Request to Produce and Interrogatories with the court. It is not known whether Mast actually sent any Request for Production or Interrogatories on Defendant Gagnon. The only Interrogatories[7] and Request for Production[8] on Gagnon by Mast that exist are not dated.

1-94. Gagnon's attorney has never responded to interrogatories served upon Gagnon by Mast.

1-95. A short time before November 27, 2012 a meeting between Dulberg and Mast occurred. At the meeting Mast told Dulberg the defendant Carolyn McGuire claimed she paid for Dulberg's prescriptions following the Hospital visit on June 28, 2011.

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1 Folder B8: pages 2 3 4 of Letter to Centegra NMCI Medical Records Custodian From Barch 9.4.12.pdf
2 Folder B9: Barch certificate of compliance.pdf
3 Group Exhibit 1: 2011-07-05_Centegra UB-04 bill_POP000722.pdf
4 Exhibit 45_Barch List of Medical Records and Bills.2.19.20.pdf_
5 Exhibit 46_2012-10-01_LTR_Mast to Accardo_POP000315.pdf
6 Group Exhibit 4: 2012-10-03_Proof of Service_DU002089, 4476.pdf and 2012-10-03_Proof of Service_ DUL006581.pdf
7 Group Exhibit 4: Undated_Plaintiff's interrogatories to Gagnon_DUL002094-2100, 4481-4487.pdf
8 Group Exhibit 4: Undated Request To Produce_DUL002091-2093, DUL004478-4480.pdf

1-96. Dulberg rebuked this claim and stated that he paid for the prescriptions and that it would be impossible for Caroline McGuire to give him money because the pharmacy was the first place he went after leaving the hospital. The hospital recorded the time he left and the pharmacy recorded the time he turned in the prescriptions he had filled. It would be impossible to make a round trip from the hospital to the McGuires home and back to the pharmacy in the times that are recorded.

1-97. Mast claimed that the pharmacy receipt didn't record the time (only the date).

1-98. Dulberg told Mast he remembers a timestamp on the receipts.

1-99. Mast said something like "well okay, lets take a look" and Mast took out 2 pharmacy receipts[1] from a manila folder and showed them to Dulberg.

1-100. While Dulberg was looking at the documents, Mast said something like "you can't even prove you paid for the prescriptions". Dulberg said he knows there was a timestamp on here.

1-101. Dulberg asked to keep the receipts. Mast said something like " sure, I have more copies of them." Dulberg wrote on one receipt: "need timestamp from when this prescription was filled & picked up" and later wrote the contact information for the custodian of records for Walgreens.[2]

1-102. Dulberg went home and contacted the Walgreens pharmacy where the prescriptions were filled. Dulberg asked them for the time of day the prescriptions were filled and he was given instructions on where to get that information. Dulberg recorded[3] this on the receipt:

> "Walgreens Custodian of Records
> (217)554-8949
> 8am-5pm Mon-Friday"

1-103. Dulberg then contacted the Walgreens custodian of records and was instructed that the request must be in writing. Dulberg wrote[4] the address and fax number on the receipt:

> "Walgreens Custodian of Records
> P.O. Box 4039
> Danville, IL. 61834
> 217-554-0955 Fax Request"

1-104. Dulberg followed through and requested the records. A report[5] was generated by the Walgreens Custodian of Records on November 27, 2012.

1-105. Dulberg got the report[6] from the custodian of records at Walgreens and did not see the

1 Exhibit 47_2012-11-27_Dulberg's note about needing timestamp_DUL006350-6351.pdf
2 Exhibit 47_2012-11-27_Dulberg's note about needing timestamp_DUL006350-6351.pdf
3 Exhibit 47_2012-11-27_Dulberg's note about needing timestamp_DUL006350-6351.pdf
4 Exhibit 47_2012-11-27_Dulberg's note about needing timestamp_DUL006350-6351.pdf
5 Exhibit 48_2012-11-27_Walgreens purged data report_DUL006687.pdf
6 Exhibit 48_2012-11-27_Walgreens purged data report_DUL006687.pdf

time of day he was after in the report. Dulberg then called the custodian of records and told them he is looking for the time of day in the report and it is not there.

1-106. The Custodian of records informed Dulberg that the audit of the local store they performed wouldn't have that information. A timestamp is handed to a customer on the 'prescription drop off receipt' the local store gives someone when they first drop off a prescription to be filled. No timestamp appears on the 'payment receipt'. The prescription drop off receipt shows the customer the time of day the customer turned in the prescription so the customer knows how long they have had to wait for their prescription to be filled. The payment receipt is a different receipt and only the payment receipt is kept in the archives.

1-107. Dulberg, having turned over all the original paperwork he had to Mast, realized that he **could not independently prove the time of day he was at the pharmacy** and stopped investigating and started to question his own memory and whether he actually kept the prescription drop off receipt or turned it over to Mast.

1-108. On September 17, 2022 Dulberg recovered the original image[1] from an old broken (i-pad) computer that he recently had repaired[2]. It was at that moment when Dulberg realized for the first time that the pharmacy receipt came on a single long piece of paper and the Popovich law firm must have cut the paper into a number of smaller bits and showed Dulberg only certain cuttings of the original 'prescription drop off receipts'.

1-109. On January 24, 2013 Dulberg was deposed.[3]

1-110. On February 1, 2013 Ron Barch filed CROSS-CLAIM FOR CONTRIBUTION AGAINTS CO-DEFENDANT DAVID GAGNON[4]. In the cross-claim the McGuires state as follows:

> 7. At the time and place alleged, notwithstanding his aforementioned duty, Defendant David Gagnon was then and there guilty of one or more of the following negligent acts and/or omissions:
>
> a. Caused or permitted a chainsaw to make contact with Plaintiffs right arm;
>
> b. Failed to operate said chainsaw in a safe and reasonable manner so as to avoid injuring Plaintiff's right arm;
>
> c. Failed to maintain a reasonable and safe distance between the chainsaw he was operating and Plaintiff's right arm;
>
> d. Failed to properly instruct Plaintiff prior to approaching him with an operating chainsaw;

1 Group Exhibit 1: 2011-06-28_Walgreens Prescriptions.pdf
2 Exhibit 49_2022-09-17_2027 PM_Recv_Your Repair Status has been updated.pdf
3 Group Exhibit 11_2013-01-24_Dulberg depositions (all)
4 Exhibit 50-2013-02-01_12LA178_CROSS CLAIM FOR CONTRIBUTION AGAINST CODEFENDANT DAVID GAGNON_CERTIFICATE OF SERVICE_Barch-McGuires copy-OCR.pd

e. Failed to properly warn Plaintiff prior to approaching him with an operating chainsaw;

f. Failed to maintain the chainsaw in the idle or off position when he knew or should have known that Plaintiff was close enough to sustain injury from direct contact with the subject chainsaw;

g. Failed to maintain a proper lookout for Plaintiff while operating the subject chainsaw;

h. Failed to maintain proper control over an operating chainsaw;

i. Was otherwise negligent in the operation and control of the subject chainsaw.

8. That the injuries alleged by Plaintiff PAUL DULBERG, if any, were the direct and proximate result of negligence on the part of Defendant David Gagnon."

1-111. Gagnon's attorney Accardo has never filed an answer on behalf of Gagnon (effectively admitting all allegations as true).

1-112. On February 1, 2013 the McGuires filed DEFENDANTS' AFFIRMATIVE DEFENSE in which they stated:[1]

1. That on the date and the place alleged in the Plaintiffs Complaint, the Plaintiff, PAUL DULBERG, was guilty of negligence by failing to exercise due care and caution for his own safety in that he:

b. Failed to use due care and caution as he assisted Defendant David Gagnon during the trimming and cutting of trees and branches when he knew and appreciated the dangers associated with chainsaw usage.

c. Was inattentive and unobservant to surrounding conditions and dangers as he assisted Defendant David Gagnon during the trimming and cutting of trees and branches.

d. Notwithstanding a reasonable opportunity to do so, failed to maintain a safe distance between himself and an operating chainsaw.

e. Was otherwise careless and negligent as will be demonstrated by the evidence at trial.

2. That by reason of the aforesaid negligence of the Plaintiff, PAUL DULBERG, and as a direct and proximate result thereof, the Plaintiff sustained the damages claimed."

1-113. On February 6, 2013 Mast filed an ANSWER TO AFFIRMATIVE DEFENSE[2] on behalf of Dulberg which denied each of these allegations.

1-114. On February 4, 2013 David Gagnon was deposed.[3]

1-115. The transcript as it was provided by Urbanski Reporting Services had a certification

1 Exhibit 51_2013-02-01_AMENDED ANSWER AND AFFIRMATIVE DEFENSE BY DEFENDANTS BILL McGUIRE AND CAROLYN McGUIRE.pdf

2 Exhibit 52_2013-02-06_12LA178_PLAINTIFFS REPLY TO DEFENDANTS BILL AND CAROLYN MCGUIRES AFFIRMATIVE DEFENSE_Mast-Dulberg copy-OCR.pdf

3 Group Exhibit 16_2013-02-06_Gagnon depositions (all)

page[1] signed by a person named "Maggie Margaret Orton".

1-116. On March 25, 2022 Margaret Orton was subpoenaed[2] for 20 signatures and she provided 20 signatures on April 19, 2022.

1-117. Omni Document Examination did an analysis of the signatures and issued a report.[3]

1-118. In the interview Mast led the witness Gagnon and intentionally did not follow up on easily impeachable testimony during the Gagnon deposition. An example of Mast leading Gagnon during his deposition occurs in this exchange:[4]

> Q. All right. Let me stop you because I understand what you're saying. You're saying after his injury you drove his car with him as a passenger to the hospital?
>
> A. Yes.
>
> Q. He got treated, discharged, and then you were back in his car going back to your mom's house?
>
> A. Never left the parking lot and he said that.
>
> Q. No, I understand that --
>
> A. Yes, but that's --
>
> Q. -- but that's where you were going?
>
> A. Yes. Yes.
>
> Q. All right. Let's try not to -- I'll try and won't talk over you; you try not to talk over me. All right. So you're leaving the hospital still in his car on the way to your mother's house, right? Right? That's on the way? That's where you were going?
>
> A. Right, that's where we were going, but we still had not left the parking lot.
>
> Q. All right. I didn't say anything about where you were. I'm saying you're in the car on the way to your mother's house, right?
>
> A. Yes.
>
> Q. Okay.
>
> A. Yes.

1-119. Popovich and Mast were in possession of the Walgreens RX pharmacy timestamps so Popovich and Mast knew the actual time Dulberg was at the pharmacy.

1-120. Mast knew that Dulberg told him that Dulberg and Gagnon drove from the hospital

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1 Folder B4: Gagnon depo certification page.pdf
2 Group Exhibit 5_2022-03-25_Margaret Orton subpoena (all)
3 Group Exhibit 6-Margaret Orton signatures analyzed (all)
4 Group Exhibit 16_2013-02-06_Gagnon depositions (all) pages 12 and 13

directly to a pharmacy on the day of the accident. Mast was in possession of the timestamps. The timestamps on the pharmacy receipts prove Dulberg's description is accurate. Both Gagnon and Carolyn McGuire insisted Dulberg went from the hospital directly to McGuire's house before returning to the pharmacy. In the above exchange Mast is leading the witness and helping Gagnon lie and contradict his own client.

1-121. Popovich and Mast were in possession of the Walgreens RX pharmacy timestamps so Popovich and Mast knew the actual time Dulberg was at the pharmacy.

1-122. Dulberg went from the hospital directly to the nearest pharmacy and had his prescription filled. David Gagnon pulled Dulberg's wallet from Dulberg's back pocket and handed the pharmacist cash from Dulberg's wallet (since Dulberg could not).

1-123. The last recorded time at Hospital is recorded at 3 different places within the Hospital report:

5:13 pm or 17:13 discharge instructions[1]

5:13 pm or 17:13 Pain 4 time[2]

5:13 pm Discharge by WJD0610 @ 1713[3]

1-124. Dulberg gave the pharmacist 2 prescriptions and the prescription drop off receipts are marked "WAITING TUE 5:39PM New"[4]

1-125. On June 28, 2011 26 minutes elapsed between the last recorded time at the Hospital and the Walgreens Pharmacy at the busiest time of day for traffic in McHenry, Illinois.

1-126. With no traffic at midnight it takes 16 minutes (using the fastest route)[5] to drive from the Hospital (located at 4201 Medical Centre Dr, McHenry, IL) to the McGuires home (at 1016 W Elder Ave. McHenry, IL). It takes 14 minutes (using the fastest route)[6] to drive from the McGuires home (at 1016 W Elder Ave. McHenry, IL) to the Walgreens Pharmacy (at 3925 W Elm St, McHenry). Driving both routes, one after the other, takes 30 minutes. This does not include the time to walk from the emergency department to the car (in the parking lot), parking and visiting with Carolyn McGuire in her home (and getting $50.00), or time to park and walk from the car to the back of the Walgreens store (where the pharmacy is located).

1-127. Rt. 120 in McHenry (between Rt. 31 North and Rt. 31 South) has undergone a major construction change to increase the flow and amount of traffic it can handle since the June 28, 2011 accident. In addition, Johnsburg has removed stop signs from Johnsburg Rd and built a new 'roundabout' in the center of town so all traffic keeps moving rather than getting backed

1 Exhibit 53_DUL000227, 2156, 5719, 5727, 7540 .pdf
2 Exhibit 54_DUL002150, 2163, 5712, 5734, 7546.pdf
3 Exhibit 55_DUL000229, 2158, 5721, 5729, 7542, 7604.pdf
4 Group Exhibit 1: 2011-06-28_Walgreens Prescriptions.pdf
5 Group Exhibit 7: 2011-06-28_McGuire-Gagnon Claimed RX route.png
6 Group Exhibit 7: 2011-06-28_McGuire-Gagnon Claimed RX route.png

up at the stop signs. Because of the major construction projects, accurate travel times from the Hospital to the McGuires home and back to the pharmacy back in June 2011 cannot be provided. But it can be assumed that the travel times given in 'Group Exhibit 7' are faster then the actual travel time on the day of the accident.

1-128. Also note there are 3 other pharmacies, (Walmart, Meijer, CVS)[1] which are closer to the McGuires home than Walgreens pharmacy. Dulberg would have had to pass 3 other pharmacies to get back to the Walgreens pharmacy (closest to the hospital). There is also a Walgreens pharmacy in Fox Lake (that is less than 10 minutes away from the McGuire home) that would be much closer than the Walgreens pharmacy Dulberg actually used.

1-129. Easily identifiable acts of perjury by Gagnon in his deposition are as follows:

1) Mast led Gagnon to state they drove from the hospital directly to the McGuire house (4 times in a row).
2) Mast allowed Gagnon to describe the limb being cut when the accident occurred as 4 or 5 feet long. Dulberg described it as being about 20 feet long. Mast helps Gagnon completely misrepresent the size and position of the limb being cut.
3) Mast allowed Gagnon to misrepresent the chainsaw accident. Mast drew a diagram of a branch that was shorter than a man and being held vertically upright by Dulberg.

1-130. Exhibit 1 of Gagnon's deposition consists of 2 papers cut and placed together to appear as one paper.[2] There are many versions of Exhibit 1 throughout the bates-numbered documents.

1-131. Exhibit 2 of Gagnon's deposition is an alleged transcript of a phone conversation.[3] Mast claimed to have a recording of the phone conversation but has never produced it. It probably does not exist.

1-132. Popovich has a different version[4] of Exhibit 3 of Gagnon's deposition than Dulberg's version[5].

1-133. On February 11, 2013 Mast wrote a letter to Dulberg stating:[6]

> "Obviously, this case is going to come down to your word against David's word. With your testimony, it seems very clear that David was negligent in operating the chaimsaw to cause it to strike you right forearm. Unfortumately, David's version of the accident is much different. Given the conflict in the testimony, it is difficult to determine how a jury will untimately decide liability in this case. If the jury decides for you, you will obviously win. However, if the jury finds for Mr. Gagnon, you will lose. One additional

1 Group Exhibit 7: 2011-06-28_Walmart.png and 2011-06-28_Meijer.png and 2011-06-28_CVS.png
2 Group Exhibit 17_Gagnon Exhibit 1 (all)
3 Group Exhibit 18_Gagnon Exhibit 2
4 Group Exhibit 19: POP 1320-1326_Gagnon Exhibit 3 with extra page.pdf
5 Group Exhibit 19_Gagnon Exhibit 3 (contains many examples)
6 Exhibit 52_2013-02-11_LTR_Mast to Dulberg_POP000260.pdf

factor is that David testified that you stated after the fall "I may never have to work the rest of my life" and that you urged him to help by offreing favorable testimony. If true, this could be problematic to the case."

1-134. On February 13, 2013 at 18:03:09 -0000 (UTC) Dulberg sent an email to Mast stating[1]:

"In response to your letter about Gagnon's deposition: In the first place, why would I hold up the very end of a branch with my damaged left arm? And if I did do it as Dave Gagnon said, I would have had my back to him. What he said makes no sense. In the second place, if you have ever been cut by a chain saw, the last thing on anyone's mind would be making a profit. I was in so much pain that I could not have talked seriously about anything other than stopping the bleeding and getting to a hospital fast. David did not come into the hospital with me. He dropped me at the door and was parking the car. He was brought into the ER and questioned by the staff that was there. You can check with whoever was working the ER that day. It's not really my word against David's but David's word against those that were working in the ER. There is one witness as to David talking about making money off of this accident. Mike Mcartor heard David say this to me in David's garage the day I went up to David's house to get his home owner's insurance policy number per your request. Mike Mcartor is a friend that grew up with David and myself and is currently living at my residence."

1-135. On February 13, 2013, at 12:51 PM, Hans Mast sent an email to Dulberg stating[2]:

"Evey case has different versions of the same accident. Unfotunately, when there are no witnesses, its hard to know how the jury will decide a case. David's description of the accident made sense to him and he described it in a way that "could have"occurred even though different from your description. I think the only way to prove him wrong is to show him to be incredible in other ways...for instance his assertion that you told him "you could be rich" in front of your room mate. If your room mate will cooperate and say that David is wrong - that you did not say this, this could be a very good way to show him to be wrong. Would your room mate agree to a deposition in the case? if so, have him call me...thanks Paul.…"

1-136. On March 18, 2013 Mast sent all defendants attorneys, Barch and Accardo, copies of the cut up pharmacy receipts without the timestamps[3] 2 days prior to the deposition of Caroline and William McGuire.

1-137. On March 20, 2013 CAROLYN McGUIRE was deposed[4], WILLIAM McGUIRE was deposed[5], and MIKE McARTOR was deposed[6].

1 Exhibit 13_DUL001577, 1579, 1581, 1582, 2723, 2725, 2728, 2729, 7086, 7988, 7092, 7479, 7481, 7484, 7485
2 Exhibit 13_DUL001576, 1579, 1580, 2722, 2725, 2727, 7085, 7088, 7090, 7478, 7481
3 Exhibit 56_2013-03-18_LTR Mast to Barch_medical records request_POP000231-POP000238.pdf
4 Group Exhibit 20_2013-03-20_Carolyn McGuire depositions (all)
5 Group Exhibit 21_2013-03-20_William McGuire depositions (all)
6 Group Exhibit 25_2013-03-20_McArtor depositions (all)

1-138. The transcripts as they were provided by Urbanski reporting services had certification pages signed by a person named "Paula Ann Erickson".

1-139. On March 25, 2022 Paula Erickson was subpoenaed[1] for 20 signatures.

1-140. Omni Document Examinations did an analysis of the signatures and issued a report.[2]

1-141. Mast led the witness Carolyn McGuire to commit perjury and intentionally did not follow up on easily impeachable testimony during the Carolyn McGuire interview. Mast helped Carolyn McGuire lie in her interview about Dulberg returning to the McGuire house directly from the hospital by hiding the pharmacy timestamps.

1-142. During the interview by Mast with Carolyn McGuire the following exchange took place:[3]

> Q. So they both run into the house, right? Yes? Yes?
>
> A. Yes.
>
> Q. You wrap the arm, then they run back out. They go to the hospital. They are at the hospital approximately, and I know you didn't time it, but approximately an hour and a half at the ER?
>
> A. Uh-huh.
>
> Q. And they come back to your house, correct?
>
> A. Correct. Yes.
>
> Q. And then Paul and Dave come into the house again?
>
> A. Yeah.
>
> Q. Okay. And do you sit down and talk to him or what happens?
>
> A. Well, Paul needed medication to have refilled and he didn't have any insurance and didn't have any money on him so I gave him $50 to go get the prescriptions refilled.
>
> Q. Okay.
>
> A. Not knowing how much they would cost but you know.
>
> Q. So as I understand it, Paul comes back to your house from the ER and says, hey, I need to refill this prescription for pain medication and don't have any money and you give him $50?
>
> A. Yes.
>
> Q. Okay. So he asked -- Did he ask -- Hold on. Did he -- It looks like you want to talk. Did he ask you for the $50 or did you just offer it to him?

1 Group Exhibit 8_2022-03-26_Paula Erickson subpoena (all)
2 Group Exhibit 9-Paula Erickson signatures analyzed (all)
3 Group Exhibit 20_2013-03-20_Carolyn McGuire depositions (all) pages 56 to 58

A. I offered it to him. He didn't ask.

Q. How long was Paul in the house when he returned from the ER until he left to get the prescription filled?

A. They weren't there maybe a few minutes and they went to the drug store.

Q. So Dave then took Paul in Paul's truck and went to the drug store to fill the prescription?

A. Uh-huh.

Q. And then when Dave returned, did he return alone or with Paul again?

A. I believe he took Paul home.

Q. Right.

A. And he could walk from Paul's house.

Q. Right. So it's your belief that Dave would have walked from Paul's house back to home and that's when he arrived home then?

A. Right.[1]

Q. Was that within the hour?

A. I don't know how long he was at Paul's house once he --

Q. Okay. But after Dave and Paul left in Paul's truck to go fill the prescription, Dave then returned next alone to the house, right?

A. Back to my house.

Q. Yes.

A. Yes, because he --

Q. So it was your feeling that he probably dropped Paul after and left the truck at Paul's house?

A. Yeah. It was his truck. Paul's truck.

Q. I understand.

A. Okay.

Q. All right. Okay. Now, let's go back a little bit and let me ask a couple follow-up questions. When Paul ran into the house after the accident, okay --

A. Uh-huh.

Q. -- with the injury, did he say anything about how it happened?

A. There wasn't time. No.

---

1 Group Exhibit 20_2013-03-20_Carolyn McGuire depositions (all) pages 56 to 58

Q. I understand there might not be time. I am just asking if. [1]

1-143. Easily identifiable acts of perjury by Carolyn McGuire in her deposition are as follows:

1) Perjury about how Dulberg came to her house directly from the hospital to ask for money. (the pharmacy timestamps prove this cannot be true)

2) Perjury about Carolyn McGuire calling the emergency room for information about Dulberg's condition (The emergency room does not give medical information on patients to the general public. Carolyn McGuire lied to the emergency room staff and claimed she was the mother of Dulberg over the phone.)

3) Dulberg claimed that he never entered the McGuire house immediately after being cut with the chainsaw. Carolyn McGuire claims he was in the house for about 1 minute. It is impossible to be in the house for 1 minute without leaving a lot of blood. This could have been verified.

4) Carolyn McGuire claimed that Dulberg lifted a 200 lb tiller off of a trailer by himself with her directly in front of him and watching him sometime after the chainsaw accident. Dulberg claims there were 3 people present and it was the third person that moved the tiller. This could have been verified simply by deposing the third person and asking them.

1-144. There are many versions[2] of Exhibit 2 of the William McGuire deposition. It is not possible to know which one is correct.

1-145. On April 24, 2013 Perry A. Accardo filed with the Circuit Clerk a NOTICE OF NAME CHANGE indicating Defendant David Gagnon's attorney's Law OFFICE had changed its name from Law Office of M. Gerard Gregoire to LAW OFFICE OF STEVEN A. LIHOSIT.[3]

1-146. On August 30, 2013 an unfiled Notice of Discovery Deposition(s) regarding Deponent Dr. Marcus Talerico was mailed to the parties' by Defendant David Gagnon's attorney.[4]

1-147. On October 15, 2013 Defendant David Gagnon's attorney sent a letter to the Plaintiff and Defendants Carolyn and William McGuire's attorneys confirming the discovery deposition of Dr. Marcus Talarico for **OCTOBER 16 AT 1:00 PM**. [EMPHASIS ADDED][5]

1-148. On October 22, 2013 Mast made a settlement offer of $7,500 to McGuires through their attorney Barch claiming Dulberg discussed it with him and agreed.[6]

1-149. There is no evidence of any communication between Mast and Dulberg about any $7,500 offer leading up to October 22, 2013 or at any time following October 22, 2013.

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1 Group Exhibit 20_2013-03-20_Carolyn McGuire depositions (all) pages 56 to 58
2 Group Exhibit 23_William McGuire Exhibit 2 (contains many different versions)
3 Exhibit 57_2013-04-17_NOTICE OF NAME CHANGE_POP001144-POP001145.pdf
4 Exhibit 58_2013-08-30_Notice of Deposition_POP000070-POP000071.pdf
5 Exhibit 59_2013-10-15_LTR_Accardo to Mast about Talerico_POP000067.pdf
6 Exhibit 60_2013-10-22_offer from Mast to Barch_POP000192.pdf

1-150. On October 30, 2013 Mast in an email to Dulberg first expressed doubt about Dulberg's case against Gagnon. Mast stated:[1]

> "Paul, here are my U1oughts regarding your case. There are two issues. The first liability, or whether Mr. Gagnon is liable for your injury. If he is not proven liable, then it does not matter how badly you were hurt since he will not be found responsible f01 your damages. The second issue is your damages, or to what extent you were injured due to Mr. Gagnon's acts. Both of these issues are strongly contested in your case. As to liability, there were no witnesses to the accident. So, whether Mr. Gagnon will be held responsible for your damages is uncertain and a gamble. That is because it is your word against his word. Our argument is that you were simply holding a limb when he caused the chain saw to strike you. His argument is that you moved your arm in the path of the chain saw unexpectedly. If the jury determines that we did not prove your "version" of the accident, then they can find against you and in favor of Mr. Gagnon at trial.
>
> As to damages, the issue is complicated. That is because your treating physicians do not all agree on exactly what injury you suffered or whether your had a fully recovery or not. Dr. Talerico at MidAmerica Hand and Shoulder, saw you twice. The first time was in December, six months after your injury. He was not supportive of your claim in most respects. He didn't really feel there was anything wrong with you - as to the forearm. He said that you complained mostly of pain radiating down the forearm from the laceration site with numbness and tingling. On exam he noted no tenderness and it was mostly a normal presentation. Strength was good. He did not see any nerve problem. He prescribed physical therapy due to a muscular s01t of symptomology - not nerve related. Apparently you did only 2 sessions of therapy and returned January, 2012. No new complaints at the time. The EMG was normal. He did not believe you were disabled. He continued you on therapy. He saw no evidence of nerve problems. The only symptoms were subjective - not represented by any abnormal exam finding. Dr. Sagerman has also been deposed. I will summarize his testimony for your soon. His was more favorable, but still limited in what he related to the chain saw accident. Apparently he does not believe you presently have any symptoms relatable to the chain saw injury. Think about these issues. I will provide you Dr. Sagerman's summary soon."

Mast did not provide Dulberg with the summary of Dr. Sagerman's deposition until 5 months after Mast's withdrawal as Dulberg'd counsel in 2015.

1-151. On November 4, 2013 Mast requested a meeting with Dulberg. Dulberg took Barbara Dulberg, his mother, to the meeting. Neither Paul Dulberg nor Barbara knew what the meeting will be about. It is at this meeting that Dulberg was first informed by Mast that Mast believed Dulberg has no case against the McGuires. Mast made a number of statements which surprised Barbara. Mast claimed that juries in this area are very conservative and Dulberg can't win against an old lady. Dulberg disagreed. It was at this meeting that Dulberg first gave Mast permission to look into a settlement.[2]

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1 Exhibit 13_POP000195.pdf, DUL001538, 1540, 1542, 5179, 5181, 5183, 7047, 7049, 7051, 7440, 7442, 7444,

2 Exhibit 61_2013-11-04_email_POP001531 POP001533-POP1536.pdf (the witness is Barbara Dulberg, Dulberg's mother)

1-152. The $7,500 offer was never discussed at the November 4, 2013 meeting that Mast requested to discuss the McGuire case. A witness at the meeting can confirm this.

1-153. It is not possible to explain why Mast called the November 4th meeting to discuss the McGuire case with Dulberg (if they already made an offer 4 weeks earlier to settle the case with the McGuires for $7,500 and were waiting for Barch to reply at that time).

1-154. On November 18, 2013 McGuire's attorney Ronald Barch contacted Mast. Barch claimed he had been given authority to make an offer for $5,000.[1] (This was not an offer but rather a counter offer to Mast's original offer made on October 22, 2013).

1-155. Dulberg was informed by Mast in an email. Mast wrote:[2]

> "In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now."

1-156. Dulberg answered:[3]

> "Only 5, That's not much at all. Is this a take it or leave it or do we have any other options? ... I'm not happy with the offer."

1-157. To which Mast replied:[4]

> "Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case."

1-158. Dulberg replied:[5]

> "I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm. Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?"

1-159. To which Mast answered:[6]

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1 Exhibit 62_2013-11-18_Barch counteroffer_POP001204.pdf
2 Exhibit 13_DUL001516, 1520, 1522, 1525, 5156, 5160, 5162, 5165, 7024, 7028, 7030, 7133, 7417, 7421, 7423, 7426
3 Exhibit 13_DUL001515, 1520, 1521, 1523, 1525, 5155, 5160, 5161, 5163, 5165, 7023, 7028, 7029, 7031, 7033, 7416, 7421, 7422, 7424, 7426
4 Exhibit 13_DUL001515, 1519, 1521, 5155, 5159, 5161, 7023, 7027, 7029, 7416, 7420
5 Exhibit 13_DUL001515, 1519, 1521, 5155, 5159, 5161, 7023, 7027, 7029, 7416, 7420, 7422
6 Exhibit 13_DUL001519, 5159, 7027, 7420

"Cause they had no say on how Dave did the work. That is what the evidence from all shows."

1-160. Dulberg later replied:[1]

"That's their personal issues of control with their own son. I will testify all day long about the things they wanted him to do that he did do throughout the day. By claiming they had no control over the work dave did after all the preparation, money and time spent out in the yard yelling at him that they wanted certain things done in a particular way I don't see how they get out of the direct over site of the project because now that there is an injury they don't feel they had any real direct control over their own workers actions? This is ridiculous. Hans, they have to do better than claim they had no control over David that day. If that's the case why were they there watching the work most of the day? Even Bill had hands on doing some of the work and rarely let David go to long without checking and seeing if things were being done the way Carol and Him wanted it."

1-161. Email exchanges from November 18, 2013 onward show that Dulberg (1) was not happy with the offer of $5,000 and (2) knew nothing of the Mast offer of $7,500. The email exchanges also show that Dulberg felt the McGuires were partially responsible for his injury.

1-162. On November 19, 2013 Dulberg wrote an email to Mast stating:[2]

"A while back you told me that the jury's here in this county are primarily conservative and that they know the only reason we are before them is for money. Not sure if that statement was meant to scare me or not but I do agree, they are, for the most part conservative and I would hope we should make it known we want money for damages, lawyers fees and the medical bills, etc... loud and clear. We should also make it known to the jury that the parties or their insurance companies have never even offered to pay 1 cent for any of the medical damage and that's why we seek the juries help in settling this dispute. Perhaps if the insurance companies would have paid for these basic things none of us would even be here. but they didn't and now yes after years of waiting I am seeking money to pay for the medical treatments, you as the lawyer and finally myself as I'm the one who has had to suffer the consequences of the Gagnon/McGuire choices on that day. I cannot believe that a conservative jury isn't going to award anything less than the cost of the medical damages and lawyer fees from them unless something catastrophic changes. I do see them being conservative as to what I will end up with at the end but not the real medical and lawyers bills. Even the conservative juries in this county are not so conservative that they won't give the base bills. The McGuires insurance is free to go after David for damages if they lose. Other than fearing a motion to dismiss the suit against the McGuire's insurance based on some false concept that because they didn't have their finger directly on the chainsaw trigger they hold no responsibility for damages. what are the real benefits of letting them off so easy? And I don't want to hear its because 2 parties vs 1 is much easier. Letting off the McGuires insurance for such

1 Exhibit 13_DUL001519, 5159, 7027, 7420
2 Exhibit 13_DUL001517, 1518, 5157, 5158, 7025, 7026, 7418, 7419

a small amount is anything but reasonable and I just can't see any ethical judge in this county not keeping them in the suit all the way for a jury to decide whether they had any part to play in the days events and the level of responsibility they share with David for the consequences considering it was the McGuires project, their land, their choice of who did the labor etc. etc... When you advised me to seek a settlement with the McGuires insurance, I agreed to look at it only because they didn't have their hands directly on the trigger of the chainsaw and That you would get at the least the medical bills paid for out of it. I thought that was made clear in your office. I know you work on approximately 33%. Is 33% of 5,000 even worth the time and money you already invested? It's only $1650 for you and I'm sure your hourly fee eats that up rather quickly, I know mine did back when I had hands and arms that worked so I could charge."

1-163. On November 20, 2013 Mast sent an email to Dulberg stating:[1]

"Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation."

1-164. Dulberg replied by email:[2]

"Ok we can meet. I will call Sheila today and set up a time. **Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor. I need to read it myself and any links to recent case law in this area would be helpful**" [Emphasis Added]

1-165. On November 20, 2013 a MEDICAL EXPENSE REPORT[3] was sent from Mast to opposing parties. It contained a cut portion of the Walgreens RX receipts without timestamps.

1-166. On November 20, 2013 Dulberg met Mast at the law offices of Thomas J. Popovich. Dulberg's brother, Thomas Kost, also attended the meeting. In the meeting Mast used the example of Tilschner vs Spangler. He claimed that the McGuires were not responsible for Dulberg's injury because Restatement of Torts 318 is not applicable in Illinois. Mast also claimed that the accident was not foreseeable by the McGuires and they had no control over Gagnon's actions. Mast also gave Dulberg a packet of other examples of case law but **Mast did not discuss the other case laws at the meeting. The only discussed Tilschner v Spangler.** [Emphasis Added]

1-167. Mast gave Dulberg a certified slip ruling of Tilschner v Spangler[4] to take home and read.

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1 Exhibit 13-DUL001515, 5155, 7023, 7416 (The witness is Thomas Kost, Dulberg's brother)
2 Exhibit 13-DUL001515, 5155, 7023, 7416 (The witness is Thomas Kost, Dulberg's brother)
3 Exhibit 63_2013-11-20_Medical Expense Report_POP000805-865.pdf
4 Exhibit 64_2013-11-20_certified slip copy of Tilschner v Spangler_not bates stamped.pdf

He also gave other documents[1] [2]of case law to Dulberg, but Mast only discussed Tilschner v Spangler at the meeting.

1-168. Thomas Kost kept a rough set of notes[3] during the meeting. The notes consist of the 7 phrases:

"forseeable"
"duty"
"negligent"
"statement of torts sect 318 not applicable in Illinois"
"agent vs contractor"
"level of control"
"Kajawa"

1-169. Mast claimed that if Dulberg doesn't accept the $5,000 the McGuires will simply file a motion to get out of the case for free. Mast said the McGuires do not have to offer anything and are offering $5,000 to be nice. Dulberg asked to read the depositions of the McGuires and of Gagnon before making a decision.

1-170. It is not possible to explain why Mast called the November 20th meeting or what was discussed (if Dulberg already agreed to settle with the McGuires for $7,500).

1-171. On November 20, 2013 Mast wrote a Memo[4] to a person named "Jen":

> "We have a co-defendant that is not really responsible in this case and they have offered a nominal settlement of $5,000 in the case. I would like to accept it but I want to have a settlement memo prepared first to show how the money will be disbursed for the client to sign. Therefore, we will not need to call on the balances but we will only need to provide a settlement memo containing only any liens listed on the settlement memo. Can you please prepare the settlement memo for me as soon as possible so that I can talk to the client about the offer."

1-172. On November 20, 2013, shortly after the meeting, on the same day, Dulberg went to the house of a neighbor of the McGuires to ask if they witnessed what was happened on the property the day of the accident. Dulberg was looking for a witness that saw the McGuires actively participating in the work being done and supervising the work.

1-173. On November 20, 2013 (later in the day) Dulberg sent an email to Mast stating[5]:

> "I'd like to read David's dep before accepting the McGuire offer. Even after reading the McGuire deps and seeing how things easily get skewed in all honesty, I can't blame Carol

1 Exhibit 65_Lajato_DUL000204-DUL000225.pdf
2 Exhibit 66_2013-11-20_Dulberg 000301-000305_Case Law CHOI.pdf
3 Exhibit 67_2013-11-20_notes of meeting_DUL001217.pdf
4 Exhibit 68_memo of November 20 2013_POP001207.pdf
5 Exhibit 13_DUL001512, 5152, 7020, 7413

or Bill for Dave's actions I just thought I was covered under their insurance. I know Carol & Bill thought I was covered as well irregardless of all the half truths in their dep."

1-174. On November 21, 2013 Mast ordered Dulberg's deposition.[1]

1-175. On December 2, 2013 Mast sent Dulberg's own deposition to Dulberg.[2]

1-176. On December 4, 2013 Dulberg received his own deposition in the mail. Dulberg again informed Mast he wants to see Gagnon's deposition.[3]

1-177. Dulberg sent an email to Mast stating[4];

> "I wanted to review David Gagnons dep before letting the McGuires off the hook. And that word "foreseeable" in the McGuire suite... Well I suppose if I gave anyone a chainsaw and told them to use it, given enough time, an injury is foreseeable, very foreseeable just not hoped for. And the comment about people not liking friends who sue friends, um well we all should know other than entirely random acts such as auto accidents, train derailments, air plane accidents, etc. Etc.. That most of the time it's those we know who hurt us most often than not. and if it's serious we must be able to sue even if it is or once was a friend."

1-178. On December 9, 2013 Mast ordered Gagnon's deposition.[5]

1-179. On December 10, 2013 Mast sent Gagnon's deposition to Dulberg.[6]

1-180. On December 18, 2013 Dulberg wrote an email to Mast after reading Gagnon's deposition stating[7]:

> "I read through David's dep. it's mostly lies with a few truths. Where should I begin or better yet where would you like me to begin? Almost everything he said was made up, from which end of the branch I was holding, at who's direction I was doing it under and even as to why I was even there on the McGuires property, etc...
>
> Not to mention the nonsense of $10,000. ... As far as the McGuires are concerned give me a call."

1-181. On December 20, 2013 Mast wrote the following memo[8] after speaking with Dulberg by phone:

> "On December 18, 2013, I called Paul today after and email and we had a long discussion

1 Exhibit 69_2013-11-21_Deb Fischer bill for Dulberg's deposition_POP000593.pdf
2 Exhibit 70_2013-12-02_LTR_Mast to Dulberg_POP000176.pdf
3 Exhibit 13_DUL001504, 1505, 2908, 2909, 5145, 5146, 7012, 7913, 7405, 7406
4 Exhibit 13_DUL001504, 1505, 2908, 2909, 5145, 5146, 7012, 7913, 7405, 7406
5 Exhibit 71_bill for Gagnon's deposition_manipulated dates_POP000594.pdf
6 Exhibit 72_2013-12-10_LTR Mast to Dulberg_POP000175.pdf
7 Exhibit 13_DUL001500, 5141, 7008, 7401
8 Exhibit 73_2013-12-20_Memorandum_POP000884.pdf

about the McGuire's liability and he seemed to concede and understand that probably based on the testimony there is nothing we can prove against the McGuire's and he is willing to take their $5,000 settlement offer."

1-182. The evidence presented demonstrates that Dulberg disagreed with the $5,000 offer from first learning about it on Nov 18 until finally agreeing on December 18th. The $7,500 offer was not mentioned once during these Mast-Dulberg exchanges. The entire discussion between Dulberg and Mast from November 18, 2013 to December 17, 2013 was in terms of choosing between two options: (1) Accept the $5,000 offer or (2) get nothing. It is not possible to explain why any of this happened if Dulberg already agreed to settle with the McGuires for $7,500 on October 22, 2013.

1-183. On December 26, 2013 Mast contacted McGuire's attorney Barch to inform him that they would accept the $5,000 offer.[1]

1-184. On January 9, 2014 Defendants Carolyn McGuire and Bill (William) McGuire's attorney Ronald A. Barch sent a NOTICE OF MOTION[2] that on the 22nd day of January, 2014, at 9:00 o'clock A.M.

"…. and then and there present: Defendant Bill McGuire and Defendant Carolyn McGuire's Motion for Good Faith Finding and Order of Dismissal with Prejudice; At which time and place you may appear, if you so desire."

The NOTICE OF MOTION was sent to the Plaintiff's attorney Defendant Hans Mast at the correct address but the NOTICE OF MOTION sent to Defendant and Cross-Defendant David Gagnon's attorney Perry A. Accardo was addressed to Accardo's previous law firm (at the law firm's previous address).

1-185. On January 22, 2014 Judge Meyer approved a motion by the McGuires for a good-faith settlement.[3]

1-186. On January 31, 2014 the final release papers were signed by Dulberg and mailed back to Mast.

1-187. On April 14, 2014, at 9:07 AM, Hans Mast sent an email to Dulberg stating:[4]

"Paul. We've been talking this case over a bit at the office. As Ive tried to advise you during our several meetings, I do not believe we can adequately prove our case at trial. Its your word against Mr. Gagnons. Most times, that means we lose - as plaintiff. I don't think we want to invest the time and expense to get to that result. Im happy to try to settle the case for you, but it will probably be a low amount. So, I want to advise you now should you wish to retain other counsel to try the case for you. Please advise how you

1 Exhibit 74_2013-12-26_LTR Mast to Barch_POP000670.pdf
2 Exhibit 75_2014-01-09_NOM_POP000575-POP000576.pdf
3 Exhibit 76_2014-01-22_GOOD FAITH FINDING AND ORDER OF DISMISSAL_POP000988.pdf
4 Exhibit 13_DUL001484, 2835, 5125, 6992, 7385

wish to proceed. I know this is not good news, but I have learned a long time ago, some cases just are not proveable - not because you are not credible, but because jurys demand more than we can give at trial."

1-188. On April 14, 2014 at 9:31:50 AM CDT Dulberg sent an email to Mast stating:[1]

"Thank you for the honesty. There is no doubt david cut my arm almost in half with a chainsaw. Even he admitted he was in control of it, so What part of the case seems most troubling?"

1-189. On April 14, 2014 at 9:44:11 AM CDT Dulberg sent an email to Mast stating:[2]

"What is a small amount? Is it enough to pay for the medical expenses?"

1-190. On April 22, 2014 13:01:02 -0000 (UTC) Dulberg sent an email to Mast stating:[3]

"I know I said to just get the best deal you can but what I forgot to ask was if you or your firm had anyone else in mind that would take on my case with the appropriate resources and attention it needs to get a result worth going further. I don't mind sharing or switching firms if it came with your blessing."

1-191. On May 16, 2014 13:23:02 -0000 (UTC) Dulberg sent an email to Mast stating:[4]

"Know anyone who does bankruptcy?"

1-192. On May 16, 2014, at 9:52 AM Mast sent an email to Dulberg stating:[5]

"Sure..

Richard T. Jones

LAW OFFICES OF RICHARD T. JONES

138 Cass Street Woodstock, IL 60098 (815) 334-8220"

1-193. On May 20, 2014 at 12:30:55 PM CDT Dulberg emailed mast stating:[6]

"... Richard has retired..."

1-194. On June 16, 2014 at 3:46:00 PM CDT Dulberg sent an email to Mast with Subject: 'Bankruptcy ?' stating[7]:

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1 Exhibit 13_DUL001484, 2835, 5125, 6992, 7385
2 Exhibit 13_DUL001484, 2835, 5125, 6992, 7385
3 Exhibit 13_DUL001480, 2842, 5121, 6988, 7381
4 Exhibit 13_DUL001476, 1477, 2861, 2863, 5115, 5116, 6982, 6983, 7375, 7376
5-Exhibit 13_DUL001476, 2861, 5115, 6982, 7375
6 Exhibit 13_DUL001476, 2861, 5115, 6982, 7375
7 Exhibit 13_DUL001475, 5114, 6981, 7374

"I spoke with David Stretch, a bankruptcy lawyer, about possibly going the route of Bankruptcy. He said if I have a pending a suit that it is considered a possible asset and may allow the court to hold off any bankruptcy judgement pending the outcome and that I would only be able to exempt 15,000 before the creditors get their share. He also said if all I default on is credit cards but keep up on the mortgage and basic needs all that can happen is a judgement will be issued against me and it goes on my credit report and it can be cleared later by filing. I know my personal financial issues are not your problem but I am to a point for the first time ever that I am stopping all payments to my credit cards and focusing on the house, food and utilities. Or rather I should say my Mom is thanks to the chainsaw. Does filing bankruptcy make any difference on your end and would it complicate anything? In your opinion what would be the better route, file bankruptcy now or just default on the credit cards and deal with it later? I added the contact info for David Stretch below"

1-195. On September 23, 2014, at 7:39 PM, Hans Mast sent an email to Dulberg stating[1]:

"My view hasn't changed. I think each time we've talked I've always tried to be open about my reservation to take this case to trial. I just don't think we have enough evidence to prove our case and to invest the time and cost and preparing for trial and moving to trial just in my mind does not make sense to me. I have to be very realistic about things and honest with my opinion. It doesn't do you any good if I do not feel strongly about the case. That's the very reason why I wanted to have this discussion. I want to give you the option of finding other counsel at this point if you really want to take the case to trial which I think ultimately will be necessary. I just do not believe strongly that defense counsel will offer much in the way of a settlement. Although I will ask him if he is going to make an offer and maybe that will allow you to make a better judgment on this."

1-196. On September 23, 2014 at 8:25:03 PM CDT Dulberg sent an email to Mast stating:[2]

"First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw. I was but a lowly printer/graphic designer my whole life and never asked for anyone's sympathy till now. Secondly, I'm sorry I must live among a bunch of potential jurors that you don't trust to just do the right thing. Thirdly, I'm most sorry for agreeing to lend David Gagnon a hand when he needed some help, I had no idea he was going to try and lop it off. Fourth, I'm sorry you don't feel good about pushing for a trial. I wish whatever mysterious evidence you seek would be shared with me becausewithouta video camera I can onlysay what I've seen from directexperience.And I guess in this case "me11 the victim isn't credible enough but the one wielding a chainsaw that hurt me is. A few questions from a laym0.n, How much could a trial actually cost? What, $50,000 $150,000 Does it even cost as much as a car? What number? How much would you hope to get for us in a settlement? How much could be expected if the trial does proceed and we have a favorable outcome? Hans, if your heart is not in this I'm sorry"

1 Exhibit 13_DUL001467, 1468, 5106, 5107, 6972, 6974, 7366, 7367
2 Exhibit 13_DUL001466, 1468, 5105, 5107, 6972, 6974, 7365, 7367,

1-197. On September 24 2014 13:32:15 -0000 (UTC) Dulberg sent an email to Mast with subject: "Call me" stating:[1]

> "Hans, My stomach is in knots again over this please call me"

1-198. On September 26, 2014 at 6:32:40 PM CDT Dulberg sent an email to Mast with Subject: "Bad night" stating:[2]

> "Last evening I was in the hospital with the most severe migraine I've ever had. This morning I filed for bankruptcy with David Stretch. This afternoon I spent with my regular physician Dr Zaide doing a follow up from yesterday. And right now, I have to email you. All when I still have a slight residual headache and should be in bed. At first I thought the migraine was brought on by the medications I'm taking but it wasn't, it was brought on after our discussions. Now I can't prove that but it seems pretty obvious to me. Joke no pun intended there! That migraine made me realize I need the stress of this situation over with. All the stress on top of losing everything is too much and I'd rather live than die from it all before my body does something worse. My body is not reacting well and the migraines are getting more frequent and worse. Have you ever vomited at the same time as deficating while being in some of the most excruciating pain in your life? If not, neither did I till the chainsaw went through my arm. That's when the migraines became more frequent, stronger and faster coming on. And now for the first time during the day. Ever since I awoke this morning, all I can I think is the stress of it all is killing me more and more as the reality sets in and I just can't afford to care about it anymore. My health means more than some lawsuits and the lure of money. All because some idiot named David Gagnon forgot to tell me to move out of the way and he can't seem to admit it. Yes, after reading his deposition and hearing it was my fault I was pissed. In my anger I suspected all sorts of things. Including it being intentional especially after my discussions at his home only trying to get his homeowners policy number and him wanting money and threatening me for it. Yes, my arm and elbow were hurt from his stupidity irregardless if some dr can link the two together or not. Yes, there will be ongoing medical as a result of all this because it still hurts and doesn't work right. Yes, I am now disabled irregardless of what SSDI appeal goes because of this. Yes, I understand I'm screwed because of a system that allows one person to hurt another and even after a trial and judgement entered all they have to do is go file for bankruptcy in the same courthouse on the same day. Yes, it just took me almost an hour just to type this. Yes, yes, yes... but none of it matters anymore! Bottom line Hans... Do the best you can with what you got, I've got nothing more to lose or give. I need it all to just go away."

1-199. On September 27, 2014 at 2:20:27 PM CDT Dulberg sent an email to Mast stating:[3]

> "I want the monies I owe back to SSDI for being found disabled because of David's crap. I owe SSDI another 30 grand so far because of this crap"

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1 Exhibit 13_DUL001456, 1464, 5092, 5103, 6959, 6970, 7352, 7363,
2 Exhibit 13_DUL001462, 5101, 6968, 7361
3 Exhibit 13_DUL001460, 5099, 6966, 7359

1-200. On October 2, 2014, at 9:19 AM, Paul Dulberg sent an email to Mast stating:[1]

> "Apparently Dynamic Hand Therapy has a lean that expired. It's for $23,900.00 and they said they will give me a 30% discount if I pay within the next few days or they could take me to trial over it. Colleen with their corporate office said she contacted you on Aug. 6th about this."

1-201. On October 2, 2014, at 9:43 AM, Hans Mast sent an email to Dulberg stating:[2]

> "Paul I'm going to try to Settle your case. No guarantees. But until the case could settle there's nothing I can do about the balances. Can you give me a copy of that bill."

1-202. On November 26, 2014 Dulberg filed for chapter 7 bankruptcy protection.[3]

1-203. Mast did not notify the court of the bankruptcy filing.

1-204. On December 08, 2014 15:31:29 -0000 (UTC) Dulberg sent an email to Mast stating:[4]

> "Just got a call from associated neurology because of the bankruptcy notice they received. Tried to explain that the leans on the lawsuit expired after 3 years and I really don't have any choice. They said they never heard of such a thing and are looking into the lean issue and will get back to me. On another note, Baudin's firm must not be interested because they never called me. Do I need to find a new firm or what?"

1-205. On December 8, 2014, at 9:42 AM, Hans Mast sent an email to Dulberg stating:[5]

> "Paul, thanks for the update. Im not sure what you mean by liens expiring. As long as your case is pending, the liens will apply to any recovery. As for an atty, my thoughts are the same. I can try to see if they want to give us a settlement offer, but I don't think we will want to take the case to trial given the extreme risk versus the time and expense in trying the case."

1-206. On December 8, 2014 at 1:06:53 PM CST Dulberg sent an email to Mast stating:[6]

> "Your risk...I just had to file bankruptcy because of that incident 3-1/2 years ago. I could no longer make all the payments to my creditors. I also have a disability suit because of it. I don't care about a settlement unless it's enough to drag David Gagnon through bankruptcy for his idiotic use of a chainsaw and made up story under oath. Gagnon sure

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1 Exhibit 13_DUL001458, 1459, 5094, 5095, 5096, 6961, 6962, 6963, 7354, 7355, 7356
2 Exhibit 13_DUL001458, 5094, 6961, 6962
3 Exhibit 77_Bankruptcy doc 1-0_OCR.pdf
4 Exhibit 13_DUL001420, 1423, 1425, 1427, 1429, 1430, 1431, 2916, 2919, 2921, 2923, 2925, 2926, 2927, 5056, 5059, 5061, 5063, 5065, 5066, 5067, 6923, 6926, 6928, 6930, 6932, 6933, 6934, 7319, 7321, 7323, 7325, 7326, 7327,
5 Exhibit 13_DUL001422, 1425, 1427, 1429, 1430, 2915, 2918, 2921, 2923, 2925, 2926, 2927, 5055, 5058, 5061, 5063, 5065, 5066, 6922, 6925, 6928, 6930, 6932, 6933, 7315, 7318, 7321, 7323, 7325, 7326,
6 Exhibit 13_DUL001419, 1422, 1425, 1426, 1428, 2915, 2918, 2921, 2922, 2924, 5055, 5058, 5061, 5062, 5062, 6922, 6925, 6928, 6929, 6931, 7315, 7318, 7321, 7322, 7324,

showed his true colors when he was deposed, he just isn't a standup guy at all. Either way it goes, (settlement or trial) I'm not going to make anything near what I've already lost or what my future losses are going to be so it just doesn't matter. The only thing that would be remotely satisfying is knowing that David Gagnon had to go through a settlement or trial and lose, then find himself actually having to face bankruptcy. I can only hope he has enough assets that it actually hurts."

1-207. On December 8, 2014, at 3:37 PM, Hans Mast sent an email to Dulberg stating:[1]

"I don't see us having the same goals in this case. I think you should search for a different atty. Let me know if you want another referral. Thanks Hans"

1-208. On December 8, 2014 at 6:00:50 PM CST Dulberg sent an email to Mast stating:[2]

"At first my goal was to get my medical paid for... That's changed because it's turned out worse than I thought... Now it's simply to get as much as we can and move on with my life... What are your goals in this case?"

1-209. On December 19, 2014 at 12:43:45 PM CST Dulberg sent an email to Mast stating:[3]

"I have to wonder... Is it the fact that David Gagnon doesn't have a bigger insurance policy? Or perhaps that I didn't lose my arm? What is it that isn't good enough for your firm that they would actually drop a client they chose to represent? I'm betting in the end it's all about the amount of money your firm can make off of my injuries because I've done nothing to exaggerate or hide anything. Have a merry Xmas, now I'm late to see a dr and my arm muscles are in spasm from trying to type this waisted email as fast as I can"

1-210. On December 19, 2014, at 10:11 AM, Hans Mast sent an email to Dulberg stating:[4]

"Here's the deal...they are going to be reviewing the case with a doctor. The doctor will probably say you weren't hurt that bad. So, even if they concede that Mr. Gagnon was at fault, they will likely not offer much on the case. How much, I don't know. But Im not interested in trying the case. I think it would be very difficult to win. So unless you want to work out a settlement, I think you should consider other counsel. Its tough to make these decisions. I know it makes it tough on you. But these decisions are the reality in working on such cases sometimes. The good news is that you have a chance to recover in a jury trial. It would be tough, but there is a chance that the jury will believe you. But it will take some time and expense to take the case to trial. If the jury believes your specialist, the damages could be good for you. But there are a lot of "ifs" and Im not prepared to undertake the risks at this point."

1 Exhibit 13_DUL001421, 2914, 2917, 5054, 5057, 6921, 6924, 7314, 7317
2 Exhibit 13_DUL001418, 2914, 5054, 6921, 7314
3 Exhibit 13_DUL001412, 2934, 5048, 6915, 7308,
4 Exhibit 13_DUL001413, 1416, 2935, 2938, 5049, 5052, 6916, 6919, 7309, 7312

1-211. On January 6, 2015 bankruptcy trustee Heeg sent a letter[1] to Mast asking about the value of the personal injury case.

1-212. On January 8, 2015 Mast faxed a letter to bankruptcy trustee Heeg stating:[2]

> "At this point, the defense is taking a "no liability" position and therefore, the chance of recovery is uncertain. I believe liability will be extremely difficult. We have calculated Paul's medical expense related to the occurance as exceeding $60,000. To my knowledge, most of the medical expense is outstanding. However, my belief is that any eventual recovery will be much less."

1-213. On January 8, 2015 "SCHEDULE B - PERSONAL PROPERTY - AMENDED" was filed with the bankruptcy court (bk doc 13-0)[3] which lists the estimated value of Illinois case No. 12LA178 as $55,000.

1-214. On January 9, 2015 Dulberg sent an email to Mast and received the following response:[4]

> From: Mail Delivery System <mailer-daemon@comcast.net>
> Date: January 9, 2015 at 12:45:29 PM CST
> To: pdulberg@comcast.net
> Subject: Delivery status notification
> This is an automatically generated Delivery Status Notification.
> Delivery to the following recipients was aborted after 0 second(s):
> * hansmast@comcast.net
> Reporting-MTA: dns; reszmta-ch2-04v.sys.comcast.net [69.252.207.68]
> Received-From-MTA: dns; resomta-ch2-10v.sys.comcast.net [69.252.207.106]
> Arrival-Date: Fri, 09 Jan 2015 18:45:29 +0000
> Final-recipient: rfc822; hansmast@comcast.net
> Action: failed
> Status: 5.1.1
> Diagnostic-Code: smtp; 550 5.1.1 No such user here
> Last-attempt-Date: Fri, 09 Jan 2015 18:45:29 +0000

1-215. On January 30, 2015 Dulberg sent an email to Mast and received the following response:[5]

> From: Mail Delivery System <mailer-daemon@comcast.net>
> Date: January 30, 2015 at 3:20:39 PM CST
> To: pdulberg@comcast.net
> Subject: Delivery status notification
> This is an automatically generated Delivery Status Notification.
> Delivery to the following recipients was aborted after 0 second(s):

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1 Exhibit 78_2015-01-06_bkcy Fax Heeg to Mast_DUL 001671-DUL 001672.pdf
2 Exhibit 79_2015-01-07_LTR_Mast to Heeg_DUL002600.pdf
3 Exhibit 80_bk doc 13-0_OCR.pdf
4 Exhibit 13_DUL001613, 2689, 5235, 7131, 7524
5 Exhibit 13_DUL001612, 2708, 5234, 7130, 7523

* hansmast@comcast.net
Reporting-MT A: dns; reszmta-ch2-01 v.sys.comcast. net [69.252.207.65]
Received-From-MT A: dns; resomta-ch2-13v.sys.comcast.net [69.252.207.109]
Arrival-Date: Fri, 30 Jan 2015 21 :20:39 +0000
Final-recipient: rfc822; hansmast@comcast.net
Action: failed
Status: 5.1.1
Diagnostic-Code: smtp; 550 5.1.1 No such user here
Last-attempt-Date: Fri, 30 Jan 2015 21 :20:39 +0000

1-216. In February, 2015 (in violation of the automatic stay) Mast and Popovich hurriedly tried to settle the Gagnon case for $50,000 in a pre-trial settlement conference. Dulberg refused to support the offer Mast was making to Gagnon on Dulberg's behalf.

1-217. On February 16, 2015, at 11:20 AM, HANS MAST sent an email to Dulberg stating:[1]

> "Paul, Sheila is sending out a letter today with a copy of the Memo for you. Let me know when you get it."

1-218. On February 19, 2015 at 2:33:44 PM CST Dulberg sent an email to Mast with the Subject: Re: Pre-trial settlement stating:[2]

> "I got it... Why does your mail always arrive opened? Also, many statements in the memo appear inaccurate. Not sure if it really matters. I'd ask for more $ in the demand... There is no way what is written is enough"

1-219. On February 22, 2015, at 5:58 PM, Hans Mast sent an email to Dulberg stating:[3]

> "I'm not sure what you're saying. I tried to tell you over and over again the nature in which the memo is written isn't important. This is just a memo to introduce the judge to the case. If there are different ways you want to say things I'm happy to do that. It's going to serve it's purpose perfectly"

1-220. On February 22, 2015 at 6:20:52 PM CST Dulberg sent an email to Mast stating:[4]

> "My case is "gross negligence" causing "untreatable, irreversible and debilitating harm" Never had a lawyer who needed me to help write or correct anything before. The SSDI lawyer pulled everything from the record and it was perfect. Yes, I would like to reword much of it because I wouldn't want anything used in it twisted later if we do go to trial. Yes, I understand that your firm won't back me but it doesn't mean I'm not going to take it to trial anyway. I need the wording to match exactly what I need should I go

1 Exhibit 13_DUL001398, 1400, 1402, 2711, 2712, 2714, 5034, 5036, 5038, 6901, 6903, 6905, 7294, 7296, 7298
2 Exhibit 13_DUL001398, 1400, 1402, 2711, 2712, 2714, 5034, 5036, 5038, 6901, 6903, 6905, 7294, 7296, 7298
3 Exhibit 13_DUL001254, 1302, 1393, 1396, 1482, 2730, 2736, 2739, 2742, 4878, 5029, 5032, 5123, 6714, 6899, 7292, 7383
4 Exhibit 13_DUL001254, 1302, 1390, 1393, 1395, 1482, 2730, 2733, 2736, 2739, 2742, 4878, 5026, 5029, 5032, 5023, 6714, 6899,

the distance. I can honestly say the dollar amount you listed I would never agree to. It wouldn't even cover my wages for the years in physical therapy yet the rest of my life. If I end up with a structured settlement where I have to chase this guy I believe we can always sell the settlement and cash out. Is that possible?"

1-221. On February 22, 2015, at 6:24 PM, Hans Mast sent an email to Dulberg stating:[1]

"Okay Paul I won't file the memo. Some would say that giving a client an opportunity to review a settlement memo is a good idea. In the past I have found clients appreciate reviewing these documents. I don't think you understand your case at all. To be honest. Just find an attorney who you like and we'll go that way. I was just trying to help. You obviously do not understand what I'm trying to do and that's fine. Let me know when you find one. Thanks"

1-222. On February 22, 2015 at 7:14:43 PM CST Dulberg sent an email to Mast stating:[2]

"Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives. I agree showing me the memo is a good idea it's just not the accuracy I expected. I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof. What's left for me? Facebook, scrap booking, crafts, etc... A life of crap... With ongoing pain and grip issues in my dominate arm/hand that are degenerative. This is as total as it gets for us in the working class short of being paralyzed or dead. I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over. What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books. I know you don't believe I'm hurt... I'm not interested in belief, I think the facts speak volumes above belief I question who's side your on? Your comments about believing David's deposition, etc... Hans, I have no degrees but I was better at my career in printing and graphic design than anyone I ever worked with who did. If I need character references from past clients, employers, coworkers, teachers, etc... I have an army of people who know I'm one of the most genuine, honest, dedicated hard working persons who takes responsibility for my actions. David on the other hand isn't a stand up guy at all. He couldn't even take responsibility for his actions not to mention his attempts at collecting from this, which I believe constitutes insurance fraud. Oh and I'm contacting the McHenry county states atty... I know too much time has passed since the threats but those threats were for a future time once all this was settled. If he attempts to collect or make good on his threats and if I end up back in the hospital I want everyone to know who to go get. I'm done playing nice with this guy and I can only hope I have an attorney who feels the same. I have to ask since you think I don't understand, what is it your trying to do?"

1 Exhibit 13_DUL001390, 1393, 1395, 2733, 2736, 2738, 5026, 5029, 5031, 6896, 6898, 7286, 7289
2 Exhibit 13_DUL001390, 1392, 1395, 2733, 2735, 2738, 5026, 5028, 5031, 6895, 6898, 7286, 7288, 7291

1-223. On February 22, 2015, at 7:20 PM, Hans Mast sent an email to Dulberg stating:[1]

> "Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. **You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case.** The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know." [Emphasis added]

1-224. On February 22, 2015, at 7:42 PM, Paul Dulberg sent an email to Mast stating:[2]

> "To believe David's version of events you must believe I was committing suicide. Who in their right mind puts his arm into a chainsaw? I figured you would cop out again... Now I'm left wondering... How hard is it to sue an atty? And yes I am and have been looking for someone who will take this case... The issue of my word vs David Gagnons... Did he cut me or did I cut myself? Of coarse he cut me. Next issue please?"

1-225. On February 22, 2015, at 8:23 PM, Hans Mast sent an email to Dulberg stating:[3]

> "Paul, honesty hurts. I am honest to a fault sometimes. **You told me at the start that David would admit his fault. That proved not to be true.** Still your threats and putdowns don't change anything. Just find another attorney and we can part ways" [Emphasis added]

1-226. On February 23, 2015, at 4:01 PM, Paul Dulberg sent an email to Mast stating:[4]

> "Once I find new council, Are you willing to release all leans and fees you and your firm have for this case?"

1-227. On February 23, 2015, at 4:27 PM, Hans Mast sent an email to Dulberg stating:[5]

> "Paul I'm definitely willing to be reasonable and consider several different options. Typically how it's done is I will work with your new attorney on the details. But to have me release everything given the time and expense I've invested in the case without

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1 Exhibit 13_DUL001389, 1392, 2732, 2735, 5025, 5028, 6892, 6895, 7285, 7288
2 Exhibit 13_DUL001382, 1384, 1386, 1387, 1388, 1389, 1392, 2732, 2735, 2744, 2746, 2748, 2750, 2751, 5017, 5019, 5021, 5023, 5024, 5025, 5028, 6892, 7288
3 Exhibit 13_DUL001382, 1384, 1386, 1387, 1388, 2744, 2746, 2748, 2750, 2751, 5017, 5019, 5021, 5023, 5024, 6884, 6886, 6888, 6890, 6891, 7279, 7281, 7283, 7284
4 Exhibit 13_DUL001379, 1380, 1381, 2752, 2753, 2754, 5014, 5015, 5016, 6881, 6882, 6883, 7274
5 Exhibit 13_DUL001380, 2753, 5015, 6882

knowing what the final result is unfair. We have completed substantially 100% of the fact discovery. All that needs to be done is deposing experts and going to trial. But don't get me wrong I think we can work out something very reasonable. Typically any type of lien arrangement is done when the case is concluded."

1-228. On February 26, 2015, at 7:42 AM, Paul Dulberg sent an email to Mast stating:[1]

"Please arrange for a copy of both the McGuire and Gagnon homeowner insurance policies be available for me to pick up by noon today. I will pay for copy fees when I pick them up."

1-229. On February 26, 2015, at 7:43 AM, Mast sent an email to Dulberg stating:[2]

"I don't think I have any insurance policies in the file"

1-230. On February 26, 2015, at 8:02 AM, Paul Dulberg wrote:[3]

"Then please have a complete accounting of all fees you feel entitled to re guarding these cases ready for pickup by noon."

1-231. On February 26, 2015, at 8:03 AM, Hans Mast wrote:[4]

"I'm not in the office today Paul. If the attorney needs information regarding this he can definitely call me tomorrow"

1-232. On February 26, 2015, at 8:23 AM, Paul Dulberg sent an email to Mast stating:[5]

"l1m not asking to see you. I'm asking for a copy of the policy numbers and an accounting of all the fees your firm feels it's entitled to. Please have someone at the office print them out and have them available for pickup. Thanks in advance again"

1-233. On February 26, 2015, at 8:25 AM, Mast sent an email to Dulberg stating:[6]

"We don't have the polls your numbers. I am in charge of the file and therefore no one else knows what is in the file. If you need a list of our costs you can call Sheila and ask her to have a printout of it."

1-234. On the afternoon of February 26, 2015 Dulberg met with attorney Saul Ferris.

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1 Exhibit 13_DUL001374, 1375, 1376, 1377, 1378, 2756, 2757, 2758, 2759, 2760, 5009, 5010, 5011, 5012, 5013, 6076, 6877, 6878, 6879, 6880, 7269, 7270, 7271, 7272, 7273

2 Exhibit 13_DUL001373, 1375, 1376, 1377, 2755, 2757, 2758, 2759, 5008, 5010, 5011, 5012, 6875, 6877, 6878, 6879, 7268, 7270, 7271, 7272

3 Exhibit 13_DUL001373, 1375, 1376, 1377, 2755, 2757, 2758, 2759, 5008, 5010, 5011, 5012, 6875, 6877, 6878, 6879, 7268, 7270, 7271, 7272 _

4 Exhibit 13_DUL001373, 1375, 2755, 2757, 5008, 5010, 6875, 6877, 7268, 7270

5 Exhibit 13_DUL001373, 1375, 2755, 2757, 5008, 5010, 6875, 6877, 7268, 7270

6 Exhibit 13_DUL001373, 2755, 5008, 6875, 7268

1-235. On March 4, 2015 at 4:23:11 PM CST Dulberg sent an email to Mast stating:[1]

"Are you willing to sign a lean release?"

1-236. On March 4, 2015, at 6:23 PM Dulberg sent an email to Mast stating:[2]

"And how much money is the lean for?"

1-237. On March 4, 2015, at 6:26 PM, Hans Mast sent an email to Dulberg stating:[3]

"It depends on what the recovery is. I can work it out with your new attorney. Technically it's one third of the recovery but obviously that's not going to work because your attorney needs to be paid for something too. The whole calculation is done at the end of the case. There's simply no way to do it until the case is settled and we know what the amount is"

1-238. On March 4, 2015, at 6:42 PM, Paul Dulberg sent an email to Mast stating:[4]

"If I have to get a new attorney in the 11th hour of this, The damage done to my case far outweighs your lean. If you sign off the lean I'll see to it your paid for your real costs."

1-239. On March 6, 2015, at 2:40 PM, Saul Ferris sent an email to Dulberg stating:[5]

"I decided not to accept your case primarily based upon you settling with the homeowners for 5 thousand. I have mailed your file back to you. I would suggest attending the pretrial to at least see what kind of settlement offer is made. Thanks for letting me review your case. Sorry I can't help you. Best, Saul"

1-240. On or about March 7th, 2015 the Saul Ferris Declination letter was inexplicably sent via the US Post Office as part of a package from attorney Saul Ferris to The Law Office of Thomas J. Popovich P.C.. This package contained the Attorney Saul Ferris Declination letter, the pretrial settlement memo, 4 depositions and all correspondence Mast/Popovich mailed to Dulberg via the US Post Office dated before February 26, 2015.[6]

1-241. On Mar 12, 2015, at 10:06 AM, Hans Mast sent an email to Dulberg stating:[7]

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1 Exhibit 13_DUL001353, 1356, 1359, 1362, 1364, 1365, 1367, 1369, 2764, 2767, 2770, 2773, 2776, 2777, 2779, 2781, 4987, 4990, 4993, 4996, 4999, 5000, 5002, 5004, 6854, 6857, 6860, 6863, 6866, 6867, 6869, 6871, 7247, 7253, 7256, 7259, 7260, 7262, 7264

2 Exhibit 13_DUL001353, 1355, 1358, 1361, 1363, 2764, 2766, 2769, 2772, 2775, 4987, 4989, 4992, 4995, 4998, 6854, 6856, 6859, 6862, 6865, 7247, 7249, 7252, 7255, 7258

3 Exhibit 13_DUL001352, 1353, 1355, 1358, 1361, 2763, 2766, 2769, 2772, 4986, 4989, 4992, 4995, 6853, 6856, 6859, 6862, 7246, 7249, 7252, 7255,

4 Exhibit 13_DUL001352, 1355, 1358, 1361, 2763, 2766, 2769, 2772, 4986, 4989, 4992, 4995, 6853, 6856, 6859, 6862, 7246, 7249, 7252, 7255,

5 Exhibit 13_DUL002785, 2786, 4976, 4984, 6843, 6851, 7236, 7244

6 Exhibit 81_SAUL FERRIS 101421 FULL indx PDFA.pdf

7 Exhibit 13_DUL001246, 1252, 1297, 1301, 1344, 1346, 1348, 2796, 2800, 2804, 2806, 2808, 4873, 4877, 4975, 4978, 4980, 6690, 6691, 6722, 6723, 6842, 6845, 6847, 7235, 7238, 7240

"Paul I will be happy to deal with any attorney considering your case directly regarding my lien. But not until they call me to talk. As is clear with your email and many others you do not respect my thoughts and/or knowledge about these cases and there is no point in continuing any further in dealing with an unsatisfied client. Find an attorney and I will talk to them about the lien."

1-242. On March 12, 2015, at 10:19 AM, Paul Dulberg sent an email to Mast stating:[1]

"I have found several attorneys and none are willing to represent me as long as you hold the lean on this case and apparently it is not legal for me to finance their representation by other means. Respect for your thoughts does not constitute a breakdown in communications. Respect is earned through truth, hard work and results. I am asking for an honest brief to go before the judge. That is all. Earn my respect and you will receive the best recommendation I have ever given anyone."

1-243. On March 12, 2015 at 10:36:25 AM CDT Mast sent an email to Dulberg stating:[2]

"I have done nothing to lose your respect. I have gone far above what you would get from any other attorney you just don't realize it or appreciate it. Instead you continue to focus on issues that have nothing to do with your case. You don't listen to my advice. Which is fine. You don't have to listen to my advice. But 9 out of 10 times you will lose this case for trial. As I told you before that is why the defense is never going to offer the policy limits. To settle the case you will need to take far less than the limits. But you don't have to you definitely can go to trial. That is your personal choice. In my view your case is not worth the limits given the issues we've already discussed. So I have done what I can do for you. We have I think $3000 in costs that we will be paid no matter who is handling Case. We have worked on the case for years without pay....but if it will allow you to find another attorney we will consider waiving Our fee unless your eventual recovery exceeds $100,000."

1-244. On Mar 12, 2015, at 12:14 PM, Paul Dulberg sent an email to Mast stating:[3]

"Your cornering of me and my brother in your office, bullying me into signing off on The McGuires policy citing cases that have nothing to do with the agency clause in the homeowners policy, which clearly makes her policy accountable. You sir are the one whom told me that I would never see a dime from either case if I didn't sign that piece of paper before leaving your office that day. You wouldn't even let me sleep on it as I had asked. You said you needed the $5,000 settlement with the McGuire's insurance to help fund your costs for the case with David Gagnon. Then when the physical therapists tried to demand payment in full you told me and my mother that medical leans against lawsuits often expire before the case is resolved saying yes the medical providers can proceed in

1 Exhibit 13_DUL001246, 1251, 1297, 1300, 1343, 1346, 1348, 2796, 2799, 2803, 2806, 2808, 4873, 4876, 4974, 4978, 4980, 6689, 6691, 6721, 6723, 6841, 6845, 6847, 7234, 7238, 7240

2 Exhibit 13_DUL001246, 1250, 1297, 1300, 1343, 1346, 2796, 2799, 2803, 2806, 4873, 4876, 4974, 4978, 6689, 6691, 6721, 6723, 6841, 6845, 7234, 7238 _

3 Exhibit 13_DUL001248, 1299, 1342, 1345, 2798, 2802, 2805, 4875, 4973, 4977, 6688, 6720, 6840, 7233, 7237

collecting funds from my assets. Meaning my home. Forcing me into bankruptcy. Then, after filing for bankruptcy, denying you ever said that to both me and mother and going on to say to us that filing for bankruptcy protection had ruined the case. All that followed up by getting a brief to review from you on the David Gagnon case that was of such a poor understanding of the facts are what lost any hope of respect I had. I am and have been trying to get you to be professional and earn that respect back at every step. If you had not taken advantage of my ignorance you would not be receiving this letter nor trying to squirm your way out of representing me today. As far as your costs and in light of your poor performance to date, it throws into question all of the work you have done on this case. Even the depositions you sat in on are in question. Do you actually think anyone in their right mind wouldn't see it that way. You may argue strategy as a defense for incompetence but since you sat in on the medical depositions and don't even know what medications I was and wasn't prescribed after almost 3-1/2 years on this case I highly doubt anyone will see your defense as viable. Exactly, What part of being harmed by both the McGuires and Gagnon through no fault of my own is 9 out of 10 times a losing case? Exactly what part of you manipulating me into a settlement for only $5000 was seeing to my best interests? Exactly how is lying in a briefing you were prepared to put before a judge is in my best interests? Exactly how is giving you chance after chance to correct yourself not giving you the respect you think you deserve from me? I can keep going... I have witnesses to all of this. It's not just your word vs mine. Bottom line is if you want out simply because you feel I have no respect for you then all of your fees are subject and any lean you have is subject. I'm giving you the opportunity to remedy this coarse of action you have chosen. Do you chose to be professional and do the job your capable of or do you chose to remove yourself for some made up reason. Our emails alone show there is no breakdown in communication. We are still communicating. This email proves that. So, unless you can explain your action to remove yourself from this case for some excusable reason I see no reason why you feel your entitled to being able to get excused from it at all. I put you to task to do as you agreed to and represent me to whatever ends this case comes to. Will you be professional and finish what you started? Damn these emails hurt to type... Wish you had it in you to go after the bad guy who did this and not your innocent client."

1-245. On March 12, 2015 at 1:13:59 PM CDT Dulberg sent an email to Saul Ferris stating:[1]

"Hi Saul, Have you already mailed the documents or can they be picked up?"

1-246. On March 13, 2015, at 10:51 AM, Paul Dulberg sent an email to Mast stating:[2]

"Your motion was granted. Please put together all the materials you have concerning this case and notify me when they can be picked up. Please include everything, emails, notes, depositions, motions, recordings, etc.."

1 Exhibit 13_DUL002785, 4976, 6843, 7236

2 Exhibit 13_DUL001336, 1338, 1339, 1340, 2791, 2793, 2794, 2795, 4966, 4968, 4969, 4971, 6835, 6838, 7226, 7229, 7231, _

1-247. On March 13, 2015, at 11:01 AM, Hans Mast sent an email to Dulberg stating:[1]

> "Paul. I am seriously willing to work with you to get new counsel. But you have to understand that until our costs are paid we can't let the file out of our office because we invested all the time and money into the file. Your new attorney will surely know this.…"

1-248. On March 13, 2015, at 11:21 AM, Paul Dulberg sent an email to Mast stating:[2]

> "Hans/Sir, I don't want my new attorney to even speak with you. And yes I have that right. You have your lean against this case and you removed yourself against my wishes. That lean is as good as it gets. Your guaranteed your share. Please Have those files ready and notify me when I may pick them up as I am limited on the time to hire a new attorney."

1-249. On March 13, 2015, at 11:25 AM, Hans Mast sent an email to Dulberg stating:[3]

> "Paul, I'm happy to deal with your new attorney on our fee but we can't release the file until we get our costs paid back."

1-250. On March 13, 2015 at 11:49:16 AM CDT Dulberg sent an email to Mast stating:[4]

> "Sir, Your fees are guaranteed. You have your lean. Please don't make me go before the judge and have the records subpoenaed."

1-251. On March 19, 2015 Dulberg retained attorney Brad Balke, who claimed he was willing to take the case against Gagnon to trial. (Barbara Dulberg was in attendance at the meeting between Balke and Dulberg at the law offices of Donahue and Walsh.)

1-252. On March 20, 2015 3:49 PM Dulberg sent an email to Balke with the Subject "Missing Depositions and pre-trial settlement brief" stating[5],

> "Hi Brad, As we discussed, I was to receive via certified US Mail depositions and communications between Hans Mast and myself from Saul Ferris an attorney in Gurnee, IL. Saul Ferris number is (847) 263-7770 I called Saul Ferris office last week and was assured they were sent. I was told to give it another week. **I called Saul Ferris office again today to find out they were mailed to and signed for at 3416 W. Elm St. McHenry, IL. by someone named Anne Oupl on March 7th. This is Hans Mast office. I called Hans office and apparently no one by that name works there and no one knows anything about receiving the certified mail.** I'm at a loss as to how these documents were sent to the wrong place and am a bit furious because it has the memo about the pre-trial settlement you wanted to see."[Emphasis Added]

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1 Exhibit 13_DUL001336, 1337, 1139, 2791, 2792, 2794, 4966, 4967, 4969, 6834, 6836, 7226, 7227, 7229
2 Exhibit 13_DUL001335, 1337, 1339, 2790, 2792, 2794, 4965, 4967, 4969, 6832, 6834, 6836, 7225, 7227, 7229
3 Exhibit 13_DUL001335, 1337, 2790, 2792, 4965, 4967, 6832, 6834, 7225, 7227
4 Exhibit 13_DUL001335, 1337, 2790, 2792, 4965, 4967, 6832, 6834, 7227
5 Exhibit 13_DUL001334, 2820, 2821, 2824, 2826, 4959, 4961, 4963, 4964, 6826, 6828, 6830, 6831, 7219, 7221, 7223, 7224,

1-253. On March 20, 2015, at 5:39 PM, Brad J Balke sent an email to Dulberg stating:[1]

"I'm picking up the file from Hans on Monday. I'm sure everything will be there."

1-254. On March 23 or 24, 2015 Mast gave a disorganized case file without any medical expense reports, without pharmacy receipts, without the October 22, 2013 settlement offer of $7,500, and without the unedited photo of Gagnon in front of his garage to Dulberg's new attorney Balke. Walgreens RX Pharmacy receipts with or without timestamps could not be found within this version of the case file. See April 2, 2015.

1-255. On March 24, 2015 10:48 AM Dulberg sent an email to Balke with the Subject "Re: Missing Depositions and pre-trial settlement brief" stating:[2]

"Were you able to get everything yesterday?"

1-256. On March 24, 2015, at 11:09 AM, Brad J Balke answered[3] by email:

"Yes. I have the file. It is large. I'm going to start going through it."

1-257. On April 2, 2015 Balke sent an email to Mast stating:[4]

"I didn't find your specials list (totaling $58k.) Do you have it?"

1-258. Shelia Quinlan sent an email to Balke stating:[5]

"Please find attached the medical expense report of Paul Dulberg wilh attached billing. If you'd like it faxed as well, please advise. The originals will be put in the mail today to you." "Attachments • MER 4-2-15.pdf(15.56MB)"

The document "MER 4-2-15.pdf" cannot be found anywhere and has never been turned over in the instant case.

1-259. On May 7, 2015 Saul Ferris' office contacted Dulberg and informed Dulberg they have received back in the mail the package mistakenly sent to The Law Office of Thomas J. Popovich P.C.. The packet of documents appears to have been in the office of Thomas Popovich and Mans Mast for about 2 months without Popovich or Mast ever admitting they were in possession of the documents.

1-260. On May 08, 2015 12:34 PM Paul Dulberg sent an email to Balke with the Subject "Missing memo for pretrial settlement" stating:[6]

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1 Exhibit 13_DUL006826, 6826, 6830, 7219, 7221, 7223
2 Exhibit 13_DUL001334, 2820, 2821, 2824, 4959, 4961, 4963, 6826, 6828, 6830, 7219, 7221, 7223
3 Exhibit 13_DUL006825, 6828, 7218, 7221
4 Exhibit 13_POP000051-POP000052
5 Exhibit 13_POP000051-POP000052
6 Exhibit 13_DUL002639, 2651, 2675, 2847, 2849, 2850, 2851, 4950, 4951, 4952, 4953, 6817, 6818, 6819, 6820, 7210, 7211, 7212, 7213

"Yesterday Saul Ferris office called and said they just received back the packet they mistakenly sent to Hans Mast at Popovich law firm. In it is the pretrial settlement memo you wanted to see. There is also the printed depositions of both the homeowners, the defendant and myself. I picked these up this morning. Let me know how to get these to you."

1-261. On May 9, 2015 at 4:32:54 PM CDT Paul Dulberg sent an email to Balke stating:[1]

"Hope you received 2 packages today"

1-262. Dulberg's memory is that the demand in the pre-trial settlement memo was $50,000 when it was mailed to him on February 16, 2015. Email exchanges between Mast and Dulberg seem to suggest a similar amount. Also Trustee Heeg's valuation confirms this. Balke's later demand was also $50,000. When the document finally arrived in Dulberg's possession in July 2015 the demand was inexplicably changed to "$135,000".

1-263. The Saul Ferris declination letter has an address at the top of the letter listed as

"3416 W. Elm Street
McHenry, IL 60050"

This is the address of the Law Offices of Thomas J. Popovich, P.C.[2]

1-264. The Saul Ferris declination letter stayed in possession of The Law Office of Thomas J. Popovich, P.C. until on or about May 8, 2015. Attorney Brad Balke received the package which came from Mast/Popovich and contained the now altered (forged) attorney Saul Ferris Declination letter. In the Saul Ferris declination letter the date Dulberg's injury had inexplicably been written as "January 24, 2013" even though Dulberg was injured on June 28, 2011. The date of the letter was inexplicably written as "December 31, 2014" even though the meeting between Ferris and Dulberg took place on February 26, 2015.[3]

1-265. Sometime around June 9, 2015 Dulberg refused a pretrial mediation offer of $50,000.00 and fired Balke over forcing the offer on Dulberg.[4] Dulberg's experience with Balke is described in 'ARDC Complaint against Balke'.

1-266. On July 7, 2015, at 9:39 AM, Paul Dulberg sent an email to Mast stating:[5]

"Hi Hans, I need to know if your willing to take a cash payout to release your lean on my case? If so, how much do you want?"

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1 Exhibit 13_DUL002847, 2849, 4950, 4951, 6817, 6818, 7210, 7211
2 Exhibit 82_Ferris declination letter_DUL006502.pdf
3 Exhibit 13_DUL002821-DUL002822
4 Exhibit 13_DUL002878
5 Exhibit 13_DUL001323, 1325, 1328, 1329, 1330, 1331, 1332, 1333, 4906, 4909, 4013, 4914, 4915, 4916, 4919, 4920, 6773, 6776, 6780, 6781, 6782, 6783, 6786, 6787, 7166, 7169, 7174, 7175, 7176, 7179, 7180

1-267. On July 7, 2015, at 3:57 PM, Hans Mast answered[1] by email:

"Whatever you need Paul. What is your thinking."

1-268. On July 7, 2015, at 2:30 PM, Paul Dulberg sent an email to Mast stating:[2]

"I need to know how much it's going to cost to get the lean released"

1-269. On July 8, 2015, at 6:59 AM, Hans Mast answered:[3]

"Just make me a reasonable offer. We're happy to work with u"

1-270. On July 8, 2015, at 7:44 AM, Paul Dulberg sent an email to Mast stating:[4]

"Morning Hans, As I'm not sure how much you invested, I'm not sure what's reasonable. What would you consider reasonable?"

1-271. On July 8, 2015, at 11:25 AM, Hans Mast answered:[5]

"If your calculating our time it'd be a lot. But just give me what you can do."

1-272. On July 8, 2015, at 10:09 AM, Paul Dulberg sent an email to Mast stating:[6]

"I can't guess... I want to make sure your paid for your out of pocket expenses plus something for putting up with me. I'm sure I wasn't the easiest to deal with. Just give me a number"

1-273. On July 8, 2015, at 12:31 PM, Hans Mast answered:[7]

"$5,000"

1-274. On July 9, 2015, at 11:27 AM, Paul Dulberg sent an email to Mast stating:[8]

"I was informed all your entitled to is $1539.32 from Brad because you signed off completely on the lean and he already paid you for the rest. Is this true?"

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1 Exhibit 13_DUL001323, 1325, 1326, 1328, 1329, 1330, 1331, 4906, 4909, 4910, 4913, 4914, 4915, 4916, 6773, 6776, 6777, 6780, 6781, 6782, 6783, 7166, 7169, 7170, 7173, 7174, 7175, 7176
2 Exhibit 13_DUL001323, 1325, 1326, 1328, 1329, 1330, 1331, 4906, 4909, 4910, 4913, 4914, 4915, 4916, 6773, 6776, 6777, 6780, 6782, 6783, 7166, 7169, 7170, 7173, 7174, 7175, 7176
3 Exhibit 13_DUL001323, 1325, 1326, 1328, 1329, 4906, 4909, 4910, 4913, 4914, 6773, 6776, 6777, 6780, 6781, 7166, 7169, 7170, 7173, 7174
4 Exhibit 13_DUL001323, 1324, 1326, 1328, 1329, 4906, 4908, 4910, 4913, 4914
5 Exhibit 13_DUL001323, 1324, 1326, 1328, 4906, 4908, 4910, 4913, 6773, 6775, 6777, 6780, 7166, 7168, 7170, 7173,
6 Exhibit 13_DUL001322, 1324, 1326, 1328, 4905, 4908, 4910, 4913, 6772, 6775, 6777, 6780, 7165, 7168, 7170, 7173
7 Exhibit 13_DUL001322, 1324, 1326, 1328, 4905, 4908, 4910, 4913, 6772, 6775, 6777, 6780, 7165, 7168, 7170, 7173
8 Exhibit 13_DUL001322, 1324, 1326, 4905, 4908, 4910, 6772, 6775, 6777, 7165, 7168, 7170

1-275. On July 9, 2015, at 1:34 PM, Hans Mast answered:[1]

> "Yes. We agreed with brad to waive our lien...What is $1,500 I think he paid our expenses."

1-276. On July 9, 2015, at 1:51 PM, Paul Dulberg sent an email to Mast stating:[2]

> "How much did he pay you for the expenses?"

1-277. On July 9, 2015 at 4:43:22 PM CDT Dulberg sent an email to Mast with the Subject: Re: Lean buyout stating[3]:

> "Hans, No need to get back together next Thursday. Didn't know that brad balky holds the entire lean and paid your expenses. Sorry for the bother. Hope the rest of the vacation is wonderful"

1-278. On July 16, 2015 Dulberg picked up the "Mixed Brown Box File" from Attorney Balke after firing attorney Balke. This is the first time the forged Attorney Saul Ferris' declination letter arrived at Dulberg's house.

1-279. From the time Dulberg received the "Mixed Brown Box File" on July 16, 2015 family members of Dulberg took notes on what they were able to understand.[4]

1-280. On July 20, 2015 at 8:07:04 AM CDT Dulberg wrote an email to Mast stating:[5]

> "I need your electronic case file for Paul Dulberg along with all paper files you have. I did get the paper files from Brad Balke however of the plaintiffs/defendants depositions I received sections are missing in each and there are no dr's depositions at all. Brad promises he turned over everything he received from you. Please collect all relevant information you have for this and notify me when it will be available to be picked up. Thank you in advance for your help with this matter,"

1-281. Sometime between July 16, 2015 and August 17, 2015 Dulberg sorted the 'Mixed Brown Box File" and separated the attorney Saul Ferris forged Declination letter from other case documents found in the "Mixed Brown Box File" and put it in a separate pile.

1-282. After Dulberg fired Popovich and Mast and received the "Mixed Brown Box" of documents Mast gave to Balke, Dulberg noticed there were notices of doctors depositions but no depositions.

1-283. According to the notices the doctors depositions were to take place on these dates:

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1 Exhibit 13_DUL001322, 1324, 4905, 4908, 6772, 6775, 7165, 7168
2 Exhibit 13_DUL001322, 1324, 4905, 4908, 6772, 6775, 7165, 7168
3 Exhibit 13_DUL001322, 4905, 6772, 7165_
4 Exhibit 83_Dulberg family notes_DUL007893-DUL008708.pdf
5 Exhibit 13_DUL001321, 2885, 4897, 6764, 7157

Dr Karen Levin on October 1, 2013 (Merrill Legal Solutions, Notice has date 10/1/2013)[1]

Dr Scott Sagerman on October 15, 2013 (Merrill Legal Solutions, Notice has date 10/15/2013)[2]

Dr Talerico (Merrill Legal Solutions, Notice has date 10/16/2013)[3]

Dr Apiwat Ford on November 20, 2013 (Merrill Legal Solutions, Notice has date 10/23/2013[4], Notice has date 11/20/2013[5])

Dr Kathy Kujawa July 23, 2014 (Merrill Legal Solutions, Notice has date 7/23/2014)[6]

1-284. The notices state that the court reporting agency handling the depositions is Merrill Legal Solutions. Dulberg contacted Merrill Legal Solutions and was told they did not know anything about the depositions.

1-285. Dulberg was told by the Law Offices of Thomas J. Popovich, P.C. to contact Vahl reporting to get certified copies of the 5 doctors depositions.

1-286. Dulberg paid Vahl reporting $723.50 for the 5 doctors depositions.[7]

1-287. On August 17, 2015 Scott Dulberg signed at The Law Office of Thomas J. Popovich for the 2nd Dulberg case file provided to Dulberg by Mast. This became known as the "Brown Jacket File", which is neat and orderly without pharmacy timestamps and without the October 22, 2013 document offer to settle with the McGuires for $7,500, and was turned over to Attorneys Randy and Kelly Baudin to be used in the case against Gagnon.[8]

1-288. On August 17, 2015 at 1:51:16 PM CDT Dulberg sent an email to Hans Mast stating:[9]

"Hi Hans, Thank you for another paper copy of my case file. Does this exist in digital form? Also, I will need the original audio recordings of the telephone conversations between yourself and David Gagnon you listed as Gagnon exhibit 2."

1-289. On August 17, 2015, at 2:19 PM, Hans Mast sent an email to Dulberg stating:[10]

"We have obviously letters saved on our computer. Somethings are saved others are not. We gave you a copy of what we have. I will have Sheila send you a copy of the Recording of the telephone conversation."

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1 Exhibit 84_DUL001753, 4284, 5995
2 Exhibit 85_DUL001761, 4292.pdf
3 Exhibit 86_DUL005999
4 Exhibit 87_DUL001755, 4286, 5987
5 Exhibit 88_DUL001759, 4288, 4290
6 Exhibit 89_DUL001750, 4281, 5991, 5993
7 Exhibit 90_Scan of Bank statement page with check cashed by Vahl.pdf
8 Exhibit 91_2015-08-17_Scott picked up brown jacket folder_POP000804.pdf
9 Exhibit 13_DUL001316, 1317, 1318, 2893, 2894, 2895, 4892, 4893, 4894, 6759, 6760, 6761, 7152, 7153, 7154
10 Exhibit 13_DUL001316, 1317, 2893, 2894, 4892, 4893, 6759, 6760, 7152, 7153

1-290. On September 11, 2015 at 1:35:46 PM CDT Dulberg sent an email to Hans Mast with Subject "Voice tape" stating:[1]

> "Hi Hans, Still Haven't received the actual voice tape/recording listed as gagnon exhibit 2. I can pick it up, please let me know when."

1-291. Dulberg's repeated requests for the audio recording of a phone conversation between Mast and Gagnon were ignored.

1-292. On September 22, 2015 hired the Baudin Law firm. Dulberg's experience with the Baudins will be described in 'ARDC Complaint against the Baudins'.

ACTIVITY INVOLVING POPOVICH AND MAST SINCE 2016

1-293. On December 16, 2016 Dulberg retained legal malpractice attorney Thomas Gooch to initiate a claim against Mast and Popovich for legal malpractice.

1-294. When Dulberg moved to collect his emails with Mast from Dulberg's Comcast account to give to Gooch, Dulberg found that 3 years of emails had been deleted from his Comcast email account.[2] [3]

1-295. Dulberg called Comcast to get his emails restored. Dulberg was told by phone that an incident report was created and an internal investigation happened concluding that the missing emails were deleted at by a senior level administrator with Comcast and unfortunately the emails were not retrievable. No other information was provided to Dulberg.

1-296. In a state of panic, Dulberg realized that his apple device was set up to utilize a different protocol for sending out emails than the protocol used to receive emails. His outgoing emails were stored on a separate Apple server, different from the incoming emails that are saved on the Comcast servers. On December 27, 2016 Dulberg forwarded all the sent emails from his Apple device to a second Comcast email account and immediately printed out 2 hard copies of all email exchanges on paper so they could not be deleted again.

1-297. In late December of 2016 Dulberg gave the "Mixed Brown Box File", the recovered sent emails printed to paper, and a separate pile of documents which contained Attorney Saul Ferris' forged Declination letter to Attorney Gooch who scanned it as part of Dulberg's documents in the instant case against Mast and Popovich. Gooch also received a case file from the Baudins and scanned it in as part of Dulberg's documents in the instant case against Mast and Popovich.

1-298. From Dulberg's first meeting with Gooch on December 16, 2016 Gooch secretly worked to weaken or sabotage Dulberg's case against Popovich and Mast. How this was done is explained in detail in the "ARDC Complaint against Thomas Gooch".

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1 Exhibit 13_DUL001310, 4886, 6753, 7146
2 Exhibit 92_Missingemails.jpg
3 Exhibit 93_Missing emails-Marked up.pdf

1-299. After Dulberg fired Gooch, Dulberg retained the Clinton Law Firm. From Dulberg's first meeting with Clinton and Williams on October 12, 2018 Clinton and Williams secretly worked to weaken or sabotage Dulberg's case against Popovich and Mast. How this was done is explained in detail in the "ARDC Complaint against Clinton and Williams".

1-300. On May 30, 2019 Williams suppressed a massive quantity of Dulberg's documents to weaken or sabotage Dulberg's case against Popovich and Mast. How this was done is explained in detail in "ARDC Complaint against Clinton and Williams", Chapter 1. Two of the many documents Clinton and Williams suppressed was Dulberg's evidence[1] [2] that 3 years of his emails with Mast and Popovich were deleted from Dulberg's Comcast account.

1-301. On May 30, 2019 the Popovich document disclosure consisted of 1450 pages. The documents released by Popovich have a number of issues that are marked up in 'Group Folder 31'.[3] Among the issues are:

a) Most depositions that do exist are dated 2019.

b) There are no Doctor's depositions or any exhibit from any Doctor's deposition among Popovich bates numbered documents. Note that there is not a single Popovich bates-numbered document in any of the following folders:

Group Exhibit 26_2013-10-01_Dr Levin depositions
Group Exhibit 27_2013-10-15_Dr Sagerman depositions
Group Exhibit 28_2013-10-16_Dr Talerico depositions
Group Exhibit 29_2013-11-20_Dr Ford depositions
Group Exhibit 30_2014-07-23_Dr Kujawa depositions

1-302. Dulberg showed the depositions purportedly created by VAHL REPORTING SERVICE, LTD. to his current attorney Alphonse Talarico and was told they are not usable in court because they are not signed.

1-303. Dulberg tried several times over a 4 week period to contact the court reporting agency VAHL REPORTING SERVICE, LTD. to obtain legally sufficient certification pages of the 5 doctors depositions that have signatures of the court reporters but nobody called back.

1-304. On March 25 and 26, 2022 Dulberg's counsel sent subpoenas for signatures to Margaret Orton and Paula Erickson.

1-305. Around March 26, 2022 Dulberg talked with Michael Urbanski. Urbanski told Dulberg that he would contact Vahl Reporting.

1-306. On March 26, 2022 Michael Urbanski emailed Dulberg with the subject: "Vahl Reporting" stating:[4]

1 Exhibit 92_Missingemails.jpg
2-Exhibit 93_Missing emails-Marked up.pdf
3 Group Exhibit 31, (entire contents)
4 Group Exhibit 10: 2022-03-26_1010 AM_RECV_Vahl Reporting.pdf

"Mr. Dulberg:

I did forward all the information to Carrie Vahl. She now has your email address and I would hope would respond to your requests.

Sincerely,
Michael Urbanski"

1-307. On March 28, 2022 at 7:44 AM a person going by the name of Carrie Vahl emailed Dulberg with the subject "Transcripts" stating:[1]

"Hi,

I spoke with Michael Urbanaki, and he gave me your email.

Michael gave me a list of transcripts that you need certifications for. Can you give me a call on my cell today or tomorrow, (847) 727-5828. Most of today I'll be in a hearing but I'll call you back.

Thanks,

Carrie

--

Carrie Vahl

Vahl Reporting Service, LLC

(847) 727-5828

1-308. On March 28, 2022 at 10:01 AM Dulberg replied stating:[2]

"Dear Carrie Vahl,

Thank you for reaching out to me.

I am not sure what is on the list Mr. Urbanski sent to you so below is a list of Dr's depositions I purchased around 9/15//2015 from Vahl Reporting.

I paid $723.50 for the depositions with Check #2486 from Account #2600005536.

The issue I have with the depositions I received back in 2015 is that none of them were certified or signed by the CSR and they do not have the exhibits attached which means after all this time they are unusable in court.

I would really appreciate a PDF of the signed, certified depositions with the exhibits listed below:

22nd Judicial Circuit, McHenry County case number 12LA178

Dr. KAREN LEVIN, 10/1/2013, ANGELA M. INGHA, CSR , Certificate No. 084-

1 Group Exhibit 10: 2022-03-28_0744 AM_RECV_Transcripts.pdf
2 Group Exhibit 10: 2022-03-28_1001 AM_SENT_Re Transcripts.pdf

002984

DR. SCOTT SAGERMAN, 10/15/2013, JILL S TIFFANY, CSR, Certificate No. 084-002807

Dr. MARCUS G. TALERICO, 10/28/2013, TERRI A. CLARK, CSR, Certificate No. 084-001957

Dr. APIWAT FORD, 11/20/2013, MARGRET MAGGIE ORTON, CSR, Certificate No. 84-004046

Dr. KATHY KUJAWA, 7/23/2014, JILL S TIFFANY, CSR, Certificate No. 084-002807

Please advise the best way I may obtain the certified, signed Dr's depositions listed above with the exhibit attached.

Thank you in advance for your help with this matter,

Paul"

1-309. On March 28, 2022 at 11:29 AM a person going by the name of Carrie Vahl responded stating:[1]

"Hi Paul,

Thanks for the list and the info. I never bothered to look up under your name. I was just searching for Popovich's people.

Tomorrow I can scan and email the signature pages to you for each transcript. I'm just out of the office today.

Regarding the exhibits, the defense counsel we were hired by those days never give us the exhibits. So that I can't help you with.

They might be in the original trial file with the clerk's office.

I have one more question. Maggie Orton received a records subpoena. She took a screenshot and it's attached. We don't know what you are looking for with the Twenty signatures. Is it just the cert page signature and then she's in compliance?

Let me know.

Thanks,
Carrie"

There was no attachment to the email and Dulberg did not respond.

1-310. On March 28, 2022 at 13:39 PM a person going by the name of Carrie Vahl sent Dulberg another email stating:[2]

1 Group Exhibit 10: 2022-03-28_1129 AM_RECV_Re Transcripts.pdf
2 Group Exhibit 10: 2022-03-28_1339 PM_RECV_Re Transcripts.pdf

"Hi Paul,

Please find attached the 5 certificate pages with the reporters' signatures.

Does this satisfy what you need from Maggie Orton? All she has, like the rest of us, is the transcript that you already have.

Thanks,
Carrie"

This email implied the individual signed certification pages from 5 different depositions all grouped into one document on their own and detached from the rest of the depositions they purportedly belong with were legally sufficient. Dulberg did not respond.

1-311. On March 31, 2022 at 9:20 AM a person going by the name of Carrie Vahl sent Dulberg a final email stating:[1]

"Hi Paul,

Did you received this email with the cert pages?

Can you please let me know about the subpoena for Maggie Orton? Does her cert page satisfy what you need?

We want to be in compliance with a subpoena.

I did leave a voicemail for your attorney also but have not heard back. I don't have his email. Could you send that to me, please?

Thanks,
Carrie"

Dulberg did not respond.

1-312. Dulberg felt these could be forgeries or something else could be wrong. Dulberg forwarded the attached documents to his attorney.

1-313. The 22nd Judicial Circuit Clerk website https://caseinfo.mchenrycountyil.gov/pca/Home/Search or "Public Case Access" does not return results for any past legal malpractice cases filed with the court using the name "Popovich", "Law Offices of Thomas J. Popovich, P.C." nor any other iteration of the name we could think of. The only way we found to find past legal malpractice cases involving the Law Offices of Thomas J. Popovich, P.C. in the 22nd Judicial Circuit Clerks files was to know the exact case number prior to conducting a search.

1-314. On March 1, 2023 Dulberg sent for a records request for case 12LA326.[2]

1-315. On March 2, 2023 Dulberg received the case file 12LA326 from the clerk.[3]

1 Group Exhibit 10: 2022-03-31_0920 AM_RECV_Re Transcripts.pdf
2 Exhibit 94_2023-03-01_1035_Records request for case 12LA326_SENT.pdf
3 Exhibit 95_2023-03-02_1402_Records request for case 12LA326_RECV.pdf

1-316. In the file Associate Judge Thomas A. Meyer recused himself from 12LA326 because Mr Meyer is a personal friend of Thomas J. Popovich.[1]

CHAPTER 2: CLAIMS AGAINST POPOVICH AND MAST

COUNT 1: DISCOVERY ABUSE

SECTION A: Redirected medical lien liability from the Defendants to Plaintiff

2-1-A1. Health Care Services Lien Act. (770 ILCS 23/10)

> Sec. 10. Lien created; limitation.
>
> (a) Every health care professional and health care provider that renders any service in the treatment, care, or maintenance of an injured person, except services rendered under the provisions of the Workers' Compensation Act or the Workers' Occupational Diseases Act, shall have a lien upon all claims and causes of action of the injured person for the amount of the health care professional's or health care provider's reasonable charges up to the date of payment of damages to the injured person. The total amount of all liens under this Act, however, **shall not exceed 40%** of the verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person on his or her claim or right of action.
>
> (b) **The lien shall include a written notice containing the name and address of the injured person, the date of the injury, the name and address of the health care professional or health care provider, and the name of the party alleged to be liable to make compensation to the injured person for the injuries received. The lien notice shall be served on both the injured person and the party against whom the claim or right of action exists.** Notwithstanding any other provision of this Act, payment in good faith to any person other than the healthcare professional or healthcare provider claiming or asserting such lien prior to the service of such notice of lien shall, to the extent of the payment so made, bar or prevent the creation of an enforceable lien. **Service shall be made by registered or certified mail or in person**.

2-1-A2. As demonstrated in this section, none of the medical liens placed due to Dulberg's 2011-06-28 injury listed **"the name of the party alleged to be liable to make compensation to the injured person for the injuries received".** There is no evidence either the McGuires or Gagnon were ever served with a lien **"made by registered or certified mail or in person".** Neither Mast nor Popovich **ever** inform Dulberg that payments on medical liens **"shall not exceed 40%** of the verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person on his or her claim or right of action".

> "(c) ...If the total amount of all liens under this Act meets or exceeds 40% of the

1 Exhibit 96_2012LA000326--2012-10-19--ORDREA_0004.pdf

verdict, judgment, award, settlement, or compromise, then:

(1) all the liens of health care professionals shall

not exceed 20% of the verdict, judgment, award, settlement, or compromise; and

(2) all the liens of health care providers shall not

exceed 20% of the verdict, judgment, award, settlement, or compromise;

provided, however, that health care services liens shall be satisfied to the extent possible for all health care professionals and health care providers by reallocating the amount unused within the aggregate total limitation of 40% for all health care services liens under this Act; and provided further that the amounts of liens under paragraphs (1) and (2) are subject to the one-third limitation under this subsection."

"...If the total amount of all liens under this Act meets or exceeds 40% of the verdict, judgment, award, settlement, or compromise, the total amount of all the liens of attorneys under the Attorneys Lien Act shall not exceed 30% of the verdict, judgment, award, settlement, or compromise."

2-1-A3. Before Dulberg retained Popovich and Mast he received the following billing and lien notice in the mail from NIMC Centegra. Dulberg gave these documents to Mast at their first meeting on December 1, 2011:

Centegra lien notice[1]
Centegra universal billing UB-04 form created on July 5, 2011[2]
Centegra bills[3]

Note that NIMC Centegra provided Dulberg with universal billing form UB-04 and that the NIMC Centegra letter and lien notice is consistent with Illinois law.

It is not known whether Popovich or Mast ever responded to the NIMC letter.

2-1-A4. Popovich and Mast were retained on December 1, 2011 and Popovich placed an attorneys lien on the injury claim with Tom Malatia on December 5, 2011.

2-1-A5. Around December 6, 2011 Popovich and Mast subpoenaed the records of NIMC Centegra.

2-1-A6. On or around January 24, 2012 Mast told Dulberg to go to NIMC and obtain medical records from them (even though they already had NIMC medical records). Dulberg obtained a second set of records[4] with a CD containing xray images. Dulberg gave this second set of

1 Group Exhibit 1: 2011-07-06_Powers and Moon Centegra Lien Notice_POP000600-POP000601.pdf
2 Group Exhibit 1: 2011-07-05_Centegra UB-04 bill_POP000722.pdf
3 Group Exhibit 1: 2011-07-02_Centegra bill_POP000737.pdf and 2011-08-05_Centegra bill_POP000735-POP000736.pdf
4 Exhibit 11_2012-01-24_Centegra-Medical Records and authorization for release.pdf

records to Mast. Mast said he did not want the CD. The second set of Centegra records that Dulberg obtained on January 24, 2012 do not exist in any version of the case file that Mast provided to subsequent counsel.

2-1-A7. On June 25, 2012 Northwest Community Healthcare sent a fax[1] to Defendant Hans Mast requesting the following information:

> The name and address of the homeowners insurance
> Claim number
> Name of responsible party
> Date of Incident.

2-1-A8. On June 27, 2012 Defendant Hans Mast responded to the June 25, 2012 request by failing to give any the requested information.[2] Mast wrote:

> "Unfortunately, we just filed suit and it is still relatively early on and I have not yet obtained the adverse parties insurance information. I would be happy to provide that to you shortly.
>
> In the meantime, please feel free to forward a lien to my attention and I would be happy to honor it for purposes of settlement and/or recovery obtained in this case."

2-1-A9. Mast was in possession of the address where the accident occurred, the claim number and the name and phone number of the insurance adjuster since December 1, 2011. Popovich and Mast placed an attorneys lien using this same information on Dec 05, 2011. In the case of this exchange with NCH, Popovich and Mast placed their own attorneys lien on the homeowners insurance claim yet appear to be preventing NCH from doing the same.

2-1-A10. Note that Mast's request is contrary to Illinois law. Mast is informing the NCH representative to:

> a) Serve the lien notice by sending it to the attorney of the injured party
>
> b) Serve the lien notice without having the required information on the party responsible for the injury

2-1-A11. A Northwest Community Hospital universal billing form UB-04[3] dated July 17, 2012 (in Box 38) has the responsible party listed as: AUTO OWNERS INS 6000 TALLGATE SUIT D ELGIN IL and (in Box 50) has the payer listed as: AUTO OWNERS INS and (in Box 60) has the INSURED'S UNIQUE ID listed as CLM#13-2779-11.

2-1-A12. On July 23, 2012 Northwest Community Hospital representative Catie Harrison appeared to have sent a NOTICE OF LIEN to Mast. There are many issues with how the lien notice was constructed:

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1 Exhibit 31_2012-06-25_fax_NCH Catie Harrison to Mast_POP000620-POP000621.pdf
2 Exhibit 33_2012-06-27_fax_Mast answer to NCH_POP000345-POP000346.pdf
3 Exhibit 33a_2012-07-17_NCH UB-04_DUL002358.pdf

a) It is not clear who she is addressing in the notice of lien.

b) It is not clear who she sent the notice of lien to.

c) In the certificate of mailing it is also unclear where it was sent .

d) the affidavit statement of the party who sent the document is missing. It is not clear what the certifier is claiming to certify doing.

2-1-A13. On August 8, 2023 Dulberg requested the financial records of Northwest Community Hospital.[1]

2-1-A14. On August 9, 2023 Dulberg was informed that no financial records exist because: "The records you are requesting exceed the record retention policy of 10 years."[2]

2-1-A15. On September 04, 2012 McGuire attorney Barch subpoenaed the records of NIMC

2-1-A16. The only existing representation of the Barch subpoenaed documents are in:

Gooch Thumbdrive/Dulberg Paul Dulberg Files from Client/ TJP & Attorney Documents/ Letter to Centegra NMCI Medical Records Custodian From Barch 9.4.12.pdf

2-1-A17. Pages 2, 3, 4,[3] and page 5[4] of the alleged 35 page reply were documents with billing information and a certification page. The documents appear to a construction of information taken from a Centegra form UB-04[5] but the UB-04 is not included. It appears someone was trying to craft documents with UB-04 billing information for some reason.

2-1-A18. The 3 documents are not included among the documents subpoenaed from Barch's office. When Barch was subpoenaed for all documents related to case 12LA178 Barch produced a list of file names of his medical records only called:

List of Medical Records and Bills.2.19.20.pdf[6]

The pdf lists the Centegra medical records but does not mention how many pages of documents Barch received from Centegra.

2-1-A19. The documents that appear to be reconstructed from the Centegra UB-04 are located in Popovich construction of NIMC documents produced responding to the Barch subpoena. Either:

(a) Barch is the source of the altered documents or

(b) Popovich arranged his case file to make it look as if Barch sent him a 35 page fax with the documents subpoenaed from Centegra.

---

1 Exhibit 97_2023-08-09_NCH response to records request.pdf

3 Folder B8 Centegra UB-04 billing statement re-creations
4 Folder B9 Centegra subpoena certification page
5 Group Exhibit 1: 2011-07-05_Centegra UB-04 bill_POP000722.pdf
6 Exhibit 44_Barch List of Medical Records and Bills.2.19.20.pdf

2-1-A20. Both NIMC Centegra and NCH are hospitals that use the universal billing statement UB-04.

In the case of NIMC: The UB-04 disappeared from the Popovich and Mast case file and was replaced by 3 crafted documents that appear to be forgeries. It later appeared in 2019 in a Popovich document disclosure in 17LA377.

In the case of NCH: The UB-04 billing statement contradicts the lien notice allegedly sent by NCH to Popovich and Mast. In this case the NCH notice of lien appears to be intentionally altered.

2-1-A21. The lien notices of Dr Sagerman (DUL 006344) and Dr Levin (DUL 006340) show the same pattern as the NCH lien notice:

a) No mention of either the McGuires or Gagnon as "**the name of the party alleged to be liable to make compensation to the injured person for the injuries received"**

b) No evidence either the McGuires or Gagnon were ever served with a lien **"made by registered or certified mail or in person"**

c) Signs of intentional manipulation (forgery) of the lien notice

The Dr Sagerman Lien is examined in paragraph 2B12. The Dr Levin Lien is examined in paragraph 2B13.

Count 1, Section B: Evidence destruction and fabrication, forgery

2-1-B1. Walgreens RX receipts. The actual receipts[1] were intentionally cut into pieces[2]. The pieces with the time stamps were removed when showing the pieces to Dulberg and when disclosing documents to opposing counsel.

The pieces with the timestamps[3] were never given to any of Dulberg's subsequent attorneys in the PI case 12LA178. The first time Dulberg saw them was during the document production of opposing counsel in legal malpractice case 17LA377 at the end of June, 2019. The first time Dulberg saw the original receipts again was after Dulberg had his ipad repaired around September 17, 2022.

2-1-B2. Gagnon deposition Exhibit 1 This is a pretty clear example of 2 pieces of paper spliced together to appear as if it is a single sheet of paper.[4] Gagnon Exhibit 1 appears in many different forms.

2-1-B3. Gagnon deposition Exhibit 2 This is an alleged transcript[5] of a recorded phone

1 Folder B1: 2011-06-28_Walgreens Prescriptions.pdf
2 Folder B1, (all files except the above show cut-up presecriptions)
3 Folder B1: cut up Walgreens RX receipts_POP000724-000727.pdf
4 Folder B2 Gagnon deposition exhibit 1 (all)
5 Folder B3 Gagnon deposition exhibit 2 (all)

message between Mast and defendant Gagnon. Mast has claimed he had an audio recording of the telephone conversation. Dulberg asked for the recorded message many times but Mast never provided it. It most probably never existed.

2-1-B4. **The certification page of the Gagnon deposition.** The certification page of the deposition of Gagnon names Margaret Maggie Orton as the court reporter.[1] On March 25, 2022 Margaret Maggie Orton was subpoenaed for 20 signatures.[2] Omni Document Examination did an analysis of the Orton signatures.[3]

2-1-B5. **The certification pages of the McGuire and McArtor depositions.** The certification pages of the William McGuire, Carolyn McGuire and Mike McArtor depositions names Paula Ann Erickson as the court reporter.[4] On March 26, 2022 Paula Ann Erickson was subpoenaed[5] for 20 signatures. Omni Document Examination did an analysis of the Erickson signatures.[6]

2-1-B6. **The certification pages of all 5 depositions of doctors.**[7]

2-1-B7. **Cropped pictures of Gagnon's address on his garage.** Around April 9, 2012 Mast sent Dulberg to Gagnon's house. Mast claimed he needed Dulberg to verify Gagnon's address. Dulberg took a picture of Gagnon's house with the address marked and gave the picture to Mast.[8] Minuteman Press made 6 copies of this image, but the numbers of the address in the picture were inexplicably cropped out.[9] The cropped image later inexplicably became 'Exhibit 2i'[10] in Dulberg's deposition.

2-1-B8. A Centegra UB-04 billing[11] statement was inexplicably turned into **3 billing documents[12] that are represented as if they came from Centegra**.

2-1-B9. **A certification page**[13] that appears to belong to the documents subpoenaed by Barch was certified on January 13, 2010 (about 30 months before the subpoena was issued). The problem is marked in the file 'Folder B10: Barch certification page marked up.pdf'.

2-1-B10. **Northwest Community Hospital NOTICE OF LIEN.** On July 23, 2012 Northwest Community Hospital representative Catie Harrison sent **a** NOTICE OF LIEN with no address.[14]

a) Note that the Northwest Community Hospital notice of lien is constructed in a way

1 Folder B4 Gagnon deposition certification page
2 Group Exhibit 5_2022-03-25_Margaret Orton subpoena
3 Group Exhibit 6-Margaret Orton signatures analyzed
4 Folder B5 McGuires and McArtor deposition certification pages
5 Group Exhibit 8_2022-03-26_Paula Erickson subpoena
6 Group Exhibit 9-Paula Erickson signatures analyzed
7 Folder B6 certification pages of all 5 Doctor's depositions (all)
8 Folder B7: original photo.JPG
9 Folder B7: all photos with names "cropped image"
10 Group Exhibit 13_Dulberg Exhibit 2 series (all)
11 Folder B8: 2011-07-05_Centegra UB-04 Bill.pdf
12 Folder B8: pages 2 3 4 of Letter to Centegra NMCI Medical Records Custodian From Barch 9.4.12.pdf
13 Folder B9: Barch certificate of compliance.pdf
14 Folder B10: NCH lien_DUL006331.pdf

that it is impossible to know who the word "you" addresses. The word "you" cannot be 'pegged down' in the document.

b) In the certificate of mailing it is also unclear where it was sent and the affidavit statement of the party who sent the document is missing. It is not clear who or what the certifier is claiming to certify doing.

Other issues are marked in the file 'Folder B10: NCH Lien comparison mark-up.pdf'.

2-1-B11. Dr Sagerman lien[1] appears to be a manipulated document in a few ways that are shown in file 'Folder B11: Sagerman lien markup.pdf'.

2-1-B12. Dr Levin lien[2] appears to follow the same pattern as the Dr Sagerman lien. Problems with the Dr Levin lien are shown in the file 'Folder B11: Levin Lien Markup.pdf'.

2-1-B13. Saul Ferris declination letter.[3] This letter and the effects of this letter have been described in detail in "ARDC Complaint against Clinton and Williams", Chapter 2, Section B. In summary:

a) The letter was in possession of Thomas Popovich and Mast for about 2 months

b) Popovich and Mast have never admitted that they were in possession of the letter. (They attempted to claim it was sent to Dulberg directly.)

c) There are 4 inaccurate statements in the letter

d) The letter was later used by Popovich and Mast (through their attorney Flynn) to try to force Dulberg to admit to the inaccurate statements in the letter and admit to receiving the letter at his home directly through the mail.

e) The letter was addressed to the Popovich law firm (written in the header).

The 4 inaccurate statements in the letter are:

a) The letter states Ferris met with Dulberg on December 31, 2014. (Ferris actually met with Dulberg on February 26, 2015.)

b) The letter states the date of Dulberg's "accident" was January, 24, 2013. (The date of Dulberg's chainsaw injury was June 28, 2011.)

c) The address at the top of the letter is the Law Office of Thomas **J.** Popovich**, P.C.** (Popovich and Mast claimed it was sent to Dulberg directly from the office of Saul Ferris.)

d) A strange comment about recommending to Dulberg that he attend an upcoming pre-

1 Folder B11 Dr Sagerman Lien
2 Folder B12 Dr Levin Lien
3 Folder B13 Ferris declination letter

trial settlement conference.

The inaccuracies are shown in the file 'Folder B13: Ferris declination letter marked up.pdf'.

The methods opposing counsel Flynn used to make absurd claims concerning Dulberg's meeting with Ferris and the Ferris declination letter is described in detail in 'ARDC Complaint against Gooch, Chapter 2, "TEAM-WORK" examples 5 and 6 and in 'ARDC Complaint against Clinton and Williams, Chapter 2, Section B.

2-1-B14. Pre-trial settlement memo.[1] A pre-trial settlement memo that Mast had written around February 14, 2015 was together with the Ferris declination letter at the Law Office of Thomas Popovich for about 2 months. The memo had been altered[2] in the time since Dulberg was shown the memo around February 14, 2015.

2-1-B15. Meijer receipt The original Meijer receipt[3] was inexplicably cut up[4] by Mast and Popovich. A comparison is made in the file 'Folder B15: Meijer receipt issues.pdf'.

Count 1, Section C: Corrupted the interrogatory and document production processes to sabotage client's case and to benefit defendants (in collaboration with opposing attorneys)

2-1-C1. Gagnon was never required to answer any interrogatory questions. Popovich and Mast never moved to compel Gagnon to answer any interrogatories.

2-1-C2. The timestamp on the Walgreens RX receipt is described in Chapter 1, paragraphs 94 to 107. Descriptions of the Walgreens RX receipt destruction of evidence was given in Chapter 2, Count 1, Section 2-B, paragraph 2B1.

2-1-C3. The Walgreens RX receipts was a key piece of evidence in case 12LA178 that Popovich and Mast hid. The Walgreens timestamps were successfully suppressed for more than 10 years by Popovich and Mast.

2-1-C4. Likewise, Tilschner v Spangler was a key piece of evidence in case 17LA377 against Popovich and Mast. Tilschner v Spangler was successfully suppressed for more than 6 years by Dulberg's attorneys Gooch, Clinton and Williams to benefit Popovich and Mast. (A detailed description of how Tilschner v Spangler was suppressed is in "ARDC Complaint against Clinton and Williams, in both Chapter 2, Section C, and in Appendix 1, and in ARDC Complaint against Thomas Gooch, Chapter 2, "TEAM-WORK" Example 1.)

2-1-C5. In both cases 12LA178 and 17LA377 a key piece of evidence was targeted and suppressed (by Dulberg's own attorneys). Popovich and Mast targeted the key evidence in the Walgreens RX receipts in 12LA178. Clinton and Williams targeted the key evidence of the certified slip copy of Tilschner v Spangler in 17LA377 (to benefit Popovich and Mast).

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1 Folder B14: Pre-trial settlement memo_DUL005390-005397.pdf
2 Folder B14: Pre-trial settlement memo marked up.pdf
3 Folder B15: 2011-07-01_original Meijer receipt for Medical Supplies.pdf
4 Folder B15, (every file but the above shows a cut-up receipt)

2-1-C6. By suppressing the timestamps of the Walgreens RX receipts Popovich and Mast were able to lead Gagnon to commit perjury during Gagnon's deposition. Popovich and Mast were also able to lead Carolyn McGuire to commit perjury during Carolyn McGuire's deposition.

Count 1, Section D: Suppressed all information on mental health issues resulting from Dulberg's injury

2-1-D1. Another document that was suppressed in both cases 12LA178 and 17LA377 is "Rosecrance Treatment Plan"[1].

2-1-D2. Dulberg sent an email with the subject "Re: Medical Expense Report" to Mast stating:[2]

> "Should I be adding treatment and meds for depression?"

2-1-D3. On Mar 26, 2013, at 11:27 AM Mast sent an email to Dulberg stating:[3]

> "Honestly, that might be difficult for several reasons. Not only will it be impossible to prove that it is due to the trauma, but it may open up the issue before the jury of whether you are a credible witness..so Id be against that frankly...."

2-1-D4. Mast told Dulberg to blacken out all medications which were prescribed by psychiatrist Dr. Elizabeth McMasters on Dulberg's pharmaceutical medication lists[4]**.**

2-1-D5. Note that while Mast was doing this, Dulberg's SSDI attorney Meredith Marcus was ***successfully winning*** Dulberg's appeal for permanent disability by using the mental health medical information overturning the decision of Administrative Law Judge Lovert F. Bassett of the SSA Office of Disability Adjudication and Review in Evanston, Illinois.

2-1-D6. Mast, in comparison, was ***successfully suppressing*** the same mental health medical information from PI case 12LA178 to help sabotage or limit Dulberg's claims against the McGuires and Gagnon and protect Mast (himself) and the Law Offices of Thomas J. Popovich, P.C. from the tolling provisions for those with a legal disability found in the statute of limitations for Legal Malpractice should Dulberg ever file suit. 735 ILCS 5/13-214.3(e)(f).

2-1-D7. The way SSDI attorney Meredith Marcus strategized to ***win*** Dulberg's claim for permanent disability (described in detail in APPENDIX B) contrasts sharply with how Mast and Popovich strategized to ***lose*** their PI case and cap the value of Dulberg's recovery.

2-1-D8. In one case the mental health information helped win an appeal. In the other case the mental health information was completely suppressed to help downplay the effect of the loss of the use of Dulberg's dominant right arm had on his mental health

1 Exhibit 99_Rosecrance-TreatmentPlan.pdf
2 Exhibit 13_DUL001570 to 1574
3 Exhibit 13_DUL001570 to 1574
4 Exhibit 98_POP000862-863.pdf

2-1-D9. Popovich and Mast also protected themselves in suppressing the same mental health medical information by removing the tolling provisions for those with a legal disability found in the statute of limitations for Legal Malpractice should Dulberg ever file suit. 735 ILCS 5/13-214.3(e)(f).

2-1-D10. About 6 years later (on April 18, 2019, the same day that Dulberg sent the certified slip ruling of Tilschner v Spangler to Williams) Dulberg sent "Rosecrance Treatment Plan" to Williams. Like with Tilschner v Spangler, "Rosecrance Treatment Plan" was never bates stamped by Clinton and Williams and was never given to opposing counsel.

2-1-D11. In case 12LA178 the evidence demonstrates that Popovich and Mast suppressed "Rosecrance Treatment Plan" to downplay the severity of the impact that Dulberg's injury had on his life. In case 17LA377 there is evidence that Clinton and Williams (once again) suppressed (the same document) "Rosecrance Treatment Plan" for the benefit of Defendants Popovich and Mast effectively removing the statutory tolling provisions for persons under a legal disability found in 735 ILCS 5/13-214.3(e)(f).

Count 1, Section E: Corrupted the deposition process to sabotage client's case and to benefit defendants (in collaboration with opposing attorneys)

2-1-E1. 10 depositions were scheduled to take place during PI case 12LA178.

2-1-E2. On February 4, 2013 David Gagnon was deposed.[1]

2-1-E3. The transcript as it was provided by Urbanski Reporting Services had a certification page[2] signed by a person named "Maggie Margaret Orton".

2-1-E4. On March 25,2022 Margaret Orton was subpoenaed[3] for 20 signatures and she provided 20 signatures on April 19, 2022.

2-1-E5. Omni Document Examination did an analysis of the Orton signatures.[4]

2-1-E6. Exhibit 1 of Gagnon's deposition consists of 2 papers cut and placed together to appear as one paper.[5] There are many versions of Exhibit 1 throughout the bates-numbered documents.

2-1-E7. Exhibit 2 of Gagnon's deposition is an alleged transcript of a phone conversation.[6] Mast claimed to have a recording of the phone conversation but has never produced it. It probably does not exist.

1 Group Exhibit 16_2013-02-06_Gagnon depositions (all)
2 Folder B4: Gagnon depo certification page.pdf
3 Group Exhibit 5_2022-03-25_Margaret Orton subpoena (all)
4 Group Exhibit 6-Margaret Orton signatures analyzed (all)
5 Group Exhibit 17_Gagnon Exhibit 1 (all)
6 Group Exhibit 18_Gagnon Exhibit 2

2-1-E8. Popovich has a different version[1] of Exhibit 3 of Gagnon's deposition than Dulberg's version[2].

2-1-E9. On March 20, 2013 CAROLYN McGUIRE was deposed[3], WILLIAM McGUIRE was deposed[4], and MIKE McARTOR was deposed[5].

2-1-E10. The transcripts as they were provided by Urbanski reporting services had certification pages signed by a person named "Paula Ann Erickson".[6]

2-1-E11. On March 26, 2022 Paula Erickson was subpoenaed[7] for 20 signatures.

2-1-E12. Omni Document Examination did an analysis of the signatures.[8]

2-1-E13. After Dulberg fired Popovich and Mast and received the "Mixed Brown Box" of documents Mast gave to Balke, Dulberg noticed there were notices of doctors depositions but no depositions.

2-1-E14. According to the notices the doctors depositions were to take place on these dates:

Dr Karen Levin on October 1, 2013 (Merrill Legal Solutions, Notice has date 10/1/2013)[9]

Dr Scott Sagerman on October 15, 2013 (Merrill Legal Solutions, Notice has date 10/15/2013)[10]

Dr Talerico (Merrill Legal Solutions, Notice has date 10/16/2013)[11]

Dr Apiwat Ford on November 20, 2013 (Merrill Legal Solutions, Notice has date 10/23/2013[12], Notice has date 11/20/2013[13])

Dr Kathy Kujawa July 23, 2014 (Merrill Legal Solutions, Notice has date 7/23/2014)[14]

2-1-E15. The notices state that the court reporting agency handling the depositions is Merrill Legal Solutions. Dulberg contacted Merrill Legal Solutions and was told they did not know anything about the depositions.

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1 Group Exhibit 19: POP 1320-1326_Gagnon Exhibit 3 with extra page.pdf
2 Group Exhibit 19_Gagnon Exhibit 3 (contains many examples)
3 Group Exhibit 20_2013-03-20_Carolyn McGuire depositions (all)
4 Group Exhibit 21_2013-03-20_William McGuire depositions (all)
5 Group Exhibit 25_2013-03-20_McArtor depositions (all)
6 Folder B5: a_Carolyn McGuire depo certification page.pdf and b_William McGuire depo certification page.pdf and c_McArtor depo certification page.pdf
7 Group Exhibit 8_2022-03-26_Paula Erickson subpoena (all)
8 Group Exhibit 9-Paula Erickson signatures analyzed (all)
9 Exhibit 88_DUL001753, 4284, 5995.pdf
10 Exhibit 89_DUL001761, 4292.pdf
11 Exhibit 90_DUL005999.pdf
12 Exhibit 91_DUL001755, 4286, 5987.pdf
13 Exhibit 92_DUL001759, 4288, 4290.pdf
14 Exhibit 93_DUL001750, 4281, 5991, 5993.pdf

2-1-E16. Dulberg was told by the Law Offices of Thomas J. Popovich, P.C. to contact Vahl reporting to get certified copies of the 5 doctors depositions.

2-1-E17. Dulberg paid Vahl reporting $723.50 for the 5 doctors depositions.[1]

2-1-E18. Dulberg showed the depositions purportedly created by VAHL REPORTING SERVICE, LTD. to his current attorney Alphonse Talarico and was told they are not usable in court because they are not signed.

2-1-E19. Dulberg tried several times over a 4 week period to contact the court reporting agency VAHL REPORTING SERVICE, LTD. to obtain legally sufficient certification pages of the 5 doctors depositions that have signatures of the court reporters but nobody called back.

2-1-E20. On March 25 and 26, 2022 Dulberg's counsel sent subpoenas for signatures to Margaret Orton[2] and Paula Erickson[3].

2-1-E21. Dulberg talked with Michael Urbanski. Urbanski told Dulberg that he would contact Vahl Reporting.

2-1-E22. On March 26, 2022 Michael Urbanski emailed Dulberg with the subject: "Vahl Reporting" stating:[4]

> "Mr. Dulberg:
>
> I did forward all the information to Carrie Vahl. She now has your email address and I would hope would respond to your requests.
>
> Sincerely,
> Michael Urbanski"

2-1-E23. On March 28, 2022 at 7:44 AM a person going by the name of Carrie Vahl emailed Dulberg with the subject "Transcripts" stating:[5]

> "Hi,
>
> I spoke with Michael Urbanaki, and he gave me your email.
>
> Michael gave me a list of transcripts that you need certifications for. Can you give me a call on my cell today or tomorrow, (847) 727-5828. Most of today I'll be in a hearing but I'll call you back.
>
> Thanks,
>
> Carrie

1 Exhibit 94_Scan of Bank statement page with check cashed by Vahl.pdf
2 Group Exhibit 5_2022-03-25_Margaret Orton subpoena (all)
3 Group Exhibit 8_2022-03-26_Paula Erickson subpoena (all)
4 Group Exhibit 10: 2022-03-26_1010 AM_RECV_Vahl Reporting.pdf
5 Group Exhibit 10: 2022-03-28_0744 AM_RECV_Transcripts.pdf

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Carrie Vahl

Vahl Reporting Service, LLC

(847) 727-5828

2-1-E24. On March 28, 2022 at 10:01 AM Dulberg replied stating:[1]

"Dear Carrie Vahl,

Thank you for reaching out to me.

I am not sure what is on the list Mr. Urbanski sent to you so below is a list of Dr's depositions I purchased around 9/15//2015 from Vahl Reporting.

I paid $723.50 for the depositions with Check #2486 from Account #2600005536.

The issue I have with the depositions I received back in 2015 is that none of them were certified or signed by the CSR and they do not have the exhibits attached which means after all this time they are unusable in court.

I would really appreciate a PDF of the signed, certified depositions with the exhibits listed below:

22nd Judicial Circuit, McHenry County case number 12LA178

Dr. KAREN LEVIN, 10/1/2013, ANGELA M. INGHA, CSR , Certificate No. 084-002984

DR. SCOTT SAGERMAN, 10/15/2013, JILL S TIFFANY, CSR, Certificate No. 084-002807

Dr. MARCUS G. TALERICO, 10/28/2013, TERRI A. CLARK, CSR, Certificate No. 084-001957

Dr. APIWAT FORD, 11/20/2013, MARGRET MAGGIE ORTON, CSR, Certificate No. 84-004046

Dr. KATHY KUJAWA, 7/23/2014, JILL S TIFFANY, CSR, Certificate No. 084-002807

Please advise the best way I may obtain the certified, signed Dr's depositions listed above with the exhibit attached.

Thank you in advance for your help with this matter,

Paul"

2-1-E25. On March 28, 2022 at 11:29 AM a person going by the name of Carrie Vahl responded stating:[2]

1 Group Exhibit 10: 2022-03-28_1001 AM_SENT_Re Transcripts.pdf
2 Group Exhibit 10: 2022-03-28_1129 AM_RECV_Re Transcripts.pdf

"Hi Paul,

Thanks for the list and the info. I never bothered to look up under your name. I was just searching for Popovich's people.

Tomorrow I can scan and email the signature pages to you for each transcript. I'm just out of the office today.

Regarding the exhibits, the defense counsel we were hired by those days never give us the exhibits. So that I can't help you with.

They might be in the original trial file with the clerk's office.

I have one more question. Maggie Orton received a records subpoena. She took a screenshot and it's attached. We don't know what you are looking for with the Twenty signatures. Is it just the cert page signature and then she's in compliance?

Let me know.

Thanks,
Carrie"

There was no attachment to the email and Dulberg did not respond.

2-1-E26. On March 28, 2022 at 13:39 PM a person going by the name of Carrie Vahl sent Dulberg another email stating:[1]

"Hi Paul,

Please find attached the 5 certificate pages with the reporters' signatures.

Does this satisfy what you need from Maggie Orton? All she has, like the rest of us, is the transcript that you already have.

Thanks,
Carrie"

This email implied the individual signed certification pages from 5 different depositions all grouped into one document on their own and detached from the rest of the depositions they purportedly belong with were legally sufficient. Dulberg did not respond.

2-1-E27. On March 31, 2022 at 9:20 AM a person going by the name of Carrie Vahl sent Dulberg a final email stating:[2]

"Hi Paul,

Did you received this email with the cert pages?

Can you please let me know about the subpoena for Maggie Orton? Does her cert page

1 Group Exhibit 10: 2022-03-28_1339 PM_RECV_Re Transcripts.pdf
2 Group Exhibit 10: 2022-03-28_1339 PM_RECV_Re Transcripts_Attachments.pdf

satisfy what you need?

We want to be in compliance with a subpoena.

I did leave a voicemail for your attorney also but have not heard back. I don't have his email. Could you send that to me, please?

Thanks,
Carrie"

Dulberg did not respond.

2-1-E28. Dulberg received an email from a person named "Carrie Vahl" with an attachment containing 5 signed certification pages.[1]

2-1-E29. Dulberg felt these could be forgeries or something else could be wrong. Dulberg forwarded the attached documents to his attorney.

2-1-E30. After Dulberg filed a lawsuit (case 17LA377) against Popovich and Mast for legal malpractice, Popovich once again corrupted the deposition process during the deposition of Mast. This is described in 'ARDC complaint against Clinton and Williams' in Chapter 2, Section C and Section K.

Count 1, Section F: Knew Defendant Gagnon effectively admitted to negligence for Dulberg's injury

2-1-F1. On February 1, 2013 Ron Barch filed CROSS-CLAIM FOR CONTRIBUTION AGAINTS CO-DEFENDANT DAVID GAGNON[2]. In the cross-claim the McGuires state as follows:

7. At the time and place alleged, notwithstanding his aforementioned duty, Defendant David Gagnon was then and there guilty of one or more of the following negligent acts and/or omissions:

a. Caused or permitted a chainsaw to make contact with Plaintiffs right arm;

b. Failed to operate said chainsaw in a safe and reasonable manner so as to avoid injuring Plaintiff's right arm;

c. Failed to maintain a reasonable and safe distance between the chainsaw he was operating and Plaintiff's right arm;

d. Failed to properly instruct Plaintiff prior to approaching him with an operating chainsaw;

1 Group Exhibit 10: 2022-03-31_0920 AM_RECV_Re Transcripts.pdf
2 Exhibit 48_2013-02-01_CROSS CLAIM FOR CONTRIBUTION AGAINST CODEFENDANT DAVID GAGNON_CERTIFICATE OF SERVICE_Barch-McGuires copy-OCR.pdf

e. Failed to properly warn Plaintiff prior to approaching him with an operating chainsaw;

f. Failed to maintain the chainsaw in the idle or off position when he knew or should have known that Plaintiff was close enough to sustain injury from direct contact with the subject chainsaw;

g. Failed to maintain a proper lookout for Plaintiff while operating the subject chainsaw;

h. Failed to maintain proper control over an operating chainsaw;

i. Was otherwise negligent in the operation and control of the subject chainsaw.

8. That the injuries alleged by Plaintiff PAUL DULBERG, if any, were the direct and proximate result of negligence on the part of Defendant David Gagnon.

David Gagnon or his attorney has never filed an answer to these allegations in the CROSS-CLAIM for contribution. By not filing an answer to CROSS-CLAIM for contribution Gagnon effectively admitted to each of the charges (a), (b), (c), (d), (e), (f), (g), (h) and (i) as of early March, 2013.

Count 1, Section G: Knew Defendant Gagnon committed perjury

2-1-G1. Mast and Popovich were in possession of the actual timestamps so they knew that David Gagnon committed perjury. In fact, Mast intentionally led Gagnon to commit perjury during the deposition.

Count 1, Section H: Knew Defendant Carolyn McGuire committed perjury

2-1-H1. Mast and Popovich were in possession of the actual timestamps so they knew that Carolyn McGuire committed perjury as early as March 19, 2013 (more than 9 months before Mast and Popovich manipulated Dulberg into settling his claim against the McGuires for only $5,000).

COUNT 2: SETTLEMENT FRAUD to sabotage client's recovery and benefit defendants

Dulberg's $5,000 settlement with the McGuires was coerced.

2-2-1. The coerced settlement process is described in detail in Chapter 1. What follows is a condensed summary:

a) Mast and Popovich knew that Carolyn McGuire committed perjury on March 20, 2013. Popovich and Mast concealed the timestamp on the Walgreens RX receipt to help Carolyn McGuire commit perjury.

b) Beginning in October 2013 Mast tried to convince Dulberg that the McGuires are in no way responsible for Dulberg's injury.

c) On October 22, 2013 Popovich and Mast made an offer to McGuire attorney Barch for Dulberg to settle his claim against the McGuires for $7,500. The offer was never discussed with Dulberg and Dulberg was never informed the offer was made.

d) On November 18, 2013 Barch claimed that he had been authorized to make an offer of $5,000 to Dulberg. Mast presented the offer of $5,000 to Dulberg as an offer initiated by the McGuires (and not as a counter-offer initiated by Mast himself). Dulberg did not know about all the nefarious activity that had been taking place (which is desribed in this complaint).

e) On November 20, 2013 Mast relied on the Appellate Court's slip ruling ~~of~~ in Tilschner v Spangler as the basis for the change in Masts legal opinion on the McGuire's liability to try to convince Dulberg that the McGuires were not legally liable for his injury. He explained that Tilschner v Spangler confirms that Restatement of Torts 318 is not applicable in Illinois. It is for this reason (because the Restatement of Torts 318 is not applicable in Illinois) that the McGuires were not responsible for Dulberg's injury.

f) By around December 26, 2013 Mast eventually convinced his fully disabled client to settle his claim with the McGuires for $5000.

g) When Dulberg later filed legal malpractice complaint 17LA377 against Mast and Popovich his own legal malpractice attorneys Gooch, Clinton and Williams successfully suppressed the certified slip copy of Tilschner v Spangler and any mention of Tilschner v Spangler from court records for over 6 years. (A detailed description of how the document was suppressed is in ARDC Complaint against Clinton and Williams, in both Chapter 2, Section C, and Section K, and in ARDC Complaint against Thomas Gooch[1], Chapter 2, "TEAM-WORK" Example 1.)

2-2-2. Popovich and Mast also attempted to coerce Dulberg to settle with Gagnon. A concise summary follows:

a) Mast and Popovich knew that Gagnon committed perjury on February 4, 2013. They concealed the timestamp on the Walgreens RX receipt and led Gagnon through a series of questions in which they knew Gagnon committed perjury.

b) Mast and Popovich also knew that Gagnon effectively admitted negligence for Dulberg's injury as of early March, 2013. It was with this knowledge that Popovich and Mast, beginning in late September, 2014 acted to settle Dulberg's claim against Gagnon for $50,000 or less.

1 ARDC Complaint Against Thomas Gooch will be filed in September, 2023.

c) On around Septenber 25, 2014 Dulberg suffered from a severe migriane headache. Mast offered to settle case.

d) About 1 week after Dulberg's migraine he received a call about the expiration of medical liens by "Colleen" and she threatened to take Dulberg's home.

e) On November 26, 2014 Dulberg reacted to the pressure not by settling with Gagnon but by declaring Bankruptcy. Federal bankrupty laws like automatic stay, PI case standing transferred to trustee, and change in jurisdiction changed Dulberg's status immediately but Dulberg was unaware of this.

f) Mast valued the PI case with bankruptcy Trustee Heeg at $50,000 (from Gagnon) + $5,000 (from the previous McGuire settlement) totalling $55,000

g) Popovich and Mast avoided contracting with bankruptcy Trustee Heeg while they continued attempting to settle case in the 22nd Judicial Circuit Court (which had no jurisdiction) for Dulberg (who had no standing as plaintiff) in violation of the automatic stay.

h) pre-trial settlement memo which asked $50,000 to settle

i) Dulberg refused

j) Mast resigned

k) The pre-trial settlement memo was in the possession of Popovich and Mast without Dulberg knowing for about 2 months just after Mast resigned. The plaintiff offer in the memo inexplicably changed from $50,000 to $135,000 while in the possession of Popovich and Mast. Popovich and Mast have never acknowledged they were in possession of the memo during this time.

COUNT 3: VIOLATION OF FEDERAL BANKRUPTCY LAWS to sabotage client's recovery and benefit defendants

2-3-1. Popovich and Mast:

a) Acted in violation of the automatic stay

b) Acted to place an upper limit on the value of the PI case in a court that had no jurisdiction

APPENDIX A: An analysis of Tilschner v Spangler. Was Tilschner sabotaged, too?

AP-1. It was not difficult to research case law and verify that the Restatement of Torts 318 is not applicable in Illinois. This was pointed out by the appellate court judges. Case law is quite clear on this. What is not clear is why Popovich and Mast thought otherwise.

AP-2. As the Appellate Court judges also point out, Popovich and Mast don't make any

convincing arguments to the contrary. They do not cite any case law supporting their argument.

AP-3. The strategy makes no sense. The question of whether Restatement of Torts 318 is applicable in Illinois would be resolved by analyzing past cases. Illinois case law is clear on this subject. Popovich and Mast cited no case law while appearing to attempt to overturn established practice. They also argued poorly. They were obviously going to loose their appeal. So why did they appeal on losing arguments just after voluntarily dropping the valid part of their claim in the circuit court?

AP-4. It is highly likely that Popovich and Mast never expected to win Tilschner's appeal. It is quite possible that Popovich and Mast knew they would lose the argument, and argued in a way that would assure Tilschner loses her appeal after they voluntarily dropped the valid part of the claim in circuit court.

AP-5. LEGAL ANALYSIS OF WHY POPOVICH AND MAST DROPPED TILSCHNER'S COUNT 2 CLAIM

As stated in Tilschner v Spangler:

> Patricia was injured during a party at the home of defendant Lowell Spangler when defendant Ralph Ruppel ignited fireworks. Patricia's third amended complaint contained three counts. **Count I alleged common-law negligence against Spangler. Count II alleged negligence against Spangler pursuant to section 318 of the Restatement (Second) of Torts.** Count III alleged common-law negligence against Ruppel. Spangler moved to dismiss count II, pursuant to section 2–615 of the Code of Civil Procedure (735 ILCS 5/2–615 (West 2008)). The trial court granted the motion to dismiss with prejudice and denied Patricia's subsequent motion to reconsider. Patricia filed an application for leave to appeal to this court pursuant to Illinois Supreme Court Rule 308 (eff.Feb.26, 2010), which was denied. Patricia was also denied leave to file a fourth amended complaint. **She then voluntarily dismissed count I of the third amended complaint**, and the trial court found no just reason to delay enforcement or appeal, pursuant to Illinois Supreme Court Rule 304(a) (eff.Feb.26, 2010). This appeal followed.
>
> Patricia now contends that the trial court erred in dismissing count II of her third amended complaint.

AP-6. The rest of the appellate court argument analyzed the applicability of Restatement of Torts 318 in Illinois based on case law history. This makes sense because this is what the appellate court was asked to reconsider by Popovich and Mast

AP-7. Using the information described in this ARDC Complaint one must wonder:

> Why did Tilschner voluntarily drop Count I alleging common law negligence against the homeowner?

AP-8. It is a strange decision to voluntarily drop Count I while pursuing and appealing on Count II. Tilschner was assumably given legal advice by Popovich and Mast to drop Count I while

Tilschner was assumably told by Popovich and Mast to pursue Count II on appeal.

Why drop the claim of common law negligence against the homeowner while pursuing negligence based on Restatement of Torts 318?

Was the focus on how Restatement of Torts 318 was not applicable in Illinois just a decoy to distract from how Count I was "voluntarily" dropped?

AP-9. As described in Chapter 1 Dulberg was told by Mast that Dulberg had no claim against the homeowners because the Restatement of Torts 318 is not applicable in Illinois. Was Tilschner told the same thing by Popovich and Mast? If so, this would explain why Tilschner "voluntarily" dismissed Count I. She was most probably told by Popovich and Mast that Count I depends on Count II and that Count II is the stronger legal argument. If so, this would explain Tilschner's "voluntary" action.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION
of the
SUPREME COURT OF ILLINOIS

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Paul Dulberg
4606 Hayden Court
McHenry, IL 60051
By email: paul_dulberg@comcast.net

Chicago
October 27, 2023

Re: Hans Anton Mast
in relation to
Paul Dulberg
No. 2023IN03135

Dear Mr. Dulberg:

Enclosed is a copy of correspondence submitted to the Commission by Hans Mast's counsel, George Flynn.

If you believe the response is inaccurate or if you wish to provide additional information or documents, please write to me within fourteen days. Please do not staple or bind any reply or attached documents. We also ask that you avoid using exhibit tabs.

We will evaluate the matter and advise you of our decision. Again, thank you for your cooperation.

Very truly yours,

/s/ Scott Renfroe

Scott Renfroe
Deputy Administrator, Appeals

SR:vja
Enclosure

KCESD

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October 27, 2023

VIA E-MAIL

Scott Renfroe
Deputy Administrator, Appeals
One Prudential Plaza
130 East Randolph Drive, Suite 1500
Chicago, Il 60601-6219
srenfroe@iardc.org

Re: *Paul Dulberg v. The Law Offices of Thomas J. Popovich, P.C. and Hans Mast*
22nd Judicial Circuit Court of McHenry County, Illinois
Trial Court Case No. 17 LA 000377
Appellate Court Case No. 2-23-0072
ARDC No. 2023IN03135

Dear Mr. Renfroe:

I write on behalf of attorney Hans Mast in response to your letter of September 20, 2023 referencing the above captioned matter.

Mr. Mast was the primary handling attorney of Mr. Dulberg's personal injury case arising out of an accident involving a chainsaw when Mr. Dulberg was represented for a period of time by the Law Offices of Thomas J. Popovich P.C. ("Popovich"). In that case, Dulberg assisted his friend David Gagnon with trimming some downed tree branches on the property of Gagnon's mother and step-father, the McGuire's. Based on his professional judgment, Mast questioned the viability of the claim against the McGuire's and suggested that Mr. Dulberg accept a settlement offer of $5,000 from the McGuire's, while continuing to prosecute the case against Gagnon.

I have represented Mast and Popovich in a legal malpractice action brought by Mr. Dulberg regarding the representation described above. Mr. Mast denies any wrongdoing and denies violating any of the Rules of Professional Conduct relative to his representation of Dulberg.

Dulberg's claim in the malpractice action has "evolved" since its inception. For example, as he has claimed here in his complaint, he asserted a theory of undue influence and coercion

KCESD

against Mast with respect to Mast's suggestion that Dulberg accept the $5,000 settlement offer from the McGuire's (Coercion and Settlement Fraud alleged here at p. 70 of Dulberg's Complaint). However, in his deposition, Dulberg admitted that there was no coercion (See Dulberg deposition pages 70-76). Dulberg further admitted on cross-examination that he deliberated over the settlement offer for several weeks. He examined deposition testimony and ultimately executed a Settlement Release which Mast had mailed him. In his deposition, Dulberg described the process of executing the Settlement Release, and mailing it to Mast from his home. Notably, Dulberg's initial Complaint at Law alleged coercion, while his subsequent pleadings abandoned this theory.

Judge Joel Berg granted Mast and Popovich's Motion for Summary Judgment in the legal malpractice claim, based on a statute of limitations defense. However, Mast denies any malpractice, and has raised additional affirmative defenses, such as judgmental immunity ("attorney judgment rule"). That defense, as well as Dulberg's inability to prove the "case within the case" as to the McGuire's liability in the underlying case, will be raised in the future for some reason the case is reversed and remanded.

We attach a copy of Mast's and Popovich's Motion for Summary Judgment, with exhibits, as it is probably the best summary of the facts, claims, and defenses in the case. Transcripts from Paul Dulberg's and Hans Mast's discovery depositions are attached as exhibits to the Motion for Summary Judgment. It would be extremely difficult to respond to the many theories and claims made in the 74 page complaint. We believe that the testimony of Dulberg and Mast refutes each of those theories and claims.

Should you have any questions or require additional materials, please do not hesitate to contact me at your earliest convenience.

Very truly yours,

KARBAL COHEN ECONOMOU SILK & DUNNE LLC

By: George K. Flynn

GKF:lmw
Enclosures: Motion for Summary Judgments w/exhibits
3370196

** FILED ** Env: 19526335
McHenry County, Illinois
2017LA000377
Date: 9/16/2022 2:53 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION/MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast ("Mast") (sometimes collectively "Popovich") by and through their attorneys Karbal, Cohen, Economou, Silk, & Dunne, LLC, pursuant to 735 ILCS 5/2-1005, submit this Motion/Memorandum in Support of their Motion for Summary Judgment, and state as follows:

I. INTRODUCTION

Plaintiff Paul Dulberg ("Dulberg") was allegedly injured on June 28, 2011 when he was assisting a friend, David Gagnon ("Gagnon"), trim a tree with a chainsaw in the backyard of a home owned by Dulberg's neighbors, Bill and Carolyn McGuire ("The McGuires"). Gagnon, who is Carolyn McGuire's son, and Dulberg were both over the age of 40 at the time of the accident. Dulberg retained defendant Popovich to prosecute a personal injury lawsuit against Gagnon and the McGuires. Defendant Hans Mast was the primary handling attorney. Eventually, in Mast's legal opinion, the case against the property owners was weak because the evidence showed they did not control the work. Mast recommended Dulberg accept the McGuires' settlement offer. Dulberg deliberated and accepted the McGuires' offer in January 2014. Thus

McGuires were dismissed from the lawsuit in January 2014, and Dulberg continued to prosecute the case against Gagnon.

Popovich and Mast withdrew from representing Dulberg on March 13, 2015. Dulberg later settled with Gagnon, and waited until November 28, 2017 to sue Popovich and Mast. In an unavailing attempt to excuse the late filing of his lawsuit, Dulberg alleges that he did not become aware of a claim against defendants until he sought a legal opinion in December of 2016. He has never been able to explain what legal opinion he received or how it caused him to "discover" his claim and damages, or why he still waited almost another year after December 2016 to file his lawsuit. Summary judgment must be entered because Dulberg's claims are barred by the two-year statute of limitations for Illinois legal malpractice claims under 735 ILCS 13/214.3(b).

II. STATEMENT OF CLAIM

The following facts can be gleaned from the Complaint (Exhibit A), Amended Complaint (Exhibit B) and Second Amended Complaint (Exhibit C).[1] [2]

On or about June 28, 2011, Dulberg was involved in an accident while assisting David Gagnon in the cutting down of a tree on the McGuire property. Exhibit A, ¶6. Gagnon lost control of the chainsaw he was using causing it to strike Dulberg. Exhibit A, ¶7. In May 2012, Dulberg retained the Law Offices of Thomas J. Popovich. Exhibit A, ¶8. In late 2013 or early 2014, Mast met with Dulberg and agreed with Mast to accept $5,000, releasing William and Caroline McGuire. Exhibit A, ¶13. Mast and Popovich continued to represent Dulberg through March of 2015. Exhibit A, ¶14. Thereafter, Dulberg retained other attorneys and proceeded to a binding

[1] The Complaint and Amended Complaint were filed by The Gooch Firm and signed by attorney Thomas W. Gooch, III.

[2] Dulberg denied the material allegations contained in Popovich's Affirmative Defenses, including its Second Affirmative Defense based on the two-year statute of limitation. (Dulberg Answer to Affirmative Defenses, Exhibit D).

mediation where he received an award. Exhibit A, ¶16. Dulberg alleges that following the execution of the mediation agreement and final mediation award, he realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. Following the mediation Dulberg was advised to seek an independent opinion from an attorney handling malpractice matters, and received that opinion on or about December 16, 2016. Exhibit A, ¶20.

In his First Amended Complaint, Dulberg modified his "discovery" allegations and alleged "it was not until the mediation in December 2016, based on the expert's opinion that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000 on an "all or nothing" basis. Exhibit B, ¶29. In ¶30 he reiterates that "Dulberg was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016." Exhibit B, ¶30.

Dulberg's first substitute counsel in this case filed a Second Amended Complaint, further modifying the allegations. It is alleged that "after accepting a $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating that "I trust your judgment." Exhibit C, ¶48. He further alleges in ¶55 of Ex. C that "only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable." Exhibit C, ¶55. He also alleges that following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information that Mast and Popovich had given Dulberg was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. Exhibit C, ¶56. He alleged that it was not until the mediation in December 2016 based on the expert's opinions that Dulberg retained for the mediation that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and

coercing him to accept a settlement for $5,000 on an "all or nothing" basis. Exhibit C, ¶57. Dulberg's allegations of Popovich' breaches of the standard of care are contained in Exhibit C, ¶58 as follows:

> 58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:
>
> a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;
>
> b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;
>
> c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance company would pay close to that;
>
> d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;
>
> e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the[sic] all the claims against both the McGuires and Gagnon in order to obtain a full recovery;
>
> f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

III. UNDISPUTED MATERIAL FACTS

A. Paul Dulberg Testimony

Dulberg has hired a personal injury attorney in 2002 and has hired a corporate lawyer in the past. (Dulberg Deposition, Exhibit E, pp.8, 9). He was injured on June 28, 2011 while assisting David Gagnon with a chainsaw cutting up some branches after they were removed from a tree. (Exhibit E, pp.12, 13). He hired Popovich to sue Gagnon and Bill and Carolyn McGuire in connection with his June 28, 2011 injury. (Exhibit E, pp. 9, 30). Hans Mast was the primary handling attorney. (Exhibit E, p. 30). Brad Balke substituted for Dulberg on March 19, 2015 when Popovich withdrew. (Exhibit E, p. 35). Dulberg asked hundreds of lawyers to take over his case when Popovich withdrew, but none accepted. (Exhibit, E, p. 36). Dulberg fired Balke prior to the binding arbitration, and he was then represented by the Baudin Law Firm. While Brad Balke handled the case, Balke never gave him an opinion as to the liability of the McGuires and whether the prior settlement was appropriate. (Exhibit E, p. 42). At some point, Dulberg hired The Daley Disability Law Firm to assist him with a Social Security disability claim. A criminal lawyer represented him in a guilty plea for drug possession in 1990. (Exhibit E, pp.34-35) (Exhibit E, p. 43). At some point during the case, it was Hans Mast's opinion that the McGuires did not have liability because they did not control the work David Gagnon was doing. (Exhibit E, pp. 50, 51). Mr. McGuire was inside the house for 45 minutes before the accident happened. (Exhibit E, pp. 51, 52).

On November 18, 2013, Mast emailed Dulberg and relayed a $5,000 settlement offer from the McGuires. (Exhibit E, p.52). Mast suggested that the $5,000 offer be accepted. Dulberg testified that at one point, "Mast defined what an independent contractor is and he said that David was an independent contractor and the McGuires weren't liable because they had hired somebody

outside even though it's their own son, he is an adult, outside to do the work and that they weren't responsible." (Exhibit E, p.55). Dulberg believed that Mast was relying on his honest legal opinion at the time. (Exhibit E, p.59). Dulberg did not accept the settlement offer on November 8, 2013. Dulberg met with Mast on November 20, 2013. (Exhibit E, p.61). Then Dulberg reviewed the depositions of the McGuires and David Gagnon before he accepted the offer. (Exhibit E, p.63). Eventually Dulberg told Mast that he would agree to accept the $5,000 settlement offer from the McGuires, just before Christmas in December of 2013. (Exhibit E, p.66) Dulberg received a letter with a settlement release from Mast on January 29, 2014 and signed it and sent it back. (Exhibit E, p.69). From December 25 until he received the settlement release, he contacted Mast again to discuss whether it would be appropriate to let the McGuires out for $5,000. (Exhibit E, p.70). Dulberg did not talk to any other lawyers and there was nothing preventing him from seeking a second opinion from some other lawyer at the time. (Exhibit E, p.71). Dulberg emailed Mast with a question about the release on January 29, 2014, and then put a stamp on the envelope with the executed release, put it in his mailbox, put the flag up, and waited for the mailman. (Exhibit E, pp. 71, 72). Mast did not force him to take the settlement. (Exhibit E, p.73).

The case continued against Gagnon through discovery and some of Dulberg's doctors were deposed. (Exhibit E, pp. 78, 79). Dulberg told Mast "First, I'm sorry that I'm not a better witness to prove David cut me with a chainsaw." Dulberg already started looking for new lawyers in the summer of 2014. Mast thought the case against David Gagnon was difficult. (Exhibit E, p.81). Mast told Dulberg that he did not make a good witness at his deposition. (Exhibit E, p.82). Dulberg and Gagnon were the only people who witnessed the accident. (Exhibit E, p.83). There were differences between the factual testimony provided by Gagnon and Dulberg in the underlying

case. (Exhibit E, p.83). His relationship with Mast was deteriorating over the fall and winter of 2015, even long before that. (Exhibit E, p.86). On February 22, 2015, Dulberg wrote in an email to Mast "Now I'm left wondering... how hard it is to sue an attorney?" (Exhibit F). When asked what the reference to suing an attorney meant he replied:

A. That was me being angry.

Q. With Hans?

A. Yes. I was seeing red.

Q. You're suggesting that you may sue him?

A. Yeah. I didn't know that I could. I'm wondering about it.

Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?

A. Yes.

Q. You, ultimately, sued him for legal malpractice, right?

A. Yes.

On February 22, 2015, Mast wrote in an email to Dulberg "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case." (Exhibit E, p.91). Mast speculated that seven out of ten times he would lose the case outright. (Exhibit E, p.92). Dulberg filed for bankruptcy. He was ordered by the bankruptcy trustee to participate in binding mediation on December 8, 2016. (Exhibit E, p.96). Dulberg admitted that the allegation in his complaint regarding Popovich being involved with the high/low agreement in the mediation was a mistake. (Exhibit E, p.103). Dulberg testified that it was Baudin that advised him to seek an independent opinion from an attorney handling legal malpractice matters. (Exhibit E, p.108). The lawyer he received the legal opinion on December 16, 2016 was Thomas Gooch, the drafter of the Complaint in this case. (Exhibit E, p.108). It was confirmed by Gooch on December 16,

2016 that Dulberg had a valid case against Popovich. (Exhibit E, p.113). He did not file a lawsuit until nearly a year later because "Thomas Gooch had some health issues and that his wife had some health issues. It took a while." (Exhibit E, p.114). Dulberg agreed that the legal opinion he received on December 16, 2016 was responsive to Interrogatory No. 1 from Dulberg's answers to Mast's Interrogatories. (Exhibit E, pp.125, 126). The legal opinion Dulberg received from Gooch was verbal. (Exhibit E, p.130). Gooch simply stated, "You have a case here. You have a valid case." (Exhibit E, p.130). When asked did he tell you exactly what they did wrong in connection with your – their representation of you, Dulberg replied "He probably did. I'm not recalling it right now. I'm pulling a blank." (Exhibit E, p.131).

Dulberg was questioned further: "Other than you have a case, what did Gooch say to you?" Dulberg responded, "He said they definitely committed malpractice." When asked whether Gooch ever put this in writing, Dulberg replied, "I think he backed it up by filing a suit. That's documented." (Exhibit E, p.136). Dulberg was asked, "As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to the McGuires' liability? Answer: They were definitely liable. He tried to say that – like Popovich and Mast were first – or second year lawyers and that they may have made a mistake here." (Ex. E, pp.139-140).

B. <u>Hans Mast Testimony</u>

Mast graduated from Kent Law School in 1991 and has been admitted to practice law in Illinois since 1991. (Mast Deposition, Exhibit G, p.10). He joined the Popovich firm in 2001 and worked there for approximately 18 years. (Exhibit G, p.12). He testified that every time he met with Dulberg: "Every time we met, we talked about this because this was the subject at the time with the McGuires and the testimony of the McGuires, given Paul' testimony, given the lack of

any evidence that they were controlling any work or even knew what Paul was doing, I felt it was a big, high risk at moving forward on that claim." (Exhibit G, p.43). Mast thought Paul's case was going to be very difficult to prove based on the testimony of everybody, credibility issues, and the lack of evidence to support and prove. (Exhibit G, p.77). Gagon's testimony regarding the facts surrounding the accident differed from Paul Dulberg's version of the facts. (Exhibit G, p.77). Mast took that difference in testimony into account in his evaluation and his analysis of the case. (Exhibit G, p.77). Mast also took into account Paul Dulberg's poor performance as a witness at his discovery deposition. Mast's analysis and evaluation of the case hinged in part on whether the McGuires controlled the method of the use of the chainsaw. Mast testified that the McGuires were inside the house and not paying attention to what was going on outside at the time of the accident. (Exhibit G, p.78). Mast's recommendation or suggestion that Dulberg settle the case for $5,000 against the McGuires was based on his analysis of the entire case, including the risks and benefits of going forward and potentially losing the case at trial. (Exhibit G, pp.78,79). Based on his professional judgment, Mast suggested that Dulberg attempt to settle the matter as opposed to taking it to trial against the McGuires. (Exhibit G, p.79).

IV. LEGAL STANDARD

The purpose of summary judgment is not to try a question of fact but to determine whether there is a genuine issue of material fact. *N. Ill. Emergency Physicians v. Landau, Omahana, & Kopka, Ltd.*, 216 Ill. 2d 294, 305 (2005). Summary judgment is proper if, when viewed in the light most favorable to the nonmovant, the pleadings, depositions, admissions, and affidavits on record establish that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Id.* A defendant moving for summary judgment may meet the initial burden of production by either affirmatively showing that some element of the case must be resolved in

defendant's favor, or by showing the absence of evidence supporting the plaintiff's position on one or more elements of the cause of action. *Hutchcraft v. Independent Mechanical Industries, Inc.*, 312 Ill App. 3d 351, 355 (4th Dist.,2000). The plaintiff is not required to prove his case at the summary judgment stage; in order to survive a motion for summary judgment, he must present a factual basis that would arguably entitle him to a judgment. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002).

V. ARGUMENT

Dulberg's legal malpractice claim against Popovich is time barred by the two (2) year statute of limitations set forth in 735 ILCS 5/2-614.3.

735 ILCS 5/13-214.3(b) reads as follows:

> (b) An action for damages based on tort, contract or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services [...] must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.

735 ILCS 5/13-214.3(b).

While Popovich denies breaching any standard of care or proximately causing Dulberg any damages, assuming *arguendo* there was malpractice, Dulberg knew or should have known of his injury and that it was wrongfully caused when Popovich withdrew. In the alternative, Dulberg should have investigated any potential claims when he questioned the appropriateness of settling with the McGuires.

In his various pleadings, Dulberg alleged that Popovich concealed his malpractice and coerced him to settle with the McGuires, but his own testimony does not bear out any such concealment. He also attempts to plead that he did not discover the malpractice and his injury until December 12, 2016, but his anticipatory pleading is not supported by his own testimony. Under any analysis, Dulberg knew or should have known of the alleged malpractice

and his injury by the time Popovich withdrew. Dulberg fails to meet his burden of proving a discovery date that would toll the limitations period.

To state a cause of action for legal malpractice, the plaintiff must allege facts to establish (1) the defendant attorney owed the plaintiff client a duty of due care arising from an attorney-client relationship, (2) the attorney breached that duty, (3) the client suffered an injury in the form of actual damages, and (4) the actual damages resulted as a proximate cause of the breach." *Nelson v. Quarles & Grady*, 2013 IL App (1st) 123122 at [*P28], citing *Fox v. Seiden*, 382 Ill. App. 3d 288, 294 (1st Dist. 2008). A legal malpractice suit is by its nature dependent upon a predicate lawsuit. *Claire Associates v. Pontikes*, 151 Ill. App. 3d 116, 122 (1st Dist. 1986). Thus, a legal malpractice claim presents a "case within a case." *Id.* "[N]o malpractice exists unless counsel's negligence has resulted in the loss of an underlying cause of action, or the loss of a meritorious defense if the attorney was defending in the underlying suit."

The two-year statute of limitations for legal malpractice under 735 ILCS 5/13-214.3(b) incorporates the discovery rule which delays commencement of the statute of limitations until the plaintiff knows or reasonably should have known of the injury or that it may have been wrongfully caused. *Scheinblum v. Schain Banks Kenny & Schwartz, Ltd.*, 2021 IL App. (1st) 200798 at [*P24], quoting *Dancor International, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666 (1st Dist. 1997). Under this rule, the statute of limitations begins to run when the injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Scheinblum* at [*P24] citing *Janousek v. Katten Muchin Rosenman LLP*, 2015 IL App (1st) 142989. Under the discovery rule, "a statute of limitations may run despite the lack of actual knowledge of negligent conduct." *SK Partners I, LP*, 408 Ill. App. 3d at 130 (1st Dist. 2011). A "person knows or reasonably should know an injury is 'wrongfully caused' when

he or she possesses sufficient information concerning an injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct had occurred." *Janousek* at [*p13]. Under Illinois law, the burden is on the injured party to inquire further as to the existence of a cause of action. "When a plaintiff uses the discovery rule to delay the commencement of the statute of limitations, the burden is on the plaintiff to prove the date of discovery." *Dancor* at 673. Identification of one wrongful cause of the plaintiff's injuries initiates his limitations period as to all other causes. *Carlson v. Fish*, 2015 IL App (1st) 140526 at ¶39.

In *Blue Water Partners, Inc. v. Mason*, 2012 IL App (1st) 102165, the Appellate Court again had the occasion to examine the discovery rule under the two-year legal malpractice statute of limitations. The court ruled that the statute of limitations begins to run when the purportedly injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Blue Water Partners* at [*P51]. In that case, the court found little dispute that the plaintiff acted on its obligation to inquire further on possible wrongful conduct when consulting with an attorney about potential claims, albeit the Plaintiff lacked diligence in filing the suit.

In the recent Illinois Supreme Court case *Suburban Real Estate Servs. v. Carlson*, 2022 IL 126935, the court distinguished between transactional malpractice and legal malpractice arising out of litigation. The court explained that when the attorney's negligence arises out of underlying litigation, no injury exists, and therefore no actionable claim arises, unless and until the attorney's negligence results in a loss of the underlying cause of action. The court explained that in "this type of legal malpractice claim, commonly referred to as a 'case within a case,' the allegation is that the client suffered a monetary loss and but for the attorney's negligence the client would have recovered in the underlying litigation." *Suburban Real Estate* at [*P19] and [citing *Tri-G, Inc. v. Burke,*

Bosselman & Weaver, 222 Ill. 2d 218 (2006). In *Fox v. Seiden*, 382 Ill. App. 3d 288 (1st Dist. 2008), the appellate court analyzed the requirement of actual damages and held that where malpractice was alleged in the prosecution of a case, the entry of judgment in that underlying case, as opposed to the payment of judgment, is sufficient to establish the element of damages in order to state a legal malpractice claim. *Fox* at 297, 299. Here, the settlement with the McGuires was executed by January 29, 2014, and they were dismissed with prejudice in January 2014. (Dismissal Order, Exhibit H).

On its face, Dulberg's legal malpractice complaint is time barred. He bears the burden of proving a date of discovery that can salvage his claim, but Dulberg has not and can never meet that burden. Dulberg's deposition testimony and pleadings are vague and inconsistent with respect to how Popovich breached the standard of care, and when and how he became aware that his injury was wrongfully caused. As discussed, Dulberg's own testimony refutes many of his allegations of concealment, undue influence and coercion.

Dulberg has fiddled with his "discovery" allegations, going back and forth as to when and how he became aware of his malpractice claim and damages. First, he plead that he sought a **legal opinion,** and received that opinion on December 16, 2016. The legal opinion was supplied by the same attorney who filed his first two pleadings in this case. Then he changed his pleading and theory and attempted to rely on discovery by virtue of the report of a "chainsaw expert" he read in connection with the December 2016 mediation. However, he actually received the opinion (Exhibit I) in July 2016 but "you don't catch everything the first time you read it." (Exhibit D, p.141). Notably the report from Dr. Lanford is dated much earlier, February 27, 2016 and was addressed to Dulberg's then attorney, Randy Baudin.

Here defendants painstakingly attempted to seek discovery as to how Popovich allegedly breached the standard of care, and when and how Dulberg became aware of any damages. Dulberg's discovery responses and deposition testimony were repeatedly evasive. See Dulberg testimony, Exhibit D, pages 106 to 141. This behavior continued and caused the need for a motion to compel (See Group Exhibit J, Motion to Compel, Motion to Supplement Motion to Compel, and July 19, 2021 transcript from hearing).

Moreover, Dulberg's dissatisfaction with Popovich's representation surfaced much earlier, and he even threatened in writing to sue Mast as early as February 22, 2015. Dulberg, no "babe in the woods" when it comes to experience with litigation retention, met with "hundreds" of attorneys and had opportunity after opportunity to investigate and inquire as to whether Popovich breached the standard of care and caused him any damage in connection with the case (including prosecution of the case against Gagnon and the McGuires). The many cases cited above establish the Plaintiff's duty to inquire, and here Dulberg had the tools, the information, and opportunity to inquire. His contrived late discovery of his claims and damages should not be countenanced by this court. He was clearly questioning whether he should agree to accept the McGuires' offer, and he deliberated on it extensively. Nothing prevented him from seeking a second opinion. Likewise, nothing prevented him from inquiring of Mr. Balke or the Baudin firm whether his injury was wrongfully caused. Summary Judgment must be entered as his claims are barred by the two-year statute of limitations.

VI. CONCLUSION

Wherefore, Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, pray that the motion for summary judgment be granted, that summary judgment be entered in its favor and against Plaintiff, and for any other relief that this court deems just and appropriate.

Dated: September 15, 2022

Respectfully submitted,

KARBAL, COHEN, ECONOMOU SILK & DUNNE, LLC

By: */s/ George K. Flynn*
George K. Flynn (ARDC #6239349)

200 So. Wacker Drive
Suite 2550
Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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EXHIBIT A

4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gaguon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000

COPY
MAY 15 2012
KATHERINE M. KAUPS, McHENRY CITY, CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT B
ALL-STATE LEGAL®

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 9/18 20 12 AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON 20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
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The Law Offices of Thomas J. Popovich P.C.

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www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kohlak

Mark J. Vogo
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT C
ALL-STATE LEGAL

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comperative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

ALL-STATE LEGAL

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendant.	)	No. 17 LA 377

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111166062
17LA000377
06/07/2018
McHenry County, Illinois
22nd Judicial Circuit
****

FIRST AMENDED COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his First Amended Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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EXHIBIT B

4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the same area.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike and cut DULBERG's arm. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A.**

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants properly filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. Also MAST incorrectly informed DULBERG that the insurance policy limit for the Gagnon was only $100,000.00, when in reality the policy was $300,000.00.

14. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST began urging DULBERG to settle the matter against William McGuire and Caroline McGuire for $5,000.00.

15. On November 18, 2013, MAST wrote two emails to DULBERG urging DULBERG to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

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16. Similarly, on November 20, 2013 MAST emailed DULBERG urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.)**

17. On or around December 2013 or January 2014, MAST met with DULBERG and other family members and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told DULBERG that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

18. DULBERG, having no choice in the matter, reluctantly agreed with MAST to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit D**.

19. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled

20. After accepting the $5,000 settlement, DULBERG wrote MAST an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.)**

21. MAST and POPOVICH continued to represent DULBERG into 2015 and continuously assured him that his case was being handled properly.

22. On February 22, 2015, as to any chance of settling the remainder of his case against Gagnon MAST wrote to DULBERG that, "There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only

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alternative is to take the case to trial and I am not interested in doing that." (See Email attached as **Exhibit F.**)

23. MAST and POPOVICH represented DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship due to a claimed failure of communication. MAST and POPOVICH withdrew from the representation of DULBERG.

24. Thereafter, DULBERG retained other attorneys and proceeded to a Court ordered binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. However, due to the settlement with the McGuires, DULBERG was only able to collect $300,000.00 based upon the insurance policy available. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit G.**

25. The McGuires were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuires were well able to pay all, or a portion of the binding mediation award had they still remained parties.

26. DULBERG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

27. Until the time of the mediation award, DULBERG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuires would only complicate the case.

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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

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f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails. into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;

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n) Failed to retain a liability expert to prove DULBERG's damages;

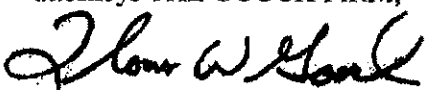
o) Were otherwise negligent in their representation of DULBERG.

32. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBERG to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,



Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.



Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~_____~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
tabbies
A

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COPY
FILED
MAY 15 2012
KATHERINE M. KELLEY
McHENRY CTY, CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 206 ON
11-28-2012, AT 9:00 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ON
20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

EXHIBIT
Deposition

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of its Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06209684

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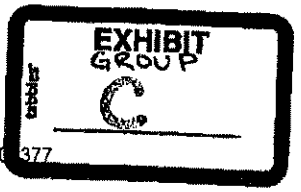
From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about Devid Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kobiak

Mark J. Vogo
James P. Tutaj
Robert J. Lumbar
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
> > ----- Original Message -----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
> > Subject: McGuire settlement
> > Here is a copy of the first page.
> > It has check boxes and one of the check boxes says;
> > I am not eligible to receive SSI or SSDI.
> > Another says;
> > I am not receiving SSI or SSDI.
> > As you know, I have applied for SSDI and SSI

EXHIBIT
tabbies
5

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: **Re: Memo**

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.

EXHIBIT
tabbies
F

ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
PLS	75,000.
LNL	75,000.

The Honorable James P. Etchingham, (Ret.)

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** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendant.	)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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EXHIBIT C

4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

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15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

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27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A.**

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

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44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

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53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing

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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

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Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~50~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

K Paul Anthony
Client

LAW OFFICES OF THOMAS J. POPOVICH

_____
Client

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
A

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COPY
FILED
MAY 15 2012
KATHRINE M. KEEPE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 8.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 11-28-2012, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 8.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____ 20__, AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
B

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06209684

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Shelia today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:

Im waiting to hear from John. I tried calling him last week, but no one answered.

In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....

Let me know what you think..

Hans
---- Original Message -----
From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
Subject: Dave's Best and oldest friend John
Hans,
Just spoke with John Choyinski again about talking with you.
I am leaving your number with him as he has agreed to talk with you about David Gagnon.
I believe he will try and call sometime tomorrow.
Paul
Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
Sorry for the rant but Dave was a complete ass all the way and deserves this.
Paul Dulberg
847-497-4250
Sent from my iPad

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogo
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
sticker D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No: 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
> > ---- Original Message ----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
> > Subject: McGuire settlement
> > Here is a copy of the first page.
> > It has check boxes and one of the check boxes says;
> > I am not eligible to receive SSI or SSDI.
> > Another says;
> > I am not receiving SSI or SSDI.
> > As you know, I have applied for SSDI and SSI

EXHIBIT
tabbies
E

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accurecy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.

EXHIBIT
F

ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

EXHIBIT

sticker C

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000
Page 19 of 19
Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377
Page 25 of 25

Pamela Walker

From: McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
Sent: Monday, December 10, 2018 1:37 PM
To: George K. Flynn; Pamela Walker
Subject: 17LA000377 - 2 Documents Filed

17LA000377

DULBERG, PAUL VS MAST, HANS, ET AL

Doc Type	**COAA**
Description	**COMPLAINT - AMENDED**
Date Filed	**12/6/2018**
Image Link	View Document Image

Doc Type	**NOTF**
Description	**NOTICE - FILING**
Date Filed	**12/6/2018**
Image Link	View Document Image

NOTE: E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

** FILED ** Env: 4610589
McHenry County, Illinois
17LA000377
Date: 4/8/2019 3:52 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

PAUL DULBERG'S ANSWERS TO DEFENDANTS' AFFIRMATIIVE DEFENSES

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, answers Paul Dulberg's Affirmative Defenses as follows:

AFFIRMATIVE DEFENSES
FIRST AFFIRMATIVE DEFENSE: CONTRIBUTION NEGLIGENCE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiffs own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

EXHIBIT D

3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

SECOND AFFIRMATIVE DEFENSE
STATUTE OF LIMITATIONS

1. In Plaintiffs Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiffv. David Gagnon, et al., Defendants,* Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2, subparts a-d.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

4. Accordingly, this matter is time-barred.

ANSWER: Plaintiff denies the allegations of this Paragraph #4.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

AFFIRMATIVE DEFENSES
THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause ofDulberg's damages.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

Respectfully submitted,

By: /s/ Julia C. Williams

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 Washington Street, Suite 2400
Chicago, IL 6002
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

Page 1

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

The deposition of PAUL DULBERG, called for examination, taken pursuant to the provisions of the Code of Civil Procedure and the rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Realtime Reporter of said state, at 150 South Wacker Drive, Chicago, Illinois, February 19, 2020, at the approximate hour of 1:00 p.m.

Page 2

PRESENT:
THE CLINTON LAW FIRM,
111 West Washington Street, Suite 1437,
Chicago, Illinois 60602,
312-357-1515, by:
MS. JULIA C. WILLIAMS,
juliawilliams@clintonlaw.net,
appeared on behalf of the Plaintiff;

KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC,
150 South Wacker Drive, Suite 1700,
Chicago, Illinois 60606,
312-431-3700, by:
MR. GEORGE K. FLYNN,
gflynn@karballaw.com,
appeared on behalf of the Defendants.

REPORTED BY: Karen Pileggi, CSR, RPR, RMR, CRR,
CSR License No. 84-3404

Page 3

(WHEREUPON, the witness was duly sworn.)

PAUL DULBERG,

called as the plaintiff herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FLYNN:

Q. Let the record reflect that this is the discovery deposition of Paul Dulberg taken by agreement of the parties and pursuant to notice.

This deposition is being taken pursuant to the Rules of the Illinois Supreme Court, the Illinois Code of Civil Procedure and any applicable local rules in McHenry County.

Sir, could you state your name and spell your last name for the record.

A. Palm Dulberg, D-u-l-b-e-r-g.

Q. What is your address?

A. 4606 Hayden Court, McHenry, Illinois 60051.

Q. How long have you lived there?

A. Forty-nine years.

Q. Who do you live there with now?

A. Mike McArtor.

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Q. Did your mother live there at some point throughout the history of this case?

A. Yes.

Q. I'm just going to go over a few rules for the deposition. I know you've testified at least one time in a deposition before because you testified in the underlying personal injury case, correct?

A. Correct.

Q. Have you testified in any other depositions before?

A. No.

Q. I'll just remind you of a few rules that I'm sure you were aware of back then when you gave your deposition.

The court reporter is here to take down everything that you and I say. She can only take down one at a time so I'd ask that before you answer a question, let me finish the entire question. Okay?

A. Yes.

Q. I'll try to do the same. I'll try to let you respond before I ask a follow-up question.

You just nodded your head. That's

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another good point to make. She can't take down nods of the head, shrugs of the shoulders or other hand gestures. Your answers need to be verbal.

From time to time we forget those rules and I may just point to the court reporter as a reminder, if that's okay.

A. Yes.

Q. If you need to take a break at any time, feel free to stop me. I just ask that it's not while a question is pending that has not been answered. Fair enough?

A. I'll try to do that.

Q. If you've answered a question, I will assume you understood it. Okay?

A. Yes.

Q. I was asking you about your mother. She lived at the house during the pendency of the underlying case?

A. Yes.

Q. Is she still alive?

A. Yes.

MS. WILLIAMS: Can we define "underlying case"?

BY MR. FLYNN:

Q. The underlying case is a personal injury

Page 6

case that you filed against Bill and Caroline McGuire and David Gagnon.

A. That sounds correct.

Q. We'll get into the dates of the filing a little bit later. We'll call that, generally, the underlying case.

Your mother lived at the house at that time?

A. Yes.

Q. Did she own the house?

A. No.

Q. Do you own the house currently?

A. Yes.

Q. Does anyone else own the house?

A. No.

Q. How long have you owned it?

A. I think I first purchased it off my parents in '97, '98, something like that.

Q. Did you hire a lawyer in connection with that transaction?

A. No.

Q. Were your parents represented by a lawyer?

A. No.

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Q. The building, as I understand it, is a duplex; is that right?

A. No.

Q. Were there two apartments in the building at one time?

A. No.

Q. Was there a point in time where you and your mother lived in one half of the house and Mike McArtor lived in the other half?

A. Yes.

Q. How was that arrangement with respect to the location of the living spaces, if you can describe it?

A. It has a walkout basement. He had the downstairs with an exit out the back. We had the upstairs with an exit out the front.

Q. Have you ever been convicted of a crime of fraud, dishonesty or deceit?

A. No.

Q. Besides the hiring of the Popovich firm in connection with the underlying personal injury case, up to that point in time had you ever had an occasion to hire a lawyer?

A. I did during a traffic accident, and I

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don't remember the year.

Q. Were you injured in about 2002? Does that sound right?

A. Roughly.

Q. Who did you hire?

A. I might get the name wrong because it's been a long time. I think it was Weiss and Michling and something else. It was a lawyer right outside the courthouse in Woodstock.

Q. A McHenry County lawyer?

A. Yeah.

Q. It was a personal injury case?

A. Yeah. It was a car accident.

Q. Did you file a lawsuit in that case?

A. I don't think we needed to.

Q. You just filed an insurance claim?

A. They did, yes.

Q. You settled it?

A. Yes.

Q. Any other occasions to hire a lawyer between that time and the time you hired the Popovich firm?

A. May I consult for a minute because I'm not sure how to answer that.

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Q. Why don't you just tell me why you can't answer it.
A. Because I've hired lawyers, but they were for the company that I had. That's different.
Q. I'm asking general questions about any interaction you've had with hiring lawyers. Any experience you've had with hiring lawyers.
A. I had a corporate lawyer. My mom and dad hired a lawyer for me when I was a kid. It was something. And myself, just the corporate lawyer, the car accident lawyer and the Popovich firm.
Q. Have you ever been married?
A. No.
Q. So you never hired a divorce lawyer. Good. How old are you now?
A. Forty-nine.
Q. The underlying case arose out of an injury that occurred on June 28, 2011, correct?
A. That sounds correct.
Q. How old were you at that time?
A. Forty-one.
Q. Besides the underlying lawsuit against the McGuires and Mr. Gagnon, had you ever filed any other lawsuit up until that point in time?

Page 10

A. No.
Q. Have you filed any lawsuits since that time besides the lawsuit against Popovich and Mast?
A. No.
Q. Do you have any military experience?
A. Yes.
Q. Please tell me about that.
A. Army National Guard. Illinois Army National Guard.
Q. How long have you been in the National Guard?
A. I'm not currently in it.
Q. When were you, from when to when?
A. I may not get the year correct. '88 or '89 to '92 or '93, somewhere in there.
Q. What was your highest rank when you were discharged from the National Guard?
A. When I was discharged?
Q. Correct.
A. I don't know. I've gotten moved up and moved down. I don't know where I ended up.
Q. How was it that you were discharged?
A. Less than honorable.
Q. What was the cause?

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A. I missed morning call, roll call. If you're not there, you're AWOL.
Q. Absent without leave?
A. Yes.
Q. What is the highest level of education that you've attained?
A. I do not have a degree. Two years of college.
Q. You graduated from high school?
A. Yes.
Q. Was that in Johnsburg in 1988?
A. Yes.
Q. Did you know Mr. Gagnon from Johnsburg High School?
A. Not from high school but just after high school.
Q. Just coincidentally you attended the same high school?
A. He was three years older than I was. I didn't know who he was until after high school.
Q. You had some education after high school but did not receive a degree, correct?
A. Correct.
Q. Where did you study?

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A. I had a couple classes at McHenry County College and McMurray College.
Q. What did you study?
A. The first two years. The basics.
Q. General studies?
A. Yeah. I did a criminal justice course. I did a macro/microeconomics. I did psychology, sociology. The normal stuff.
Q. How did you meet David Gagnon?
A. Through a mutual friend.
Q. When was that?
A. I want to say, roughly, 1990.
Q. Was your home located somewhere fairly close to his parents' home or his mom and stepdad's home?
A. Two streets away.
Q. That's where you were injured on June 28, 2011, was at David Gagnon's mom's house and his stepdad's house?
A. Yes.
Q. And their name is McGuire?
A. Yes.
Q. Generally speaking, you were injured assisting David with a chainsaw trying to cut down a

Page 13

tree?
A. He was cutting a branch.
Q. Cutting branches off a tree, correct?
A. Cutting up the branches after they were off the tree.
Q. Could you tell me a little bit about your work history. Do you have any licenses or certifications?
A. I'm certified to run printing presses. Or at least I was.
Q. You worked for Sharp Printing, Inc. from '91 to 2011; is that right?
A. Ninety-one? No. I would say 1999.
Q. Did you own that corporation?
A. Yes. Well, partner. I was a partner. I didn't own like...
Q. It was an Illinois corporation?
A. Yes.
Q. Were you –
A. A stockholder.
Q. Let me just finish my question so she can take us down.
You were a stockholder in Sharp Printing, Inc.?

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A. Yes.
Q. Who else were the stockholders?
A. Mike McArtor and Scott Dulberg and at that time it was Herbert Dulberg.
Q. What does that mean? Do you mean Scott's name was Herbert?
A. No. Scott Dulberg was an owner and Herbert Dulberg was an owner. Three different Dulbergs: me, my brother, my dad.
Q. And Mike McArtor?
A. Yes.
Q. There were four owners at what time?
A. Until my dad died and then it went to three.
Q. Was that business incorporated?
A. Yes.
Q. Did a lawyer assist the corporation with setting up the corporation?
A. Yes.
Q. When did that happen?
A. 1999.
Q. Did you hire the lawyer yourself?
A. All three of us did. All four of us. Sorry.

Page 15

Q. What was the name of that attorney?
A. McAndrews, and I don't remember the rest of it. It was McAndrews in McHenry. I can get you the rest of that information.
Q. They are based in Crystal Lake, Illinois?
A. It used to be in McHenry when we did that.
Q. Patrick McAndrews, he was also identified as the registered agent of that corporation?
A. Yes.
Q. It was voluntarily dissolved on April 8, 2011; is that right?
A. That's what the Secretary of State's Office has, yes.
Q. Is that your understanding as well?
A. I was corrected. My partners – I was corrected. It was actually after the accident. How it got to end up with that date, I'm not sure.
Q. What was corrected, exactly?
A. Well, do you want me to – Mike read my deposition and he said, "You got that wrong." I said, "What do you mean?" because I answered it twice in that deposition.
I was thinking that Juskie happened

Page 16

before the accident. Sharp Printing wasn't actually dissolved until after the accident when we decided to sell off the equipment and end it all. That's the honest truth.
Q. I will represent to you that the Illinois Secretary of State's Website as of today shows that the company was involuntarily dissolved on April 8, 2011. So it's your testimony that that is not true?
A. I don't know how they come up with that.
Q. Why don't we break it down and start with why the corporation was involuntarily dissolved. Do you know that?
A. Involuntarily? I don't know. It may be that I was late on paying the corporate licensing thing, which we just pay a fine and did it. We didn't renew it because we decided to end it.
We had a ten-year thing, I think, on it. I may be wrong. I've got to go back and look at the records.
Q. Is it possible that the corporation was actually involuntarily dissolved by the Illinois Secretary of State on April 8, 2011?
A. Sure.
Q. Did Sharp Printing, Inc. file corporate

Page 17

tax returns while it was a going concern?
A. We had a problem the couple of years before the accident because I was not up in Illinois and I usually did that with the lawyer and the accountant and things got screwed up while I was taking care of a loved one who was dying down in Florida.
Q. Did the corporation ever file tax returns?
A. Oh, yes.
Q. When did they file?
A. Quarterly and annually.
Q. Until what year?
A. Roughly somewhere in 2008. I was missing things because I was not here. I know we missed a few.
Q. I believe you testified in your underlying deposition that Sharp Printing, Inc. was not dissolved as a result of your June 28, 2011 chainsaw accident, correct?
A. Yes, I did. I stood corrected by my partners.
Q. So is it your testimony that the corporation was dissolved because of your personal

Page 18

injury?
A. I don't know how to answer that without going back and looking at records.
Q. Was the company winding down up until about the time you were hurt?
A. The company books got screwed up when I was down in Florida and I was back up in Illinois in 2010 getting back on my feet and I was going to pick things back up, get everything paid up, the fines and everything.
Q. Who were you taking care of in Florida?
A. My grandmother.
Q. You were gone from when until when?
A. I want to say from the mid to end of 2007 until somewhere in the beginning of 2010.
Q. Was anyone running Sharp Printing during that period of time?
A. Mike McArtor.
Q. Did Sharp Printing have any customers for that three-year period?
A. Yes, they did.
Q. How many?
A. I'm not sure, without looking at the books.

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Q. Can you estimate what the yearly revenues were for Sharp Printing in the year 2007?
A. In 2007? I'd have to look at the books, to be honest with you.
Q. Was it more than $5,000?
A. Yes.
Q. Was it more than $100,000?
A. No.
Q. Was it more than $20,000?
A. Yes.
Q. Same line of questioning with respect to 2008. Do you know what the revenues were for Sharp Printing in '08?
A. Are you asking me what we reported or what we made and put into accounts for equipment?
Q. I'm asking you about revenues.
A. Total sales?
Q. Total revenues.
A. In two thousand...?
Q. 2008.
A. I'd have to go back and look.
Q. Can you estimate what they were?
A. No, because I wasn't there.
Q. Do you know how many customers the

Page 20

company had in 2008?
A. We had a few, I know that. I don't know how many. Mike was handling it and it got messed up.
Q. What types of customers did Sharp Printing have in 2007 and 2008?
A. What kind of customers?
Q. Right. What did you do?
A. We printed on t-shirts. We printed on CDs. We printed on anything that wasn't wet. We printed on glass, all different stuff.
Q. Were there any full-time employees of Sharp Printing in '07 and '08?
A. In '07 and '08, no.
Q. Just the owners?
A. Just the owners.
Q. Did all the owners operate the business?
A. Yes.
Q. Including your brother?
A. Yes.
Q. What were the yearly revenues of Sharp Printing in 2009?
A. I don't know.
Q. What about 2010, do you know?

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A. No.
Q. When did Sharp Printing start selling its equipment?
A. I put up the ad in August. I think August. I might be off by a month or two. August of 2011.
Q. Did you sell any equipment prior to August 2011?
A. No.
Q. What type of equipment did Sharp Printing, Inc. have or own?
A. Mostly textile screen printing equipment, but we had other screen printing stuff too. Paper.
Q. Where was the equipment located?
A. My home.
Q. Did you require a license to conduct this business out of your home?
A. We had what was called a temporary -- we're in a rural area so we didn't have to have that.
Q. In any event, you didn't have a license, correct?
A. We had a license to do business there, yes.

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Q. In that location?
A. Yes.
Q. Did customers ever come to the shop?
A. Yes.
Q. Do you recall how many customers the business had in 2010?
A. Not in 2010.
Q. Was it more than five?
A. Yes.
Q. Was it more than 100?
A. It might be around that. I don't know, specifically.
Q. In 2010 you may have had 100 customers that you did t-shirt screen prints for?
A. Possibly. I'm not saying that is the number, but it's possible.
Q. Did Sharp Printing have any customers in 2011?
A. Mike was finishing up one customer's thing in the spring of 2011, yes. We don't -- I'll give you -- we don't typically get much work between January 1st and the first warm days of Spring. We sell t-shirts and not a lot of people buy during that period. They just don't.

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Q. You did not earn a salary from Sharp Printing, correct?
A. No.
Q. You did not earn an hourly wage, correct?
A. No.
Q. I think your interrogatory answers indicate you didn't take a profit or a draw, correct?
A. Correct.
Q. How much, if any, money did you earn from Sharp Printing in 2011?
A. Can I ask how to define that? In 2011 I didn't pull any.
Q. Did you earn any income whatsoever from Sharp Printing in 2010?
A. I don't think so.
Q. You were down in Florida for '07 to 2010?
A. Sometime in early 2010, yes.
Q. Did you earn any income from Sharp Printing from 2007 to 2010?
A. No.
Q. Were you working in Florida?
A. No.
Q. Is it fair to say you were unemployed

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from 2007 to 2010?
A. Yes. I was not officially collecting unemployment.
Q. You weren't an employee of any business or working for any individual, correct?
A. I did do some work for Mark. I did some traveling back and forth from Florida to Illinois back and forth during that time. When I was up here, I did do some work for Juskie Printing. Not much, though.
Q. What is Juskie Printing?
A. Juskie Printing is another one that I had listed as an employer in the underlying case.
Q. What are they?
A. Another print broker.
Q. Where are they located?
A. I don't know the exact address, but it's off of Chicago Avenue off of 355 going south.
MS. WILLIAMS: I think he's asking what city.
BY THE WITNESS:
A. I don't know how the cities break up down there.
BY MR. FLYNN:
Q. Somewhere in the western suburbs of

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Chicago?
A. Yes.
Q. How long did you have a relationship with Juskie Printing?
A. Since the early 2000s.
Q. What type of printing did Juskie do?
A. Offset, mostly.
Q. What does that mean?
A. Prints on paper.
Q. Did you have a set schedule at any time working for Juskie?
A. I don't know what you mean by "a set schedule."
Q. Did you have a particular number of hours per week?
A. No. The jobs I got were project based.
Q. How many projects did you have from 2007 to 2011 for Juskie?
A. Probably a few hundred quick little things, yeah. At least.
Q. Do you know what you earned from working at Juskie in 2007?
A. Not without looking at the returns, I don't know offhand.

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Q. How often were you in the Chicago area in 2007?
A. I didn't leave here until, I want to say, August or September of '07.
Q. And then thereafter?
A. I was not back that year.
Q. You didn't work for Juskie in 2008, correct?
A. I might have done some stuff.
Q. You're not sure?
A. I'd have to go back and look.
Q. Were you in Florida?
A. Part of the time, yeah.
Q. How often did you come back and forth between –
A. About every three months I tried to get back up here.
Q. For how long?
A. Sometimes a few weeks. Sometimes a month.
Q. Did you come back and work or did you take care of other things?
A. If I'd let Mark know I was back, "I've got something for you or I don't."

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Q. Who is Mark?
A. Mark owns Juskie Printing.
Q. I think your interrogatory answers indicated from 1999 through 2006 you were employed in a barter situation; is that right?
A. With Mark, yes.
Q. What does that mean, exactly?
A. Well, he would owe me money and he would give me printing equipment instead of cash.
Q. He owed you money for working for him?
A. Well, he owed both Sharp Printing and me, personally, money. They are two different things. But he would just pay by saying, hey, I've got this or I've got this paper cutter or this or that. It was a barter.
Q. So you worked for him from 1999 to 2006 but did not earn any income in the traditional sense?
A. No money changed hands.
Q. He gave you things to pay you for projects?
A. Correct.
Q. You gave a deposition in the underlying case on January 24, 2013. Does that sound right?

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A. If it says it on there, yes.
Q. You took an oath that day?
A. Yes.
Q. You told the truth?
A. I tried to, to the best of my knowledge, on that day, yes.
Q. You told the truth in response to all of the questions that day, correct?
A. I tried to, yes.
Q. You testified you were last employed prior to the accident in May of 2011?
A. That would be with Juskie, yes.
Q. It's accurate –
A. Actually, I wasn't employed. I was a 1099 so I was self-employment.
Q. When in May did you stop working for Juskie, whether it be as an employee or an independent contractor?
A. I believe it was the end of May.
Q. Then from the beginning of June until your accident on June 28, 2011, you were not employed; is that an accurate statement?
A. Correct.
Q. You were not even acting as an

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independent contractor for any business from that period of time, correct?
A. Not during that month, no.
Q. Your deposition testimony from 2013 is typed up on 175 pages. I don't intend to go back over each of those details.
A. Okay.
Q. It's fair to say you were injured, your arm was injured on June 28, 2011, correct?
A. Correct.
Q. Which arm was that?
A. My right arm.
Q. As a result of the injury, you hired the Popovich law firm to explore a recovery in the case?
A. I hired them to represent me, yes.
Q. You hired them to represent you and file a lawsuit against David Gagnon who was operating the chainsaw that injured you, correct?
A. He was one of them, yes.
Q. I'm asking you if you hired him to –
listen to the question, please.
David Gagnon was operating the chainsaw, correct?
A. Correct.

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Q. No one else was operating the chainsaw?
A. Correct.
Q. You also hired Popovich to sue Bill and Caroline McGuire, correct?
A. Correct.
Q. They were the land owners where your accident occurred?
A. They did own the land, yes.
Q. The accident occurred at their house, correct?
A. Correct.
Q. This was in the backyard, so to speak?
A. Yes.
Q. Hans Mast was the primary handling attorney at the Popovich firm for your case?
A. That's who I met with, yes.
Q. Did any other lawyer communicate with you while Popovich was handling your case?
A. The lady who sat in on my deposition. Ms. Freeman I think it is. I'm not sure about that.
Q. Generally speaking, Hans Mast, though, was the primary handling attorney?
A. Yes.
Q. Before you hired the Popovich firm in May of 2012, is that the correct time period?

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A. I don't think so. I don't think they filed it until then, but I might be wrong. I'd have to go back and look.
Q. Was there a retainer agreement executed in May 2012?
A. I don't think I paid a retainer.
Q. Did you execute an attorney engagement agreement in May 2012?
A. I believe it was much earlier than that.
Q. You only executed one engagement letter or engagement agreement with Popovich, correct?
A. Yeah.
Q. Before you executed or came to an arrangement with Popovich, had you talked to any other lawyers about investigating –
A. One.
Q. Let me finish the question.
– investigating or filing the lawsuit?
A. Yes.
Q. Who was that?
A. I went back to the same firm that handled the car accident for me years earlier.
Q. What was the name of that firm?

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A. They changed names when I went back there. It was Weiss – I have to go back through paperwork and get you the actual name.
Q. They are known as a personal injury firm; is that right?
A. Yes.
Q. Why did you not hire them to take your case?
A. The man who handled my case previously with the car accident was no longer with the firm and they said go find somebody else.
Q. I'm not sure what one has to do with the other.
A. I don't either. I just said okay and I went and found somebody else.
Q. Did you meet with an attorney at that firm?
A. Yes.
Q. Did you tell them what happened with your incident?
A. Yes.
Q. They told you that they did not want to take the case; is that right?
A. Yes.

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Q. They declined the case?
A. They declined the case.
Q. Did they tell you why they declined the case?
A. No.
Q. You next went to the Popovich firm?
A. Yes.
Q. They took the case?
A. Yes.
Q. They, ultimately, filed a lawsuit against Gagnon and the McGuires on May 15, 2012; is that right?
A. Yes.
Q. You reviewed the lawsuit and approved it, correct?
A. I didn't – I never got anything to review.
Q. Did you ever read the lawsuit?
A. No. I was never given any paperwork.
Q. Back to the incorporation of Sharp. What interaction did you have with corporate lawyers when they were first retained?
A. McAndrews?
Q. Correct.

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A. What relationship?
Q. What experience did you have with McAndrews when you first retained them?
A. He was good.
Q. How often did you meet with him or speak to him?
A. Once a year.
Q. Did he file corporate returns or other documents for the company?
A. No. I had to file them. He just made sure they were all done right, I believe.
Q. Have you ever had occasion to hire a criminal lawyer?
A. I did in 1990. My mom and dad had to hire one. Not me.
Q. Did you hire a criminal lawyer for your mom and dad?
A. No. They hired one for me.
Q. Who was that?
A. Give me a second. You're digging back far in my memory. Driscoll was the last name.
Q. This was a McHenry County-based criminal lawyer?
A. No. Des Plaines.

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Q. What was the general nature of the reason for the need for a lawyer?
A. Drug possession.
Q. Were you convicted of it?
A. Yes. I pled guilty.
Q. That was a Cook County case, then?
A. No. It was a McHenry County case.
Q. The lawyer was in Des Plaines, though?
A. Yes.
Q. But he represented you in McHenry County in criminal court?
A. Yes.
Q. Throughout the case you met with the lawyer?
A. A few times.
Q. While Popovich represented you in the underlying personal injury case, did you ever communicate with any other lawyers about your case?
A. At the end, yes.
Q. Popovich withdrew sometime in March 2015?
A. Correct.
Q. And Brad Balke entered his appearance on March 19, 2015. Does that sound correct?
A. That is correct.

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Q. Popovich also withdrew that day, right?
A. I don't know if it was on the same day. I'd have to look at the paperwork.
Q. Besides Mr. Balke, had you talked to any other lawyers towards the end of the relationship with Popovich?
A. Yes.
Q. How many?
A. Hundreds.
Q. Hundreds of lawyers?
A. I'm not kidding. Yes.
Q. Did you ask those lawyers to take your case?
A. I asked them to review it.
Q. Did any of them take the case?
A. No.
Q. They all reviewed it, though?
A. Yes. Most took the time to review it.
Q. Did any of them tell you why they didn't want to take the case?
A. There were different reasons I got from various. Some people just didn't get back to me and some people wrote me letters. I think I gave you some of those. But I got various reasons back from

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attorneys.
Q. I don't recall seeing any lawyers, but I would ask you to search for those.
MS. WILLIAMS: We'll search for those. I'll make a note.
BY MR. FLYNN:
Q. As you sit here, do you recall the basis for any attorney declining to take your personal injury case over from Popovich?
A. Say that again.
Q. As you sit here today, do you recall any of the reasons why any attorney declined to take your personal injury case over from the Popovich firm?
A. Yes.
Q. What were those reasons?
A. I remember a few. One I was looking at local lawyers in McHenry County and I was told like -- I can name them. My sister was married to him.
Anyway, I was told if Tom Popovich says you don't have a case, you don't have a case and we're not even going to look at it. That I got a lot of it.

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Q. That's one reason. Any others?
A. That I got locally a lot of. As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that.
Q. Who said that?
A. Sal Ferris.
Q. When did you speak to Sal Ferris?
A. I don't know the exact date.
Q. When did he --
A. He wasn't the only one.
Q. When did he say that to you, that you just described?
A. He said it in a letter and he said it on the phone and he sent me an e-mail, I think. I don't remember the ways that he contacted me. I'd have to go back and look.
MS. WILLIAMS: We'll find it.
BY MR. FLYNN:
Q. Besides Sal Ferris, can you recall any other attorney, specifically, that told you they wouldn't take the case because of your settlement with the McGuires?

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A. Yes.
Q. Who was that?
A. There was at least three firms downtown here right near the Daley Center that I came down to see and I don't remember their names, but they -- I got the same thing out of all three of them.
Q. Did any of the lawyers give you any other reason for declining your case?
A. Mostly it was because they knew Popovich or it was the McGuire settlement.
Q. Did any lawyer tell you that they didn't want to take your case because there was questionable liability against David Gagnon?
A. No.
Q. Did any lawyer tell you that there was questionable liability against the property owners, the McGuires?
A. No.
Q. We're jumping ahead, but did you have different lawyers that handled a binding arbitration or binding mediation for you in the underlying case?
A. Yes.
Q. Their name was Baudin?
A. Yes.

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Q. Why did Brad Balke not handle the binding arbitration?
A. I fired him.
Q. When did you fire Brad Balke?
A. I'd have to look at the dates. I'm not sure, exactly.
Q. Why did you fire him?
A. Because he forced me to undergo the exact mediation at the McHenry County court in front of Judge Meyer that Hans Mast set up that I specifically said no to.
Q. When was this mediation?
A. I'd have to look at the dates again.
Q. Was it a pretrial conference?
A. Yes.
Q. You actually attended this pretrial conference?
A. Yes, I did.
Q. What happened?
A. I said no.
Q. You said no about what?
A. They offered an amount of money and I said no.
Q. The defendants offered an amount of

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money?
A. Yes.
Q. Was this before or after the McGuires settled out of the case?
A. They were settled.
Q. So there was an offer of settlement from David Gagnon or his insurer?
A. Yes.
Q. Do you recall what that amount of money was?
A. $50,000.
Q. You refused the offer?
A. Yes.
Q. Why did that cause you to fire Brad Balke?
A. He wouldn't take it any further than that and he agreed to when I hired him. He agreed that that was not going to be the end of it and then he changed his tune, and I said, you know what – and the other thing was, I finally got through to the Baudins who I wanted to take the case because they had helped my family – his dad helped my family many eons earlier.
Q. Did you ever talk to Brad Balke about the

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liability or lack of liability by the McGuires, the property owners in the case?
A. I don't think so. We were on the Gagnon case.
Q. You didn't discuss the McGuires?
A. There may have been a word or something, but that's not what he was there for.
Q. He never gave you an opinion one way or the other whether the settlement was appropriate?
A. I don't believe Brad did, no. Like I said – I don't think he did.
Q. At some point after your accident did you hire the Daley Disability Law Firm?
A. Yes.
Q. Was that for –
A. I didn't hire.
Q. I know you're anticipating what I'm saying.
A. I was trying to correct myself. I did not hire.
Q. Either way, let me try to get out my question before you raise any kind of response, just so she can take down –
A. Count before I answer.

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Q. That's a good idea.
Did you ever retain the Daley Disability Law Firm?
A. NO.
Q. Did you have any relationship with Daley Disability –
A. Yes.
Q. – Law? Let me finish it before you answer. I know you're anticipating what you think I'm going to say, but it might not come out the way you think. Either way, she can't take down both of us talking over each other.
What relationship did you ever have with the Daley Disability Law Firm?
A. They stepped in as a substitute counsel for the law firm that I did hire.
Q. You originally hired some other law firm to represent you in connection with social security disability?
A. Yes.
Q. What was the name of that original law –
A. The lady's ladies name was Margaret Bradshaw.
Q. You terminated your relationship with her

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one way or another?
A. No.
Q. Why did Daley Disability Law substitute in for her?
A. I was told by – I have to go back and look at the communications exactly how it happened, but I was told that, basically, they are going to be taking over the hearing part of it. I don't know why. I don't know whether they sub out work. I don't know how it works.
Q. Would it be fair to say that you first retained Ms. Bradshaw in 2012 sometime?
A. I'd have to go back and look.
Q. Is that approximately when you applied for social security?
A. It sounds like it.
Q. The Daley Disability Law Firm came in sometime in 2012 as well?
A. I don't know exactly when. I don't know.
Q. Would it be 2012 or 2013?
A. I know that they were there and – I know that something had to be signed when we went in for the hearings. Margaret Bradshaw had to sign something for the judge allowing Daley Disability to

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represent me at the hearings. I don't know when exactly they got involved. That's behind the scenes. I didn't have anything to do with that.
Q. Did you file for bankruptcy while your personal injury case was pending?
A. Yes.
Q. When did you file for bankruptcy?
A. I'd have to look at the paperwork again, but I don't believe that was until, I want to say, about eight or nine months, but I'm guessing, after the McGuire settlement.
MS. WILLIAMS: The question was what month and year.
BY THE WITNESS:
A. I don't know exactly. I'd have to go back and look at the paperwork.
BY MR. FLYNN:
Q. Did you hire a lawyer to represent you in a bankruptcy?
A. Yes.
Q. Who was that lawyer?
A. David Stretch.
MS. WILLIAMS: If it helps, we can stipulate to the date the bankruptcy was filed.

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MR. FLYNN: That's fine. I think we've got some e-mails that may reflect when it was. I just wondered if he knew offhand.
MS. WILLIAMS: I can stipulate, at least, that it was 2014.
BY MR. FLYNN:
Q. You filed for bankruptcy while the Popovich firm was still representing you —
A. Yes.
Q. — in the underlying case, correct?
A. Yes.
Q. Sometimes I'll still pause in my question so if you could please pause before you answer.
In the underlying case you answered written discovery; is that true?
A. I believe so.
Q. Then you later testified at your deposition January 24, 2013, correct?
A. If that's the date, yes.
Q. Ultimately, David Gagnon was also deposed, true?
A. Yes.
Q. Were you present for his deposition?
A. No.

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Q. Did Caroline McGuire give a deposition in that case?
A. I believe so, yes.
Q. Were you present for that dep?
A. No.
Q. What about Bill McGuire's deposition?
A. I was not present.
Q. Did you e-mail back and forth with Hans Mast a fair amount during the Popovich firm's representation of you?
A. By "fair amount," what do you mean?
Q. Did you regularly e-mail with Hans Mast?
A. Yes.
Q. Those e-mail communications have all been produced in this case?
A. Yes.
Q. On to the exhibits. This will be 1.
(WHEREUPON, a certain document was marked Exhibit No. 1, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Let me show you what's been marked as Exhibit 1. These are one set of your Answers to Interrogatories in our case, the current legal

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malpractice case you filed against the Popovich firm and Hans Mast.
Do you recognize this document?
A. Yes.
Q. We've been providing you with various copies of the signature page in the case that's been back and forth between me and your counsel.
I don't, frankly, know if this verification that's attached is the one that went with this document, but I'll just ask you, for the record, if these are your answers, that's your signature, and that this verification is accurate?
A. That is my signature on there, yes.
Q. What was the e-mail address you used in the communication with Hans Mast?
A. Primarily it was pdulberg@comcast.net.
Q. His address was hansmast@comcast.net?
A. And he switched it to at&t.net.
Q. Did you use some other e-mail address as well?
A. I may have accidentally e-mailed him a couple of times from a Yahoo account.
Q. In answering discovery in our case, the legal malpractice case, did you search through both

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of those e-mail accounts of yours?
A. I no longer have the Yahoo account.
Q. Did you search through the Comcast account?
A. Yes.
Q. Did you search for PDFs or attachments to those e-mails that you produced?
A. Everything that I got, I turned over. I had converted the e-mails to PDFs because Comcast started purging the e-mails after so many years, so I turned them all into PDFs.
MS. WILLIAMS: The question was what did you search in your in box.
BY THE WITNESS:
A. What did I search?
BY MR. FLYNN:
Q. Let me ask you a different question.
You produced e-mails in this case?
A. Yes.
Q. You turned e-mails into PDFs and sent them to your lawyer; is that right?
A. Yes.
Q. Some of the e-mails I reviewed have an icon that indicates there was a PDF or some other

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attachment to the e-mail. Do you understand that?
A. Yes.
Q. Did you produce the attachments to each of the e-mails in this case?
A. We went through that. I produced the attachments that I still had.
Q. There were some that were not available, correct?
A. Yeah. When I looked at them, 99 percent of them were already part of some other document that we turned over. I think 100 percent of them.
Q. At some point in time while Hans was handling your case, did he start to communicate with you relative to his analysis of the McGuires' liability in the case?
A. Yes.
Q. Did he start to generally advise you that he didn't believe that there was a strong case for liability against the McGuires?
A. Yes.
Q. Is it fair to say that Hans' opinion was that the McGuires did not have liability in the case because they did not control the work that David Gagnon was doing?

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A. Yes.
Q. That's generally a fair summary of Hans' opinion?
A. Not quite exactly those words, but yeah.
Q. The McGuires' liability as property owners was questionable because based on Hans' analysis of the evidence, they did not control the work or the manner of work of David Gagnon on the date of the accident; is that a fair summary?
A. Depends on which time he said that.
Q. Did he say things like that over and over again?
A. He did say things like that, yes.
Q. Again, I don't want to go over the facts you already testified to with regards to the date of the accident. At some point in time was William McGuire swimming in the swimming pool?
A. Yes.
Q. Was that an above ground pool or —
A. Above ground.
Q. Was there a fair amount of time during the day that Mr. McGuire was inside the house watching television?
A. Maybe — he went inside the house for

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probably about 45 minutes before the accident happened. I don't know that he was watching television.
MR. FLYNN: Let's mark the next exhibit as 2.
(WHEREUPON, a certain document was marked Exhibit No. 2, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 2, which is an e-mail chain including e-mails from November 18, 2013, are these e-mails between you and Hans Mast?
A. It looks like it, yes.
Q. I think the time stamps on these e-mails go from the bottom, which would be page 2, to the top of the first page, correct?
A. It's backwards, yes.
Q. In the original e-mail at 1:28 p.m., did Hans Mast relay to you a $5,000 settlement offer from the McGuires?
A. Which — where are you at?
Q. We're on Exhibit 2, which is also labeled as Bates label POP 181. At the bottom of the page, does Hans relay to you a settlement offer for

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$5,000?
A. Yes.
Q. He was telling you that the McGuires' attorney offered to settle the case for $5,000?
A. Yes.
Q. Did you have an understanding that that was a settlement just for the McGuires, not including David Gagnon?
A. Yes.
Q. In the e-mail Hans says, quote, "As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now."
Is that an accurate reading?
A. Of that sentence, yes.
Q. Is it fair to say that he suggested that you take the $5,000 but didn't force you to take it?
A. It says, "So my suggestion is..."
Q. Then did you respond to the e-mail?
A. Yes.
Q. Hans replied again at 8:07 p.m. that same day, right?
A. Yes.

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Q. He said, "Paul, whether you like it or not, they don't have a legal liability for your injury because they were not directing the work."
Is that right?
A. Part of it, yes.
Q. Was my prior summary of Hans' legal analysis a fair summary in view of these e-mails and his opinion that he relayed to you?
A. I think it went further than this, and other things, but yes.
Q. As far as these e-mails, I've accurately –
A. This e-mail, yes.
Q. What else did he tell you about the McGuires and why he didn't think they would be found liable in the case?
A. I'm pulling out of memory because I can't quote which document it's off of.
Q. That's what we're here for.
A. I can only give you the gist.
Q. I'll ask you for the exact language, but if you don't have it –
A. At one point he defined what an independent contractor is for me and he said that

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David was an independent contractor and that the McGuires weren't liable because they had hired somebody outside even though it's their own son, he's an adult, outside to do the work and that they weren't responsible.
Q. By the way, how old was David at the time that this accident occurred?
A. I'm adding. If I was 41 – I don't know what his birthday is, but I'm assuming he would be 44, 45.
Q. Is it fair to say that there were two 40-plus-year-olds, a 41- and a 44-year-old trimming trees with a chainsaw in David's parent's backyard that day, correct?
A. I was not using it. There was one 44-year-old using a chainsaw.
Q. You, the 41-year-old was holding some branches for him?
A. Yes. Just before the accident, yes.
Q. Up until this point in time when Hans is providing this legal analysis to you, you had a fair number of occasions to interact with lawyers, as we've discussed today, correct?
A. At this point, the only lawyer that I

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interacted with was the first one.
Q. I'm talking about in your lifetime. You had a corporate lawyer, you had a criminal lawyer, another personal injury lawyer –
A. I didn't hire –
Q. Let me finish. You had experience with lawyers representing you up to this point in time?
A. Yes.
Q. Did you have an understanding that lawyers evaluate cases differently?
A. Yes.
Q. And judges evaluate cases differently?
A. Sure. That's fair.
Q. Would it be fair to say that some laws in our country are clearer and some are open to interpretation?
A. I think all of them are.
MS. WILLIAMS: Objection. Calls for speculation.
If you understand the question, you can answer it.
BY MR. FLYNN:
Q. Would you say, for example, that the tax code is a little more clearcut than common law

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that's created by cases and case precedent?
A. I'm not real familiar with tax law. I have accountants for that.
Q. How about an easier question. The stop sign means that you stop, and if you go through it, it's pretty clear that you're liable for a traffic violation?
A. I'll agree with that.
Q. The legal liability for a property owner in Illinois might be a little more complicated; is that a fair statement?
A. I don't know.
Q. Would it be fair to say, in your opinion or your knowledge of the law, the property owner isn't necessarily liable because somebody is injured on their property?
A. Are you talking about what I know now or what I knew back when this was?
Q. At any time.
A. What I know now is in the circumstances that we were in, they were very liable.
Q. I'm just asking if – just because somebody is injured on a property owner's property, they are not necessarily liable, correct? Other

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factors are required too.
MS. WILLIAMS: I'm going to object for – he's not an expert and can't testify to legal analysis.
BY MR. FLYNN:
Q. As you sit here today, do you know whether a premises liability case involves multiple factors to prove liability against the property owner?
A. I don't know. I'd say that's fair. You're asking the wrong person for that.
Q. It was Hans' opinion that the McGuires did not control the work based on the evidence, correct?
A. In my opinion?
Q. That's not what I'm asking.
Was it Hans' opinion –
A. I can't –
Q. Let me just finish.
Did Hans tell you that it was his opinion that the McGuires were not liable because they did not control the work?
A. He said that right there, yes.
Q. Do you believe that he truly felt that way? That was his legal opinion?

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A. Do you want the Monday morning quarterbacking version or at the time?
Q. I'm asking if at that time you felt that he truly believed that the McGuires did not have liability?
A. At the time I trusted him, yes. I hired him to represent me, and yeah.
Q. You believed that he was relying his honest legal opinion to you at that time?
A. Yes.
Q. Including on November 18, 2013?
A. Yes.
Q. You did not accept the settlement offer of $5,000 that he relayed to you on that day, correct?
A. Correct.
Q. Did you ultimately meet with Hans to discuss the settlement offer?
A. I think it was the day before this, but I'm not sure. It was either the day before or the day after.
MS. WILLIAMS: I think the question was, did you meet with him, at all, not the date.

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BY THE WITNESS:
A. Yes.
MR. FLYNN: Can we mark this as Exhibit 3, please.
(WHEREUPON, a certain document was marked Exhibit No. 3, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 3. Do you recognize this memorandum?
A. Yes.
Q. You may have seen it from the document production that we made in this case. This is a memorandum drafted by Hans Mast, which purportedly memorializes a meeting that he had with you on November 20, 2013.
Does this refresh your memory as to when you met with him or if you met with him?
A. If he took the memorandum on the same day, then sure.
Q. In the memo Hans says, "I met with Paul and his friend."
Do you see that?
A. Yes.

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Q. Did you meet with Hans and some third person –
A. Yes.
Q. – at or about this time regarding the case?
A. Yes.
Q. Who was that friend?
A. Tom Kost.
Q. Who is Tom Kost?
A. My brother.
Q. Not that it matters necessarily for privilege purposes, but can you tell me how Tom Kost is your brother?
A. We have the same mom.
Q. He was with you and observed the meeting between you and Hans?
A. Yes.
Q. The $5,000 settlement offer was discussed, correct?
A. Yes.
Q. At that time did Hans, again, relay his opinion as to the questionable liability about the McGuires – strike that.
Did he relay to you his opinion about the

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questionable nature of the McGuires' liability?
A. At the meeting with Tom, yes.
Q. He advised you they maintain they were not directing Dave's work. That was the McGuires' position, correct?
A. I don't know that he stayed on that at that meeting. At different times he gave different reasons.
Q. The next line says, "Paul maintains the McGuires controlled everything that Dave was doing."
Is that an accurate reflection of your opinion?
A. Yes.
Q. As you sit here today, do you know if that statement is consistent with your own deposition testimony from the underlying case?
A. Yes.
Q. We'll come back to that. Did you tell Hans that you wanted to read the depositions of the McGuires and David Gagnon's depositions?
A. Say that again.
Q. Did you tell Paul that you wanted to read the depositions of the McGuires and Dave Gagnon's depositions?

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A. Did I tell Paul?
Q. I'm sorry. Did you tell Hans that?
A. That I wanted to read the McGuires and David Gagnon's depositions?
Q. Yes.
A. Yes, I did.
Q. What was the purpose of your wanting to review those depositions?
A. Hans had told me that what they said in their depositions meant that they had no liability.
Q. You wanted to review the testimony to determine whether you wanted to consider the $5,000 settlement offer; is that correct?
A. Right.
Q. Did you do that?
A. Eventually, yes.
Q. Before you accepted the offer?
A. I think so.
Q. So sometime after this meeting on November 20, 2013 and before you accepted the settlement offer on January 29, 2014, did you review those three deposition transcripts?
A. I'll correct you. I did not accept the offer on January 20th. I signed a release on

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January 29th.
Q. Fair point. Did you read the depositions between those two dates, November 20, 2013 and January 29, 2014?
A. Yes.
Q. Those are –
A. I believe I asked him -- I don't know – it may be a little earlier because I don't know that I asked him before or after the meeting. I don't remember. I'd have to go back in the e-mails to give the date.
Q. Some point in time between those two dates you read the deps?
A. I may have asked for them before. I don't know without seeing the e-mail. It was, roughly, in the last quarter of that year, yes. Or the first month. I don't remember the first time that I asked to read them. I don't remember off the top of my head.
Q. At any point in time did you ever grant Hans authority to make a settlement demand in the case?
A. No.
MR. FLYNN: Mark this as Exhibit 4.

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(WHEREUPON, a certain document was marked Exhibit No. 4, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. Showing you what's been marked as Exhibit 4. This is a copy of the original complaint in this instant case. It reflects a filing date of November 28, 2017.

Is this your original legal malpractice complaint against the Popovich firm and Hans Mast?

A. I believe so.

Q. Did you review and approve the allegations in this complaint?

A. For the most part. I wanted to reword some things, but the lawyer, they do their thing.

Q. At the time you were represented by the Gooch firm is when you filed this lawsuit, correct?

A. Yes.

Q. Directing your attention back to Exhibit 1, if you still have it. If you could turn to page 10.

The answer to Interrogatory No. 24 indicates that on November 4, 2013, Mest was granted authority to investigate a settlement but a specific

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dollar amount was never provided. Do you see that?

A. He was verbally granted authority to investigate, yes.

Q. Who did you want him to investigate a settlement with?

A. The McGuires.

Q. Just the McGuires or the McGuires and –

A. He wanted to do it. I didn't. I said, "If you want to look at that, go ahead."

Q. Did you grant him authority to investigate a settlement with David Gagnon as well?

A. I don't know if I did or not, off the top of my head, but that would have been much later.

Q. Eventually did you tell Hans that you would agree to accept the $5,000 settlement offer from the McGuires?

A. Eventually did I tell him that?

Q. Yes.

A. Yes.

Q. When did you tell him that?

A. I want to say just before Christmas in December of 2013.

Q. There's no doubt in your mind that you relayed your acceptance of the $5,000 settlement

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offer to Hans Mast before Christmas Day, which would be December 25, 2013?

A. Right.

Q. Then did Hans mail to you a settlement release by letter dated January 24, 2014?

A. I'd like to see the letter, but yeah, I believe so.

Q. I believe it's –

A. I believe he had to mail it a couple times because I didn't get it.

MR. FLYNN: Let's mark Exhibit 5.

(WHEREUPON, a certain document was marked Exhibit No. 5, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. Showing you what's been marked as Exhibit 5. I'll represent to you that this is a copy of the second amended complaint that you filed in this case by your new lawyers, your current lawyers. If I could direct your attention to Exhibit D attached to this Exhibit 5.

Is Exhibit D a January 24, 2014 cover letter from Hans Mast to you enclosing the general release and settlement agreement from defense

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counsel for Caroline and Bill McGuire?

A. That's what it says.

Q. In the letter did he ask you to – it looks like it might be a typo. It says, "Please release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience."

A. Right, but I believe it was just a release – it was all tied into one.

Q. This letter is unsigned. Did you receive the letter unsigned?

A. Did I receive this unsigned?

Q. Yes.

A. Yes.

Q. Have you ever seen a signed copy of this letter?

A. No.

Q. If I could direct your attention to the next page of Exhibit D. Is that page 1 of the general release and settlement agreement?

A. Exhibit D?

Q. Correct.

MS. WILLIAMS: Turn the page.

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BY MR. FLYNN:
Q. Is this what you received attached to the cover letter?
A. I don't think so. Let me see. Yes, this looks like it because it's got these things I remember.
Q. When did you receive this letter and the attachment?
A. I would say I wrote back on January 29th and I probably got it that day, signed it and sent it back.
Q. The copy of the release is also unsigned. It's attached as exhibit -- part of Exhibit D to your second amended complaint.
Do you see the signature lines and the notary signature here that's missing?
A. Yes.
Q. Is this the document that you signed and sent back to Hans Mast?
A. The document that I signed had my signature.
Q. I'm asking if this is the same document that you signed and sent back to him?
A. Yes.

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Q. Right now we don't have a signed copy. I don't know that I've seen one in the case.
MS. WILLIAMS: Can we go off the record for a second?
MR. FLYNN: Sure.
(WHEREUPON, discussion was had off the record.)
BY MR. FLYNN:
Q. Is there any doubt, in your mind, that Exhibit D is the letter and attachment that you received from Hans Mast?
A. No. I believe that this is it.
Q. You signed some copy of this release and sent it back to Hans on January 29; is that correct?
A. Yes.
Q. You accepted the settlement offer prior to Christmas and presumably defense counsel or Hans drafted the settlement release and then Hans mailed it to you, correct?
A. Yes.
Q. At any point in time from December 25th until you received this settlement release, did you contact any lawyer to discuss whether it would be appropriate to let the McGuires out for 5,000?

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A. I believe I contacted Hans again.
Q. Besides Hans, did you talk to anyone else?
A. No.
Q. Was there anything preventing you from seeking a second opinion from some other lawyer at that time?
A. No.
Q. Directing your attention to Exhibit E attached to the second amended complaint, the second amended complaint, again, being Exhibit 5. Is this an e-mail from you to Hans on January 29, 2014?
A. This is the e-mail chain between me and Hans, yes.
Q. Down below at the bottom of the page, January 29 at 10:51 a.m., it appears that you were questioning Hans regarding some of the language in the release, including social security disability check boxes. Do you see that?
A. Yes.
Q. Hans responded to you and then at the top of the page here at 1:59 p.m. it says, "Okay, it's signed and in the mail."
A. Correct.

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Q. What did you mean by that?
A. I signed it and mailed it.
Q. Did you -- where did you mail it from?
A. My home.
Q. How did you do that?
A. Put a stamp on the envelope and put it in the mailbox, put the flag up and waited for the mailman.
Q. Is the mailbox attached to your home or is it --
A. It's out on the street.
Q. You walked down there and you put the mail -- the envelope in the mailbox, put the flag up and --
A. That is correct.
Q. Your understanding of signing that release and sending it back to your lawyer was that you would agree to take the $5,000 settlement, correct?
A. Yes.
Q. Hans didn't deliver the letter to you personally. He mailed it to you, correct?
A. He mailed it to me?
Q. He mailed it to you.

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A. Correct. U.S. mail.
Q. Do you recall an allegation in your complaint or amended complaint or second amended complaint in this case alleging that you were pressured or alleging undue influence by Hans in urging you to accept the $5,000 settlement from the McGuires?
A. Yes.
Q. How is it, as you sit here today, can you tell me how Hans unduly influenced you to accept the $5,000 settlement offer?
A. I don't know what Hans was thinking. How did I feel influenced?
Q. Unduly influenced.
Let me put it this way. He didn't put a gun to your head?
A. No.
Q. He suggested that you take the settlement?
A. Correct.
Q. He didn't force you to take the settlement?
A. Correct.
Q. It was your decision?

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A. Correct.
Q. You signed it and you sent it back to him in the mail?
A. Yes.
Q. Aside from your e-mails with Hans on January 29, did you call him that day?
A. I believe so.
Q. Did you also discuss whether it was appropriate to accept the McGuires' $5,000 settlement offer at that time?
A. Yes.
Q. You deliberated on it and decided to take it, correct?
A. There wasn't much – it was take it or get nothing.
Q. You had the opportunity to deliberate on it, correct?
A. For that day, yeah.
Q. You had reviewed the transcripts of the McGuire depositions and David Gagnon's depositions in order to provide you with some information in order to determine whether to accept the settlement offer, correct?
A. I believe I did try to read those, yes.

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Q. Did you call Hans or e-mail him and question him with respect to the evidence, the testimony contained in those deposition transcripts?
A. Yes.
Q. What did you say to him and what did he say to you?
A. There were many conversations over the phone and I'm sure some through e-mails.
Q. He continued to tell you that it was his opinion that the liability on the McGuires is questionable because they did not control David Gagnon's work that day, correct?
A. It depends on which time. Sometimes he said because they didn't tell them how to squeeze the trigger. It depends which time you are talking about.
Q. Again, there was nothing preventing you from seeking a second opinion from some other lawyer at the time you signed the settlement release and sent it back to Hans, correct?
A. From the time I received it, signed it and sent it back?
Q. Right.
A. No. It was a matter of hours. I got it

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that morning.
Q. You decided to mail it that day, right?
A. He needed it. He said now or you're not going to get anything.
Q. There was nothing preventing you from seeking the advice of another attorney at that time?
A. At that time it was time. It was now or nothing.
Q. You were in the comfort of your own house when you received the letter, correct?
A. Yes.
Q. You had the ability to go find another lawyer and ask them to discuss the case at that time. You had done it hundreds of times earlier – strike that.
After the settlement with the McGuires, you continued to prosecute the case against Gagnon, correct?
A. Yes.
Q. Did you have an understanding as to what, if any, insurance coverage he had?
A. Yes.
Q. How much was that?
A. What time frame are you talking about?

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Q. What was your initial understanding as to the limits on David Gagnon's insurance coverage?
A. Hans Mast told me he had $100,000.
Q. Was that in an e-mail?
A. There were – not initially, no, but later on he reiterated that in e-mails, yes.
Q. Did you, ultimately, learn that there was some additional amount of coverage with respect to Gagnon's policy?
A. Long after Hans Mast was gone, not part of the case.
Q. How much was the coverage?
A. The Allstate coverage, I believe, was 300,000.
Q. We'll talk about the settlement later, but did you ultimately settle the case again Gagnon for 300,000?
A. I believe it went to binding mediation.
Q. Was there an award of $300,000 based on a high/low agreement?
A. Yes.
Q. Is it fair to say that if Hans made a mistake about the $100,000 in coverage, that that was corrected and there was never any harm done as a

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result of his –
A. No.
Q. Explain to me how you were harmed by the representation that there was $100,000 in coverage.
A. You want me to explain?
Q. Yes.
A. Had I known the value of the case, I would have not filed for bankruptcy.
Q. Explain to me why one has something to do with the other.
A. Is my family and me going to dump money into a black hole that we can't recover or is there a light at the end of the tunnel where I can pay them back.
Q. At the time that you filed for bankruptcy, had any settlement offer been made from David Gagnon or his lawyers to you?
A. At the time of when?
Q. When you filed for bankruptcy.
A. I don't think so. I'd have to check the dates, but I don't think so.
Q. As the case was progressing against David Gagnon, were your doctors deposed?
A. As the case progressed with David Gagnon,

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I believe they were deposed. I don't remember. I'd have to look at the dates.
Q. Discovery continued on in the case?
A. I believe one doctor was deposed after the McGuire settlement. I'm not sure, though.
Q. Did Hans continue to represent you for some period of time?
A. Yes.
MR. FLYNN: I'll have you mark this as Exhibit 6.
(WHEREUPON, a certain document was marked Exhibit No. 6, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 6. Do you recognize this e-mail chain?
A. Yes.
Q. This is from September 23, 2014. If we go from the bottom up, it appears that Hans said to you that he wanted to give you the option of finding other counsel at this point if you really want to take the case to trial, which I think ultimately will be necessary. Correct?
A. Are we at "before I proceed" or "that's

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the very reason"?
Q. "That's the very reason."
Is it fair to say he was suggesting you find another counsel in the case at that point?
A. Yes.
Q. He also said, "I just do not believe strongly that defense counsel will offer much in the way of settlement."
Do you see that?
A. Yes.
Q. That's his opinion regardless of what he believed the coverage limits to be; is that a fair statement?
A. Yes.
Q. You responded to him, he responded to you and then you wrote an e-mail to him at 8:25 p.m. that night?
A. Okay.
Q. Do you see that? Did you say, "First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw"?
A. Yes.
Q. Did you start to look for other lawyers to help you in your case against Gagnon at that

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point in time?
A. I believe I did, that summer. This is fall, September.
Q. You had already started looking for new lawyers?
A. I believe that Hans had told me to start looking for a new lawyer in April of that year.
Q. Did he say why?
A. We'd have to read his thing. He says why.
Q. Do you recall why he said that to you?
A. He did not feel that the case was provable against David. He did not feel the value of the case was worth it. He did not feel -- actually, this is 2014. The dates are rough.
Q. He thought the case against David was difficult, correct?
A. Yes.
Q. Have you ever described the case as a he said, she said with respect to the facts of the accident?
A. He described that to me many times.
Q. Have you also --
A. And I used that back, yes.

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Q. Have you ever described this case as a he said, she said case?
A. I may have. I don't know.
Q. It is your word against David Gagnon's as to what happened and whose fault it was that day?
A. That's what Hans explained to me as what the problem was.
Q. Did you ever describe the accident as a he said, she said?
A. I don't think I called David a "she said" or me a "she said." I don't know. Right here I do.
Q. What do you say there?
A. I said, "I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw."
Q. He was denying that he even cut you, correct?
A. No, he never denied that.
Q. What was your reason for writing this sentence in that way?
A. Because Hans said that he believed David over me.
Q. With respect to what fact at issue?
A. His deposition versus mine. He said that I didn't make a good witness.

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Q. With respect to what points?
A. All of it. He was dumping me and he was coming up with his own excuses.
Q. You and David were the only ones that witnessed this accident?
A. Correct.
Q. Based on your understanding of how the evidence came out in the case, would you agree that there were differences with respect to the version of events?
A. Oh, yeah.
Q. There were differences between what he said happened and what you said happened?
A. Oh, definitely.
Q. Would it be fair to say, then, it would be up to the trier of fact, whether it be a judge or a jury, to determine who they believed?
MS. WILLIAMS: Objection. Calls for a legal conclusion.
You can answer, if you understand.
BY THE WITNESS:
A. I believe it would be up to a judge or jury, sure.

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BY MR. FLYNN:
Q. At the bottom of Exhibit 7 you say, "Bottom line Hans... do the best you can with what you got."
I'm sorry. I didn't mark this one yet. My apologies.
(WHEREUPON, a certain document was marked Exhibit No. 7, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 7. Is this an e-mail chain between you and Hans?
A. I don't think it's a chain. I think it's one.
Q. Point is well taken. It's you writing to Hans?
A. Yes.
Q. At the bottom it sounds like you had been in the hospital with a migraine and then you wrote, "Bottom line, Hans... do the best you can with what you got."
A. Yes.
Q. What did you mean by that?

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A. He wanted to settle, and I can tell you right now this letter was written after a very traumatic experience and – let me read it and refresh myself. I'm melting down in this letter.
Q. You said after a traumatic experience. Are you referring to the bankruptcy filing from that day?
A. That, in combination with migraines, yes.
Q. David Stretch was your lawyer that filed bankruptcy for you?
A. Yes.
Q. Did you meet with Mr. Stretch and discuss the bankruptcy process before you hired him?
A. Yes.
Q. How long did you meet with him?
A. I think I asked about it. I don't know. It may have been a couple of months or a couple weeks before it got filed. I wanted to learn about it.
Q. Did you, ultimately, list the case against David Gagnon as an asset in your bankrupt filing?
A. Yes, I did.
Q. Is that why the bankruptcy trustee became

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involved with the binding mediation?
A. Yes.
Q. Did you ever meet the bankruptcy trustee?
A. Yes. The first one.
Q. What was the name of that person?
A. The first one was Heeg was her last name. H-e-e-g, I think.
Q. Again, we established that Brad Balke became your lawyer in the case on March 19, 2015, correct?
A. Yes.
Q. Is it fair to say that your relationship with Hans Mast was deteriorating over the fall and beginning of the winter of 2015?
A. I would say it had been deteriorating long before that. You can see from the last exhibit I'm melting down and it was already started deteriorating.
Q. By the time you drafted Exhibit 7, had you talked to other lawyers about taking your case?
A. I have to go back and look, but probably. If he told me to look at other lawyers in April before this, yes.
Q. How many lawyers would you say you talked

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to between April and the time you drafted this e-mail on September 26?
A. I couldn't count that high, probably.
Q. Quite a few?
A. Yeah.
Q. Did any of them take your case?
A. No.
MR. FLYNN: Mark this as Exhibit 8.
(WHEREUPON, a certain document was marked Exhibit No. 8, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 8. Is this an e-mail from you to Hans Mast?
A. Yes. It's an e-mail chain, yes.
Q. On February 22, 2015 at 7:42 p.m. you wrote to Hans, correct?
A. Yes.
Q. Halfway down in that e-mail message you said, quote, "Now I'm left wondering... how hard it is to sue an attorney?"
A. That is true.
Q. You wrote that?
A. Yes.

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Q. The next line you wrote, "And yes, I am and have been looking for someone who will take this case..."
A. That is not in reference to suing the attorney. That was in reference to the Gagnon case.
Q. What did the reference to suing an attorney mean?
A. That was me being angry.
Q. With Hans?
A. Yes. I was seeing red.
Q. You're suggesting that you may sue him?
A. Yeah. I didn't know that I could. I'm wondering about it.
Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?
A. Yes.
Q. You, ultimately, sued him for legal malpractice, right?
A. Yes.
Q. Is that what you had in mind when you wrote this?
A. No. This was about dropping Gagnon. The malpractice is about dropping the McGuires.

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Q. This –
A. We're talking – this is 2015.
Q. In this 2015 e-mail you are suggesting to Hans that you may sue him because of the McGuire settlement; is that right?
A. No.
Q. Then what is it that you're saying to him?
A. That if he damaged the Gagnon case, I didn't know if he did or didn't, and I'm threatening because I'm angry. You can see, again, I'm melting down here. These are emotional outbursts, I guess.
Q. Moving up the page a little bit also on February 22, 2015 at 8:14 p.m., you say, "To be honest, you took this case knowing it was my word versus his."
A. Yes.
Q. He said, he said, right?
A. Yes.
Q. Is that a fair characterization of the case, your word against David's?
A. That's how Hans kept describing it. That's the way I put it back to him, yes.
Q. You didn't correct him or dispute his

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characterization, did you?
A. No. I used his characterization.
Q. You agreed with it?
A. He said – how did it go? We had conversations between these e-mails on the phone. Then we would hang up and I would get angry and type it in an e-mail, type whatever it was that bothered me so he had it.
Q. Let me ask another question, if that's okay.
Did you ever correct Hans if he called this a he said, he said case? Did you ever say it's more than that?
A. Do I ever say it's more than that?
Q. Did you ever correct him? If he said it's a he said, he said case, did you say no, that's not right?
A. He said there's no witnesses. I said, "I'm a witness."
Q. You're one of the hes. It's your word against David Gagnon's, as you said in this e-mail?
A. Yes.
MR. FLYNN: If I could have you mark that as Exhibit 9.

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(WHEREUPON, a certain document was marked Exhibit No. 9, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Exhibit 9, is that Brad Balke's substitute appearance that was filed on March 19, 2015 in the case against Gagnon?
A. It looks like it, yes.
Q. Back to Exhibit 5, which is the second amended complaint. If I could direct your attention to Exhibit F. This appears to be a more complete copy of another e-mail we just talked about. Is Exhibit F more of the February 22, 2015 e-mail chain?
A. I'm not sure if that's separate or the same. Oh, it looks like it.
Q. At 7:20 p.m. Hans wrote to you and said, "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case."
Right?
A. Yes.
Q. He says, "I've been telling you over a year now the problems with the case and you just

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don't see them."
Correct?
A. That's what it says.
Q. Obviously, a difference of opinion, right?
A. Yes. Are you talking about difference of opinion as to the value or difference of opinion of the problems within the case?
Q. Let's go on. He says, "You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear, it is not. My guess is that seven out of ten times you will lose the case outright. That means zero. That's why I've been trying to convince you to agree to a settlement. You clearly do not want to."
Did I accurately read that?
A. Just that part of that paragraph, yes.
Q. So Hans is telling you that in his opinion your case against Gagnon you're going to lose it seven out of ten times, correct?
A. In this one, yes.
Q. He's acknowledging that you may have a

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chance.
A. I think later on he says nine out of ten.
Q. In this e-mail he says seven out of ten you will lose.
A. Yes.
Q. He's recognizing three times out of ten you may win, right?
A. I don't know what Hans is thinking.
Q. Is that what he said?
A. He says seven out of ten times you lose.
Q. You understood that there are risks in taking the case to trial that you could lose?
A. There are unforeseen risks, yes.
Q. There are always risks, period, in taking a case to trial?
A. Yes.
Q. Before you hired Brad Balke and after Hans told you he couldn't represent you, did you talk to any other lawyers about taking your case?
A. Yes.
Q. How many?
A. I can't tell you. A lot.
Q. Did any of them tell you that they wouldn't take the case because they didn't think you could prevail against Gagnon?

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A. No.
Q. Not one?
A. No.
Q. What are the names of any of the lawyers you talked to about taking your case over from Popovich?
A. I can't tell you without looking at documents who it was and what date it was, what it was between these two.
Q. I don't think documents I produced would help you in that regard.
I'll just ask you based on your memory the names of any lawyers you met with from the time Hans wrote this February 22 e-mail –
A. I believe –
Q. Let me finish.
A. I believe –
MS. WILLIAMS: He has not finished his question.
THE WITNESS: Sorry.
BY MR. FLYNN:
Q. From the time that Hans wrote this February 22 e-mail and the time that Brad Balke enters an appearance on March 19. Just the name of any lawyer you –

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A. I believe that Sal Ferris that I was talking about was one of the lawyers that I talked to.
Q. You're not sure? You believe that he was?
A. In between this time and this time?
Q. Yes.
A. I believe it's right around then.
Q. What type of law practice does Sal Ferris have?
A. I believe personal injury.
Q. Did you ever talk to him about taking your case before that date?
A. Before the date of this e-mail?
Q. Yes.
A. I'd have to look at it.
Q. He wasn't one of the original attorneys that you spoke with at the beginning of the case?
A. No.
Q. Fair to say once Balke entered his appearance on March 19, 2015 that Mast and Popovich were no longer your attorneys, correct?

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A. When Balke enters his appearance?
Q. Yes.
A. I would believe that, yes.
Q. They were terminated and Balke stepped in?
A. Yes.
Q. Can you tell me how the binding mediation which proceeded on December 8, 2015 evolved and came to be.
A. I was ordered into it from a bankruptcy court.
Q. Why is that?
A. I believe that the trustee put a motion up. I don't know who did it. I assume it was the trustee and the court ordered that it be put into binding mediation.
Q. Did you appear at the mediation?
A. Yes.
Q. Do you recall the name of the mediator?
A. Not off the top of my head, no.
Q. One of the exhibits to your second amended complaint indicates it was retired Judge James Etchingham.
A. That sounds familiar.

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Q. Do you recall how long the mediation lasted?
A. All day.
Q. Do you know if the parties submitted mediation briefs or statements to the judge?
A. I believe both sides submitted a whole bunch of things.
Q. The Boudins represented you in this mediation?
A. Yes.
Q. Because you had fired Balke by this point?
A. Oh, yes.
Q. Directing your attention, again, to Exhibit 5, the second amended complaint and Exhibit G. Exhibit G is, apparently, a memorialization of the mediation award. Do you see that?
A. It's how the judge decided to break it down, yes.
Q. Do you see that there's an award for future medical expenses of $200,000?
A. Yes.
Q. Since that date of December 8, 2015, have you received any medical treatment relative to your

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injuries –
A. Yes.
Q. Let me finish. Strike the question.
Since that date, December 8, 2015, have you received any medical treatment for your injuries incurred on January 28, 2011?
A. You're asking since the date of the binding mediation?
Q. That's right.
A. Yes.
Q. What medical treatment have you received?
A. I do an ongoing with the neurologist for the dystonia.
Q. That's in your right arm?
A. Yes.
Q. Have you calculated the medical bills that you've incurred since that day?
A. No, I have not.
Q. Are they anywhere near $200,000?
A. It depends if you calculate with or without insurance. I know what I pay, but then I have to pay for the insurance that pays for that.
Q. How much have you paid out of pocket since that date for medical treatment on your arm?

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A. I don't know, offhand.
Q. Was there any doctor that opined that you would require $200,000 in future medical expenses?
A. I believe so.
Q. Who was that?
A. I believe that was Dr. Patel. I don't know that she said $200,000. She was the doctor that was handling it at the time.
Q. Did you discuss your injury with the mediator at the mediation?
A. He did ask me a few questions.
Q. How much time did you spend with him?
A. On and off. He would come in and ask me questions and then go away and then come in and would ask me questions and then go away.
I don't remember which one was the mediator, which one was the Allstate adjuster, which one was the – I don't remember.
Q. You're not sure which one was the mediator?
A. They came in and they said they are going to ask you some questions and I answered them.
Q. As you sit here today, you don't know how much face time you had with the mediator that day?

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A. I don't remember the face of which one is which.
Q. Did the issue of lost wages ever come up?
A. At the mediation with me?
Q. Yes.
A. I don't remember.
Q. Did you ever make a claim of lost wages of $250,000?
A. I may have.
Q. Do you know what that was based on?
A. Yeah.
Q. What is that based on?
A. Past and future.
Q. What past wages had you ever earned that could lead to an award of $250,000?
A. To me, that's not a very high number. I think I asked for more than that. It would be an average over a certain number of years plus benefits and that's all lost.
Q. Would it be fair to say that your income would be accurately reflected in the tax returns you've produced in this case, so I don't want to ask you about each one of them?
A. I would say my personal income, yeah.

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Q. Have you filed personal tax returns since 2015?
A. Tried.
Q. I didn't ask you if you tried.
A. No. They won't let me. They said I don't make enough anymore.
MR. FLYNN: I believe the next exhibit is 10.
(WHEREUPON, a certain document was marked Exhibit No. 10, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what's been marked as Exhibit 10. This is a six-page binding mediation agreement. The copy I have is unsigned.
Do you recognize this as the mediation agreement that governed your December 8, 2016 mediation?
A. Yes.
Q. If I could direct your attention to -- first, let me ask you.
Do you know why the bankruptcy trustee or the bankruptcy court ordered binding mediation as opposed to nonbinding?
A. I have no idea.

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Q. On page 4, section F, subsection B -- I'm sorry, 1B. It says, "The parties agree that for this mediation the minimum award to Paul Dulberg will be $50,000. Also, the maximum award to Paul Dulberg will be $300,000."
Do you see that?
A. Yes.
Q. Do you know why the parties agreed to this high/low agreement?
A. No.
Q. Do you recall alleging in your original complaint against Popovich that there was a high/low agreement?
A. There is. There was.
MS. WILLIAMS: Can you repeat the question, please.
(WHEREUPON, the record was read by the reporter as requested.)
BY THE WITNESS:
A. I don't know. I'd have to read it.
MS. WILLIAMS: I asked her to read it. And you had answered it previously.
BY MR. FLYNN:
Q. Directing your attention back to

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Exhibit 4, which is the original complaint in this case. Page 4, paragraph 16.
A. Okay.
Q. There's a sentence that begins with, "Unfortunately, a high/low agreement had been executed by Dulberg reducing the maximum account he could recover to $300,000 based upon the insurance policy available."
Do you see that?
A. Yes.
Q. It's not your position or testimony that Popovich had anything to do with the high/low agreement?
A. That was a mistake in there. No.
Q. You would agree that Popovich had nothing to do with the high/low agreement?
A. I believe that events that unfolded the way they did was due to Hans Mast's initial assessment of the value of the case.
Q. Let me ask it a different way.
Did Popovich have any idea that this high/low agreement existed when it was entered into?
A. I don't know.
Q. Do you have any reason to believe that he

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did?
A. I don't know. I don't know how much the Boudins were in contact with them because they worked together. I don't know.
Q. What do you mean, "they worked together"?
A. They worked together on all different cases. That's a small county out there.
Q. Did you ever write to Hans and accuse Popovich of having a conflict of interest because he may have gone to high school with David Gagnon?
A. I did learn that.
Q. Do you believe the fact that someone went to high school with another person may give rise to a conflict of interest in a lawsuit?
A. I was shooting in the dark and guessing why they didn't see this as a viable case.
Q. Do you think that was appropriate to send to your lawyer at the time?
A. When you're wondering why they are doing what they are doing and you learn that and they were pretty much in the same class and they all knew each other and it's a small town, let me ask you, are you friends with the guy I'm suing? That's an appropriate question.

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Q. You didn't say that. You asked if they went to school together.
A. Correct.
Q. Popovich did not enter into this high/low agreement on your behalf, correct?
A. Popovich, no.
Q. When I say "Popovich," I mean generally the Popovich firm and your lawyers.
A. This was years later. No.
Q. They had nothing to do with it, right?
A. I wouldn't say anything to do with it.
Q. Withdrawn.
Who drafted this high/low agreement that's contained in the mediation agreement?
A. I'm not sure who drafted it.
Q. Would it have been either the mediator, the bankruptcy trustee, your lawyers or the defense attorneys?
A. I assume that this would have been an agreement of all of them.
Q. You don't think Popovich had anything to do with drafting this high/low agreement, do you?
A. I don't know that he did or didn't.
Q. Do you have any reason to believe that he

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did?
A. At this point, no.
Q. Continuing on in Exhibit 4. Directing your attention to the bottom of page 4, paragraph 10.
A. Exhibit 4. Say it again.
Q. The bottom of page 4, paragraph 20. This is your complaint against Popovich and Mast.
A. This has been amended since then.
Q. I understand. Paragraph 20 reads, "Following the execution of the mediation agreement with the high/low agreement contained therein and the final mediation award, Dulberg realized for the first time that the information Mast and Popovich had given Dulberg was false and misleading and that, in fact, the dismissal of the McGuires was a serious and substantial mistake."
Do you see that?
A. Yes.
Q. Can you tell me, as you sit here today, what false and misleading information did Mast and Popovich give you?
A. That I realized on the day of the – following the execution of the mediation agreement?

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Q. Correct.
A. The liability of the McGuires.
Q. What was false about it?
A. What made them liable and what didn't.
Q. What is it you learned to dispute what you were told?
A. I learned from a reliability expert that had the report there that day that the McGuires provided the tools which made Gagnon an agent of the McGuires. He was working at their behest.
Q. Who was this liability expert?
A. What's his name?
Q. He's a doctor?
A. Yes.
Q. Continue on with that paragraph. "Following mediation, Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016."
Do you see that allegation?
A. Yeah.
Q. Who advised you to seek an independent opinion from an attorney handling legal malpractice matters?

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A. I believe that was Boudin.
Q. You believe that or you know that?
A. I know that.
Q. You alleged it in this complaint so it's important that we know who that was.
A. Yes, that was Boudin.
Q. Boudin told you to seek an independent opinion from an attorney that handles malpractice matters?
A. Yes.
Q. It says you received that opinion on or about December 16, 2016.
A. Yes.
Q. That's separate and apart from any opinion you may have received from a liability expert, a doctor, an expert on chainsaws?
A. Yes.
Q. Who was the lawyer that you received a legal opinion from on December 16, 2016?
A. I believe that would be Thomas Gooch.
Q. The drafter of this complaint?
A. I'd have to look at the dates because I think – December 8th was the mediation; is that right?

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Q. Correct.
A. So the 16th would sound about right to be meeting with Gooch, but I can get that date.
Q. You met with Gooch –
A. Soon, within weeks. It was quick.
Q. Now that the door has been opened, you fired Gooch in this case, correct?
A. Yes.
Q. He drafted this complaint and he's also the one that gave you an opinion about legal malpractice liability on the part of my clients?
A. Yes.
Q. What is it that he told you on December 16, 2016?
MS. WILLIAMS: Objection. I don't think we've waived that privilege, but – can we go off the record for a second?
MR. FLYNN: I don't want to go off the record. I've asked this interrogatory in about five different ways and it hasn't been answered appropriately.
The allegation was made in the complaint. That's why I drafted the interrogatory the way I did. I don't think that there's been a square

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answer to it. This is clear that you're talking about a legal opinion.
BY THE WITNESS:
Q. Is this the same wording as we have in the current complaint?
BY MR. FLYNN:
Q. It's not exactly.
A. What would this be valid for, then?
Q. You've raised a response to a statute of limitations defense in this case and placed your knowledge of the malpractice and the date of incurring of an injury at issue.
Because your discovery of malpractice has been placed at issue, it's our position that you've waived privilege anyhow with respect to this conversation on December 16, 2016.
A. I'm not sure –
MS. WILLIAMS: There's not a question pending. I'm going to make a standing objection as to privilege with Gooch.
If we can agree that that objection will stand, we can go through this line of questioning and then if we need to later, have a judge determine whether or not that line of questioning is

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admissible. Are you agreeable to that?
MR. FLYNN: I'm agreeable to continuing on for a few minutes. I want to explore. I'll try to lay foundation for – to confirm this wasn't anyone else, for starters. Why don't we continue on and if you need to raise it again, we can talk.
MS. WILLIAMS: Otherwise, I'm just going to raise it to every single question you ask. I just don't want to have to continue to make the objection as to – if questions are asked about advice given by a legal malpractice attorney, I'm going to raise an objection as to that.
MR. FLYNN: Okay. But this is why we had the 201K conferences, multiple 201K conferences. It was made clear, to me, that there was a waiver with respect to subsequent counsel.
MS. WILLIAMS: Tom Gooch isn't subsequent counsel.
MR. FLYNN: The allegation has been made in this complaint and apparently this is subsequent counsel subsequent to my client's representation.
MS. WILLIAMS: It is a different case. It's not subsequent counsel in the underlying case. It's a new case.

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MR. FLYNN: We'll get to the interrogatory in a few minutes. I'll pull that out.
BY MR. FLYNN:
Q. Let me ask you. Is there any other attorney besides Mr. Gooch that gave you an opinion that's referenced here on December 16?
A. No one that isn't privileged.
Q. Could it have been anyone else?
A. No.
Q. So Gooch is the only person that's being referenced here in this allegation that's in your complaint that's a public record?
I'm not asking you right now what the opinion is. I'm going to do that later. I'm asking you who gave it to you. It's not anyone besides Mr. Gooch, correct?
A. Yes. It was Thomas Gooch.
Q. He drafted the very complaint that that allegation is contained in?
A. Yes.
Q. Dr. Landford was the liability expert that you referenced earlier, correct?
A. Yes.
Q. Back to the allegation that Gooch and –

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that Popovich and Mast provided you false and misleading information. That information was simply their legal opinion on the McGuires' liability; isn't that correct?
A. No. There was nothing simple about that. That's a very complex series of things that go all the way back to before the McGuire settlement.
Q. They didn't lie to you, did they?
A. It depends on how you define lie.
Q. How do you define lie?
A. If you know better and you say something else, that's a lie. Omission is a lie.
Q. Did they provide you with anything other than a legal opinion as to the McGuires' liability?
A. Yes. They provided me with case laws. They provided me with all different stuff. Yes.
Q. Whatever the advice that was given to you on December 16, 2016, you felt that you were mislead by Popovich and Mast at that point in time, correct?
A. At that point in time it was confirmed to me that I had a valid case against Popovich.
Q. You had a valid malpractice case against Popovich?
A. Yes. I did not know before that.

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Q. As of December 16, 2016?
A. Yes.
Q. Why is it that you didn't file that lawsuit until nearly a year later on November 28, 2017?
A. I believe because Thomas Gooch had some health issues and then his wife had some health issues. It took a while.
(WHEREUPON, a certain document was marked Exhibit No. 11, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what has been marked as Exhibit 11. This is one set of your supplemental Answers to Interrogatories.
First, I'll ask you if that is your verification and signature at the end?
A. That is my signature.
Q. Again, I don't know if that verification was attached to this original document. It may have been. But there's been some confusion with respect to these verification pages. This is your signature and you answered these interrogatories, correct?
A. Yeah.

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Q. So this is a valid verification page with respect to this discovery document; is that a fair statement?
A. This is supplemental to original answers.
Q. That's your signature and you agree these are your answers?
A. I've reviewed them and we went over them and yes, I agree.
Q. And they are accurate?
A. As accurate as we can be.
Q. If I could direct your attention to Interrogatory No. 26. Do you see that?
A. Okay. Yes, I see it.
Q. This is similar to what we just talked about a few minutes ago. I'll read the interrogatory to you. "Identify and describe the false and misleading information Mast and Popovich provided to you and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake as alleged in paragraph 56 of your second amended complaint."
Do you see your supplemental answer here?

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A. I see it, yes.
Q. You reference the mediation award and then you state, quote, "At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning."
A. I do.
Q. Can you explain what that means because I don't quite understand it.
A. Hans Mast assured me — I want to go back to 2013, the Fall between October and the signature of the final release for the McGuires.
He assured me that, he said -- at that time he didn't tell me what anybody's policies were. He assured me that if we let the McGuires out of the case, Gagnon has enough insurance, you're going to get everything from him, so it doesn't matter that you're carrying the McGuires in the case.
Q. The next interrogatory is 27. "Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint including the identity of the expert, any opinions and any other information

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provided by the expert which caused you to learn in the summer of 2016 and became reasonably aware that Mast and Popovich did not properly represent you."

What does the summer of 2016 have to do with your discovery of malpractice?

A. Technically, I was sent Dr. Landford's report – I might be off a little by a couple months here, but I think in July of that year. And I read it, but I didn't – you don't catch everything the first time you read it.

It was not until later that I caught the part of the report that was brought to the attention – it caught my eye when I was sitting there and reading it.

Q. You didn't read any of this interrogatory or the original interrogatory as requesting legal opinions that you had alleged that gave you notice that there was a malpractice claim against Mast and Popovich?

A. Excuse me?

MR. FLYNN: Can you read that back.

(WHEREUPON, the record was read by the reporter as requested.)

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BY THE WITNESS:

A. The way she said it, I don't understand.

BY MR. FLYNN:

Q. I'll rephrase it.

We've known about this allegation in the original complaint since it was filed. You received some legal opinion in 2016. That's why you didn't know you had a malpractice case against Mast and Popovich.

We asked you in discovery answers a couple different ways what those legal opinions are. You didn't read 26 and 27 as requesting information about legal opinions?

A. I don't know that an expert witness would be considered a legal opinion. Wouldn't that be more like an attorney?

Q. I'll ask you again. Why is it that you first became aware of a legal malpractice matter against Mast and Popovich on or about December 16, 2016?

A. December 16th I was talking to a legal malpractice attorney.

Q. You were told that there was a case against –

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A. A valid case, yes.

Q. – Mast and Popovich?

A. Yes.

Q. Why is it you didn't know about this valid case prior to that date?

A. Because I hadn't talked to anybody that was a lawyer that specialized in that area.

Q. Whatever it is that he said to you gave you the basis for believing you had a valid case against Mast and Popovich?

A. Very much so, yes.

Q. You're withholding that information from me right now, as we sit here. You won't tell me what that expert said, correct?

MS. WILLIAMS: Repeat the question.

(WHEREUPON, the record was read by the reporter as requested.)

MS. WILLIAMS: I'm asserting attorney-client privilege on behalf of my client for Gooch's advice on December – in December of 2016.

However, because I want to move forward with this deposition, if he can answer the question, I believe we should go ahead and move forward and have him answer the question.

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I'll assert the privilege with the understanding that this may have to be briefed later.

MR. FLYNN: To be stricken later?

MS. WILLIAMS: Right.

MR. FLYNN: The substance of the answer he can put on the record. You're just saying you may move to strike it later?

MS. WILLIAMS: Right. I want to maintain the privilege with the objection, but I don't want to have to call the judge right now. I don't think it's something we should have to call the judge about right now.

MR. FLYNN: Just for the record, I believe it's been placed at issue by virtue of the first amended complaint. The responses to the statute of limitation defenses that were raised in very dispositive motions before Gooch withdrew from the case, the gist of that is the discovery rule has been raised and, therefore, it's our position that the date of discovery has been placed at issue and, accordingly, any legal opinions that were provided to this plaintiff have been exposed and that we're entitled to know what those are.

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MS. WILLIAMS: Can I also note one more thing?
MR. FLYNN: Sure.
MS. WILLIAMS: In the supplemental -- in the request it specifically refers to paragraph 57 of the second amended complaint, which is different.
MR. FLYNN: It is different. I'll acknowledge that. I believe that the prior original interrogatories asked for any opinions relative to the discovery of the malpractice. I could be wrong. There was a reason I asked this and that's why I believe that's what it was about.
MS. WILLIAMS: So --
MR. FLYNN: That particular one I agree with you is not phrased as calling for --
MS. WILLIAMS: Right. That's the question that was asked. We answered the question that was asked, which that particular paragraph does not refer to a legal expert. It just merely -- I'll read it out loud. "It was not until the mediation in December of 2016 based on the expert's opinion that Dulberg retain for mediation that Dulberg became reasonably aware."
I just want it clear that he did answer the question that was asked. I understand your line

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of questioning and we'll agree to move forward.
MR. FLYNN: I believe there were other discovery requests that did point to that and I think we can take a break here and I can find them fairly quickly because I think we're getting close to the end anyway.
MS. WILLIAMS: Okay.
BY MR. FLYNN:
Q. Did you ever receive any money from the mediation award?
A. No. I received money from the bankruptcy itself. It was a surplus bankruptcy.
Q. There was a $300,000 award given in the mediation.
A. That did not go to me. That went to bankruptcy.
Q. It was collected on your behalf and paid to the bankruptcy trustee, correct?
A. Correct.
Q. All $300,000?
A. I don't know that because I think -- I don't know how exactly it works. I heard attorneys have a lien that's special. I don't know how they break it up. I assume it goes to the trustee.

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Q. The Boudins weren't working for free. They got something out of it, right?
A. Yes.
Q. The trustee took the remainder and paid off some of your creditors, correct?
A. Correct. All of them.
Q. But the award was paid to the trustee on your behalf?
A. I believe so. I don't know how it worked.
Q. How much was the surplus after your creditors were paid?
A. After just the creditors?
Q. How much did you get?
A. How much did I get?
Q. Yes.
A. A third.
Q. I'm asking how much money did you get?
A. A third of the award.
Q. Dollars. How much money did you get?
A. Roughly a hundred.
Q. $100,000?
A. I don't know the exact number. It's roughly a hundred.

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Q. Was there a check that was issued to you?
A. By the trustee, yes.
Q. Did you cash it?
A. Yes.
Q. At what bank?
A. McHenry Bank & Trust.
Q. Do you still have an account there?
A. Yes.
Q. Do you have a copy of the canceled check?
A. I'm sure the bank has a photo thing.
Q. You can request a copy of the check, correct?
A. I could. I could see if they got it.
Q. I would ask you to do that. If you have any other documentation relative to the payouts that were made by the bankruptcy trustee on your behalf, we are requesting that information.
MR. FLYNN: Why don't we take a break and I'm going to look for one document and then we're just about done here.
(WHEREUPON, a recess was had.)
MR. FLYNN: Mark these as the next two.

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(WHEREUPON, a certain document was marked Exhibit No. 12, for identification, as of 02/19/2020.)
(WHEREUPON, a certain document was marked Exhibit No. 13, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm going to show you what I've marked as Exhibits 12 and 13. Twelve are your answers to Hans Mast's interrogatories. Thirteen is your responses to Popovich's request for production.
Interrogatory No. 1 from Mast asks, "Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach."
Do you understand that?
A. Yes.
Q. So how is it they committed malpractice?
A. May I see it?
Q. I'm going to show it to you in a second. I only have one copy.
This is basically, how did you first become aware that they committed malpractice?

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That's the essence of that interrogatory.
Here is your response. I can show that to you. It doesn't reflect any discussion with any malpractice lawyer in December of 2016.
Tell me –
A. Let me read it again. We're talking about No. 1 on this?
Q. Correct.
A. Okay.
Q. You understand it?
A. Yes.
Q. Would you agree that the legal opinion you received on December 16, 2016 is responsive to that interrogatory, whatever it is that you were told?
A. Yes.
Q. You didn't identify this December 16, 2016 discussion in the answer to that interrogatory, correct?
A. Say that again.
Q. Your discussion with Mr. Gooch on December 16, 2016, that's referenced in your original complaint, you didn't respond and identify it in this answer to the interrogatory, correct?

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A. This asks for every way Popovich or Mast breached the duty of care. It didn't ask for Gooch's opinion.
Q. How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?
A. Yes.
Q. That's what you've alleged here in this complaint.
A. Yes.
Q. Here I'm asking you, each and every way that they ever breached a duty of care to you. I covered the waterfront. You didn't answer --
A. On the McGuire case it was between October 2013 and January 2014. Yes. There's a multitude of things and that's why I listed a range.
Q. I'm asking when you became aware of it, in that interrogatory. Do you see that?
A. I became aware of that when Thomas Gooch read them and said there's a problem here.
Q. That's not the way you answered the interrogatory, correct?
A. I answered the first part. I did not answer after the comma and the and.

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Q. There's no objection and indication that any information is being withheld, correct?
A. Excuse me?
Q. There's no objection and an indication that you're withholding –
A. I was not withholding.
Q. I'll show you Exhibit 13. It asks – Exhibit 13 are the production requests to you. Number 8 asks for you to produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created and the date the recipient received the document.
The answer is, "The plaintiff is only withholding attorney-client communication between his successor counsel."
Is that your answer to the production request and did I accurately read No. 8?
A. May I consult with her for a minute?
Q. Sure.
THE WITNESS: Can we go off the record?
MS. WILLIAMS: If you can answer the question, answer the question first.

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BY THE WITNESS:
A. It's been a while since I've done this, so I'm not sure who the successor counsel is. Is it her or is it the Boudins or Balke?
BY MR. FLYNN:
Q. I think successor counsel, we can both agree, the successor counsel in the underlying case which would be Balke and then Boudin.
You didn't identify any documents withheld other than documents between you and successor counsel, correct?
THE WITNESS: I believe we waived those, didn't we, for Balke and Boudin?
MS. WILLIAMS: For Balke and Boudin we can represent that we waived those.
BY MR. FLYNN:
Q. Let me ask a different question.
Did Gooch communicate with you in writing relative to his opinion that you had a legal malpractice case against Mast and Popovich?
A. In writing?
Q. Yes.
A. I suppose the agreement between us that he would represent me because I had the case is a

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document in writing.
Q. Did he tell you -- strike that.
The discussion that you reference in the complaint, paragraph 20 of December 16, 2016, was that a face-to-face communication with Gooch?
A. What number is that?
Q. Exhibit 4, paragraph 20. The legal opinion you received, was it verbal, was it written?
A. I believe it was verbal.
Q. Now, I'm going to ask you what he said. There was an objection and that will be addressed by the Court later. Please tell me what Gooch told you.
A. He read what I brought him, looked through some things, and I don't remember if it was the same day that we talked to him or he took a day or two. I don't remember. He got back to me and he said, "You have a case here. You have a valid case."
Q. Did he say why?
A. On the basis of what I brought to him. Yes.
Q. Specifics, though. I don't want to talk about generalities. Did he tell you what Mast and

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Popovich did wrong and how it injured you?
A. How it injured me? Yeah.
Q. The first part of my question was, did he tell you exactly what they did wrong in connection with your -- their representation of you?
A. He probably did. I'm not recalling it right now. I'm pulling a blank.
The parts of the conversation I'm remembering, and for some reason I'm not pulling it. We've been at this a while and this is a long thing. Yes, he said based on what he saw, he saw reason for malpractice.
Q. You don't remember any details, as you sit here? Did you discuss the liability of property owners in Illinois?
A. Well, if they were just property owners in the case, that would be one thing, but they weren't just property owners.
Q. That wasn't my question. I'm asking if you discussed it?
A. Certainly.
Q. You and Gooch discussed the liability of the McGuires in the case?
A. Yes.

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Q. What did you say to him and what did he say to you?
A. I showed him the expert opinion.
Q. The chainsaw expert?
A. Yes.
Q. Did you show him any deposition transcripts?
A. Yes.
Q. Which ones?
A. All of them.
Q. And he read them before you talked?
A. I don't remember. Like I said, it may have been a few days between our initial meeting and bringing the whole file that I had and trying to get what the Boudins had and letting him go through it. I don't remember how long that took.
Q. How did you transmit the documents to him --
A. My brother carried them.
Q. Let me finish.
How did you transmit the documents to Mr. Gooch, including the deposition transcripts?
A. I believe we brought him a box.
Q. So you physically handed the documents to

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him?
A. I didn't physically hand them. My brother did.
Q. Did you communicate with Mr. Gooch by e-mail, at all, leading up to this meeting?
A. No.
Q. Did he ever write you any letters?
A. An e-mail or regular mail or what are you talking about?
Q. Any letters whatsoever.
A. Throughout the course of his representation, yes.
Q. What about in December of 2016?
A. I believe we started communicating in December, yes.
Q. But in writing?
A. In e-mails, sure.
Q. Did he discuss –
A. We may have. I'm not – whenever we started – whenever he started sending me things and going back and forth, I don't remember the exact date, but it was right after he started representing me, sure, we exchanged e-mails and started, yes.
Q. When did Gooch begin representing you?

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A. The day that he agreed to represent me. I believe it would have been the day that he decided that he had a case.
Q. On or about December 16?
A. Yes.
Q. At that point in time, or shortly thereafter, he communicated with you in writing the details of the breach of the standard of care committed by Popovich and Mast; is that correct?
A. I believe he started to detail those out in the complaint and we were working it back and forth trying to get it right.
Q. When did you first exchange drafts of the complaint?
A. I'd have to look back in the e-mails. I don't remember the dates.
Q. Did you look for any of these e-mails in connection with my discovery requests in this case?
A. At the time I think we thought they were privileged.
Q. That privilege objection wasn't exactly made. My question is, did you look for them?
A. Did I look for them? I have them.
Q. I would ask that you preserve each and

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every communication between you and Mr. Gooch, all written communications, even phone records that might reflect the dates and times of your phone communications, if any. Did you use a cell phone back then?
A. I used VOIP over a data line.
Q. Who was your carrier?
A. Comcast.
Q. Is that still your carrier?
A. Yes.
Q. Do you have the same phone that you utilized?
A. Same phone number for 50 years, yes.
Q. What else could you remember that Gooch told you on or about the 16th of December 2016 about Mast and Popovich breaching the standard of care and how it damaged you?
A. Say that again.
Q. What, if anything, else do you recall about your discussions with Gooch on December 16 regarding the breach of the standard of care by Popovich and Mast and how it injured you?
A. We discussed the whole scenario between October and January and what happened. It was

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pretty detailed. We discussed everything that you see that's been communicated in the e-mails. He didn't have much else to go on other than the documents and the e-mails.
Q. You're talking about the e-mails between you and Hans from the fall of 2013?
A. Yes.
Q. Ultimately leading to the $5,000 settlement?
A. Yes.
Q. Other than you have a case, what did Gooch say to you?
A. He said that they definitely committed malpractice.
Q. Did he ever put this in writing?
A. Did he ever put it in writing? I think he backed it up by filing a suit. That's documented.
Q. Again, the suit wasn't filed until November of 2017.
A. Yes, he had some health problems and then his wife had some health problems. Believe me, I was pushing for him to get that done.
Q. From December of 2016 until the complaint

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was filed, you exchanged some drafts of complaints with him?
A. I believe he let me see what he wanted to put in the complaint. I got to review some things. Of course I had, do this or that's not right. In fact, a couple of these things in here we had to definitely – you caught one. He totally worded it wrong. It was wrong. We had to amend.
MS. WILLIAMS: His question was, did he give you drafts for you to review?
THE WITNESS: Yes.
BY MR. FLYNN:
Q. These were exchanged by e-mail?
A. I believe so, yes.
Q. So you would have records of them?
A. Yes.
Q. Any comments with respect to the pleadings, as well, did you ever ask him questions? Did he explain to you the basis for the allegations in the draft complaints, similar to what you did with Hans?
A. Over many times, yes.
Q. This is all reflected in e-mails?
A. Yes.

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Q. Ultimately, you didn't file until November of 2017?
A. Correct.
Q. Popovich ceased being your lawyer March 19 of 2015, correct?
A. That sounds about right.
Q. Until December 16, 2016, you didn't have any reason to believe there was a malpractice case against –
A. Say the date again.
Q. Until December 16, 2016, you didn't have any other reason to believe there was a malpractice case against Popovich and Mast?
A. I did not know that I had a case, no.
Q. You threatened one with respect to the Gagnon case –
A. Yes.
Q. – at another point in time, correct?
A. I think I threatened him a few times in there. Yeah. I was actually nice to what I really wanted to say.
Q. Subject to the ruling on these objections, you don't recall any other specific details that you discussed with Popovich – I'm

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sorry – Gooch on December 16, other than what we already talked about?
A. I discussed the exact same things that you – the same documents that you already have. We went over the case that Mast and Popovich had against the McGuires. He followed through all the way to the end. We went over the whole case. You see as much as he did.
Q. Did Gooch ever explain to you why the McGuires would have been liable any more than Mast explained to you that they wouldn't be liable?
A. He said he agreed right away. He said that's obvious.
Q. Did Gooch ever provide you with any cases or statutes?
A. Provide to me, maybe. Maybe. I don't know.
Q. Would that be by e-mail?
A. It could be. I was in his office quite a few times. He may have.
Q. As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to

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the McGuires' liability?
A. That they were definitely liable. He tried to say that – like Popovich and Mast were first- or second-year lawyers and that they may have made a mistake here.
I said they've got 20 years in this. You think they'd know the difference. That's the kind of thing. He agreed with me. Twenty years, yeah, they should have known better.
Q. Did you ever discuss the specifics of the McGuires' potential liability with Gooch?
A. Liability with Gooch?
Q. With Gooch, did you ever discuss the specifics of the McGuires' liability other than he thinks you have a case?
A. Yes.
Q. Did he ever tell you why? What was it?
A. Because he agreed with the expert's opinion.
Q. The expert on the chainsaw?
A. Yes. The liability expert.
Q. The expert said you should use safety goggles and gloves and things like that?
A. He said more than that, but yes.

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Q. Do you know who commissioned that expert report?
A. Boudins.
Q. Do you know when the first draft of that doctor's expert report was circulated?
A. I heard that Boudin got it in February, maybe. I don't think I got it until July, but I'm not sure about that.
Q. July of what year?
A. The same year as the mediation.
Q. Of 2016?
A. Yeah.
Q. So you actually read it in advance of the mediation?
A. I talked about this earlier. I said yes. You don't catch everything the first time you read it. I was sitting there at the mediating table and I was reading it and I caught it and I turned to Randy and I said, after it was over, does this mean – that means.
Q. Means what?
A. Does this mean the McGuires are liable? Yeah, that means they are liable. He said, call my office after everything and I'll give you a name for an attorney you should go see.

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MR. FLYNN: Any follow-up, Julia?
MS. WILLIAMS: I have two follow-up questions.

EXAMINATION

BY MS. WILLIAMS:

Q. Did you ever give Hans authority to make a settlement demand regarding Mr. Gagnon?
A. I think at one time in one of my meltdown letters I said get whatever you can, but no, I never actually signed anything saying you have the right to offer a settlement.
Q. Did you ever give Hans authority to make a settlement demand with regard to the McGuires?
A. A demand, no. He said he was going to probe and see what was out there, and I said, if you want to do that, that's fine.
MS. WILLIAMS: I have no further questions.
MR. FLYNN: Signature?
MS. WILLIAMS: We can waive signature.
THE REPORTER: Are you ordering this?
MR. FLYNN: Yes.
THE REPORTER: Regular delivery, e-tran?
MR. FLYNN: Yes.
THE REPORTER: Copy?

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MS. WILLIAMS: Yeah.
THE REPORTER: Regular delivery, e-tran?
MS. WILLIAMS: PDF.

(WHEREUPON, at 4:00 p.m., the deposition of PAUL DULBERG was concluded.)

* * * * *

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STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)

I, KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify:

That previous to the commencement of the examination of the witness, the witness was duly sworn to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction, and constitutes a true record of the testimony given and the proceedings had;

That the said deposition was taken before me at the time and place specified;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto

set my hand and affix my seal of office at Chicago, Illinois this 3rd day of March, 2020.

Karen Pileggi

Notary Public, DuPage County, Illinois.
My commission expires 1/2/24.

CSR Certificate No. 84-3404

EXAMINATION

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

DULBERG'S ANSWERS TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S INTERROGATORIES TO PLAINTIFF PAUL DULBERG

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds to Defendant, The Law Offices of Thomas J. Popovich, P.C.'s Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

1. Identify the person(s) answering and/or providing assistance in the answering of these interrogatories.

ANSWER: Paul Dulberg, available through counsel. The Clinton Law Firm, as counsel for Paul Dulberg.

2. Identify all persons who have knowledge of any matters relating to any of the facts, claims, damages, or defenses at issue in this case.

ANSWER: Paul Dulberg is the Plaintiff in this matter and is expected to testify in accordance with any deposition testimony he provided or provides. He has knowledge regarding the circumstances leading to the injury he sustained, the actual injury, the harm he suffered, including financial injury.

William McGuire ("William") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

EXHIBIT # 1

Caroline McGuire ("Caroline") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

David Gagnon ("Gagnon") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

Barbara Dulberg. 4606 Hayden Ct., McHenry, IL 60051. Retired. Barbara is expected to testify to the facts and circumstances of the November 4, 2013 meeting with Hans Mast. Barbara is also expected to testify as to the facts and circumstances of Paul Dulberg's pain and suffering, and Dulberg's loss of use of his arm.

Thomas Kost. 423 Dempster Ave., Mt Prospect, IL 60056. Electrician. Thomas Kost is expected to testify as to the legal advice given to Dulberg from Mast and The Popovich Firm on the McGuires' liability, or lack of it, and how the judge would rule in the December 2013 meeting, as well as Dulberg's pain and suffering and loss of use of arm.

Mike McArtor, 4606 Hayden Ct., McHenry, IL 60051. McArtor was Dulberg's business partner at Sharp Printing, Inc. He is expected to testify regarding the facts and circumstances as to Dulberg's ability to work, loss of use of arm, and the facts and circumstances of the pain and suffering after the accident.

Scott Dulberg, 8245 Cunat Blvd, Apt. 2B, Richmond, IL 60071. Scott Dulberg is Paul Dulberg's family member and was Paul Dulberg's business partner at Sharp Printing, Inc. He is expected to testify regarding the facts and circumstances as to Dulberg's ability to work, loss of use of arm, and the facts and circumstances of the pain and suffering after the accident.

Investigation continues.

3. Identify the address of the McGuire's property described in paragraph 6 of your second amended complaint, and your address identified in paragraph 7 of the second amended complaint.

ANSWER: McGuires' real property is located at 1016 W. Elder Ave., McHenry, IL 60051.

Dulberg's home is located at 4606 Hayden Ct., McHenry IL 60051

4. Identify and describe how you were invited to the McGuires' property to see if you wanted any of the wood from the tree, as alleged in paragraph 12 of your second amended complaint.

ANSWER: Dulberg received a call from Gagnon on June 27, 2011. Over the phone, Gagnon asked Dulberg if he wanted wood from the tree that the McGuires were removing and invited Dulberg to come see the wood.

5. Identify how William McGuire physically assisted in cutting down the tree, including the date, time, and location of his assistance, and describe how and when he supervised David Gagnon's actions in cutting down the tree, as alleged in paragraph 13 of your second amended complaint.

ANSWER: On June 28, 2011, Dulberg went to the McGuires' home and arrived between 8:30-9:00 am. He observed William McGuire working with Gagnon between that time and approximately noon that same day to remove tree branches from the tree. Gagnon continued to work throughout the day, after William stopped working. Caroline was present observing the work and supervising the work.

William and Caroline McGuire purchased and provided the chainsaw that was used to cut the branches. William and Caroline McGuire provided the ropes and straps that Gagnon used to climb the tree. Caroline had the chain saw owner's manual in her possession and instructed Gagnon what fuel/oil ratio to use for the chain saw.

William and Caroline McGuire instructed Gagnon as to which trees and branches that they wanted removed and where they wanted the trees and branches to fall during the removal process. Gagnon climbed into the tree and cut the branches utilizing the chain saw that the McGuire's provided. The branches would fall to the ground and William would pile the branches in the yard. He also started a fire and burnt some of the branches. At times, William started the chainsaw for Gagnon.

Throughout the entire day, Caroline observed the work and instructed Gagnon to "be careful"

on several occasions. She also provided water to both William and Gagnon.

William, Caroline, and Gagnon had several conversations throughout the morning as to which trees and branches to cut, how to best remove the trees and branches, where the trees and branches would fall, and how to clean them up. William and Caroline instructed Gagnon regarding those matters.

At approximately noon on that same date, William stopped working on cutting down the tree and went into the house. He then came out of the house and entered the McGuires' pool that is located on the same property.

Gagnon continued to work through the afternoon and early in the afternoon complained to Caroline that he was "working alone" and couldn't complete the work that day without help. Caroline and Gagnon then asked Dulberg to assist. Dulberg agreed to assist.

Dulberg assisted William McGuire by moving branches to the garden and started the chainsaw for Gagnon once while Gagnon was in the tree.

Dulberg then assisted Gagnon by moving the large branches that had already been cut and holding the large limbs steady so that Gagnon could cut them. Dulberg would hold the large branch while Gagnon would cut the smaller branches off the larger branch with the chain saw.

Gagnon would tell Dulberg which branches to pick up and move to the location where Gagnon was cutting them into smaller pieces by cutting off smaller limbs with the chain saw. Gagnon would also instruct Dulberg as to how and where to hold the limbs so that he could cut the branch with the chain saw. Gagnon placed the larger limb, which was now stripped of the smaller branches in a pile and instructed Dulberg to grab the next limb, which still had the smaller branches, to start the process again.

The chain saw was very loud and little conversation occurred during the time the chain saw was on. Instead, Gagnon would gesture to communicate with Dulberg as to how he wanted the branch

held or moved.

No one cut down the entire tree that day, instead branches were removed from the tree and cut down into smaller pieces.

6. Identify and describe how Caroline McGuire supervised David Gagnon and William McGuire's actions, as alleged in paragraph 14 of the second amended complaint.

ANSWER: See answer to 5.

7. Identify the date, time, the location, and the exact words exchanged between Gagnon and the McGuires on the one hand and you on the other as alleged in paragraph 15 of your second amended complaint, in which it is alleged that were asked to assist the trimming and removal of the tree.

ANSWER: See answer to 5. Dulberg does not recall the "exact words exchanged" but does recall the incident as outlined in his answer to 5.

8. Identify what safety information was readily available to Caroline and William McGuire as alleged in paragraph 18 of your second amended complaint, and how you know this information.

ANSWER: Caroline and William McGuire had the owner's manual to the chain saw. Caroline was reading parts of it aloud to Gagnon in the morning of June 28, 2011. Dulberg observed Caroline in possession of the owner's manual and saw her reading it in the morning of June 28, 2011.

The owner's manual had safety instructions and warnings that would have prevented the accident.

9. Did you request any protective equipment or other safety devices from the McGuires or Gagnon while you provided assistance to Gagnon in operating the chainsaw?

ANSWER: No, Gagnon instructed Dulberg as to what to do and Dulberg never operated the chain saw or read the owner's manual.

10. Did you assist Gagnon with trimming and removal of the tree? If so, describe

each and every action you took in assisting Gagnon with the cutting down or removal of the tree.

ANSWER: See answer to 5.

11. Identify and describe each and every conversation between and David Gagnon while you were assisting him with trimming or cutting down the tree.

ANSWER: See answer to 5.

12. Identify and describe each of your employers in the ten year period prior to the accident of June 28, 2011, including any self-employment. For each employer, identify your wage rate or salary, your title, your job description, your required duties, and your income for the ten year period prior to the accident in question.

ANSWER:

1. 1999-2011 Sharp Printing, Inc., 4606 Hayden Ct., McHenry, IL 60051

Paul Dulberg was an owner and operator of Sharp Printing, Inc. along with his two partners Scott Dulberg and Michael McArtor.

Paul Dulberg was the President, salesperson, graphic designer, 8 color screen print pressman, handled fulfillment, shipping & receiving, as well as other day to day operations of the company.

For income, see tax returns.

Sharp Printing, Inc. operated out of the lower floor of Paul Dulberg's personal residence and paid all utilities bills, including garbage, water, natural gas, electric, internet, phone, and cable. The approximate value is $650 per month.

2. 1999-2011 Juskie Printing

Paul Dulberg served as an independent contractor for Juskie Printing performing graphic design and prepress functions.

From 1999-2006, this was a barter arrangement.

From 2007-2011, Paul Dulberg earned approximately $18,000 per year.

See tax documents.

3. Intermatic Incorporated

1998-2002 Intermatic Incorporated, Offset Press Operator I

2002-2007 Intermatic Incorporated, Graphic Designer

2010 Intermatic Incorporated, Independent Contractor for Graphic Design

See tax documents for income information.

See job description provided with documents.

4. 2011 Art Material Services. Material Handler

Operated and maintain thread roller.

See tax documents for income information.

13. Did you suffer any serious personal injury and/or illness within ten years prior to the date of the occurrence? If so, describe where and how you were injured and/or became ill and describe the injuries and/or illness suffered.

ANSWER:

1. Migraine Headaches, treated at home.

2. 2002. Rear end collision at Hayden Dr and Johnsburg/Wilmot Rd., in McHenry, IL.

See medical records produced.

3. Approx. 2004, Chest Infection. Treater: Dr. Sek. Treated with inhaler and antibiotics

4. 2005. Broken Foot. Treated at Centegra Hospital in McHenry. Scott Dulberg stepped on Paul Dulberg's bare right foot.

14. Have you suffered any serious injury and/or illness since the date of the occurrence? If so, state when, where, and how you were injured and/or became ill and describe the injury and/or illness suffered.

ANSWER:

1. 2011 to present. Migraines.
   Treaters: Dr. Levin
   Dr. Terrance Lee
   Investigation Continues.
2. 2013 Hemorrhoid related to stress. Treater: Dr. Conway

3. 2016 Dog Bite to Left Leg. Treater: Centegra, McHenry.

a. Dulberg broke up a fight between his dog and the neighbors' dog when he was bitten by a neighbor's dog.

4. Enlarged Prostate Treaters: Dr. Berger, The Uro Center, Lake Zurich, Illinois.

Dr. Elterman and Dr. Tarnauskas, Elterman Center, Skokie, Illinois.

Investigation continues. No other major illness or injuries relevant to this case.

15. Have you filed any claim for workers compensation benefits in the ten years prior to the underlying accident of June 28, 2011? If so, state the name and address of your employer, the date(s) of the accidents, the identity of the insurance company that paid you such benefits and the case nos. and jurisdictions where filed.

ANSWER: No.

16. State the personal injuries sustained by you as the result of the underlying occurrence.

ANSWER: Chainsaw injury to the right arm. See medical records.

17. With regard to your injuries, state:

(a) The name and address of each attending physician and/or health care professional;
(b) The name and address of each consulting physician and/or health care professional;
(c) The name and address of each person and/or laboratory taking an x-ray, MRI and/or other radiological tests of you;
(d) The date or inclusive dates on which each of them rendered you service;
(e) The amounts to date of respective bills for services; and
(f) From which of them you have written reports

ANSWER: See medical records provided.

18. As a result of your personal injuries from the underlying case, were you a patient or outpatient at any hospital and/or clinic? If so, state the names and addresses of all hospitals and/or clinics, the amounts of their respective bills and the date or inclusive dates of their services.

ANSWER: See medical records provided.

19. As a result of your personal injuries from the underlying case, were you unable to work? If so, state:

(a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;
(b) The date or inclusive dates on which you were unable to work;
(c) The amount of wage and/or income lost by you; and
(d) The name and address of your present employer and/or wage and/or salary.

ANSWER: Paul Dulberg was self-employed and unable to work after the accident. He has not been employed since the date of the accident. See tax returns for lost wages. See SSDI documents for current income.

20. State any and all other expenses and/or losses you claim as a result of the occurrence in the underlying case or resulting from any alleged legal malpractice committed by Popovich or Mast. As to each expense and/or loss, state the date or dates it was incurred, the name of the person, firm, and/or company to whom such amounts are owed, whether the expense and/or loss in question has been paid, and if so, by whom it was so paid and describe the reason and/or purpose for each expense and/or loss.

ANSWER: Investigation continues. Medical costs, lost wages, loss of use, permanent disability resulting from injury, and pain and suffering.

21. Were any photographs, movies, and/or videotapes taken of the scene of the occurrence or the persons and/or equipment involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, and the name, address, occupation and employer of the person taking them.

ANSWER: Photograph of Mr. Gagnon. See all photographs produced with request to produce.

22. Had you consumed any alcoholic beverage within the 12 hours immediately prior to the occurrence or had you used any drugs or medications within 24 hours immediately prior to the occurrence. If so, state the name(s) and address(es) of those from whom it was obtained, where it was used, the particular kind and amount of drug, medication, or alcohol so used by you, and the names and current residence addresses of all persons known by you to have knowledge concerning the use of said drug or medication or alcohol.

ANSWER: Dulberg may have taken Naproxen sodium prior to the accident. Naproxen

sodium is a pain reliever available over the counter. Dulberg does not recall whether he took the drug the night before or the day of the accident, but he did take it on a regular basis at that time. He did not consumer any other drugs or alcohol during that time.

23. Describe why you agreed to a binding mediation in the summer of 2016 as alleged in paragraph 52 of your second amended complaint.

ANSWER: At that time, a bankruptcy trustee was appointed by the bankruptcy court and the bankruptcy trustee filed a motion for binding mediation that was granted.

24. Identify the date on which you provided any settlement authority to Hans Mast or the Popovich firm, and the amount of any specific settlement authority to make any settlement demand upon the defendants in the underlying case.

ANSWER: Specific settlement authority was never given. On November 4, 2013, Mast was granted authority to investigate a settlement, but a specific dollar amount was never provided. On or around January 29, 2014, Dulberg signed the settlement agreement.

25. Identify and describe the date on which you received a copy of the settlement agreement from Mast in the underlying case, the date on which you executed the settlement agreement and the date on which you mailed the executed settlement agreement to Mast.

ANSWER: January 29, 2014, received, signed and mailed back to Mast.

26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.

ANSWER: Mast told Dulberg that Illinois law does not permit a recovery against the McGuires in the circumstances of Dulberg's case and that Dulberg would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to

seek and receive a full recovery from Gagnon.

27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.

ANSWER:

Dr. Landford is a chain saw expert who was retained by Dulberg. See documents produced.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

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Julia C. Williams
The Clinton Law Firm, LLC
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juliawilliams@clintonlaw.net

MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the $5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans

EXHIBIT # 3

2-19-20

VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true, correct, and complete, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Paul Dalberg

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM.
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT # 4
2-19-20

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as Exhibit B reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as Exhibit C.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. *MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by* violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT

A

COPY
FILED
MAY 15 2012
KATHERINE M. KEEPE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
vs.) No.: 12LA178
)
DAVID GAGNON, Individually, and as)
Agent of CAROLINE MCGUIRE and BILL)
MCGUIRE, and CAROLINE MCGUIRE)
and BILL MCGUIRE, Individually,)
)
Defendants.)

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT
B
ALL-STATE LEGAL®

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 11-28 20 22, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON 20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06209784

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Rohrak

Mark J. Vogo
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

Copy
HANS A. MAST

smq
Enclosure

ALLSTATE LEGAL
PLAINTIFF'S EXHIBIT
C

Waukegan Office
210 North Martin Luther King Jr. Avenue
Waukegan, IL 60085

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 08:53 AM / Transaction #17111117457? Case #17LA000377

GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No: 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____ _____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation	
medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P.S	75,000.
L N L	75,000.

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 08:53 AM / Transaction #17111117451 / Case #17LA000

** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF, v. THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	)	Case No. 17 LA 377

NOTICE OF FILING

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on December 6, 2018, the undersigned caused the enclosed Second Amended Complaint to be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, a non-attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Mary Winch
Mary Winch

EXHIBIT # 5
2-19-20

** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendant.	)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

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15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

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27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A.**

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

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44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

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53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing

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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

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Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3 %) of my recovery from my claim by suit or settlement; this will increase to _____ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Client

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
A

COPY
FILED
MAY 15 2012
KATHERINE M. KEEPS
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
vs.) No.: 12LA178
)
DAVID GAGNON, Individually, and as)
Agent of CAROLINE MCGUIRE and BILL)
MCGUIRE, and CAROLINE MCGUIRE)
and BILL MCGUIRE, Individually,)
)
Defendants.)

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count 1

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 11-28 2012 AT 2 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____ 20__ AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
B

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06209684

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>>
>> Sent from my iPhone
>>
>>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>>
>>> Only 5. That's not much at all.
>>> Is this a take it or leave it or do we have any other options?
>>>
>>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>>
>>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

EXHIBIT GROUP C

They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ---- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kowiak

Mark J. Vogo
James P. Tutin
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #1711111174017 Case #17LA000377
Page 16 of 19
Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377

GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____ _____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2018 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: **Re: McGuire settlement**

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
> > ---- Original Message ----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
> > Subject: McGuire settlement
> > Here is a copy of the first page.
> > It has check boxes and one of the check boxes says;
> > I am not eligible to receive SSI or SSDI.
> > Another says;
> > I am not receiving SSI or SSDI.
> > As you know, I have applied for SSDI and SSI

EXHIBIT
F

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: **Re: Memo**

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.

EXHIBIT
tabbies
F

ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation	
Medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

EXHIBIT G

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000
Page 18 of 18
Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377
Page 25 of 25

Pamela Walker

From: McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
Sent: Monday, December 10, 2018 1:37 PM
To: George K. Flynn; Pamela Walker
Subject: 17LA000377 - 2 Documents Filed

17LA000377

DULBERG, PAUL VS MAST, HANS, ET AL

Doc Type	COAA
Description	COMPLAINT - AMENDED
Date Filed	12/6/2018
Image Link	View Document Image

Doc Type	NOTF
Description	NOTICE - FILING
Date Filed	12/6/2018
Image Link	View Document Image

NOTE: E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Just received your mailed letter**
Date: December 27, 2016 7:10:43 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: September 23, 2014 at 9:06:46 PM CDT
To: Hans Mast <hansmast@comcast.net>
Subject: **Fwd: Just received your mailed letter**

Hans,
if I use a chainsaw and cut you badly who is going to believe me when I say it's not my fault, Hans just fell into it?

Who in their right mind is going to believe me when your pointing your finger at me saying I did it?

Who?

Begin forwarded message:

From: Paul Dulberg <pdulberg@comcast.net>
Date: September 23, 2014 at 8:25:03 PM CDT
To: Hans Mast <hansmast@comcast.net>
Subject: **Re: Just received your mailed letter**

First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw. I was but a lowly printer/graphic designer my whole life and never asked for anyone's sympathy till now.

Secondly, I'm sorry I must live among a bunch of potential jurors that you don't trust to just do the right thing.

Thirdly, I'm most sorry for agreeing to lend David Gagnon a hand when he needed some help, I had no idea he was going to try and lop it off.

Fourth, I'm sorry you don't feel good about pushing for a trial. I wish whatever mysterious evidence you seek would be shared with me because without a video camera I can only say what I've seen from direct experience. And I guess in this case "me" the victim isn't credible enough but the one wielding a chainsaw that hurt me is.

A few questions from a layman,

How much could a trial actually cost?
What,
$50,000
$150,000
Does it even cost as much as a car?
What number?

How much would you hope to get for us in a settlement?

How much could be expected if the trial does proceed and we have a favorable outcome?

Hans, if your heart is not in this I'm sorry

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

EXHIBIT # 6
2-19-20

On Sep 23, 2014, at 7:39 PM, Hans Mast <hansmast@comcast.net> wrote:

Hi Paul. My view hasn't changed. I think each time we've talked I've always tried to be open about my reservation to take this

case to trial. I just don't think we have enough evidence to prove our case and to invest the time and cost and preparing for trial and moving to trial just in my mind does not make sense to me. I have to be very realistic about things and honest with my opinion. It doesn't do you any good if I do not feel strongly about the case.

That's the very reason why I wanted to have this discussion. I want to give you the option of finding other counsel at this point if you really want to take the case to trial which I think ultimately will be necessary. I just do not believe strongly that defense counsel will offer much in the way of a settlement. Although I will ask him if he is going to make an offer and maybe that will allow you to make a better judgment on this.

Sent from my iPhone

> On Sep 23, 2014, at 7:17 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>
> Before I proceed,
> Why the change of heart?
> I mean, last month your response was we are setting a date for trial or something like that but Now it's settle or find new council again.
> Paul
>
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Bad night**
Date: December 27, 2016 7:07:16 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: September 26, 2014 at 6:32:40 PM CDT
To: Hans Mast <hansmast@comcast.net>
Subject: Bad night

Hans,

Last evening I was in the hospital with the most severe migraine I've ever had.

This morning I filed for bankruptcy with David Stretch.

This afternoon I spent with my regular physician Dr Zaide doing a follow up from yesterday.

And right now, I have to email you. All when I still have a slight residual headache and should be in bed.

At first I thought the migraine was brought on by the medications I'm taking but it wasn't, it was brought on after our discussions. Now I can't prove that but it seems pretty obvious to me. Joke no pun intended there!

That migraine made me realize I need the stress of this situation over with. All the stress on top of losing everything is too much and I'd rather live than die from it all before my body does something worse.

My body is not reacting well and the migraines are getting more frequent and worse. Have you ever vomited at the same time as deficating while being in some of the most excruciating pain in your life?

If not, neither did I till the chainsaw went through my arm. That's when the migraines became more frequent, stronger and faster coming on. And now for the first time during the day.

Ever since I awoke this morning, all I can I think is the stress of it all is killing me more and more as the reality sets in and I just can't afford to care about it anymore.

My health means more than some lawsuits and the lure of money.

All because some idiot named David Gagnon forgot to tell me to move out of the way and he can't seem to admit it.

Yes, after reading his deposition and hearing it was my fault I was pissed.

In my anger I suspected all sorts of things. Including it being intentional especially after my discussions at his home only trying to get his homeowners policy number and him wanting money and threatening me for it.

Yes, my arm and elbow were hurt from his stupidity irregardless if some dr can link the two together or not.

Yes, there will be ongoing medical as a result of all this because it still hurts and doesn't work right.

Yes, I am now disabled irregardless of what SSDI appeal goes because of this.

Yes, I understand I'm screwed because of a system that allows one person to hurt another and even after a trial and judgement entered all they have to do is go file for bankruptcy in the same courthouse on the same day.

Yes, it just took me almost an hour just to type this.

Yes, yes, yes...

but none of it matters anymore!

Bottom line Hans... Do the best you can with what you got, I've got nothing more to lose or give. I need it all to just go away.

EXHIBIT # 7
2-19-20

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:01:21 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 9:38:57 PM CST
To: Hans Mast <hansmast@att.net>
Subject: **Re: Memo**

No answer, that's what I thought...
Your not very quick when cornered and your not excused from this case until I say you are whether or not your firm agrees.
Got it?

> On Feb 22, 2015, at 9:05 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>
> Is your wanting out a personal issue with me or is it strictly financial?
>
> > On Feb 22, 2015, at 9:01 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Oh, and unless I'm wrong, David did admit to having control over the chainsaw. David, in his lie, admitted to seeing me move my arm and continued along his path with the chainsaw at cutting rpm's.
> > In effect he did admit it was his fault.
> >
> > > On Feb 22, 2015, at 8:52 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > You do not have my consent to quit.
> > >
> > > > On Feb 22, 2015, at 8:23 PM, Hans Mast <hansmast@att.net> wrote:
> > > >
> > > > Paul, honesty hurts. I am honest to a fault sometimes. You told me at the start that David would admit his fault. That proved not to be true. Still your threats and putdowns don't change anything. Just find another attorney and we can part ways.
> > > >
> > > > Sent from my iPhone
> > > >
> > > > > On Feb 22, 2015, at 8:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > >
> > > > > To be honest, you took this case knowing it was my word vs. his.
> > > > > Now you back out because the value of the case isn't worth your time?
> > > > > You got some nerve and your earning the reputation of a shady lawyer
> > > > >
> > > > > > On Feb 22, 2015, at 7:42 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > > >
> > > > > > To believe David's version of events you must believe I was committing suicide.
> > > > > > Who in their right mind puts his arm into a chainsaw?
> > > > > >
> > > > > > I figured you would cop out again...
> > > > > >
> > > > > > Now I'm left wondering...
> > > > > > How hard is it to sue an atty?
> > > > > >
> > > > > > And yes I am and have been looking for someone who will take this case...
> > > > > >
> > > > > > The issue of my word vs David Gagnons... Did he cut me or did I cut myself?
> > > > > >
> > > > > > Of coarse he cut me.
> > > > > >
> > > > > > Next issue please?

EXHIBIT # 8
2-19-20

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY

FILED APE
MAR 19 2015
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

PAUL DULBERG

vs. Case Number 12 LA 178

DAVID GAGNON, ET AL.

APPEARANCE

I HEREBY ENTER THE APPEARANCE OF

PAUL DULBERG
(Insert the name of the party for whom you are entering your appearance)

AND MY OWN AS

☐	REGULAR COUNSEL	☐	TRIAL COUNSEL
☐	SPECIAL & LIMITED APPEARANCE	☒	SUBSTITUTE COUNSEL
☐	PRO-SE	☐	COUNSEL IN FORCIBLE ENTRY
☐	ADDITIONAL COUNSEL	☐	APPELLATE COUNSEL
☐	GUARDIAN AD LITEM	☐	COURT APPOINTED COUNSEL

AND AS (HIS) (HER) (THEIR) COUNSEL IN THE ABOVE ENTITLED CASE.

SIGNED BB
(Signature of Attorney filing appearance)

Name BRAD J. BALKE, P.C. BRAD J. BALKE
Printed Name

ARDC Number 6273304

Attorney for PLAINTIFF

Address 542 S. DEARBORN ST., STE. 310

City, State Zip CHICAGO, IL 60605

Phone 312-986-8063

GE-APPI (Revised 12/01/08)

EXHIBIT # 9
2-19-20

Binding Mediation Agreement
ADR Systems File # 33391BMAG

Revised for Special Billing

I. Parties

A. Paul Dulberg, by attorneys, Kelly N. Baudin and Randall Baudin, II

B. David Gagnon, by attorney, Shoshan Reddington

SPECIAL BILLING – Section V.B.5 – Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.

II. Date, Time and Location of the Binding Mediation

Date: Thursday, December 8, 2016
Time: 1:30 P.M.
Location: ADR Systems of America, LLC
20 North Clark Street
Floor 29
Chicago, IL 60602
Contact: Alex Goodrich
312-960-2267

III. Rules Governing the Mediation

Each party ("Party") to this agreement ("Agreement") hereby agrees to submit the above dispute for binding mediation ("Mediation") to ADR Systems of America, L.L.C., ("ADR Systems") in accordance with the following terms:

A. **Powers of the Mediator**

1. The Parties agree that The Honorable James P. Etchingham (Ret.) shall serve as the sole Mediator in this matter (the "Mediator").
2. The Mediator shall have the power to determine the admissibility of evidence and to rule upon the law and the facts of the dispute pursuant to Section III(D)(1). The Mediator shall also have the power to rule on objections to evidence which arise during the hearing.
3. The Mediator is authorized to hold joint and separate caucuses with the Parties and to make oral and written recommendations for settlement purposes.
4. **The Parties agree that the Mediator shall decide all issues concerning liability and damages arising from the dispute if this matter cannot be settled, unless any of the above is waived. Any other issues to be decided must be agreed upon by the Parties, and included in this contract.**
5. Any failure to object to compliance with these Rules shall be deemed a waiver of such objection.

EXHIBIT # 10
2-19-20

B. **Amendments to the Agreement**

1. No Party shall amend the Agreement at any time without the consent and approval of such changes by the opposing Party, and ADR Systems of America.
2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR Systems case manager by telephone. The agreed proposal must also be submitted to the ADR Systems case manager in writing, by fax or email, if necessary, and the contract changes MUST be made by ADR Systems. No changes made outside these guidelines will be accepted. Furthermore, if the amended contract made by ADR Systems is not signed by both Parties, the Agreement shall be enforced in its original form, without changes.

C. **Pre-Hearing Submission**

1. Mediation statements are permitted provided that the statement is shared among the other parties. The Mediation Statement may include: statement of facts, including a description of the injury and a list of special damages and expenses incurred and expected to be incurred; and a theory of liability and damages and authorities in support thereof.

D. **Evidentiary Rules**

1. The Parties agree that the following documents are allowed into evidence, without foundation or other proof, provided that said items are served upon the Mediator and the opposing Party at least **17 (seventeen)** days prior to the hearing date:
   a. Medical records and medical bills for medical services;
   b. Bills for drugs and medical appliances (for example, prostheses);
   c. Property repair bills or estimates;
   d. Reports of lost time from employment, and / or lost compensation or wages;
   e. The written statement of any expert witness, the deposition of a witness, the statement of a witness, to which the witness would be allowed to express if testifying in person, if the statement is made by affidavit sworn to under oath or by certification as provided in section 1-109 of the Illinois Code of Civil Procedure;
   f. Photographs;
   g. Police reports;
   h. Any other document not specifically covered by any of the foregoing provisions that a Party believes in good faith should be considered by the Mediator; and
   i. Each Party may introduce any other evidence, including but not limited to documents or exhibits, in accordance with the rules of evidence of the State of Illinois.
2. The Parties agree that they will not disclose any and all dollar figures relating to the high/low agreement; last offer and last demand; policy limits; and /or set-offs orally or in written form, to the Mediator at any time before or during the conference, or while under advisement, prior to the Mediator's final decision.

a. Violation of this rule set forth in (D)(2) shall constitute a material breach of this Agreement. The non-disclosing Party must formally object to the Mediator upon learning of the breach, or the breach will be considered waived. The non-disclosing Party shall then have the option to continue the Mediation from the point of objection to its completion; or to terminate the Mediation at the point of objection as null and void. The ADR Systems case manager must be made aware of this breach at the time of the objection, so the objection is addressed in accordance with the Agreement; and

b. If the Mediation is terminated as null and void, all costs of the Mediation will be charged entirely to the disclosing Party. A new Mediation shall then take place with a new Mediator on a new date. If the Mediation is not terminated, the costs of the Mediation shall remain the responsibility of each Party or in accordance with the Agreement.

3. The Parties agree if a Party has an objection to the evidence or material submitted by any other Party pursuant to Paragraph (D)(1), notice of the objection shall be given to the ADR Systems case manager and opposing counsel by telephone and in writing at least seven days prior to the Mediation. If resolution cannot be obtained, the case manager will forward the objection to the Mediator to be ruled upon before or at the Mediation. The case manager will notify each of the Parties of the objection. The objection may result in a postponement of the proceedings. **If the objection is because of new material being disclosed with the submission for the first time (for example, new or additional reports, additional medical/wage loss claims, etc.) then the disclosing party shall be charged for the total cost associated with the continuance.**

4. The Parties agree that any Party desiring to introduce any of the items described in Paragraph (D)(1) without foundation or other proof, must deliver said items to the Mediator and to the other Parties no later than **Monday, November 21, 2016.**

5. The items are considered delivered as of the date that one of the following events occur:

   a. If mailed, by the date of the postmark;

   b. If delivered by a courier or a messenger, the date the item is received by the courier or messenger; and

   c. The date transmitted by facsimile or email.

6. The Parties agree to deliver any of the items described in Paragraph (C)(1) and (D)(1) to the following addresses:

   If emailing Submissions, please send to submissions@adrsystems.com, however, please do not send anything over 50 pages, including exhibits.

   The Honorable James P. Etchingham, (Ret.) (Mediator)
   C/O ADR SYSTEMS
   20 North Clark Street
   Floor 29
   Chicago, IL 60602

   Kelly N. Baudin, Esq. / Randall Baudin, II, Esq. (Plaintiff Attorneys)
   BAUDIN LAW GROUP
   304 McHenry Avenue
   Crystal Lake, IL 60039

Shoshan Reddington, Esq. (Defense Attorney)
LAW OFFICES OF STEVEN LIHOSIT
200 N. La Salle Street
Suite 2550
Chicago, IL 60601

E. **Conference Procedure**

1. The Parties may present opening statements but there will be no live testimony.
2. The Parties will attempt to reach a voluntary settlement through negotiation with the assistance of the Mediator.
3. If the Parties cannot voluntarily reach a settlement, the Mediator will advise the Parties that settlement cannot be reached. The Mediator will then take the matter under advisement and render an award that will be binding to all Parties, (the "Award"), subject to the terms of any high/low agreement that the Parties may have as described below in Paragraph (F)(1).

F. **Award Limits**

1. The Parties may agree prior to the Mediation that a minimum and maximum amount will serve as parameters for the Award (sometimes referred to as a "high/low agreement"), such that the actual amount that must be paid to the plaintiff or claimant shall not exceed a certain amount (the "high" or "maximum award") and shall not be less than a certain amount (the "low" or "minimum award").

   a. If liability is disputed and comparative fault or negligence is asserted as an affirmative defense, the Mediator shall make a finding regarding comparative fault or negligence, if any. In the event that there is a finding of comparative fault or negligence of the plaintiff that is greater than 50% (fifty percent), the plaintiff shall receive the negotiated minimum award. In the event that there is a finding of comparative fault or negligence of 50% (fifty percent) or less against the plaintiff, then any damages awarded in favor of the plaintiff shall be reduced by the amount of the plaintiff's comparative fault or negligence, but shall be no less than the minimum parameter or more than the maximum parameter.

   b. All award minimum and maximum parameters are subject to applicable set-offs if any, as governed by policy provisions if not specified in the Agreement.

      The Parties agree that for this Mediation the minimum award to Paul Dulberg will be **$50,000.00**. Also, the maximum award to Paul Dulberg will be **$300,000.00**. These amounts reflect the minimum and maximum amounts of money that David Gagnon shall be liable to pay to Paul Dulberg.

IV. Effect of this Agreement

A. After the commencement of the Mediation, no Party shall be permitted to cancel this Agreement or the Mediation and the Mediator shall render a decision that shall be in accordance with the terms set forth in this Agreement. When the Award is rendered, the Mediation is resolved, and any Award arising from this Mediation shall operate as a bar and complete defense to any action or proceeding in any court or tribunal that may arise from the same incident upon which the Mediation is based.

B. The Parties further agree that any pending litigation will be dismissed, with prejudice, as to those Parties participating in this Mediation upon the conclusion thereof. Any and all liens, including contractual rights of subrogation owed are subject to existing Illinois law. By agreement of the Parties, the Mediator's Award will be final and binding and not subject to appeal or motion for reconsideration by any Party.

V. Mediation Costs

A. ADR Systems Fee Schedule

1. A deposit is required for the Administrative Fee, Mediator's estimated review, session, and follow-up time ("Mediation Costs"). Binding-Mediations are billed at a four hour per day minimum. **The required deposit amount is $2,590.00 from Party B and is due by November 21, 2016.** Any unused portion of the deposit will be refunded based on the four hour minimum. If the Mediator's review, session and follow-up time go over the estimated amount, each Party will be invoiced for the additional time.
2. Mediation Costs are usually divided equally among all Parties, unless otherwise agreed upon by the Parties. **ADR Systems must be notified of special fee arrangements.**
3. All deposits are due two weeks prior to the session. ADR Systems reserves the right to cancel a session if deposits are not received from all Parties two weeks prior to the session.
4. ADR Systems requires **14-day notice in writing or via electronic transmission** of cancellation or continuance. For Binding-Mediations **cancelled or continued** within 14 days of the session, the Party causing the cancellation will be billed for the Mediation Costs of all the Parties involved, which includes the four hour per day minimum, additional review time, and any other expenses incurred("cancellation fees"). If the cancellation is by agreement of all Parties, or if the case has settled, the cancellation fees will be split equally among all Parties, unless ADR Systems is instructed otherwise. The cancellation fees may be waived if the Mediator's lost time can be filled by another matter.

Administrative Fee	$390.00 (Non-refundable)
Mediator's Review Time	$450.00 per hour
Session Time	$450.00 per hour
Mediator's Decision Writing Time	$450.00 per hour
Mediator's Travel Time (if any)	$75.00 per hour

B. Responsibility for Payment **Special Billing

1. Each Party and its counsel (including that counsel's firm) shall be jointly and severally responsible for the payment of that Party's allocated share of the Mediation Costs as set forth above.
2. All expenses and disbursements made by ADR Systems in connection with the Mediation, including, but not limited to, outside room rental fee, meals, express mail and messenger charges, and any other charges associated with the Mediation, will be billed equally to the Parties at the time of the invoice.

3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney's fees, incurred by ADR Systems in connection with the collection of any amount due and owing. Payment of additional costs incurred by ADR Systems in connection with the collection of any amount due and owing shall be made within 15 days of invoice.

4. In the event ADR Systems' session rooms are completely booked on your selected session date, ADR Systems will attempt to find another complimentary venue for your session. If ADR Systems cannot find a complimentary venue or the parties cannot agree on the complimentary venue, ADR Systems reserves the right to schedule your case in a location that may involve a facilities charge. The facilities charge will be split equally among the parties unless ADR Systems is instructed otherwise.

5. ****Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.**

VI. Acknowledgment of Agreement

A. By signing this Agreement, I acknowledge that I have read and agree to all the provisions as set forth above.

B. Each Party is responsible for only his/her own signature where indicated and will submit this signed Agreement to ADR Systems within 10 days of receipt of the Agreement. Counsel may sign on behalf of the Party.

By: _____
Paul Dulberg / Plaintiff Date

By: _____
Kelly N. Baudin / Attorney for the Plaintiff Date

By: _____
Randall Baudin, II / Attorney for the Plaintiff Date

By: _____
Shoshan Reddington / Attorney for the Defendant Date

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

DULBERG'S SUPPLEMENTAL ANSWERS TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S INTERROGATORIESTO PLAINTIFF PAUL DULBERG

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds, in supplement, to Defendant, The Law Offices of Thomas J. Popovich, P.C.'s Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

12. Identify and describe each of your employers in the ten year period prior to the accident of June 28, 2011, including any self-employment. For each employer, identify your wage rate or salary, your title, your job description, your required duties, and your income for the ten year period prior to the accident in question.

SUPPLEMENT TO ORIGINAL ANSWER:

1. 1999-2011 Sharp Printing, Inc., 4606 Hayden Ct., McHenry, IL 60051

Paul Dulberg was an owner and operator of Sharp Printing, Inc. along with his two partners Scott Dulberg and Michael McArtor. Dulberg provided full time employment services to Sharp Printing, Inc. and thus was "employed" by Sharp Printing, Inc. However, Dulberg did not draw a salary from Sharp Printing, Inc. and did not receive any profits from the company.

Paul Dulberg was the President, salesperson, graphic designer, 8 color screen print pressman, handled fulfillment, shipping & receiving, as well as other day to day operations of the company.

For income, see tax returns.

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Sharp Printing, Inc. operated out of the lower floor of Paul Dulberg's personal residence and paid all utilities bills, including garbage, water, natural gas, electric, internet, phone, and cable. The approximate value is $650 per month.

19. As a result of your personal injuries from the underlying case, were you unable to work? If so, state:

(a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;
(b) The date or inclusive dates on which you were unable to work;
(c) The amount of wage and/or income lost by you; and
(d) The name and address of your present employer and/or wage and/or salary.

SUPPLEMENT TO ORIGINAL ANSWER:

Paul Dulberg was self-employed by Sharp Printing and unable to work after the accident. He was also an independent contractor with Juskie Printing. He has not been employed since the date of the accident. See tax returns for lost wages. See SSDI documents for current income.

26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.

SUPPLEMENT TO ORIGINAL ANSWER:

On December 8, 2016, the mediator issued a net award to Dulberg of $561,000. Dulberg discovered he could not recover the entire mediation award from Gagnon. At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect, because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning.

27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.

SUPLEMENT TO ORIGINAL ANSWER:

Dr. Landford is a chainsaw expert who was retained by Dulberg during the mediation which occurred in 2016. Landford's expert opinion demonstrates that contrary to Mast's advice, the McGuires were liable for Gagnon's actions with the chainsaw. The expert report came out in February of 2016 and the mediation award was issued in December of 2016.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street
Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true, correct, and complete, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Paul Dulberg

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DULBERG'S ANSWERS TO DEFENDANT HANS MAST'S INTERROGATORIESTO PLAINTIFF PAUL DULBERG

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds to Defendant Hans Mast's Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER: Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

ANSWER: Various dates between October 2013 to January 2014. The advice was

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provided via email, text messages, telephone calls, and in person meetings.

Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg would that he would retain his claim against Gaganon and be able to seek and receive a full recovery from Gagnon.

All documents in Plaintiff's possession and control produced.

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

ANSWER: The McGuire's owned their home and vehicles. McGuire's also held bank accounts in their name. Investigation continues.

4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than $100,000?

ANSWER: The McGuire's produced insurance information to Dulberg on the day of the accident and also were represented by insurance counsel.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street, Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

5ttIN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DULBERG'S RESPONSES TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPVICH, P.C., s REQUESTS FOR PRODUCTION TO PLAINTIFF

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 214, responds to Defendants, The Law Offices of Thomas J. Popovich, P.C.'s Requests for Production To Plaintiff as follows:

PRODUCTION REQUESTS

1. Produce any and all records regarding the legal representation provided to you by the Law Offices of Thomas J. Popovich, P.C. ("Popovich") and/or Hans Mast ("Mast") in connection with the underlying case, against William McGuire, Caroline McGuire, and David Gagnon.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

2. Produce any and all correspondence, agreements, draft agreements, emails, letters, and any other documents between you and Popovich or Mast in connection with the legal representation in the underlying case.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

3. Produce any and all correspondence between you and any defendant from the underlying case, including Caroline McGuire, William McGuire, and David Gagnon, from June 28, 2011 to the present time.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

4. Produce any and all documentation relating to legal representation of you by any successor counsel in the underlying case.

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RESPONSE: Objection. Attorney Client Privilege.

5. Any and all engagement or disengagement letters or agreements between you and any attorney relative to legal services in the underlying case.

RESPONSE: Objection. Attorney Client Privilege.

6. Any and all pleadings and discovery (including deposition transcripts) created, filed, served, and received in the underlying case prior and subsequent to Popovich and Mast's withdrawal as your attorneys, including but not limited to any "high/low" agreement and any arbitration award, arbitration agreement, and any other documentation relating to any arbitration in the underlying case.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

7. Produce any and all documents relating in any way to your claimed damages in the instant case, including but not limited to any special damages, such as medical bills, medical records, costs, invoices, and lost wages.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

8. Produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created, and the date any recipient received the document.

RESPONSE: Plaintiff is only withholding attorney client communication between his successor counsel.

9. Produce any and all state and federal tax returns you filed in the ten year period prior to the accident of June 28, 2011.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

10. Produce any and all documentation of lost wages as alleged in paragraph 30 of your second amended complaint, including but not limited to any employment agreement, wage records, paystubs, cancelled checks, and any other documentation reflecting income in the ten year period prior to the date of the accident.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

11. Produce copies of any and all settlement documents, settlement agreements, cancelled checks or other payments made in connection with any settlement reached in the underlying case, including payment of approximately $300,000 as alleged in paragraph 54 of your supplemental complaint.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

12. An affidavit signed you (and not your attorney) pursuant to Illinois Supreme Court Rule 214, certifying that your response is complete in accordance with each request contained herein.

RESPONSE: Produced.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street
Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:01:21 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 9:38:57 PM CST
To: Hans Mast <hansmast@att.net>
Subject: **Re: Memo**

No answer, that's what I thought...
Your not very quick when cornered and your not excused from this case until I say you are whether or not your firm agrees.
Got it?

> On Feb 22, 2015, at 9:05 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>
> Is your wanting out a personal issue with me or is it strictly financial?
>
> > On Feb 22, 2015, at 9:01 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Oh, and unless I'm wrong, David did admit to having control over the chainsaw. David, in his lie, admitted to seeing me move my arm and continued along his path with the chainsaw at cutting rpm's.
> > In effect he did admit it was his fault.
> >
> > > On Feb 22, 2015, at 8:52 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > You do not have my consent to quit.
> > >
> > > > On Feb 22, 2015, at 8:23 PM, Hans Mast <hansmast@att.net> wrote:
> > > >
> > > > Paul, honesty hurts. I am honest to a fault sometimes. You told me at the start that David would admit his fault. That proved not to be true. Still your threats and putdowns don't change anything. Just find another attorney and we can part ways.
> > > >
> > > > Sent from my iPhone
> > > >
> > > > > On Feb 22, 2015, at 8:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > >
> > > > > To be honest, you took this case knowing it was my word vs. his.
> > > > > Now you back out because the value of the case isn't worth your time?
> > > > > You got some nerve and your earning the reputation of a shady lawyer
> > > > >
> > > > > > On Feb 22, 2015, at 7:42 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > > >
> > > > > > To believe David's version of events you must believe I was committing suicide.
> > > > > > Who in their right mind puts his arm into a chainsaw?
> > > > > >
> > > > > > I figured you would cop out again...
> > > > > >
> > > > > > Now I'm left wondering...
> > > > > > How hard is it to sue an atty?
> > > > > >
> > > > > > And yes I am and have been looking for someone who will take this case...
> > > > > >
> > > > > > The issue of my word vs David Gagnons... Did he cut me or did I cut myself?
> > > > > >
> > > > > > Of coarse he cut me.
> > > > > >
> > > > > > Next issue please?

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EXHIBIT F

STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

-vs- No. 17 LA 377

THE LAW OFFICES OF THOMAS POPOVICH and HANS MAST,

Defendants.

The remote videoconference deposition of HANS MAST, appearing remotely from McHenry County, Illinois, called by the Plaintiff for examination, pursuant to subpoena and pursuant to the Code of Civil Procedure of the State of Illinois, and the Rules of the Supreme Court thereof, pertaining to the taking of depositions, for the purpose of discovery, taken before Barbara G. Smith, appearing remotely from Will County, Illinois, Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, commencing at the hour of 10:00 a.m. on the 25th day of June, A.D., 2020.

EXHIBIT G

REMOTE APPEARANCES:

THE CLINTON LAW FIRM, By
MS. JULIA C. WILLIAMS
111 West Washington Street, Suite 1437
Chicago, Illinois 60602
(312) 357-1515
(312) 201-0737 (Facsimile)
juliawilliams@clintonlaw.net
On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, By
MR. GEORGE FLYNN
150 South Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3622
(312) 431-3670 (Facsimile)
gflynn@karballaw.com
On behalf of the Defendants.

ALSO PRESENT: Mr. Paul Dulberg

I N D E X

WITNESS	EXAMINATION
HANS MAST	
By Ms. Williams	5
By Mr. Flynn	76

E X H I B I T S

HANS MAST DEPOSITION EXHIBIT	MARKED FOR ID
No. 1	16
No. 2	17
No. 3	18
No. 4	26
No. 5	28
No. 6	32
No. 7	35
No. 8	36
No. 9	40
No. 10	46
No. 11	48
No. 12	49
No. 13	53
No. 14	55
No. 15	64

(All exhibits provided electronically to the reporter.)

THE REPORTER: The attorneys participating in this deposition acknowledge that I am not physically present in the deposition room and that I will be reporting this deposition remotely. They further acknowledge that, in lieu of an oath administered in person, the witness will verbally declare his testimony in this matter is under penalty of perjury. The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting. Please indicate your agreement by stating your name and your agreement on the record.

MS. WILLIAMS: Julia Williams. I agree.

MR. FLYNN: George Flynn. I agree.

THE REPORTER: Will the witness kindly present his government-issued identification by holding it up to the camera for verification?

(Witness presents government-issued identification and identity is verified.)

THE REPORTER: Thank you.

HANS MAST,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. WILLIAMS:

MS. WILLIAMS: Okay, so this is the discovery deposition of Hans Mast taken pursuant to all applicable rules and notice in the case of Dulberg versus The Law Offices of Thomas Popovich, et al. This deposition is being taken for the purposes of discovery.

Q. Hans, can you state your name for the record, please?

A. Hans Mast.

Q. Have you had your deposition taken before?

A. Yes.

Q. And how many times?

A. I think two.

Q. And for what purpose?

A. Long, long time ago I think there was a malpractice case I was a witness on and a legal -- a medical malpractice case that turned into a legal malpractice case, not against me but against the office I was with.

Q. Okay. So you weren't named in the lawsuit as a defendant?

A. I might have been named. I might have been

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named, but I was somebody that appeared on a motion. I think I got out eventually.

Q. Okay, and then -- And then -- Sorry. And then you said you think twice, so do you know approximately what year that medical malpractice case that turned into a legal malpractice case, do you know roughly what year that was?

A. '94 or something.

Q. Okay, and then the second time, what would have that been?

A. It's not coming to me. It was another legal case. I don't remember the details.

Q. Okay --

A. There -- Go ahead.

Q. More than 10 years? I'm sorry, I didn't mean to interrupt you.

A. Yes.

Q. We can go over the -- I'm going to try not to interrupt you, you're going to try not to interrupt me. You've taken depositions before, I'm sure we can get into that and appreciate you answering orally, all of those typical things that apply, and I'll try not to interrupt you too much. Have you ever -- Other than the one time you just

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identified, have you ever been sued other than this suit for legal malpractice?

A. No.

Q. Do you recall any other details about that medical malpractice lawsuit that turned into a legal malpractice suit? Do you know what the basis of the suit was?

A. It was a medical malpractice case that I think lost on a summary judgment motion and they were -- the client was suing the office and I think I got involved in it because I was on a motion.

Q. Were you the one that drafted the summary judgment motion?

A. I don't think so. I don't really remember clearly back then, but I don't think I did.

Q. Okay.

A. I think I argued -- I might have argued it. I don't remember.

Q. Okay. Have you -- Have you taken depositions before?

A. Yes.

Q. Roughly how many depositions do you think you've taken in your legal career?

A. Lots. Lots.

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Q. Hundreds?

A. Probably.

Q. Oh, I'm sorry, I forgot to do this, but I think we saw your room. It's just you and George Flynn in the room with you, correct?

A. Yes.

Q. And there's no one else in the room and if there were, you would identify them, correct?

A. Yes.

Q. And you don't have any devices or anything with you? You're not communicating with anyone during this deposition other than the attorney in the room with you, correct?

A. And you and who else is on this meeting.

Q. Okay. I'm sorry, let me rephrase. Is there anyone that I don't know that you are communicating with that I wouldn't know?

A. Not that I'm aware of.

Q. Okay. If you take any notes or otherwise communicate with people during the deposition, we just ask that those notes be produced. Okay. Did you do anything to prepare for the deposition today?

A. Well, I just saw some exhibits you sent George. I didn't really prepare them. I looked them

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over briefly.

Q. Did you review any of the other files that have been produced in this case?

A. No.

Q. Did you review any notes?

A. No.

Q. Any other documents?

A. No.

Q. Did you meet with anyone --

A. Other than George?

Q. -- to prepare? Other than George.

A. No.

Q. And you did meet with George, I'm assuming. I don't want to know the contents of that meeting, but you met with George to prepare?

A. Not very long.

Q. Okay. Did you talk to anyone else about today's deposition prior to the deposition today?

A. No.

Q. Where did you go to law school?

A. Kent.

Q. And what year did you graduate?

A. '91.

Q. And were you admitted to practice in

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Illinois that same year?
A. Yes.
Q. And have you -- Are you admitted to practice anywhere else?
A. No.
Q. Have you ever been reprimanded or disciplined by any courts?
A. No.
Q. Have you ever been publicly reprimanded or disciplined by any oversight body, such as the ARDC?
A. No.
Q. When did you start practicing?
A. '91.
Q. And where did you start?
A. In Rockford.
Q. With a firm?
A. Yeah, Cacciatore.
Q. And how long were you there?
A. About a year and a half.
Q. And what kind of work did you do there?
A. Personal injury, plaintiff.
Q. Have you done personal injury your entire career?
A. No, I did some defense work.

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Q. Okay. So you were at Cacciatore for a year and a half and you were doing plaintiff's personal injury work. What did you do after that?
A. I went to the Loggans firm in Chicago for about 6 months.
Q. And what did you do there?
A. Plaintiff's.
Q. PI again, personal injury?
A. Yeah.
Q. And after that?
A. Judge and James in Park Ridge.
Q. And how long were you there?
A. 7 years, I think.
Q. Did you do plaintiff's personal injury there as well?
A. No, that was defense.
Q. What kind of defense work?
A. Lots -- All kinds, municipal, tort.
Q. Did you defend personal injury cases while you were there as well?
A. Yes.
Q. And then after that, where did you go?
A. Kemper, I think.
Q. And how long were you with Kemper?

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A. I think a couple years. Maybe a little more than that.
Q. And what kind of work did you do at Kemper?
A. Defense.
Q. Defense of what type of cases?
A. Lots of different kinds, auto accidents, premises.
Q. Mostly torts though, negligence-type cases?
A. Yes.
Q. And then after Kemper?
A. I think Popovich was next.
Q. And how long were you with the Popovich firm?
A. About 18 years, I think.
Q. And do you know what year you -- roughly what year you joined Popovich?
A. 2001 maybe.
Q. And you were there for roughly 18 years you think?
A. Yes.
Q. So you left maybe just last year?
A. In '18.
Q. 2018?
A. Yeah.

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Q. And why did you leave Popovich?
A. To start on my own.
Q. And where are you now?
A. With Compton Law Group.
Q. I'll give you just a second to come back.
A. Yeah.
Q. And what types of -- I'm sorry, I'm going to go back to the Popovich firm. What kind of cases did you handle at Popovich's firm?
A. Plaintiff's personal injury, all kinds.
Q. And then at Compton, what kind of work do you do?
A. Same thing, same kind of cases, plaintiff's personal injury.
Q. So is it fair to say you've been doing plaintiff's personal injury cases steadily throughout your career?
A. Yeah, except for the time I was with the defense offices.
Q. Okay. But you were still doing personal injury, just on the defense side, not on the plaintiff side?
A. Right.
Q. Okay. Did you answer discovery in this

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case, in the malpractice case that we're -- the Dulberg versus Thomas Popovich case?
A. I think I did.
Q. Do you remember -- Did you review discovery in this case, do you recall?
A. Like I said, I think I answered some and signed off on some, I just don't remember. I haven't seen them recently.
Q. Okay. Okay. If you recall, do you remember reviewing the documents that were produced in this case?
A. I don't know what was produced.
Q. Okay.
A. I assume the file.
Q. Right. Okay, if I represented that the file was produced, would that make sense to you? Can we kind of agree that the file was produced?
A. Well, if you told me that.
Q. Okay. So when the file was produced, I don't know if you recall, there were black -- some black pages between the file. Do you remember any discussions about that?
A. I didn't produce anything so and I haven't reviewed what was produced, that wasn't my -- I was

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in a different office when it was produced, I think.
Q. Okay. So Thomas Popovich would have had possession of the file?
A. Right.
Q. You did not have possession of any documents from the underlying case, from the Dulberg versus Gagnon-McGuire case?
A. I didn't.
Q. Okay. So you would not have had access to that file since you were with Thomas Popovich in 2018?
A. Once I left the firm, I have not had the file.
Q. Okay. In this case did you produce emails that you possessed or did you not have access to those either?
A. I would -- I don't know what was produced, again, by the Popovich firm. I don't know if they had my emails, but I have a new email address. I don't think it's the same as it was back then.
Q. Okay.
A. So I didn't produce anything.
Q. So you didn't produce any emails or communications that -- in the -- from the underlying

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case?
A. Not that I'm aware of. Unless I produced it to Popovich and he produced it. I don't know how that worked.
Q. Okay. When were you retained by Paul Dulberg?
A. I don't recall. I'm assuming there's paperwork that shows that.
Q. Yes. Let me upload a file here. Just give me a second.
A. I don't think he retained me. I think he retained Tom Popovich's office.
Q. Okay. I just uploaded a file that's titled Dulberg Mast Dep Exhibit 1, if you can -- And, George, you should have that as well -- and it should be the retainer contract.
A. Yeah, I see it.
Q. Okay. So it's a contract for legal services and it's marked POP, P O P, 000586 on the bottom, just for reference, so this will be the first exhibit in this deposition. Do you recognize this document?
A. I recognize what it looks like, yeah.
Q. Yeah, and it's the contract for legal services and it's undated, it looks like.

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A. That's what it looks like.
Q. Okay. I'm going to upload another exhibit. So I'm uploading Exhibit 2, it's titled Dulberg Mast Dep Exhibit 2, and this should be the original complaint filed in the case of Dulberg versus Gagnon, et al., 12 LA 178, filed in McHenry County. Do you see that document?
A. Yeah. What I'm going off are an email I got with all the exhibits attached, so I'm not — that's what I'm looking at.
Q. Okay.
A. It's a complaint and it says Exhibit 2.
Q. Right, okay. So our numbers may be a little off, but the description should be correct. In that complaint shows file stamp May 15, 2012?
A. Yeah, that's what it says.
Q. Okay, and so Mr. Dulberg would have hired you sometime -- hired the Popovich firm sometime prior to that, correct?
A. I'm assuming. I --
Q. Okay. Do you have any idea?
A. I'm sorry.
Q. I'm sorry, I didn't mean to interrupt you. Go ahead.

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A. Go ahead.
Q. Do you have any idea about -- Do you have any idea about what timeframe he would have hired -- retained you?
A. I really, again, I don't have an independent recollection of it. I think there's probably a memo out there of me meeting with him, too.
Q. Okay. Actually, I think there is. Okay, I just uploaded Dulberg Mast Dep Exhibit No. 3 and the top says -- it's titled, "Intake Memo." At the top it says, "Memorandum," it's Popovich, it says POP00961 and 000962. Do you recognize this document?
A. I -- It looks familiar.
Q. And it indicates that it's from you, so you would have drafted this document, correct?
A. I would have dictated it, yeah.
Q. Okay, and it looks like you had a new client meeting with Paul on December 1st of 2011?
A. That's what it says.
Q. Okay. Does that seem like that timeframe would have been roughly correct?
A. I have no reason not to believe that's accurate.
Q. Okay. So Paul retained you probably

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sometime in December of 2011 and then you filed a complaint around May 15, 2012?
A. That's what it appears.
Q. Okay. So can you just tell me what the case against Mr. -- I'm sorry. Can you describe the case between Paul Dulberg and David Gagnon, Caroline and William McGuire?
A. What do you mean describe it? What it's about?
Q. Yeah, basically what was it about?
A. An injury, a chain saw injury.
Q. Okay. Was there anything about the case that was unique to you?
A. Other than it was a chain saw injury.
Q. Okay. What was your theory of that case? What was your theory of liability in the case?
A. I think the -- Paul had claimed Dave struck him with the chain saw.
Q. So was it just a negligence theory or was it a strict liability or --
A. I believe it was negligence, if I recall correct.
Q. Negligence against Gagnon, David Gagnon?
A. Yeah, and I think the McGuires actually were

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named as well.
Q. And what was the theory as to the McGuires?
A. I think Paul had said that they were the ones that owned and looked over the work that was being done.
Q. Okay. So if they owned the chain saw and were overseeing the work, what's the legal theory for liability on that? Why would they be liable?
A. Under case law potentially there's liable -- liability for people that oversee and direct the work.
Q. Okay, and is that a strict liability or is it some other form of liability?
A. It would be negligence.
Q. So negligent oversight?
A. Potentially.
Q. Okay. Were there any other theories that you were going to pursue or could be pursued?
A. Not that I recall.
Q. Okay. So a negligence claim against Gagnon for negligently utilizing the chain saw and then a negligence claim against McGuires for not -- for not controlling his use of the chain saw, is that accurate?

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A. I don't recall the exact allegations, but I think in a general theme that was what we were going to try to prove.
Q. Okay. In the intake memo, do you want to go back to that? There are some notes on this exhibit that state -- it looks to me like it says, "Hans BC the accident occurred on their premises, their HO med pay will cover the bills," and then it's signed. Do you recognize that handwriting?
A. Yeah, that would be Tom.
Q. Okay, and what does that note mean?
A. Medical coverage, medical payments coverage.
Q. So there -- So the McGuires -- When he says their, is he referring to Caroline and Bill McGuire?
A. Well, I don't know what he's referring to. I think what he's -- Well, he circled their names, so that probably indicates what he's referring to.
Q. Okay. Would their -- Would their insurance cover medical bills in an instance like this?
A. Possibly.
Q. Okay. Did you reach out to their insurance company about covering any medical bills?
A. I don't recall if that was applicable or I don't know -- I don't recall that issue.

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Q. Okay.
A. Oh, uh, I think -- It just kicked me off.
MR. FLYNN: I got disconnected, too. It's the Wi-Fi.
BY MS. WILLIAMS:
Q. Okay, we'll just wait a minute here.
A. I can hear you. I just can't see you.
Q. We'll wait a minute until you can get your video back on.
MR. FLYNN: Julia, we think the Wi-Fi may have dropped here in the office.
MS. WILLIAMS: Okay. Well, let's just give it a minute and see.
MR. FLYNN: Okay.
(Whereupon, a break was taken, after which the following proceedings were had:)
MS. WILLIAMS: Okay. I think we're back on the record. Barb, are you doing all right?
THE REPORTER: Yes.
BY MS. WILLIAMS:
Q. Okay. So we just went through the memo that Tom made a note about insurance and your testimony was that you don't recall whether you made any

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requests to the McGuires' insurance to pay Paul's medical bills; is that correct?
A. I don't remember, right.
Q. Okay. Back to the actual claims made. Do you remember -- Do you recall what the defense was for first Gagnon and then Bill -- William and Caroline McGuire?
A. What do you mean by defense?
Q. What was their theory of defense in the case, do you recall? As you understood it.
A. I mean, that's a big question. I mean, they, like every case, they were denying what we were alleging.
Q. Were they denying the facts? Did they dispute the facts of the case?
A. Definitely.
Q. Okay. Do you recall what they were alleging as far as the facts that were different from what you were alleging?
A. I mean, I can probably answer that for -- with an hour -- an hour answer. There's a lot that they were denying. There was a lot that, you know, I mean, I'd have to -- I could look at their answer. I could look at their deposition testimony, but, I

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mean, that brings up a lot of issues.
Q. Okay. Let's -- Let me narrow it down a little bit and try to get more to a point that will be useful for our discussion. At some point, you had recommended that Paul settle the case as to the McGuires; is that correct?
A. Yeah.
Q. And what was the reasoning for settling the case as to William and Bill McGuire?
A. Just risk, like you always discuss with any settlement.
Q. Can you be a little more specific about what type of risk?
A. Again, that's a long question but, I mean, it's like any settlement, you're taking a risk if you don't settle the case when you have issues that could be problematic.
Q. Okay. When you say issues that can be problematic, and I know it could be a very long answer, but as much as you can, can you summarize what you think those risks were?
A. Understanding it's a summary that, I mean, I could probably answer that in a couple hours, but the chance of recovery was in my view very slim if at all

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because of lots of reasons, one, because of Paul's testimony, Gagnon's testimony, the McGuires' testimony. The evidence didn't seem to be something that was going to allow us to prove the case against the McGuires.
Q. Okay. What -- And, again, I understand this is -- these are very long questions, but just in summary, what were you going to need to prove the case against the McGuires?
A. Now, again, understanding I would have to put myself in my place where I was back at the time that I fully evaluated this with Paul, but if I'm just trying to come up with some thoughts now years later the case law, I think, was against us. The defense was going to file a motion for summary judgment if we didn't work out some sort of settlement that I felt they were going to win and the testimony from all parties was not helpful to us.
Q. Okay. I'm going to move forward and then we may come back to this a little bit. Do you recall when the first time was that you talked to Paul about settling the claims with the McGuires?
A. No, whenever -- You know, the defense attorney would have reached out to me to ask for some

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sort of demand, I assume.
Q. Did you make a demand at some point?
A. I think -- I think some of your paperwork showed that I did.
Q. Okay. I just uploaded Dulberg Mast Exhibit 4 and it says letter -- it's "Letter Re Settlement," and that should be -- still be Exhibit 4 that was emailed around to Counsel so that you would have it. And it is labeled POP192 and POP193. Do you recognize those documents?
A. Wait. I think the Internet, maybe because we were having problems, is the Internet went down, so now my exhibits aren't pulling up. Can you try it again? Do you have that, George?
MR. FLYNN: Yeah, here's the hard copy.
THE WITNESS: I'll look at the hard copy, so what are you asking?
BY MS. WILLIAMS:
Q. Great. So it should be the document it has letterhead on the top, Popovich letterhead on the top, and at the bottom it's POP000192 and POP000193.
A. Right.
Q. Do you recognize those documents?

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A. I mean, they look familiar. Documents from the Popovich firm, if that's what you're asking.
Q. Is that your signature?
A. Yes.
Q. So you would have drafted or caused this letter to be drafted and sent?
A. It appears that way, yeah.
Q. And this is a demand letter where you make a demand of $7,500; is that correct?
A. Yes.
Q. Do you recall making that demand?
A. No.
Q. Do you recall if you talked to Paul prior to making the demand?
A. I'm sure I would have.
Q. Okay. Do you recall -- Do you have any memos or notes regarding that conversation with Paul?
A. I don't personally.
Q. Okay. If there were memos and notes, would they be in Thomas Popovich's file?
A. It should.
Q. Okay. Do you recall any emails about the demand -- the 7,500 demand?
A. I know there were lots of emails. I don't

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know if this number is identified in those emails, but, again, it would have been something I would have talked to him about before making it.
Q. Okay. But at this time you don't know if there are any memos, notes or emails memorializing any conversation with Paul prior to sending the October 22, 2013 demand?
A. Not that I recall.
Q. Okay, and if they did exist, they would be in the possession of Thomas Popovich, correct?
A. I would think so.
Q. Okay, and if you had those in your possession, you would produce them in discovery, correct?
A. If I had them.
Q. Okay. Just uploaded Exhibit 5, and this is email dated October 30, 2013, and it's marked at the bottom POP000195.
A. Okay.
Q. Okay, and here in this email it looks like you started this email chain to Paul on October 25, 2013. Do you see that?
A. It looks like there's a couple emails here. There's several pages. You just mean the first page?

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Q. I think -- It should only be, I believe it's only one page and it looks like --
A. Oh, these aren't part of it? Just one page?
Q. The document that I have is just one page. Are we looking at the same thing?
A. Okay.
Q. It's POP00195 on the bottom.
A. Yeah, he had a couple other pages on it, but okay.
Q. Okay. I just want to make sure that I didn't -- Okay. And on the bottom there of the first sheet, if you have several, I've only published one sheet for the purposes of this deposition, it states, "Friday, October 25, 2013," do you see that?
A. Where does it say that?
Q. So about halfway down the page it looks like it says, "Original message from Paul"?
A. Yeah.
Q. Okay. So that looks like Paul reached out to you about medical deposition and then on the top it appears to be your reply of October 30, 2013. Does that seem like that's accurate?
A. That's what it shows.
Q. Okay. Okay. And here you first -- Am I

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correct in summarizing this is an email where you talk to Paul about liability for Mr. Gagnon?
A. Look likes I did cover that issue.
Q. Okay, and do you recall at the time what your purpose was behind this email?
A. I mean, every purpose is just to have open communication. That's all the purpose --
Q. Okay. Would you have been trying to explain to Paul the liability issues in his case that you described earlier?
A. Yeah, I definitely was discussing several issues for him so he knows what's going on.
Q. Okay, and this email response is dated October 30th, so that was after you sent that initial letter. Do you recall whether there would have been anything prior to this?
A. Whether what was prior to this?
Q. Would there have been any communications about liability either to Gagnon or the McGuires prior to the October 30, 2013 email?
A. Every time we talked, there were issues about liability, I mean, for whatever I first -- he first came to the office I recall he was lots of questions and I gave him lots of answers as is

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reflected in my emails.
Q. Okay. Did you meet with Paul after you sent that October 22nd demand letter?
A. Did I meet with him?
Q. Yes. In person.
A. I'm sure I did.
Q. Okay. Do you recall -- Do you recall meeting -- the dates of those meetings?
A. No, I don't recall the dates.
Q. Okay. So I'm going to upload another file here.
A. Yeah, our Internet is down. That's why I can't bring these up.
Q. Okay.
MR. FLYNN: Julia, just so you know, I've got hard copies of the majority of the exhibits you sent with the exception of the larger files, like the insurance policy and the dep transcripts.
MS. WILLIAMS: Okay. Okay, great.
MR. FLYNN: I've got some of the deposition transcripts, but I didn't want to waste a lot of paper and ink at home.
MS. WILLIAMS: Okay. I think we'll be -- For the most part, I think we'll be fine and we'll

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deal with it if and when we get to that point.
Q. Okay. So the document that I'm looking at now is another email on the -- it's now titled Exhibit 6. I don't think it was entitled Exhibit 6 in what I sent to George, but it's an email that the first date on the email is November 4, 2013, and the last date on the email is November 5, 2013 email chain and it's -- at the bottom it's stamped Dulberg001531.
A. What exhibit is it?
Q. I think it might have been 5-A to George. It's now Exhibit 6 for the purposes of this deposition.
A. Yeah, that wasn't part of the download then. Do you have --
MR. FLYNN: Yeah, I don't think that was included.
THE WITNESS: What's the Bates stamp or what's the stamp?
MS. WILLIAMS: The Bates stamp is Dulberg001531.
THE WITNESS: Yeah, I don't recall --
MR. FLYNN: I don't recall seeing a 5-A on the download. I think it just went straight from

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5 to 6.
MS. WILLIAMS: Okay, let me see if I can do something else. I'm going to try to share my screen. I don't know if I'm going to be able to do it. So bear with me. Okay. I can't -- I can't share the screen. Can I email -- George, can you pull up an email if I email it to you?
MR. FLYNN: I should be able to eventually.
MS. WILLIAMS: Okay, let me see if that will --
THE WITNESS: Let me run to the washroom real quick while you guys do --
MS. WILLIAMS: We'll take a quick break, that's fine, we'll try to work this out. If anybody else needs a break, obviously take a break now.
(Whereupon, a break was taken, after which the following proceedings were had:)
BY MS. WILLIAMS:
Q. Okay, back on the record. This is the Exhibit 6 for the deposition and it's marked at the bottom Dulberg001531 and it's an email chain between Paul Dulberg and Hans Mast dated November 4th through about November 5th, is that accurate, Hans?

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A. That's what it appears.
Q. Okay, and it appears at the bottom that Paul is asking you if he should bring anything to a meeting.
A. Okay.
Q. And that meeting appears to be at 3:00 p.m. on November 4th of 2013.
A. Okay.
Q. Is that an accurate description? Okay? Do you recall having --
A. Go ahead, I'm sorry.
Q. Do you recall having a meeting on November 4th of 2013 with Paul Dulberg?
A. I don't have an independent recollection.
Q. Okay. Okay.
MR. FLYNN: Julia, now I recall, this is a separate exhibit you sent a little bit later than the original download, so I did have this.
MS. WILLIAMS: Okay. Okay. We got it worked out.
MR. FLYNN: Yeah, okay.
BY MS. WILLIAMS:
Q. Okay. So you don't recall calling a meeting for November 4th?

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A. We had lots of meetings so --
Q. Okay.
A. -- I don't have an independent recollection of that one particular date.
Q. Okay. Okay, I'm going to stop screen sharing. Okay. I'm going to upload another file. This is Deposition Exhibit 7. George, you probably had it as Exhibit 6, but for the purposes of this deposition right now it's going to be 7 and it's an email chain dated --
A. I have these on the computer. You don't need to, unless you want to, but I'm just saying I have these on the computer.
Q. Okay, but Barb needs them, so that's why I keep uploading them, otherwise she doesn't have them. Okay. So Exhibit 7, and it's POP00181 and POP00182, and it's two pages of an email chain, November 15th, looks like on the second page it starts November 15th and ends November 19th, is that accurate?
A. Yes.
Q. Okay, great. So here it looks like Paul started this email chain, but then on November 18th you note that, "The McGuires' attorney has offered us, you, $5,000 in full settlement of the claim against the McGuires only," do you see that?
A. Yes.
Q. Okay. Do you recall that offer being made?
A. I do have some recollection of having a conversation with them.
Q. Okay. So I'm going to upload another document and then we can keep going here. And then this is Exhibit 8 and for -- it is a letter from Ronald Barch to you, Hans, and it's POP000667. Do you have that?
A. What's it dated?
Q. I'm sorry, dated November 18, 2013.
A. Yeah, I have that.
Q. Okay. And that's a settlement letter from Barch offering the settlement of $5,000, correct?
A. Right.
Q. Do you recall receiving this letter?
A. I mean, I don't today recall getting the letter, but I'm familiar with the transaction, yes.
Q. Okay. Okay. So you would have received the $5,000 offer from Barch and you communicated it to Paul via the email on November 18th?
A. As well as when we talked, yes.
Q. Okay. Okay. And when did you talk?

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A. Again, I don't know the dates. I just know generally how this all transpired.
Q. Would you have talked to Paul on the 18th when the letter came in?
A. It's dated the 18th. I doubt I got it on the 18th. Whenever I got it, I would have told Paul.
Q. Okay. And it looks like the email you sent, which is Exhibit 7, communicated that offer?
A. Okay.
Q. Would you have talked to the McGuires' attorney prior to receiving the letter about the offer?
A. I don't recall. It might have -- that might have happened.
Q. Okay. Do you recall whether you met with Paul sometime after -- on or after November 18 to discuss the settlement offer?
A. I'm sure we did. I know we had several conversations and meetings about that.
Q. Okay. In this email chain that's Exhibit 7 about halfway down the page it says on November 18, 2013, at 7:40 p.m., Paul responds to your email. Can you see that?
A. Are we going back to the email now?

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Q. Yep, it's POP00181.
A. What exhibit?
Q. It's Exhibit 7.
A. 7, that's the letter.
Q. If may be 6 for you. It may be 6 for you.
A. Let's take a look. What page is the email?
Q. The date at the top of the email chain is Tuesday, November 19, 2013.
A. Yeah, I have that.
Q. Okay. And then about maybe halfway down the page it's dated on November 18, 2013, at 7:40 p.m., do you see that?
A. Yep.
Q. And there it says, "Only five? That's not much at all," do you see that?
A. That's his response, yes.
Q. Right. Right. Do you recall talking to Paul about the $5,000 and that not being much?
A. Like I said, yes, we've had plenty of conversations and meetings on that.
Q. Okay. When you originally offered the 7,500, did you talk about what the possible outcomes as far as counteroffers, what they may demand, something like that, did you talk about that prior to

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making that $7,500 offer?
A. I mean, I think I generally understand what you're asking. Did we just have general conversations of numbers? Yes.
Q. Okay. In this email and this is -- I understand this is speculation, but in this email it appears that Paul is surprised that it's $5,000 was the offer, correct? Would that be fair to characterize it that way?
A. Is he surprised at it or is he surprised at the amount? It looks like he didn't think it was much.
Q. Right. So if you originally offered 7,500 and they came back at 5,000, in your experience, does that seem like much of a difference when it comes to counteroffers?
MR. FLYNN: I'll object to the form.
THE WITNESS: Yeah, I'm not real sure what you mean by that.
BY MS. WILLIAMS:
Q. I guess let me rephrase because I don't think I'm getting to the point. Prior to making the $7,500 offer, did you discuss with Paul that the McGuires may come back with an offer that was lower

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than the 7,500?
A. Again, I'm -- I understand the question. I'm just not trying to play games, but you're asking me do I recall specific words that are used or topics. All I can tell you about this is we talked about the whole gamut of options, that I didn't feel it was a strong case, that they were reaching out to us for $5,000, and that balancing everything, the risks, costs, even though it wasn't much, it was something that would have been desirable for him if he wants to end up with money versus the McGuires.
Q. I'm going to add another exhibit here. Okay, for the purposes of this deposition it's Deposition Exhibit 9. This is a memorandum. At the top it will say, "Memorandum," and the date is November 20, 2013, and at the bottom it's identified as POP and then 3 — there's 000003, I believe. Do you have that?
A. What exhibit is it?
Q. I think you're probably going to have it as Exhibit 8, but for the purposes of this deposition it's actually going to be Exhibit 9.
A. Okay.
Q. And it's Dulberg Mast Memo,

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2013 November 20.
A. Okay, yeah.
Q. Okay. It looks from this memo that you had a meeting with Paul and his friend on November 20th, is that accurately reflected what's stated in the memo?
A. Yes.
Q. Do you remember this document? Do you recall this?
A. As I said before, I understand what you're asking, but we've had lots of meetings. Do I remember that particular date, no, but I remember the meetings.
Q. Do you recognize this memorandum?
A. I recognize the discussion that's referenced in the memo. I haven't seen the memo for 7 years.
Q. Okay. Do you recall the advice that you gave in that meeting of November 20th?
A. Yeah, like I said, it's summarized a little bit in there. Yeah.
Q. Okay. And what was the -- Why don't -- What was the advice that you gave?
A. Do you want me to read the memo or you want me to just tell you generally what the topics were or

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what?
Q. Generally to the best that you can recall.
A. Looks like on that day he brought his friend in because before he wanted to consider the offer, he wanted to have his friend come with him to talk about these issues with me. So we went over --
Q. So --
A. Go ahead.
Q. No, I'll let you finish. Go ahead. I'm sorry.
A. Well, we went over all the issues, all the risks, all the money issues, all of the issues.
Q. Do you recall who the friend was?
A. Not as I sit here today.
Q. From this memo it says, "Paul maintains the McGuires controlled everything that they were doing and you told him that wasn't what the evidence seemed to show." So can you expound on what -- This is really going to be a complicated question, but to the best of your ability, can you explain what the theory of your case was against the McGuires and what the evidence was that was going to -- what evidence was your reason for believing that you couldn't prove your theory?

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A. We already talked a little bit about that earlier, but every time we met, we talked about this because this was a subject at the time with the McGuires and given the testimony of the McGuires, given Paul's testimony, given the lack of any evidence that they were controlling any work or even knew what Paul was doing, I felt it was a big, high risk of moving forward on that claim.
Q. So I'm going to try to summarize this. Maybe in parts. So in order for the McGuires to be liable for Gagnon's work, Paul would have to prove in his case that the McGuires controlled Gagnon's work, is that accurate?
A. Are you asking me if that's an accurate statement of the law?
Q. Yes.
A. I think that's partially right. There's a lot more to it. It's different branches and elements that you have to prove, control was a factual matter, and he would have to be able to establish there was some oversight. It goes down into some factual issues that you have to be able to show.
Q. Okay. So can you -- To the best of your ability, can you kind of walk me through for the

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negligence claim against the McGuires what the legal elements were that you would have to show?
A. I haven't brushed up recently on that area, but I can tell you that under the case law they have to have some oversight and control over what was going on and some involvement in the work and some knowledge higher and above what Paul was doing, and if you look at their testimony, they were not out there, they were not looking at it, they didn't even really know what Paul was doing frankly.
Q. And what about David? Did they have to control what David was doing as well?
A. I meant David, I'm sorry.
Q. Okay. So the McGuires would have to have oversight and control over David Gagnon?
A. Over the work.
Q. Okay. Over the work. Okay. So William and Caroline did buy the chain saw, correct?
A. I believe that is true.
Q. Okay. But then David Gagnon was the one operating the chain saw?
A. Right.
Q. And you would have to show in Paul's case that Bill and Caroline, one or the other, had control

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over David's operation of the chain saw?
A. Control could mean a lot of things. They would have to be in a position to instruct him, tell him what to do, be aware of the work that was being done and have some control over what he was doing.
Q. Okay. So in your -- Your opinion of the case was that it was insufficient for them to have simply purchased the chain saw and provided it to Gagnon?
A. Yeah.
Q. And what about if they were paying him? Would that make any difference?
A. No.
Q. I'm sorry, I don't know or no?
A. No.
Q. Just bear with me for a second here. And you informed Paul -- I'm sorry, let me back up. In exhibit -- Deposition Exhibit 7, so it's probably 6 for you, the email chain between you and Paul, roughly November 18th through the 19th, Popovich 000181, on the bottom of that first page, November 18, 2013, at 1:28 p.m. there's an email from you. Do you see that?
A. Yes.

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Q. "In addition, the McGuires' attorney," so it's ATTY, "has offered us, you, 5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners so they likely will get out of the case on a motion." Did I read that correctly?

A. Yes.

Q. So this is where you told Paul that you didn't believe the McGuires had any liabilities for the reasons -- in part for the reasons we just discussed?

A. Right.

Q. Ultimately Paul accepted that $5,000 offer, correct?

A. Yes.

Q. And you communicated that to the other side later in 2013, does that sound correct to you?

A. Yes.

Q. I'm uploading Exhibit 10, and it should be Exhibit 10 for you as well, and it's a memorandum dated December 20, 2013, and at the bottom it's POP000884, do you see that?

A. Yes.

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Q. And that's a memorandum that you wrote to the legal file; is that correct?

A. It looks like that.

Q. I think I already said this, it's dated December 20, 2013?

A. Yes.

Q. Okay. And the substance of it, it appears that you had a conversation on December 18th with Paul and that he was authorizing you to accept the $5,000 settlement?

A. Yes.

Q. Okay. Do you recall that conversation of December 18?

A. I recall having lots of conversations, this is one of them, and generally I do recall the conversations in a general sense, not the exact dates.

Q. Okay. So you don't remember anything specific to this December 18th call what you would have discussed?

A. Not other than what I've already said we discussed over the time.

Q. Okay.

A. Paul was weighing his options. He knew the risk and he had -- he wanted some time to think about it and consider it.

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Q. Okay. All right, just bear with me here. Okay, I just uploaded Deposition Exhibit 11, it's a settlement acceptance letter, letterhead from Thomas Popovich's office dated December 26, 2013. Hans, your signature appears on there and it's POP00670. Do you recognize this document?

A. That appears to be a letter from Popovich's office to defense counsel.

Q. Do you recognize your signature on here?

A. Yes.

Q. And this is the letter where you accepted the offer on behalf of Paul, is that accurate?

A. It appears, yeah.

Q. Okay. So the Defendants made the original offer around November 18 and Paul -- November 18, 2013, and Paul accepted it around December 20, 2013. Is that statement accurate?

A. I don't have, like I said, independent recollection of the dates. I would just have to go off the documents.

Q. Okay. Was there -- If that timeframe is roughly correct, was there anything that occurred during that timeframe that indicated to you, you know, why Paul changed his mind from originally thinking it was too little to now accepting it. Was there anything that stuck out in your mind about that?

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A. Yeah.

Q. Can you expound on that?

A. Well, he had his friend with him during our meeting and he reviewed the depositions.

Q. Okay. Did he not have the depositions prior to that?

A. I remember he asked for copies of them, so I provided them to him.

Q. Okay, and when you say the depositions, do you mean just the party depositions, the McGuires and the Gagnon?

A. I don't remember if I gave him the doctors. I don't remember which ones I gave him, but I know specifically it was Gagnon and the McGuires.

Q. Okay, I'm uploading Dulberg Mast Dep Exhibit 12. This is titled, "Legal Research." And this is hard because there's -- it's 27 pages. Some of them have Bates numbers, but some of them are black on the bottom, so I think the Bates numbers

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didn't -- didn't take, but it's roughly -- looks like roughly 204, maybe 205, Dulberg204, 205 through roughly Dulberg00304 -- Actually, I'm sorry, these aren't going to be continuous. But do you have that packet of legal research in front of you? It appears to be copies out of a -- copies of case law out of the Northeastern Digest.

A. I just have the one case here.

Q. Just one case? Which -- What's the case title?

A. The first one, it's L A J A T O.

Q. Okay. Do you -- Did you copy this case law?

A. I don't know.

Q. Do you recall providing any case law to Paul?

A. I don't know if I did or didn't. I don't know if he asked.

Q. Okay. Do you recall doing case law research?

A. I'm sure I did, yeah.

Q. Would have there been a memo or something regarding that research?

A. Not necessarily. I was familiar with the law.

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Q. Okay. Okay. Was there any -- Was there any case law that stuck out to you, any particular cases that stuck out to you?

MR. FLYNN: Object to the form.

THE WITNESS: You mean stuck out to me with regard to Paul and his case?

BY MS. WILLIAMS:

Q. No. Were there any applicable cases that stuck out to you one way or the other as to whether the McGuires would be liable? Was there any specific cases that made you think that the McGuires may not be liable given the facts in Paul's case?

A. I mean, you deal with this issue a lot and I can't think of one particular name of a case, but these cases all go along the same line, so there were lots of cases on this one particular issue. It wasn't a complicated issue.

Q. So particularly the issue of control of Gagnon.

A. Of a premises owner's liability for an independent contractor.

Q. Okay. So can you explain generally what an independent contractor is?

A. I'll give you have an answer if you want,

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but just, I mean, we're talking now, what is it, 7 years later? I haven't been asked to do any research before today's deposition, but so, I mean, if you're asking me for what the case law says, I'd have to look at the case law, if that's what you're asking.

Q. I'm asking based on your -- on your experience and knowledge as a personal injury attorney and not necessarily related to Dulberg's case specifically.

A. Okay.

Q. But based on your knowledge and experience in premises liability cases, what is an independent contractor?

A. Someone that works on their own.

Q. And can you explain what you mean by on their own?

A. Somebody that's hired, like, somebody that's hired to paint the house.

Q. Okay. So somebody that's hired by a homeowner or maybe a business?

A. Yes.

Q. But someone that's hired by a homeowner but the homeowner doesn't -- doesn't tell them how to do

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their job?

A. Right.

Q. Did you ever obtain a copy of the McGuires' insurance policy, do you recall?

A. I don't have an independent recollection.

Q. Did you ever advise Paul as to the limits of the McGuires' policy?

A. I'm sure we talked about it.

Q. Okay. I just uploaded Dulberg Mast Deposition Exhibit 13 McGuire Interrogatory Answers and they're Bates stamped Dulberg000162 is the first page and there's roughly 14 pages. Do you see that document?

A. Yes.

MR. FLYNN: This is 14?

MS. WILLIAMS: It should be Exhibit 13 -- 13 or 14. I think I have it as 13. Yes, okay. And this -- I'm looking at paragraph 15 or at least I'm trying to look at paragraph 15.

Q. Okay. In paragraph 15 it looks like there was a question about the homeowner's insurance and the McGuires respond with their personal liability and their medical liability, do you see that?

A. Yes.

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Q. Okay. Now that you see that, do you recall whether you ever got a copy of that policy?
A. I don't -- You mean the dec pages or the whole policy?
Q. Either. Did you get a copy of the dec pages?
A. I have no idea.
Q. And you have no idea whether you got a copy of the whole policy?
A. Yeah, don't know.
Q. But they are representing what their insurance was and the liability there, correct, or their liability coverage there?
A. That's what it appears.
Q. Okay. And these -- This was -- looks like this was responded to based on the McGuires' signature on roughly the 12th page of the document. It looks like it was August 6th of 2012.
A. That's what it appears.
Q. Yeah. So prior to when they would have made the settlement offers, correct?
A. That's what it appears.
Q. Okay. Did you ever talk to Paul about those -- the limits of the insurance policy and how

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that may be important in his case?
A. I suspect we talked about the policy, yeah.
Q. Okay. Prior to any settlement discussions?
A. Yeah.
Q. Okay. But you've already testified you didn't -- You don't know if you -- You don't know if you obtained a copy. What about Gagnon's insurance policy, did you ever obtain a copy of that?
A. I don't know. I don't know.
Q. Okay. Did you issue interrogatories to Mr. Gagnon?
A. I'm sure I did.
Q. Let me upload this. Would they have been in Popovich's file if you --
A. Yes.
Q. Okay. So I can tell you, I don't recall seeing any documents issued by you. I'm going to upload a document that appears to be interrogatories issued by McGuires' counsel in the case. I'm going to upload it right now. It's Exhibit 14 and Answers to Co-Defendant Interrogatories and it is stamped Dulberg00178. Do you see that document?
A. Yes.
Q. It appears that these were issued by

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Co-Defendants, in other words, the McGuires, does that seem accurate to you?
A. Yes.
Q. So would you have issued interrogatories in addition to what the McGuires' counsel issued?
A. It's probable.
Q. Okay. Do you recall one way or the other today as we sit here?
A. Not other than it's probable I did.
Q. I have not seen those in discovery, so if they exist, we'd ask that they be produced. Do you ever recall talking to Paul about the policy limits of the Gagnon insurance policy?
A. It's a topic that frequently comes up. I don't have an independent recollection.
Q. Would you have any memos or notes on that?
A. I could. I may. I don't have an independent recollection of that.
Q. Okay. And, again, that would have been in the file that -- in Thomas Popovich's file?
A. Correct.
Q. In your knowledge and experience not related to the Dulberg case but just in your general knowledge and experience, are there any situations

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where a homeowner may be strictly liable for someone doing work on their property?
MR. FLYNN: I'm just going to object to the hypothetical being inaccurate and incomplete, also calls for an expert opinion. While this witness is a lawyer, I won't necessarily -- I don't expect to call him as an F-2 or F-3 witness in the case.
THE WITNESS: So you're asking if a homeowner can be strictly liable for an injury?
BY MS. WILLIAMS:
Q. Right.
A. In general terms, not with regard to this case?
Q. No, in general terms. I'm just asking in general terms in your -- based on your experience and knowledge of injury cases.
A. I mean, I think -- Not in Paul's case, but I think I could probably think of something that maybe could be -- as products strict liability, there's hazardous materials strict liability, there's different issues that potentially factually if they're applicable could apply, but not in Paul's case.
Q. Okay. Just in general, what kind of

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hazardous -- When you say hazardous, are you talking about hazardous chemical-type cases?

A. There's a string of cases when you're dealing with hazardous chemicals and hazardous materials, like a bomb or something like that, things like that.

Q. Okay. Okay. Are there any, like, hazardous actions? Could something be considered, like, some type of action be considered hazardous?

A. What do you mean by action? Activity?

Q. Yeah, like, I'm trying to give you an example because I'm just trying to understand it more than anything else. Yeah, is there an activity that you could be doing on your property, I don't know, like, what about tearing down your home, would that be considered -- would that be something that could be hazardous?

A. There would have to be statutory authority for that and there isn't.

Q. Okay. Okay. Okay. So generally for strict liability there has to be some type of statutory authority for that?

A. Or common law. Yeah. They have a particular fact pattern.

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Q. Okay. But this case particularly is simply a negligence case. Paul's case against the McGuires was a simple negligent failure to control case in your opinion?

A. That's what was pled.

Q. Okay. Did you ever make any -- ever consider pleading any other allegations?

MR. FLYNN: Object to the form.

THE WITNESS: I don't -- No. Not that I recall.

MS. WILLIAMS: Okay. Can we take about a 4-minute break?

MR. FLYNN: Sure.

MS. WILLIAMS: Let's just take -- I just want to take a quick break and review my notes and I want to give everybody an opportunity to kind of stretch for a second. I'm going to go on mute.

MR. FLYNN: Okay.

(Whereupon, a break was taken, after which the following proceedings were had:)

MS. WILLIAMS: Let's go back on the record. Okay, thank you everyone. Okay, just a little bit more here.

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Q. On -- When you were talking to Paul about settlement in the general timeframe of November-December 2013, did you ever suggest at that time that he seek alternative counsel or any recommendation related to that?

A. I think that did come up.

Q. Do you recall what your advice to him was or what the discussion was?

A. I think, you know, we always talk about the risks of not settling and further down the road what, you know, having to try the case and having to try prove the case or getting a motion for summary judgment, having the costs exceed the benefits and all that, and I think my position with Paul, since he didn't give a relatively very good deposition, my thought was we were going to have a tough time, an uphill battle, and he can always seek other counsel if he doesn't agree with me.

Q. And you just stated that you thought Paul didn't give a very good deposition, that may not have been your exact language, but roughly that the deposition wasn't great. Can you explain what -- as you recall it, what about the deposition was problematic?

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A. I mean, he even agreed with me, but he just doesn't do a very good job.

Q. You mean -- Can you expand on that a little bit?

A. As a witness, as I recall, again, it's been quite some time, as I recall he was -- his testimony wasn't given -- wasn't strong, it wasn't definite, it didn't have credible points and some points were incredible when compared to other -- other testimony. I mean, there's just a lot -- there was a lot of problems with his testimony.

Q. Okay. Do you recall the circumstances that Paul described as to why he came to the McGuires'?

A. I think he was either going to pick up something or drop something off.

Q. Okay.

A. I don't really recall. I'm just thinking back now.

Q. Okay. Do you recall whether he was asked to come over to help with the tree, to help take down the tree? Was that the purpose of his visit?

A. I don't recall that.

Q. Would it matter as for liability whether it was or wasn't?

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A. As by who? As to whose liability?
Q. I'm sorry, his and McGuires' liability.
A. As to how he got there?
Q. Whether he was -- Whether he was invited for the purpose of assisting with the removal of the tree.
MR. FLYNN: Object to the form. Just invited by whom?
THE WITNESS: Yeah, that's a complicated question, but I don't think --
BY MS. WILLIAMS:
Q. Let me clarify if I can. Okay. So my question was does it matter if the McGuires invited Paul to their residence to remove the tree on that -- on the June -- roughly June, I believe, 2011 date?
MR. FLYNN: Object to the hypothetical.
THE WITNESS: I don't think it matters.
BY MS. WILLIAMS:
Q. Okay. Would it matter if they were paying Paul?
A. That's not the issue. The issue is Dave.
Q. Okay. So the relationship between the McGuires and Paul is somewhat irrelevant?
A. I'm just saying the issue really that --

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about liability is Dave's relationship with them.
Q. Because Dave is the one that controlled the chain saw that injured Paul, is that accurate?
A. He was the one hired to do the work or asked to do the work, however, whatever that background was.
Q. And Caroline and William McGuire both testified that they had never used a chain saw; is that correct?
A. I think that's accurate. I'd have to refresh my memory, but that sounds right.
Q. Okay. Do you remember discussing bankruptcy with Paul?
A. I don't remember that.
Q. Do you remember that Paul filed for bankruptcy? Do you recall that?
A. I saw a -- Maybe I didn't see one. I remember there was some sort of bankruptcy matter. I don't know the dates or when it came up.
Q. Okay. Do you recall if you advised Paul to file for bankruptcy?
A. I don't advise people to file for bankruptcy.
Q. All right. So you would not have advised

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Paul to file for bankruptcy?
A. Would not.
Q. Okay. And then sometime after the McGuire settlement but before the -- but while the Gagnon -- the claims against David Gagnon were still pending you withdrew from the case; is that correct?
A. The law firm did. I -- Again, he hired the law firm.
Q. Sure. Sure. I'm sorry. The Popovich firm withdrew?
A. Right.
Q. And I -- Let's see -- I think we're on Exhibit 14.
THE REPORTER: 15.
MS. WILLIAMS: 15, okay.
Q. I have, I think, one more and then -- Okay, I am uploading Exhibit 15, Dulberg Mast Dep Exhibit 15. It's a motion to withdraw and it's four pages and on the first page it has a Dulberg versus Gagnon case caption and file stamped March 13, 2015. Do you have that document?
A. Yeah.
Q. And this is the Popovich's firm motion to withdraw as counsel for Paul Dulberg in the Dulberg

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versus Gagnon-McGuire case, correct?
A. Yes.
Q. And you drafted or caused this motion to be drafted and filed?
A. Yes.
Q. And was it granted that same day it was filed?
A. I'm sure it had to be noticed up.
Q. Okay. On the notice of motion it looks like it was noticed for March 13, filed on March 13, but sent to the service list on March 5th, does that seem accurate?
A. That's what it says.
Q. But at any rate, you withdrew sometime in roughly March of 2015?
A. It appears that way. Again, I don't have an independent recollection of the date.
Q. Okay. Okay. That's fine. And I didn't see it -- an order actually showing the exact date of when you withdrew. Can you explain why you withdrew from the case?
A. The short version is just we had a difference of opinion.
Q. Can you give me the long version or slightly

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longer?
A. Well, we have difference of opinion but Paul was a bit difficult, so I just had to -- there were a couple times that I told him I was going to withdraw and then he begged me not to and so I didn't, but then ultimately he -- it got pretty -- it got pretty tough. He was saying some unfavorable, unflattering things and I just decided we're not going to get anywhere, I'm going to move on.
Q. Okay, so you -- the client relationship broke down and you withdrew?
A. Yes.
Q. Okay. Was there anything about Gagnon's liability or your thoughts on his liability that would have caused you to withdraw?
A. That was another aspect of it. Paul was looking for the stars and the moon and I didn't see it.
Q. And when you say Paul was looking for the stars and the moon, you mean -- Well, what do you mean by that?
A. He was looking for a lot of money.
Q. Okay, and what was your opinion as to David Gagnon's liability in the case?

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A. I didn't think much of the liability issue. I thought it was going to be a long, tough haul given that --
Q. And --
A. -- Paul was going to be our only witness on our side pretty much.
Q. Okay, and there were no other witnesses other than Paul and David; is that correct?
A. Correct.
Q. And what about -- Anything related to, like, the actual injury, the doctors' depositions or anything like that?
A. That all -- It was the whole ball of wax. The doctors weren't supporting his claim. Dave was saying he's a liar, he tried to bribe him. There was just a lot of -- a lot of bad stuff, not enough good stuff.
Q. Okay, and then at that point you and Paul disagreed and Paul retained alternative counsel?
A. Right.
Q. Okay. Was there anything else about the case that you can recall right now that gave you pause as to the liability either to the McGuires or David Gagnon?

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A. Anything other than what? Pretty much everything was not good.
Q. Okay. I mean, anything that we haven't really discussed here today. We've talked about Paul's testimony, Gagnon's testimony a little bit, the McGuires, the premises liability. We talked -- You mentioned the doctors' depositions. Is that sort of the general gamut of it?
A. That's the whole case.
Q. Okay. Have you ever had any other chain saw liability cases other than this particular case?
A. I'm sure I have. I don't -- If you're going to ask me to name a date, I don't know. I mean, it's not a common issue, but it comes up from time to time.
Q. Okay. Did you state -- Did you seek out a liability expert, a chain saw liability expert, during the time you were representing Paul?
A. No.
Q. Is there a reason for that?
A. That's always a possibility. It's always a consideration, but I had to consider even more whether we could even get to prove a credible case and that was my first object, my first -- my first

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tier. It doesn't do any good to hire an expert if you don't have a good case.
Q. Okay. Okay. If you were going to take the case to trial, at that point would you have hired an expert, chain saw expert?
A. For this case, I don't know. I'd have to look at it again and see what we need to prove, what they're arguing. There's -- As I recall, they weren't arguing the chain saw -- They weren't arguing. He didn't get hit with the chain saw. So I'm not real sure. I'd have to think whether we need to prove -- what we need to prove, anything more than that.
Q. Okay.
A. It was more what happened, who caused it to happen, not that it happened.
Q. Okay. Is there a difference between an independent contractor and an employee?
A. In terms of what? In terms of duty or what?
Q. Right. In terms of the supervisor's duty. So if the Gagnons -- If Gagnon was, and this is a hypothetical, if Gagnon was an employee of his parents as opposed to an independent contractor, would there be a liability difference?

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MR. FLYNN: Object to the hypothetical. It's inaccurate and incomplete.

THE WITNESS: That's a very complicated question, even though it doesn't sound like one. It depends on lots of things.

BY MS. WILLIAMS:

Q. Okay. We've already talked about an independent contractor. So just in your experience and knowledge, what is a supervisor's duty as to an employee? That's actually a really terrible question. Let's strike that question.

Is there a difference -- Is there a difference between the control aspect of -- Would an -- Let me start again. This is a complicated question, more complicated than I'm anticipating right now. Okay.

We've generally established that in order for an -- someone who hires an independent contractor to be liable for the actions of that independent contractor, they would have to control the work. In a situation, an employer-employee situation, is that control element also present when considering liability? Does the employer have to control the work of the employee in the same way?

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A. I think there are --

MR. FLYNN: I just want to raise an objection for the record. I object to the form. I think that the premise of the question indicated that we already established some legal precedent. I don't think that's the case. I don't think that he's testified to that, so, again, I'll just object to the form. But if you can --

THE WITNESS: You're asking me to compare two different theories without a fact pattern, but there's a lot to each issue and it's hard to just say, well, if you have this, then you have that. There's a lot of different facts that apply, but now I'm forgetting what you asked initially about the employer-employee question.

BY MS. WILLIAMS:

Q. So I guess my question to the point of is an employer liable for their employees in a different way than a homeowner would be liable for an independent contractor?

A. I think --

Q. Based on -- You go ahead.

A. I think under the law there are different elements to those actions.

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Q. And there are --

A. Go ahead.

Q. So there would be different elements if something was an employer-employee situation, that would be different law, different case law?

A. Yeah, there's a different cause of action.

Q. Okay.

A. Different elements potentially have to be pled and proved.

Q. Okay. But in this case you were trying to prove -- In Dulberg's case against the McGuires and Gagnon you were trying to show that -- The theory of the case was that Gagnon was not an employee, but an independent contractor, and the McGuires had to control him in order to be liable?

A. Well, that's ultimately what it appeared. You followed the evidence, you follow the facts, so if it turned out it was employee-employer-employee relationship, that's a different evaluation.

Q. Okay. So but, for the most part, you were -- your evaluations of the liability were based on an independent contractor analysis?

A. Well, that's where it went because of the evidence.

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MS. WILLIAMS: Okay. I'm going to go on mute for just a second so you guys don't hear me shuffling papers, but I think I'm almost finished here or may be finished.

MR. FLYNN: Okay.

BY MS. WILLIAMS:

Q. Okay. Just a couple more questions and then we'll wrap things up here. When did you first advise Paul that you didn't think the claims against Gagnon were going to be very strong?

A. Probably day one.

Q. Before the settlement with the McGuires?

A. Yeah.

Q. And did you discuss that several times prior to that McGuire settlement?

A. Like I said, we discussed those issues every time we'd meet, liability issues, damages issues.

Q. Do you recall any particular instances, like maybe after Paul's deposition, after David's deposition, did that stick out in your mind at all?

A. Discussing what, the issues of liability against Gagnon?

Q. Yes.

A. Those are probably something we talked about

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every visit.
Q. Okay. So we discussed this a little bit before, but I believe the testimony was that the McGuires testified that they purchased the chain saw and I believe you said yes, that was your recollection as well; is that correct?
A. That sounds right. I just don't have an independent recollection at this point.
Q. Okay. If the McGuires -- Let's assume that -- Just for the purposes of this, let's assume that the McGuires did -- it was their chain saw, they purchased it and let Gagnon use it on their property. Would they have any duties to share the manual of that chain saw with Gagnon or provide any other education as to the use of the chain saw to Gagnon?
A. All right, so you're asking me to make a judicial decision whether they had a duty or not?
Q. No, I'm asking you in your experience with these types of cases is there any duty there for them.
A. All right, so a legal duty?
Q. Right. Right. And -- Go ahead, George.
MR. FLYNN: Yeah, I'll just object. I mean, there isn't any evidence that Gagnon asked for a

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manual, for one, but as far as him providing legal opinions not based on the facts of this case, I'm just going to caution him not to provide what could be considered an expert opinion.
THE WITNESS: You don't want me to answer?
MR. FLYNN: It's up to you. I don't know if you can.
THE WITNESS: I don't remember the question. You're asking me should the McGuires have given Gagnon the manual to the chain saw?
BY MS. WILLIAMS:
Q. Yes.
A. Sure, if he asked for it or if they wanted to give it to him.
Q. Are there any other warnings that they should have provided?
A. See, I mean, you're asking me to -- I get the question, but I'm saying you're asking me to evaluate the conduct of both parties and interpret something and I don't know that that's my position as a witness, but should they have warned him? You know, sure, go ahead and warn him, but obviously when you take on a piece of equipment that you're skilled and experienced in operating, you should be able to

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operate it effectively yourself safely.
Q. Sure. Okay. And --
A. So I mean --
Q. Okay. But today you're not giving an opinion one way or the other whether they had a duty to provide warnings, whether they had a duty to provide the manual, fair enough?
A. Yeah, legal wise, no, I'm not giving you a legal opinion on that.
MS. WILLIAMS: Okay. Okay, I don't think I have anything further.
MR. FLYNN: I actually have just a few follow-ups to that.
MS. WILLIAMS: Sure.
EXAMINATION
BY MR. FLYNN:
Q. Hans, is your understanding based on the evidence that there were only two eyewitnesses to Mr. Dulberg's accident, correct?
A. Correct.
Q. That was Mr. Dulberg himself and David Gagnon?
A. Correct.
Q. And did you have an understanding as to how

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the evidence and testimony shook out as to each gentleman's version of the accident and how it occurred?
A. Well, as I said before, I thought Paul's case was going to be very difficult to prove based on the testimony of everybody, credibility issues, and the lack of evidence to support and prove.
Q. David Gagnon's testimony regarding the facts surrounding the accident differed from Paul Dulberg's version of the facts, correct?
A. Correct.
Q. You took that into account in your evaluation and analysis of the case?
A. Definitely.
Q. Did you also take into account your professional analysis of Paul Dulberg's performance as a witness at his discovery deposition?
A. Definitely.
Q. You didn't think he made a very good witness for himself, did he?
A. He even admits he didn't and I don't think he -- I think -- that was one of the worst -- that was one of my worst fears with this case. I had lots of cases and on a scale of weak witnesses, he's

probably up at the top, and I'm not putting him down, that's just a reality and I think he even acknowledged that reality.

Q. Okay. Not everyone is a professional witness?

A. Right.

Q. Okay. Generally speaking, your evaluation of the case hinged in part on whether the McGuires controlled the manner and method of the use of the chain saw, correct?

A. Right.

Q. Do you have any recollection as to what the McGuires were doing while the work was being done?

A. They were inside the house, just another day to them. They weren't even -- I don't think even paying attention to what was going on outside.

Q. Did Mr. McGuire testify that he was watching television inside the house while David was working on the tree?

A. They were both inside as I recall.

Q. Your recommendation or suggestion that Mr. Dulberg settle the case for $5,000 was based on your analysis of the entire case, including the risks and benefits of going forward and potentially losing

the case at trial, correct?

A. Yes.

Q. Did you have any way to predict whether the case would result in a verdict on behalf of the plaintiff in the case against the McGuires?

A. I'm sorry?

Q. Did you have any -- Did you have any certainty as to whether Mr. Dulberg could prevail at trial on liability against the McGuires?

A. I would have staked a lot that we would not have recovered in the case and just something that didn't come up with the direct is they didn't offer the arbitrator to me. That was something that was later decided. I talked to them about that. They did not offer that to me, so that was not an option to me.

Q. So you were -- Based on your professional judgment, you suggested that you attempt to settle the matter as opposed to taking it to trial versus the McGuires, correct?

A. Right.

MR. FLYNN: Okay. That's all I have.

MS. WILLIAMS: I have no follow-up.

THE REPORTER: Signature?

THE WITNESS: I'll waive signature.

MS. WILLIAMS: We'll order the original, E-tran.

MR. FLYNN: I'll take a regular and a mini copy.

DECLARATION UNDER PENALTY OF PERJURY

I, HANS MAST, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on June 25, 2020; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this _____ day of _____, 20__, at _____, Illinois.

_____

HANS MAST

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STATE OF ILLINOIS }
} SS:
COUNTY OF C O O K }

I, Barbara G. Smith, Certified Shorthand Reporter and Notary Public in and for the County of Cook, State of Illinois, do hereby certify that on the 25th of June, A.D., 2020, the deposition of the witness, HANS MAST, called by the Defendants, was taken remotely before me, reported stenographically and was thereafter reduced to typewriting through computer-aided transcription.

The said witness, HANS MAST, was first duly sworn to tell the truth, the whole truth, and nothing but the truth, and was then examined upon oral interrogatories.

I further certify that the foregoing is a true, accurate and complete record of the questions asked of and answers made by the said witness, at the time and place hereinabove referred to.

The signature of the witness was waived by agreement.

The undersigned is not interested in the within case, nor of kin or counsel to any of the parties.

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Witness my official signature and seal as Notary Public, in and for Cook County, Illinois on this 7th day of July, A.D., 2020.



Barbara G. Smith, CSR, RPR
Notary Public
200 West Jackson Boulevard, Suite 600
Chicago, Illinois 60606

License No. 084-002753

Exhibits

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

X _____
Client

_____
Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

Exhibit 1
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

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IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, Individually, Defendants.	)	No. 12 LA 178

FILED
McHenry County, Illinois
MAR 13 2015
KATHERINE M. KEEFE
Clerk of the Circuit Court

MOTION TO WITHDRAW AS COUNSEL

NOW COME the LAW OFFICES OF THOMAS J. POPOVICH, P.C., attorneys for the Plaintiff, PAUL DULBERG, and hereby move to withdraw as counsel for the Plaintiff in this cause pursuant to Supreme Court Rule 13. In support of said Motion, the attorneys hereby state as follows:

1. Communication between Plaintiff and Plaintiff's counsel has broken down resulting in an unworkable situation for both attorney and client.

2. By copy of this motion, Plaintiff is hereby advised that, to ensure notice of any further action in this cause, she should retain new counsel or within 21 days of the hearing of this motion and withdrawal of counsel, retain other counsel or file her own supplementary appearance with the clerk of the circuit court, stating an address at which service of notices or other papers may be had upon her.

WHEREFORE, the LAW OFFICES OF THOMAS J. POPOVICH, P.C. respectfully requests that this Court enter an Order granting the LAW OFFICES OF THOMAS J. POPOVICH, P.C. leave to withdraw as counsel for the Plaintiff, PAUL DULBERG.

Respectfully submitted,

Hans A. Mast

LAW OFFICES OF THOMAS J. POPOVICH
3416 West Elm Street
McHenry, IL 60050
(815) 344-3797
Attorney No. 06208070

Exhibit 2
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

COPY
FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs. No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 204 ON 11/8 20 12, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON
20 , AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20 That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No.:
	)	
DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,	)	
	)	
Defendants.	)	

AFFIDAVIT

I, HANS A. MAST, being first duly sworn on oath, depose and state as follows:

1. That I am one of the attorneys responsible for the prosecution of the above-entitled case.

2. That on behalf Plaintiff, PAUL DULBERG, I am hereby requesting money damages in an amount not to exceed $50,000.00, together with the costs of this action, against each of the above-named Defendants.

FURTHER, Affiant sayeth naught.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
ARDC No. 06203684

MEMORANDUM

TO: Tom, Marla, Diana and Alarie

FROM: Hans

DATE: December 5, 2011

SUBJECT: **PAUL DULBERG - NEW CLIENT**

HAM
B/C the accident occurred on their premises, their H.O. net will pay the bills.

On December 1, 2011, I met Paul Dulberg and his mother, concerning a recent injury that Paul suffered at a friend's house due to a chainsaw accident on June 28, 2011. Paul was referred to our office by a former client, Hubert McArtor. Paul had previously been with Francisco Botto in Woodstock but they rejected the case. He did sign a contract with Botto but we have correspondence in the file that they rejected him and sent him away. They did not refer him to us. Apparently, they rejected the case because they did not think that they would be able to prove that the defendant was more than 50% negligent causing the accident. I disagree.

Exhibit 3
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Paul's contact information is as follows:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051
847/497-4250
SSN 323-76-4001
DOB 03-19-70
DOA 06/28/11

Paul describes that he was at a friend's house, Caroline and Bill McGuire who live at 1016 W. Elder Avenue, McHenry, IL 60051, phone 815/344-4274. The McGuire's son, Dave was at the home and Dave was cutting up some tree limbs in the yard. Caroline had called Paul over to the house earlier to see if he wanted the wood for firewood. Dave asked Paul to hold some tree limbs while he cut them up. He had held two tree branches previously and then about an hour after he arrived he was holding another branch and Dave suddenly swung around with the chainsaw rising it in the air and cutting his Paul's forearm severely while holding on to a branch. Paul said that the chainsaw went about 40% through his forearm. Dave took him immediately to NIMC where they stitched him up. It was a very deep and open wound. Unfortunately, he did not take any photos of the wound. Instead, he followed up with his family physician, Dr. Frank Sek on Route 120 in McHenry who removed the stitches about a week later. Dr. Sek thought there was going to be possible nerve damage due to his arm being very painful. About two weeks later he went to a doctor at the Associates in Neurology in Libertyville and they took and EMG test which found that there were some branch nerves that had been severed which may be the cause of his ongoing pain. They thought that the pain was probably more ligamentous and they referred him to Dr. Paul Papierski, phone 847/247-0547. That was in August. He has not returned to see Dr. Papierski because apparently they needed an MRI and he did not have money to pay for an MRI. I urged him to return

to see Dr. Papierski and to have the MRI done even if they have to hold a lien on our case. His arm is very painful when he lifts anything and he drops things continuously. He said that he will follow up with Dr. Papierski and advise me further what needs to be done as far as treatment.

At the time of the accident he was not employed but he had been just recently hired when the accident occurred by AMS Screw Products in Spring Grove. He was going to earn $12 an hour for 40 hours per week. He had talked to Karen over at AMS Screw and she agreed to hire him, but unfortunately, he was injured before he could start work. Their phone number is 732/545-8888x231.

The central issue in my view in this case is whether there is insurance coverage. Since the son was not living with the McGuire's at the time of the accident, it may be that David Gagnon is not going to be insured for the accident. However, Paul and his mother advised me that Dave also had a home and lived at 39010 90th Place in Genoa City, Wisconsin. Therefore, hopefully he has homeowner's insurance that will apply to this claim as well as med-pay coverage to help pay for the MRI that needs to be done.

The McGuire's were insured by:

Auto Owners Insurance
Tom Malatia, Adjuster
6000 Tallgate Road, Suite D
Elgin, IL 60123
847/587-3077
847/531-5420
847/531-8063x3808 gen. #
Claim No. 13-2779-11

By copy of this memo, I ask **Alarie** to set up a new file.

By copy of this memo, I ask **Marla** to order the medical records and bills from NIMC, Dr. Frank Sek and Associates in Neurology in Libertyville. Please also diary the 1 and 2 year SOL deadlines in this case.

Thanks,

Hans

S:\Main\DULBERG, PAUL\Memos\Memo re new client 12-5-11.wpd

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

FAXED

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for $7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Exhibit 4
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

** Transmit Conf.Report **

P.1 Oct 22 2013 12:24pm
LAW OFFICE T POPOVICH Fax 1-815-344-5280

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
18152267701	Normal	22:12:23pm	0'25"	1	* O K	

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kobnak

Mark J. Vogo
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for $7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

XFINITY Connect

hansmast@comcast.ne

+ Font Size -

Re: Medical depositions

From : Hans Mast <hansmast@comcast.net>

Wed, Oct 30, 2013 02:34 PM

Subject : Re: Medical depositions

To : Paul Dulberg <pdulberg@comcast.net>

Cc : Hans Mast <hansmast@comcast.net>

Paul, here are my thoughts regarding your case. There are two issues. The first liability, or whether Mr. Gagnon is liable for your injury. If he is not proven liable, then it does not matter how badly you were hurt since he will not be found responsible for your damages. The second issue is your damages, or to what extent you were injured due to Mr. Gagnon’s acts.
Both of these issues are strongly contested in your case.
As to liability, there were no witnesses to the accident. So, whether Mr. Gagnon will be held responsible for your damages is uncertain and a gamble. That is because it is your word against his word. Our argument is that you were simply holding a limb when he caused the chain saw to strike you. His argument is that you moved your arm in the path of the chain saw unexpectedly. If the jury determines that we did not prove your "version" of the accident, then they can find against you and in favor of Mr. Gagnon at trial.
As to damages, the issue is complicated. That is because your treating physicians do not all agree on exactly what injury you suffered or whether your had a fully recovery or not.
Dr. Talerico at MidAmerica Hand and Shoulder, saw you twice. The first time was in December, six months after your injury. He was not supportive of your claim in most respects. He didn’t really feel there was anything wrong with you - as to the forearm. He said that you complained mostly of pain radiating down the forearm from the laceration site with numbness and tingling. On exam he noted no tenderness and it was mostly a normal presentation. Strength was good. He did not see any nerve problem. He prescribed physical therapy due to a muscular sort of symptomology - not nerve related. Apparently you did only 2 sessions of therapy and returned January, 2012. No new complaints at the time. The EMG was normal. He did not believe you were disabled. He continued you on therapy. He saw no evidence of nerve problems. The only symptoms were subjective - not represented by any abnormal exam finding.
Dr. Sagerman has also been deposed. I will summarize his testimony for your soon. His was more favorable, but still limited in what he related to the chain saw accident. Apparently he does not believe you presently have any symptoms relatable to the chain saw injury.
Think about these issues. I will provide you Dr. Sagerman’s summary soon.
Hans

----- Original Message -----From: Paul Dulberg <pdulberg@comcast.net>To: Hans Mast <hansmast@comcast.net>Sent: Fri, 25 Oct 2013 13:18:24 -0000 (UTC)Subject: Medical depositions

Morning Hans,Wanted to touch base this morning because the call from you about something not being medically linked has been on my mind.I'm not sure what was said during that deposition with the drs that prompted the call but I have been thinking about what it could be. Most likely it was the right elbow procedure. During my deposition I remember being asked if the two were linked and I answered yes. Let me explain my answer to you. If the chainsaw had not gone through my arm then the procedure on my elbow wouldn't have happened. That procedure was exploratory to find what was bothering the arm from the chainsaw. Upon opening up the arm they did find some compressions which from my understanding was nothing unusual for a male of my age and very well may or may not have happened during my retreat from the chainsaw when I ended up half way across the yard on the ground. Incidental finding or not it still would not have been found if I hadn't had the chainsaw incident. So as I see it they are linked good or bad and cannot be separated. The exploratory procedure was to find and possibly fix issues relating to the chainsaw incident. They also removed a ton of scar tissue in the forearm on the same day during the same exploratory procedure that was a direct result of the chainsaw.

Hope this helps explain things better.Let me know,Thanks,Paul

Paul Dulberg847-497-4250Sent from my iPad

Exhibit 5
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: 3 pm meeting**
Date: December 28, 2016 10:39:25 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 5, 2013 at 9:46:33 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: 3 pm meeting

Hans,

Below is a link to an article talking about the integration of digital cameras at the centegra facilities.

A friend of mine who works at NIMC for well over a decade just replied to me and she says everything is recorded and available exactly for the purposes we discussed.

http://www.sdmmag.com/articles/print/success-stories-in-integrating-video-surveillance

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 5, 2013, at 9:00 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> no chance, sorry
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Mon, 04 Nov 2013 22:54:28 -0000 (UTC)
> Subject: Re: 3 pm meeting
> Also,
> Any chance the hospital (centegra) has video of their parking lots?
> This could disprove David's claim of talking before entering the ER.
> Thanks,
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 4, 2013, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> No need to bring anything, your mom is welcome...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Mon, 04 Nov 2013 17:31:20 -0000 (UTC)
>> Subject: 3 pm meeting
>> Hi Hans,
>> Curious if I should bring anything with me at 3 pm?
>> Mind if my Mom comes along?
>> Thanks and see you soon,
>> Paul
>> Paul Dulberg
>> 847-497-4250
>> Sent from my iPad

Exhibit 6
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

XFINITY Connect

hansmast@comcast.ne

+ Font Size -

Re: Dave's Best and oldest friend John

From : Paul Dulberg <pdulberg@comcast.net>

Tue, Nov 19, 2013 02:29 AM

Subject : Re: Dave's Best and oldest friend John

To : Hans Mast <hansmast@comcast.net>

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>
> Sent from my iPhone
>
>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>
>> Only 5, That's not much at all.
>> Is this a take it or leave it or do we have any other options?
>>
>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>
>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.
>>
>> They all left me out in the yard screaming for help while they were busy making sure they were covered.
>>
>> She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.
>>
>> How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.
>>
>> I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.
>>
>> I'm not happy with the offer.
>>
>> As far as John Choyinski, he knows he has to call you and said he will tomorrow.
>>
>> Paul
>>
>> Paul Dulberg
>> 847-497-4250
>> Sent from my iPad
>>
>>> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>>>
>>> Im waiting to hear from John. I tried calling him last week, but no one answered.
>>>
>>> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at

Exhibit 7
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>>>
>>> Let me know what you think..
>>>
>>> Hans
>>> ----- Original Message -----
>>> From: Paul Dulberg <pdulberg@comcast.net>
>>> To: Hans Mast <hansmast@comcast.net>
>>> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
>>> Subject: Dave's Best and oldest friend John
>>> Hans,
>>> Just spoke with John Choyinski again about talking with you.
>>> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
>>> I believe he will try and call sometime tomorrow.
>>> Paul
>>> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
>>> Sorry for the rant but Dave was a complete ass all the way and deserves this.
>>> Paul Dulberg
>>> 847-497-4250
>>> Sent from my iPad

CICERO, FRANCE, BARCH & ALEXANDER, P.C.
A Professional Corporation
Attorneys at Law
6323 EAST RIVERSIDE BOULEVARD
ROCKFORD, ILLINOIS 61114

PAUL R. CICERO
JOHN W. FRANCE
RONALD A. BARCH
CHARLES P. ALEXANDER

CHANTEL R. BIELSKIS
ANDREW T. SMITH

TEL: (815) 226-7700
FAX: (815) 226-7701

November 18, 2013

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich, PC
3416 West Elm Street
McHenry, IL 60050

Case: *Paul Dulberg v. David Gagnon, Caroline McGuire and Bill McGuire*
(McHenry County Case No. 12 LA 178)

Issued For Settlement Purposes Only

Dear Mr. Mast:

I am writing to confirm our telephone conversation earlier this morning, wherein I advised you that I was authorized to propose settlement of Mr. Dulberg's claim against Carolyn and Bill McGuire for a lump-sum total of $5,000.00. The settlement would of course be contingent upon customary settlement documents, including a release, a good faith settlement finding and dismissal.

Pursuant to your request, I searched my file materials for lien notices. The only notice of lien contained in my file at this time is your Attorney's Lien (enclosed). I have asked my contact at Auto-Owners Insurance Company to confirm no lien notices have arrived on his end since Mr. Dulberg's case was assigned to me for the defense of Mr. and Mrs. McGuire. I do not anticipating any lien notices, but just wanted to be safe.

I understand that you intend to run my settlement proposal by Mr. Dulberg. I look forward to hearing from you once you have had a chance to confer with him.

Very truly yours,

RONALD A. BARCH

RB:mj\37ltr.HAM
cc Tom Malatia (Claim No. 13-2779-11)
Encl.

Exhibit 8
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

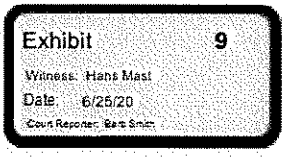
SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the $5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans



MEMORANDUM

TO: File

FROM: Hans

DATE: December 20, 2013

SUBJECT: **PAUL DULBERG**

On December 18, 2013, I called Paul today after an email and we had a long discussion about the McGuire's liability and he seemed to concede and understand that probably based on the testimony there is nothing we can prove against the McGuric's and he is willing to take their $5,000 settlement offer.

Exhibit 10
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Sara Smith

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

FAXED 12/27

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

December 26, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

Please be advised that we will accept your $5,000 settlement offer on behalf of you clients, Caroline and Bill McGuire. Please forward your settlement agreement to my attention. Also, please present a motion for good faith finding with regard to the settlement.

As I understand it, you have no liens on the file other than our attorney's lien.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Exhibit 11
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Bare Smith

Waukegan Office
210 North Martin Luther King Jr. Avenue
Waukegan, IL 60085

debridement and skin grafting. In *Fomond*, a two-and-one-half-year-old girl sustained third-degree burns that required at least seven surgeries, including two skin grafts and continued physical therapy even several years after receiving the burns. In *Negrete*, a 17-month-old baby boy sustained burns from hot water, resulting in permanent scarring across 60% of his body and, due to the burning of his genital area, possible permanent damage to his reproductive capacity. In *Rogers*, the defendant poured grain alcohol on top of the female victim's head and then threw a lit match at her, causing her head, face, chest and pants to ignite.

In light of the above-cited case law, I would reverse defendant's conviction for heinous battery.

Defendant was properly convicted of aggravated battery against a child, however, no sentence was imposed for that crime. If a reviewing court reverses a conviction on which the sentence was imposed, it can remand for sentencing on a conviction on which no sentence was imposed. Such process has been approved in *People v. Dixon*, 91 Ill.2d 346, 63 Ill.Dec. 442, 438 N.E.2d 180 (1982) and *People v. Frantz*, 150 Ill.App.3d 296, 300, 103 Ill.Dec. 649, 501 N.E.2d 966 (1986) ("[i]f the reviewing court acts to affirm the incomplete judgment of conviction, the reviewing court then must remand the cause for imposition of sentence").

283 Ill.App.3d 126
669 N.E.2d 645

Fernando LAJATO, Plaintiff-Appellant,

v.

AT & T, INC., Defendant-Appellee, and Third Party Plaintiff (Quinn Delivery Service, Inc., Third Party Defendant).

No. 1-95-0447.

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Independent contractor who was injured when loading telephone company's battery hoist for transport brought negligence action against telephone company. The Circuit Court, Cook County, Anthony J. Bosco, J., granted summary judgment for telephone company. Contractor appealed. The Appellate Court, Gordon, J., held that: (1) contractor's motion for reconsideration was timely; (2) telephone company had not voluntarily undertaken duty to properly maintain and secure battery hoist for transport; (3) telephone company was not liable as gratuitous bailor; and (4) trial court did not abuse its discretion by denying contractor's motion to amend his complaint.

Affirmed.

1. Judgment ⇐321, 386(1)

Posttrial motion must be filed within 30 days of final judgment or trial court will lose jurisdiction to modify or vacate final order which it entered after lapse of 30 days. S.H.A. 735 ILCS 5/2-1203.

2. Motions ⇐39

Motion to reconsider is posttrial motion, and therefore falls within purview of post-judgment motions which must be filed within 30 days after challenged judgment is entered. S.H.A. 735 ILCS 5/2-1203.

3. Appeal and Error ⇐344

Only if posttrial motion is timely filed will it extend time for filing notice of appeal. Sup.Ct.Rules, Rule 303(a)(1).

4. Judgment ⇐186

Motion to reconsider filed within 30 days of entry of summary judgment was timely, although no certificate of service was filed until well after 30 days of entry of summary judgment. S.H.A. 735 ILCS 5/2-1203; Sup. Ct.Rules, Rule 104.

5. Appeal and Error ⇐893(1), 1073(1)

Although trial court did not entertain motion for reconsideration of summary judgment in erroneous belief that it did not have jurisdiction to hear motion, appellate court

Exhibit 12
Witness: Hans Mist
Date: 6/25/20

d not need to remand to allow trial court to nsider merit of motion, as grant of sum- ary judgment required de novo review by ppellate court to determine question of law.

Negligence ⇐36

Independent contractor could not base rsonal injury action against defendant on eory of premises liability, where he was ured in bed of his truck and not due to any ndition of defendant's premises.

Appeal and Error ⇐893(1)

Appellate review of order granting sum- ary judgment is de novo.

Judgment ⇐185(2)

Negligence ⇐1

To withstand motion for summary judg- ent in action based in negligence, plaintiff ust allege facts sufficient to show that de- ndant owed him a duty, that defendant reached that duty, and that his injury proxi- ately resulted from that breach.

Negligence ⇐20

Telephone company did not voluntarily ndertake duty to properly maintain and se- re its battery hoist for transport, where dependent contractor, who was injured by ist when loading it for transport as result loosening of strap securing motor, had tal discretion in preparing and moving ist, and there was no evidence that tele- one company had strapped motor, that rapping was undertaken as protection for ntractor, or that contractor relied upon fety of strapping. Restatement (Second) Torts § 323.

Negligence ⇐136(14)

Whether a duty has been voluntarily ndertaken is question of law to be deter- ined by court. Restatement (Second) of orts § 323.

Bailment ⇐35

Telephone company was not liable as ratuitous bailor for injuries sustained by dependent contractor when strap securing otor on battery hoist loosened when con- ractor was loading hoist for transport, here contractor presented no evidence oth- r than inadmissible hearsay rumors to show either defect in hoist or that telephone company knew or should have known of any dangerous propensities in hoist.

12. Appeal and Error ⇐169

Contentions not raised in trial court are waived on appeal, even in summary judgment case.

13. Bailment ⇐9, 21

Gratuitous bailor may be liable for physical harm caused by use of chattel when he knows or has reason to know that chattel is or is likely to be dangerous when put to use for which it was supplied, has no reason to believe that those for whose use chattel is supplied will realize its dangerous condition, and fails to exercise reasonable care to inform user of its dangerous condition or of facts which make it likely to be dangerous.

14. Judgment ⇐185(1)

Unsubstantiated hearsay statements cannot be considered in ruling on motion for summary judgment.

15. Pleading ⇐236(6)

Trial court did not abuse its discretion by denying motion of independent contractor, who was injured when loading telephone company's battery hoist for transport, to amend his complaint to allege more specifically facts that there was voluntary undertaking by telephone company, after trial court granted summary judgment for telephone company, where issue was not that complaint was deficient in its framing of issues but that evidence presented in support of voluntary undertaking theory failed to establish genuine issue of material fact, and amendment would be prejudicial to telephone company in that amendment was sought on eve of trial and five years after inception of lawsuit, with no explanation as to why contractor never before attempted to develop facts necessary to withstand telephone company's summary judgment motion.

Beerman, Swerdlove, Woloshin, Barezky, Becker, Genin & London, Harvey L. Walner & Associates, Chicago (Alvin R. Becker, Harvey L. Walner, Christopher A. White, of counsel), for Appellant.

William F. DeYoung, Loretto M. Kennedy, Carole C. Tubbesing Burke, Weaver & Prell, Chicago, for American Telephone & Telegraph.

Justice GORDON delivered the opinion of the Court:

This is an action for damages brought by the plaintiff, Fernando Lajato, arising from injuries he incurred while working as an independent contractor for third-party defendant Quinn Delivery Service, Inc. (Quinn) to move a battery hoist owned by defendant AT & T. AT & T filed a contingent third-party complaint against Quinn, not at issue in this appeal, seeking indemnification pursuant to the delivery service contract between Quinn and AT & T, in the event plaintiff recovered a judgment in his tort action against AT & T. AT & T subsequently filed a motion for summary judgment against plaintiff which the trial court granted. In that order, the court also denied plaintiff's oral motion requesting leave to amend his complaint. Subsequently, plaintiff filed a motion to reconsider, which the court ultimately struck by reason of its alleged lack of jurisdiction to hear it. Plaintiff appeals from the orders granting summary judgment to AT & T, denying his motion to amend his complaint, and refusing to hear his motion to reconsider. AT & T has moved to dismiss this appeal for lack of appellate jurisdiction.

In November 1989, plaintiff filed a complaint against AT & T, wherein he alleged that on July 1, 1988, he was on the premises of AT & T on behalf of Quinn in order to move an AT & T battery hoist. The complaint further alleged that while performing that task, the hoist fell upon him, causing him injuries for which he sought damages. The complaint averred that AT & T was negligent in its failure to maintain, inspect, and repair the battery hoist, and for AT & T's failure to warn plaintiff of the propensity of the hoist to fall. In April 1990, AT & T filed its answer, specifically denying each basis for recovery alleged in plaintiff's complaint. The matter was scheduled for trial in June 1995.

On April 25, 1994, AT & T filed a motion for summary judgment, alleging that, based upon the undisputed facts, it was clear that [illegible] owed no duty of care to plaintiff with respect to his injuries. In support of its motion, AT & T submitted excerpts of the deposition testimony of plaintiff and a copy of the delivery services contract between AT & T and Quinn. In his deposition, plaintiff testified that on the date of the accident, July 1, 1988, he was making pick-ups and deliveries of telephone equipment at various AT & T locations as an independent contractor for Quinn. He stated that he had received instructions from Quinn via radio to go to an AT & T property in Rolling Meadows, Illinois, the scene of the accident, to pick up a battery hoist and to transport it to another AT & T location in Rockford, Illinois. Approximately 99% of plaintiff's delivery work for Quinn involved pick-ups and deliveries of AT & T equipment. The plaintiff stated that AT & T did not direct him in his moving work, but rather, allowed him to use his own expertise to determine how each move would be accomplished.

Plaintiff further testified that the battery hoist, which weighs approximately [illegible] pounds, was used to lift batteries weighing approximately 300 pounds up onto shelves. Plaintiff described the hoist as being rectangular in shape, on wheels, and consisting of a large, black metal frame with a motor and hoist accessories suspended from the middle of the frame. The hanging motor and accessories could be pulled to one side of the hoist frame and secured thereto with a nylon strap and a chain, both of which were also attached to the hoist, in order to stabilize the hoist during transport and when not in use to perform its battery-lifting function. It was plaintiff's customary practice to inspect the hoist to ensure that the motor and accessories were firmly secured with the strap and the chain prior to moving the hoist. Plaintiff had moved this particular hoist on at least 10–15 different occasions.

Plaintiff's deposition further revealed that when he reached the AT & T Rolling Meadows location, an AT & T employee directed him to the hoist, and that after that brief conversation, plaintiff had no further discussions with anyone, AT & T employees or otherwise, until after the accident.

intiff approached the hoist, he observed t its motor and accessories were already apped and secured to the hoist's frame. also testified that he personally examined strap to ensure that the hanging appara- was firmly secured to the frame of the st with the nylon strap and the motor ain before attempting to move the hoist. intiff then wheeled the hoist to the back his truck and onto his truck's hydraulic lift form, which he had lowered to ground- el in order to lift the hoist into his truck. er raising the lift and the hoist from und-level up to the truck's bed, plaintiff bed into the truck bed and began to pull hoist into the bed.

Plaintiff further testified that while pulling hoist into the truck, the strap around the or and hoist accessories loosened for rea- beyond his knowledge, permitting the or and the accessories to swing free and weight of the hoist to shift towards him. ediately thereafter, the hoist fell onto tiff, causing him various injuries. Plain- stated that there were no known wit- es to the accident. He also stated that t two months after the accident, he d from an AT & T installer that certain laborers at AT & T had told him that plaintiff's accident, they would not use hoist because it was unsafe, and that AT ultimately shipped the hoist back to the facturer.

addition to plaintiff's deposition testimo- AT & T submitted the Quinn–AT & T ery contract in support of its motion for mary judgment. That contract reveals Quinn, through its own independent con- tors, performed moving services for de- dant AT & T. The contract required n to

eceive, pick up, load, transport, unload, d deliver telephone equipment and other terial (the "Material"), and perform the her services provided for in this agree- ent as ordered by [AT & T] from April 1, 87 to March 31, 1989."

contract further provided that Quinn or gents

hall have the sole and exclusive care, ustody and control of the Material from the time it is tendered to [Quinn], [Quinn's] agents or servants, until it is delivered to and accepted by [AT & T] * * *."

In his response to AT & T's motion for summary judgment, plaintiff argued that AT & T had voluntarily assumed and breached a duty to him to keep its premises safe and to maintain the hoist such that it would not do harm to those moving it. In support of his position, plaintiff attached additional excerpts from his own deposition, pointing to his testimony that the AT & T hoist's motor and accessories were already secured to the frame of the hoist by the nylon strap and the motor chain when he arrived at the site to move the hoist. He also referred to his testimony that there was no motor lock securing the motor to the frame, and that the motor and accessories would not have swung free after the strap loosened if there had been such a motor lock.

In a hearing on July 27, 1994, the trial court granted AT & T's motion for summary judgment with prejudice. Later at that same hearing, the trial court heard plaintiff's oral request for leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)), where plaintiff argued that he should be allowed to amend his complaint to show that AT & T voluntarily undertook to secure the hoist and did so negligently. The court denied plaintiff's motion to amend, stating as its reason that "[i]t's an '89 case."

On August 25, 1994, within 30 days of the July 27 order granting summary judgment and denying leave to amend, plaintiff filed a motion to reconsider. However, plaintiff did not serve AT & T with that motion until September 18, 1994, at which time he transmitted that motion to AT & T via facsimile at AT & T's request. No notice of motion was served upon AT & T until November 9, 1994, and plaintiff did not file a certificate of service for that motion until November 17, 1994.

AT & T subsequently filed a motion objecting to plaintiff's motion to reconsider, arguing that the trial court had no jurisdiction to hear it based on plaintiff's failure to file a proof of service within 30 days of the July 27 order. On January 13, 1995, the trial court

sustained AT & T's objection, finding that it had no jurisdiction to hear plaintiff's motion to reconsider, and therefore did not address the merits of that motion. On January 25, 1995, within 30 days of the trial court's January 13 order, plaintiff filed his notice of appeal, both from that order and from the July 27, 1994 order granting summary judgment and denying plaintiff leave to amend.

Plaintiff contends on appeal that the trial court erred in granting summary judgment because by improperly securing the battery hoist for transport, AT & T negligently performed a voluntary undertaking, and because as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that the trial court abused its discretion in denying him leave to amend his complaint after the grant of summary judgment.

I. JURISDICTION:

Before reaching plaintiff's contentions on appeal, we must first address defendant's motion to dismiss this appeal for want of appellate jurisdiction. *Bell Federal Savings & Loan Ass'n v. Bank of Ravenswood*, 203 Ill.App.3d 219, 148 Ill.Dec. 559, 560 N.E.2d 1156 (1990). In its motion to dismiss, AT & T contends that plaintiff's failure to file a proof of service with its August 25, 1994 motion to reconsider prevents this court from reviewing either of the trial court's July 27 or January 13 orders. Defendant argues, somewhat obliquely, that plaintiff's motion to reconsider should not be considered as being timely filed, because it was not accompanied by a proof of service, and as a result, the trial court was correct in stating that it had no jurisdiction to consider it. Consequently, defendant would urge that the motion to reconsider did not have the effect of extending the time for filing plaintiff's notice of appeal beyond the initial 30 day period following entry of the summary judgment order. See Illinois Supreme Court Rule 303(a)(1) (155 Ill.2d R. 303(a)(1)) (discussed more fully below). We disagree.

[1-3] Under Supreme Court Rule 303(a)(1), a notice of appeal must be filed within 30 days after the entry of the final judgment from which the appeal is taken, or, if a timely post-trial motion directed at the judgment is filed, within 30 days after entry of the order disposing of the last pending post-trial motion. (134 Ill.2d R. 303(a)(1)). Under section 2-1203 of the Illinois Code of Civil Procedure, a post-trial motion must be filed within 30 days of a final judgment. 735 ILCS 5/2-1203 (West 1994). Otherwise, the trial court will lose jurisdiction to modify or vacate the final order which it entered after the lapse of 30 days. *Archer Daniels Midland Co. v. Barth*, 103 Ill.2d 536, 83 Ill.Dec. 332, 470 N.E.2d 290 (1984); *In Matter of Application of County Treasurer*, 208 Ill.App.3d 561, 153 Ill.Dec. 528, 567 N.E.2d 486 (1990). A motion to reconsider is a post-trial motion (*Elmhurst Auto Parts v. Fencl-Tufo Chevrolet*, 235 Ill.App.3d 88, 175 Ill.Dec. 771, 600 N.E.2d 1229 (1992)), and therefore "falls within the purview of post-judgment motions which must be filed within 30 days after the challenged judgment is entered." *Sho-Deen, Inc. v. Michel*, 263 Ill.App.3d 288, 290, 200 Ill.Dec. 729, 732, 635 N.E.2d 1068, 1071 (1994). Only if a post-trial motion is timely filed pursuant to section 2-1203 will it extend the time for filing the notice of appeal under Rule 303(a). *In Matter of Application of County Treasurer.*

[4] Thus, the question as to whether the appellant's notice of appeal was filed beyond the 30 day period allowed under Rule 303(a), thereby depriving this court of its jurisdiction, depends upon whether the failure to file a certificate of service vitiated the filing of the plaintiff's motion to reconsider. If we determine that the filing of plaintiff's motion to reconsider on August 25 within 30 days after the July 27 summary judgment order was timely, notwithstanding the failure to file an accompanying certificate of service within that 30-day period, then plaintiff's notice of appeal from both the July 27 and the January 13 orders was timely. This would follow under Rule 303(a), since the notice of appeal was filed on January 25, within 30 days after the trial court's disposition on January 13 of plaintiff's motion to reconsider. On the other hand, if the trial court was correct in its determination that under section 2-1203, the timely filing of a certificate of service is

jurisdictional, [illegible] reconsider cannot [illegible] timely filed, then [illegible] case, filed more tha[illegible] entry of the summa[illegible] be untimely pursu[illegible] leave this court w[illegible] tion.

The rule is clea[illegible] certificate of service [illegible] a motion to reco[illegible] been specifically pr[illegible] preme Court Rule [illegible] which provides at pa[illegible]

"(b) Filing of Pap[illegible] Pleadings subseq[illegible] written motions, a[illegible] to be filed shall be [illegible] a certificate of co[illegible] copies have been s[illegible] have appeared * *

* * *

(d) Failure to del[illegible] required by this r[illegible] *impair the jurisd[illegible]* the person of any [illegible] party may obtain [illegible] and the court sh[illegible] party to reimburse [illegible] the expense thereo[illegible] (d) (Emphasis adde[illegible]

Thus, under Rule [illegible] deliver or serve copi[illegible] jurisdiction of the co[illegible] applied to post-trial [illegible] *nage of Collins*, 154 [illegible] Dec. 109, 506 N.E.2[illegible] *Kollath v. Chicago T*[illegible] Ill.App.3d 353, 321 N[illegible] held that the failure [illegible] vice with a post-trial [illegible] date the motion or re[illegible]

Defendant contends [illegible] addresses the failure [illegible] of the motion but do[illegible] are to file a certificat[illegible] motion is devoid of [illegible] failure to serve will [illegible] certificate, unless the [illegible] pare himself. Thus, if [illegible] serve notice does n[illegible]

[5] Defendant next would urge that if we determine that the January 13 order is reviewable, we should confine our review solely to the correctness of the trial court's denial of its jurisdiction over the motion to reconsider. Defendant contends that if we find that the trial court's jurisdictional determination was erroneous, we should remand the matter to the trial court to allow the trial court to first consider the merit of that motion. We disagree for the same reasons as articulated in *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 167 Ill.Dec. 225, 587 N.E.2d 494 (1992). There, the court stated as follows:

> "Defendant initially urges us, without citation to authority, to remand this matter to the circuit court because that court did not address the merits of plaintiff's motion. This argument betrays a misperception of the nature both of the question presented and of our review. As noted above, we consider summary judgment orders *de novo*: we, like the circuit court, must decide only whether the parties' pleadings and other submissions present an issue of triable fact and if not, whether plaintiff is entitled to judgment as a matter of law. This is a question of law, not of fact." *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 76, 167 Ill.Dec. 225, 231, 587 N.E.2d 494, 500 (1992).

Here, too, the grant of summary judgment is subject to *de novo* review, requiring our *de novo* determination whether the submissions of the parties presented triable issues of fact and if not whether defendant was entitled to a judgment as a matter of law. Thus, here, as in *Myers*, we may consider this appeal on its merits without the necessity of a remand.

II. MERITS:

[6] As noted earlier, plaintiff contends on appeal that the trial court erred in granting summary judgment because the facts are sufficient to create an inference that AT & T voluntarily assumed a duty to properly secure the battery hoist for transport, a duty which was breached as a result of AT & T's negligence. Additionally, plaintiff contends, for the first time on appeal, that there was error in granting summary judgment because the facts are sufficient to create an inference that as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that even if summary judgment was properly entered in favor of AT & T under the issues framed by the existing complaint, the trial court abused its discretion in denying him leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)).[1]

[7, 8] We first address plaintiff's contention that the trial court erred in entering summary judgment pursuant to the issues framed by the existing complaint. Summary judgment is proper when the pleadings, depositions and affidavits on file, construed in the light most favorable to the nonmoving party, establish that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. See generally 735 ILCS 5/2–1005 (West 1994); *First State Insurance Co. v. Montgomery Ward & Co.*, 267 Ill.App.3d 851, 204 Ill.Dec. 814, 642 N.E.2d 715 (1994); *Torres v. City of Chicago*, 261 Ill.App.3d 499, 197 Ill.Dec. 985, 632 N.E.2d 54 (1994); *Giannoble v. P & M Heating & Air Conditioning, Inc.*, 233 Ill.App.3d 1051, 175 Ill.Dec. 169, 598 N.E.2d 1183 (1992). Appellate review of an order granting summary judgment is *de novo*. *E.g., Hesselink v. R.L. Perlow Corp.*, 265 Ill.App.3d 478, 202 Ill.Dec. 36, 637 N.E.2d 575 (1994); *La Salle National Bank v. Skidmore, Owings & Merrill*, 262 Ill.App.3d 899, 200 Ill.Dec. 225, 635 N.E.2d 564

1. As previously noted, at the trial level, plaintiff urged liability both on the basis of premises liability and the law governing voluntary undertakings. Plaintiff has conceded on appeal that he cannot base his action against AT & T upon a theory of premises liability as a matter of law, due to the holding in *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994), insofar as he incurred his injuries in the bed of his truck, and not due to any condition of AT & T's premises. See also *Jackson v. Hilton Hotels Corp.*, 273 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995) (in action based on premises liability, no duty to plaintiff existed where plaintiff failed to show that his injuries were caused by any condition of the premises).

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sdictional, without which the motion to consider cannot be deemed to have been ely filed, then the notice of appeal in this e, filed more than three months after the ry of the summary judgment order, would untimely pursuant to Rule 303(a) and ve this court without appellate jurisdic-n.

The rule is clear that the absence of a rtificate of service will not vitiate the filing a motion to reconsider. This matter has en specifically preempted by Illinois Su-me Court Rule 104 (134 Ill.2d Rule 104), ich provides at parts (b) and (d) as follows:

"(b) Filing of Papers and Proof of Service. Pleadings subsequent to the complaint, written motions, and other papers required to be filed shall be filed with the clerk with a certificate of counsel or other proof that copies have been served on all parties who have appeared * * *.

* * * * * *

(d) Failure to deliver or serve copies as required by this rule *does not in any way impair the jurisdiction of the court* over the person of any party, but the aggrieved party may obtain a copy from the clerk and the court shall order the offending party to reimburse the aggrieved party for the expense thereof." 134 Ill.2d R. 104(b), (d) (Emphasis added).

Thus, under Rule 104(d), the failure to liver or serve copies does not impair the risdiction of the court. This rule has been plied to post-trial motions in *In re Mar-age of Collins*, 154 Ill.App.3d 655, 107 Ill. ec. 109, 506 N.E.2d 1000 (1987) and in *ollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d 353, 321 N.E.2d 344 (1974), which eld that the failure to include proof of ser-ce with a post-trial motion will not invali-ate the motion or render it untimely.

Defendant contends that Rule 104(d) only addresses the failure to actually serve copies of the motion but does not address the fail-re to file a certificate of service. This con-tention is devoid of any rationale since a failure to serve will preclude the filing of a certificate, unless the movant seeks to per-jure himself. Thus, if the failure to actually serve notice does not impair jurisdiction, then *a fortiori*, the failure to serve a certificate of service will not impair the validity or timeliness of the motion. See *In re Marriage of Collins*.

Defendant's reliance on *Vlahakis v. Parker*, 3 Ill.App.3d 126, 278 N.E.2d 523 (1971) (abstract of op.) and *Ingrassia v. Ingrassia*, 156 Ill.App.3d 483, 109 Ill.Dec. 68, 509 N.E.2d 729 (1987) is misplaced. Although *Vlahakis* reached a contrary result, it is clear that that opinion did not purport to in any way consider or confront the impact of Rule 104(d) in its determination. That opinion has therefore been distinguished and rejected on that basis in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d at 357–58, 321 N.E.2d at 348 ("Rule 104(d) renders a failure to comply with Rule 104(b) * * * non-jurisdictional * * * [and] the only cases decided since enactment of rule 104(d) which reached a contrary result [, including *Vlahakis v. Parker*,] did not consider that provision at all"). Likewise, the opinion in *Ingrassia* does not purport to consider rule 104(d) in its determination. Moreover, *Ingrassia* does not purport to deal with the validity or timeliness of the filing of a post-trial motion, but, rather, with the sufficiency of the notice of that motion when given to the opposing party only a few hours before the hearing on the motion. Hence, *Ingrassia* is not in point, since here there is no question that defendant had actual knowledge of the pendency of plaintiff's motion to reconsider well in advance of the scheduled hearing date on that motion.

Consequently, plaintiff's August 25 motion to reconsider, and therefore his January 25 notice of appeal, were seasonably filed, notwithstanding that no certificate of service was filed until long after 30 days had passed since summary judgment was entered on July 27. Since the August 25 motion was timely, the notice of appeal filed on January 25 complied with Rule 303(a) since it was filed within 30 days after the trial court disposed of the motion to reconsider, albeit on jurisdictional grounds, on January 13. Accordingly, our jurisdiction to review both the July 27 and January 13 orders of the trial court remains unimpaired.

(1994). To withstand a motion for summary judgment in an action based in negligence, a plaintiff must allege facts sufficient to show that the defendant owed him a duty, that defendant breached that duty, and that his injury proximately resulted from that breach. See *DiBenedetto v. Flora Township*, 153 Ill.2d 66, 178 Ill.Dec. 777, 605 N.E.2d 571 (1992); *Ziemba v. Mierzwa*, 142 Ill.2d 42, 153 Ill.Dec. 259, 566 N.E.2d 1365 (1991).

[9, 10] With respect to plaintiff's contention concerning AT & T's duty arising from its purported voluntary undertaking, section 323 of the Restatement (Second) of Torts provides as follows:

"One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking." Restatement (Second) of Torts § 323, at 135 (1965).

See generally, *Cross v. Wells Fargo Alarm Services*, 82 Ill.2d 313, 45 Ill.Dec. 121, 412 N.E.2d 472 (1980); *Jackson v. Hilton Hotels Corp.*, 277 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995). Whether a duty has been voluntarily undertaken is a question of law to be determined by the court. *Gouge v. Central Illinois Public Service Co.*, 144 Ill.2d 535, 163 Ill.Dec. 842, 582 N.E.2d 108 (1991); *Jackson v. Hilton Hotels Corp.*

In the instant case, plaintiff has failed to allege facts sufficient to establish in the first instance that defendant voluntarily assumed or undertook any duty to properly maintain and secure the battery hoist for transport. First, it is undisputed that AT & T had neither control nor influence over the manner in which plaintiff, an independent contractor retained by Quinn (who was also an independent contractor), readied or moved the hoist, and that plaintiff had total discretion in preparing and moving the hoist. Moreover, plaintiff did not submit any evidence that AT & T strapped the motor to the hoist, nor any evidence regarding whether the strapping was undertaken as protection for the plaintiff. Lastly, and more overridingly, even if we were to presume that the strapping was effected by AT & T, there is no evidence whatsoever submitted by plaintiff that he relied upon the safety of that strapping. In fact, the record is clear that plaintiff himself checked the strapping of the motor to ensure it was fastened securely prior to moving the hoist, as was his customary practice when moving that particular hoist.

[11-13] Plaintiff urges that even if there is no basis for liability under a theory of voluntary undertaking, there is a basis established for liability under a theory of gratuitous bailment. In that regard, he contends that there is a genuine issue of material fact that AT & T, as a gratuitous bailor of the hoist, breached a duty to plaintiff to provide a safe hoist or to warn plaintiff of its dangers. We first note that contentions not raised in the trial court are waived on appeal, even in a summary judgment case. *Witek v. Leisure Technology Midwest, Inc.*, 39 Ill.App.3d 637, 640, 350 N.E.2d 242, 245 (1976) ("This rule of waiver applies even in a summary judgment case"); *Wilson v. Gorski's Food Fair*, 196 Ill.App.3d 612, 143 Ill.Dec. 477, 554 N.E.2d 412 (1990). However, even if the argument were preserved, we note that there was no evidence presented that AT & T breached a duty to plaintiff as a gratuitous bailor of the hoist.

"[A] gratuitous bailor may be liable for physical harm caused by the use of his chattel when he knows or has reason to know that the chattel is or is likely to be dangerous when put to the use for which it is supplied; has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition; and fails to exercise reasonable care to inform the user of its dangerous condition or of the facts which make it likely to be dangerous." *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994).

[14] Plaintiff has not produced evidence as to any specific defect either in the design or manufacture of the hoist itself which would indicate that AT & T had actual or constructive knowledge that the hoist was unsafe when it was handed over to plaintiff. Plaintiff himself did not testify as to the condition of the hoist except to say that the strap loosened. The only other evidence that plaintiff has presented consists of unsubstantiated hearsay statements. In that regard, plaintiff testified in his deposition to a conversation which took place after the accident with an AT & T installer who told plaintiff that certain other fellow employees had stated that after plaintiff's accident they refused to use the hoist because it was unsafe, and that AT & T ultimately returned the hoist to its manufacturer. However, plaintiff was unable to identify those other AT & T employees, and he did not provide any further detail regarding the specific contents of their statements. Such unsubstantiated hearsay statements cannot be considered in a ruling on a motion for summary judgment. See *Certified Mechanical Contractors, Inc. v. Wight & Co., Inc.*, 162 Ill.App.3d 391, 113 Ill.Dec. 888, 515 N.E.2d 1047 (1987) (in deciding a motion for summary judgment, court should ignore personal conclusions, opinions and self-serving statements and consider only facts admissible in evidence under the rules of evidence); *Seefeldt v. Millikin National Bank of Decatur*, 154 Ill.App.3d 715, 107 Ill.Dec. 161, 506 N.E.2d 1052 (1987) (although a complaint may purport to raise an issue of material fact, summary judgment is appropriate if such issue is not further supported by evidentiary facts, and in determining the genuineness of a fact, a court should ignore personal conclusions and opinions and consider only admissible facts).

Plaintiff's reliance on *Pagano* is not well taken. There, the court on appeal did find an issue of fact as to whether a defective dolly supplied by the defendant to help move certain barrel drums of ink rendered the defendant liable under a theory of gratuitous bailment. However, in that case, plaintiff gave direct testimony as to specific, observable defects in the dolly which, if believed, would establish that the dolly was defective. Here, aside from the inadmissible hearsay rumors which were reported, the plaintiff himself presented no evidence to show either a defect in the hoist or that AT & T knew or should have known of any dangerous propensities in the hoist. Consequently, the evidence presented here was not effective to support a counterinference for purposes of summary judgment.

[15] Plaintiff next contends that the trial court erred in its refusal in its July 27 order to allow him leave to amend his complaint to more specifically allege facts that there was a voluntary undertaking and that it was implemented negligently. We disagree.

Section 2-1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(g) (West 1994)) provides as follows:

> "(g) Amendment of pleading. Before or after the entry of a summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms."

The allowance of an amendment to the pleadings is in the trial court's discretion, and reversible error can only be found if there is a manifest abuse of discretion. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992). See also *Misselhorn v. Doyle*, 257 Ill.App.3d 983, 195 Ill.Dec. 881, 6[illegible] N.E.2d 189 (1994); *Eyman v. McDonough District Hospital*, 245 Ill.App.3d 394, 184 Ill.Dec. 502, 613 N.E.2d 819 (1993).

As noted, on July 27, immediately after the trial court entered summary judgment against him, plaintiff made an oral motion to amend his complaint, as follows:

> "MR. JOHNSON [Plaintiff's attorney]: I'll set it out to specifics that they undertook the duty to secure the hoist and they negligently performed that duty and as a result Plaintiff was injured based upon the *Nelson v. Pippen, Phillips* [*sic*] case, that one undertakes a duty to do something, they do so negligently, and someone is injured, they are absolutely liable.
>
> * * * * * *
>
> If the fact that the Court feels that the premises liability count cannot stand does not mean then that a negligent voluntary [*sic*] undertaking is not proper here

There will be no new deps. That's what the evidence is through the Plaintiff's deposition."

The court denied plaintiff's motion to amend, stating that "It's an '89 case. I'll deny the motion [to amend]."

We first note that plaintiff never made the proposed amended complaint a part of the record on appeal, except for his oral proposal before the trial judge which, without any offers of new evidence, essentially duplicates the voluntary undertaking theory which has already been argued and rejected. Plaintiff's failure to include the proposed amendment and supporting facts therefor in the record could be found to constitute a waiver in this court of his right to have the denial of his request for leave to amend reviewed. See *Mendelson v. Ben A. Borenstein & Co.*, 240 Ill.App.3d 605, 181 Ill.Dec. 114, 608 N.E.2d 7 (1992) (plaintiff's failure to tender amended complaint or to include it in the appellate record diminished the appellate court's ability to determine whether the proposed amendment would provide a viable theory against defendant, and constituted waiver of right to a review of the denial of his request for leave to amend). See also *Ignar- v. Norbut*, 271 Ill.App.3d 522, 207 Ill.Dec. , 648 N.E.2d 285 (1995) (no abuse of discretion in denying motion for leave to amend complaint where movant orally moved to amend yet failed to submit proposed amendment to trial court).

Notwithstanding waiver, even if we were to review the amendment which plaintiff orally proposed, we would find no abuse of discretion by the trial court in denying plaintiff leave to amend. As already discussed, there was ample evidence before the trial court to support its conclusion that the facts in this case as revealed in the summary judgment submissions would not permit a pleading which could allege a valid cause of action. Moreover, by the same token, even if the complaint were amended to more specifically allege a voluntary undertaking as requested by the plaintiff, the allegations of the complaint would be superseded by the extrinsic facts already submitted which as noted would dictate for summary judgment. See *Werckenthein v. Bucher Petrochemical Co.*, 248 Ill.App.3d 282, 188 Ill.Dec. 332, 618 N.E.2d 902 (1993) (where allegations in nonmovant's complaint are contravened by movant's extrinsic submissions in summary judgment proceedings, extrinsic submissions control); *East Side Fire Protection District v. City of Belleville*, 221 Ill.App.3d 654, 164 Ill.Dec. 192, 582 N.E.2d 755 (1991) (nonmovant must controvert proofs offered by movant in support of motion for summary judgment and cannot merely rest on pleadings); *Seefeldt v. Millikin National Bank of Decatur*. The issue here is not simply that plaintiff's complaint is deficient in its framing of the issues, but that, as discussed, the testimony and evidence presented in support of his negligent voluntary undertaking theory are deficient, and fall short of establishing a genuine issue of material fact such that judgment should not be entered as a matter of law on that theory of action.

Plaintiff's reliance on *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992) is not well taken. In *Loyola*, the court on appeal set forth four factors to determine whether the trial court had abused its discretion in denying a section 2–1005(g) amendment, including whether the proposed amendment would cure the defective pleading, whether it would cause prejudice or surprise to other parties, whether it was timely, and whether previous opportunities to amend the pleading could be identified.

Applying these factors in order, in the instant case the question of whether plaintiff's proposed amendment would cure the defective pleading is not relevant, because as already discussed, AT & T succeeded in its motion for summary judgment not because plaintiff's complaint was improperly pleaded, but because the evidence presented at summary judgment shows no genuine issue of material fact regarding the allegations in the complaint. *Werckenthein v. Bucher Petrochemical Co.; East Side Fire Protection District v. City of Belleville*. Taking the second and third *Loyola* factors together (whether there would be prejudice or surprise to AT & T and whether the proposed amendment was timely), the record is ample to support the trial court's determination that the allowance

of an amendment would in fact be prejudicial to AT & T, insofar as the amendment was being sought on the eve of trial, five years after the inception of this lawsuit, with no explanation from plaintiff as to why he never before attempted to develop the facts which would be necessary to withstand AT & T's motion for summary judgment. See *Mendelson v. Ben A. Borenstein & Co.* (no abuse of discretion in denying leave to amend following grant of summary judgment where proposed amendment was sought beyond the pleading stages). See also *Ignarski v. Norbut.*

The final *Loyola* factor is whether plaintiff had sufficient prior opportunities to amend. To that extent, we note that plaintiff indeed had substantial opportunities to amend. Although plaintiff complains that AT & T never gave him notice of any deficiency in his complaint which would require amendment because AT & T never filed a motion to dismiss prior to filing its motion for summary judgment, it is axiomatic that a party can amend its pleading on its own motion. See 3 R. Michael, Illinois Practice, ch. 26, at 446 (West 1989). The case of *Evans v. United Bank of Illinois, N.A.*, 226 Ill.App.3d 526, 168 Ill.Dec. 533, 589 N.E.2d 933 (1992), upon which plaintiff relies, does give credence to plaintiff's contention under the fourth *Loyola* factor that the failure of AT & T to challenge his pleadings prior to its motion for summary judgment deprived plaintiff of any prior opportunity to amend. However, we note that in *Evans* the court on appeal did not rely on that factor alone in finding that the trial court abused its discretion in denying the plaintiff in that case leave to amend, but found that *all* of the *Loyola* factors supported that plaintiff's motion for leave to amend.

In any event, even if plaintiff were correct in his reliance upon *Evans*, we need not consider its application here. As already discussed, the issue here is not whether the allegations of the complaint were sufficient to state a cause of action based upon a voluntary undertaking theory, but whether the facts adduced were sufficient to create an inference to support such allegations. See *Werckenthein v. Bucher Petrochemical Co.; East Side Fire Protection District v. City of Belleville.* As previously noted, the fa submitted here are insufficient to raise su an inference. Hence, we find that the tr court's denial of the motion to amend was an abuse of discretion. See *Regas v. Asso ated Radiologists, Ltd.*, 230 Ill.App.3d 9 172 Ill.Dec. 553, 595 N.E.2d 1223 (19 (where a cause of action cannot be sta even after amendment, leave to am should be denied).

For the foregoing reasons, the judgment the Circuit Court of Cook County is affirm

McNULTY, P.J., and HOURIHANE, J. concur.

283 Ill.App.3d 112
669 N.E.2d 655

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Vernetta CASSELL, Defendant-Appellant.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Curlee SIMMONS, Defendant-Appellan

Nos. 1-94-2782, 1-95-1380.

Appellate Court of Illinois, First District, Fifth Division.

Aug. 9, 1996.

Rehearing Denied Sept. 11, 1996.

Defendants were convicted in the Cir Court, Cook County, John J. Moran, J., aggravated criminal sexual assault, and defendant was convicted of additional cri of home invasion and aggravated kidnapp Defendants appealed. The Appellate Co McNulty, P.J., held that: (1) circuit co had adequate basis for its determination th victim was not entitled to assert privile

gainst self-incrimination; ficient evidence that defer reat of force in order t urse with victim to sup ggravated criminal sexua as sufficient evidence th confined victim to supp apping conviction; (4) enied effective assistan efendant who drove vehi ault occurred was cri the assault; and (6) e emergency room nurse that victim identified d who dragged her fr rmless error.

Affirmed.

1. Witnesses ⇐297(13.1)

Trial court had adeq tion for aggravated cri its determination th uded to assert Fifth A inst self-incrimination rt did not conduct he ether victim's testimon , where, in response t s as to why she wan e, victim never expres of being charged wit she could not remem arly. U.S.C.A. Const.

2. Witnesses ⇐297(1)

Privilege against rds against compulsor ding to establish S.C.A. Const.Amend. 5

3. Witnesses ⇐297(1)

Although witness i ilege to refuse to an d to incriminate him ured by Fifth Amend ose instances where wi se to believe he or self or herself to pro wers. U.S.C.A. Cons

4. Witnesses ⇐297(1)

Once witness asser endment privilege no f or herself, trial cou

laintiff approached the hoist, he observed t its motor and accessories were already apped and secured to the hoist's frame. e also testified that he personally examined e strap to ensure that the hanging appara- was firmly secured to the frame of the st with the nylon strap and the motor ain before attempting to move the hoist. laintiff then wheeled the hoist to the back his truck and onto his truck's hydraulic lift form, which he had lowered to ground- el in order to lift the hoist into his truck. er raising the lift and the hoist from ound-level up to the truck's bed, plaintiff bed into the truck bed and began to pull hoist into the bed.

Plaintiff further testified that while pulling hoist into the truck, the strap around the or and hoist accessories loosened for rea- beyond his knowledge, permitting the r and the accessories to swing free and weight of the hoist to shift towards him. ediately thereafter, the hoist fell onto tiff, causing him various injuries. Plain- stated that there were no known wit- s to the accident. He also stated that two months after the accident, he d from an AT & T installer that certain laborers at AT & T had told him that plaintiff's accident, they would not use hoist because it was unsafe, and that AT ultimately shipped the hoist back to the facturer.

addition to plaintiff's deposition testimo- AT & T submitted the Quinn–AT & T ry contract in support of its motion for ary judgment. That contract reveals Quinn, through its own independent con- ors, performed moving services for de- nt AT & T. The contract required n to

eceive, pick up, load, transport, unload, d deliver telephone equipment and other terial (the "Material"), and perform the er services provided for in this agree- nt as ordered by [AT & T] from April 1, 87 to March 31, 1989."

contract further provided that Quinn or gents

hall have the sole and exclusive care, ustody and control of the Material from the time it is tendered to [Quinn], [Quinn's] agents or servants, until it is delivered to and accepted by [AT & T] * * *."

In his response to AT & T's motion for summary judgment, plaintiff argued that AT & T had voluntarily assumed and breached a duty to him to keep its premises safe and to maintain the hoist such that it would not do harm to those moving it. In support of his position, plaintiff attached additional excerpts from his own deposition, pointing to his testimony that the AT & T hoist's motor and accessories were already secured to the frame of the hoist by the nylon strap and the motor chain when he arrived at the site to move the hoist. He also referred to his testimony that there was no motor lock securing the motor to the frame, and that the motor and accessories would not have swung free after the strap loosened if there had been such a motor lock.

In a hearing on July 27, 1994, the trial court granted AT & T's motion for summary judgment with prejudice. Later at that same hearing, the trial court heard plaintiff's oral request for leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 1LCS 5/2–1005(g) (West 1994)), where plaintiff argued that he should be allowed to amend his complaint to show that AT & T voluntarily undertook to secure the hoist and did so negligently. The court denied plaintiff's motion to amend, stating as its reason that "[i]t's an '89 case."

On August 25, 1994, within 30 days of the July 27 order granting summary judgment and denying leave to amend, plaintiff filed a motion to reconsider. However, plaintiff did not serve AT & T with that motion until September 18, 1994, at which time he transmitted that motion to AT & T via facsimile at AT & T's request. No notice of motion was served upon AT & T until November 9, 1994, and plaintiff did not file a certificate of service for that motion until November 17, 1994.

AT & T subsequently filed a motion objecting to plaintiff's motion to reconsider, arguing that the trial court had no jurisdiction to hear it based on plaintiff's failure to file a proof of service within 30 days of the July 27 order. On January 13, 1995, the trial court

debridement and skin grafting. In *Fomond*, a two-and-one-half-year-old girl sustained third-degree burns that required at least seven surgeries, including two skin grafts and continued physical therapy even several years after receiving the burns. In *Negrete*, a 17-month-old baby boy sustained burns from hot water, resulting in permanent scarring across 60% of his body and, due to the burning of his genital area, possible permanent damage to his reproductive capacity. In *Rogers*, the defendant poured grain alcohol on top of the female victim's head and then threw a lit match at her, causing her head, face, chest and pants to ignite.

In light of the above-cited case law, I would reverse defendant's conviction for heinous battery.

Defendant was properly convicted of aggravated battery against a child, however, no sentence was imposed for that crime. If a reviewing court reverses a conviction on which the sentence was imposed, it can remand for sentencing on a conviction on which no sentence was imposed. Such process has been approved in *People v. Dixon*, 91 Ill.2d 346, 63 Ill.Dec. 442, 438 N.E.2d 180 (1982) and *People v. Frantz*, 150 Ill.App.3d 296, 300, 103 Ill.Dec. 649, 501 N.E.2d 966 (1986) ("[i]f the reviewing court acts to affirm the incomplete judgment of conviction, the reviewing court then must remand the cause for imposition of sentence").

283 Ill.App.3d 126

669 N.E.2d 645

Fernando LAJATO, Plaintiff–Appellant,

v.

AT & T, INC., Defendant–Appellee, and Third Party Plaintiff (Quinn Delivery Service, Inc., Third Party Defendant).

No. 1–95–0447.

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Independent contractor who was injured when loading telephone company's battery hoist for transport brought negligence action against telephone company. The Circuit Court, Cook County, Anthony J. Bosco, J., granted summary judgment for telephone company. Contractor appealed. The Appellate Court, Gordon, J., held that: (1) contractor's motion for reconsideration was timely; (2) telephone company had not voluntarily undertaken duty to properly maintain and secure battery hoist for transport; (3) telephone company was not liable as gratuitous bailor; and (4) trial court did not abuse its discretion by denying contractor's motion to amend his complaint.

Affirmed.

1. Judgment ⇐321, 386(1)

Posttrial motion must be filed within 30 days of final judgment or trial court will lose jurisdiction to modify or vacate final order which it entered after lapse of 30 days. S.H.A. 735 ILCS 5/2–1203.

2. Motions ⇐39

Motion to reconsider is posttrial motion, and therefore falls within purview of post-judgment motions which must be filed within 30 days after challenged judgment is entered. S.H.A. 735 ILCS 5/2–1203.

3. Appeal and Error ⇐344

Only if posttrial motion is timely filed will it extend time for filing notice of appeal. Sup.Ct.Rules, Rule 303(a)(1).

4. Judgment ⇐186

Motion to reconsider filed within 30 days of entry of summary judgment was timely, although no certificate of service was filed until well after 30 days of entry of summary judgment. S.H.A. 735 ILCS 5/2–1203; Sup. Ct.Rules, Rule 104.

5. Appeal and Error ⇐893(1), 1073(1)

Although trial court did not entertain motion for reconsideration of summary judgment in erroneous belief that it did not have jurisdiction to hear motion, appellate court

d not need to remand to allow trial court to nsider merit of motion, as grant of sum- ary judgment required de novo review by ppellate court to determine question of law.

. Negligence ⇐36

Independent contractor could not base ersonal injury action against defendant on eory of premises liability, where he was ured in bed of his truck and not due to any ndition of defendant's premises.

. Appeal and Error ⇐893(1)

Appellate review of order granting sum- ary judgment is de novo.

. Judgment ⇐185(2)

Negligence ⇐1

To withstand motion for summary judg- ent in action based in negligence, plaintiff ust allege facts sufficient to show that de- ndant owed him a duty, that defendant reached that duty, and that his injury proxi- ately resulted from that breach.

. Negligence ⇐20

Telephone company did not voluntarily dertake duty to properly maintain and se- re its battery hoist for transport, where dependent contractor, who was injured by ist when loading it for transport as result loosening of strap securing motor, had al discretion in preparing and moving ist, and there was no evidence that tele- one company had strapped motor, that apping was undertaken as protection for ntractor, or that contractor relied upon fety of strapping. Restatement (Second) Torts § 323.

. Negligence ⇐136(14)

Whether a duty has been voluntarily dertaken is question of law to be deter- ined by court. Restatement (Second) of rts § 323.

. Bailment ⇐35

Telephone company was not liable as ratuitous bailor for injuries sustained by dependent contractor when strap securing otor on battery hoist loosened when con- actor was loading hoist for transport, here contractor presented no evidence oth- than inadmissible hearsay rumors to show either defect in hoist or that telephone company knew or should have known of any dangerous propensities in hoist.

12. Appeal and Error ⇐169

Contentions not raised in trial court are waived on appeal, even in summary judgment case.

13. Bailment ⇐9, 21

Gratuitous bailor may be liable for physical barm caused by use of chattel when he knows or has reason to know that chattel is or is likely to be dangerous when put to use for which it was supplied, has no reason to believe that those for whose use chattel is supplied will realize its dangerous condition, and fails to exercise reasonable care to inform user of its dangerous condition or of facts which make it likely to be dangerous.

14. Judgment ⇐185(1)

Unsubstantiated hearsay statements cannot be considered in ruling on motion for summary judgment.

15. Pleading ⇐236(6)

Trial court did not abuse its discretion by denying motion of independent contractor, who was injured when loading telephone company's battery hoist for transport, to amend his complaint to allege more specifically facts that there was voluntary undertaking by telephone company, after trial court granted summary judgment for telephone company, where issue was not that complaint was deficient in its framing of issues but that evidence presented in support of voluntary undertaking theory failed to establish genuine issue of material fact, and amendment would be prejudicial to telephone company in that amendment was sought on eve of trial and five years after inception of lawsuit, with no explanation as to why contractor never before attempted to develop facts necessary to withstand telephone company's summary judgment motion.

Beerman, Swerdlove, Woloshin, Barezky, Becker, Genin & London, Harvey L. Walner & Associates, Chicago (Alvin R. Becker, Harvey L. Walner, Christopher A. White, of counsel), for Appellant.

William F. DeYoung, Loretto M. Kennedy, Carole C. Tubbesing Burke, Weaver & Prell, Chicago, for American Telephone & Telegraph.

Justice GORDON delivered the opinion of the Court:

This is an action for damages brought by the plaintiff, Fernando Lajato, arising from injuries he incurred while working as an independent contractor for third-party defendant Quinn Delivery Service, Inc. (Quinn) to move a battery hoist owned by defendant AT & T. AT & T filed a contingent third-party complaint against Quinn, not at issue in this appeal, seeking indemnification pursuant to the delivery service contract between Quinn and AT & T, in the event plaintiff recovered a judgment in his tort action against AT & T. AT & T subsequently filed a motion for summary judgment against plaintiff which the trial court granted. In that order, the court also denied plaintiff's oral motion requesting leave to amend his complaint. Subsequently, plaintiff filed a motion to reconsider, which the court ultimately struck by reason of its alleged lack of jurisdiction to hear it. Plaintiff appeals from the orders granting summary judgment to AT & T, denying his motion to amend his complaint, and refusing to hear his motion to reconsider. AT & T has moved to dismiss this appeal for lack of appellate jurisdiction.

In November 1989, plaintiff filed a complaint against AT & T, wherein he alleged that on July 1, 1988, he was on the premises of AT & T on behalf of Quinn in order to move an AT & T battery hoist. The complaint further alleged that while performing that task, the hoist fell upon him, causing him injuries for which he sought damages. The complaint averred that AT & T was negligent in its failure to maintain, inspect, and repair the battery hoist, and for AT & T's failure to warn plaintiff of the propensity of the hoist to fall. In April 1990, AT & T filed its answer, specifically denying each basis for recovery alleged in plaintiff's complaint. The matter was scheduled for trial in June 1995.

On April 25, 1994, AT & T filed a motion for summary judgment, alleging that, based upon the undisputed facts, it was clear that it owed no duty of care to plaintiff with respect to his injuries. In support of its motion, AT & T submitted excerpts of the deposition testimony of plaintiff and a copy of the delivery services contract between AT & T and Quinn. In his deposition, plaintiff testified that on the date of the accident, July 1, 1988, he was making pick-ups and deliveries of telephone equipment at various AT & T locations as an independent contractor for Quinn. He stated that he had received instructions from Quinn via radio to go to an AT & T property in Rolling Meadows, Illinois, the scene of the accident, to pick up a battery hoist and to transport it to another AT & T location in Rockford, Illinois. Approximately 99% of plaintiff's delivery work for Quinn involved pick-ups and deliveries of AT & T equipment. The plaintiff stated that AT & T did not direct him in his moving work, but rather, allowed him to use his own expertise to determine how each move would be accomplished.

Plaintiff further testified that the battery hoist, which weighs approximately [illegible] pounds, was used to lift batteries weighing approximately 300 pounds up onto shelves. Plaintiff described the hoist as being rectangular in shape, on wheels, and consisting of a large, black metal frame with a motor and hoist accessories suspended from the middle of the frame. The hanging motor and accessories could be pulled to one side of the hoist frame and secured thereto with a nylon strap and a chain, both of which were permanently attached to the hoist, in order to stabilize the hoist during transport and when not in use to perform its battery-lifting function. It was plaintiff's customary practice to inspect the hoist to ensure that the motor and accessories were firmly secured with the strap and the chain prior to moving the hoist. Plaintiff had moved this particular hoist on at least 10–15 different occasions.

Plaintiff's deposition further revealed that when he reached the AT & T Rolling Meadows location, an AT & T employee directed him to the hoist, and that after that brief conversation, plaintiff had no further discussions with anyone, AT & T employees or otherwise, until after the accident.

sustained AT & T's objection, finding that it had no jurisdiction to hear plaintiff's motion to reconsider, and therefore did not address the merits of that motion. On January 25, 1995, within 30 days of the trial court's January 13 order, plaintiff filed his notice of appeal, both from that order and from the July 27, 1994 order granting summary judgment and denying plaintiff leave to amend.

Plaintiff contends on appeal that the trial court erred in granting summary judgment because by improperly securing the battery hoist for transport, AT & T negligently performed a voluntary undertaking, and because as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that the trial court abused its discretion in denying him leave to amend his complaint after the grant of summary judgment.

I. JURISDICTION:

Before reaching plaintiff's contentions on appeal, we must first address defendant's motion to dismiss this appeal for want of appellate jurisdiction. *Bell Federal Savings & Loan Ass'n v. Bank of Ravenswood*, 203 Ill.App.3d 219, 148 Ill.Dec. 559, 560 N.E.2d 1156 (1990). In its motion to dismiss, AT & T contends that plaintiff's failure to file a proof of service with its August 25, 1994 motion to reconsider prevents this court from reviewing either of the trial court's July 27 or January 13 orders. Defendant argues, somewhat obliquely, that plaintiff's motion to reconsider should not be considered as being timely filed, because it was not accompanied by a proof of service, and as a result, the trial court was correct in stating that it had no jurisdiction to consider it. Consequently, defendant would urge that the motion to reconsider did not have the effect of extending the time for filing plaintiff's notice of appeal beyond the initial 30 day period following entry of the summary judgment order. See Illinois Supreme Court Rule 303(a)(1) (155 Ill.2d R. 303(a)(1)) (discussed more fully below). We disagree.

[1-3] Under Supreme Court Rule 303(a)(1), a notice of appeal must be filed within 30 days after the entry of the final judgment from which the appeal is taken, or, if a timely post-trial motion directed at the judgment is filed, within 30 days after entry of the order disposing of the last pending post-trial motion. (134 Ill.2d R. 303(a)(1)). Under section 2-1203 of the Illinois Code of Civil Procedure, a post-trial motion must be filed within 30 days of a final judgment. 735 ILCS 5/2-1203 (West 1994). Otherwise, the trial court will lose jurisdiction to modify or vacate the final order which it entered after the lapse of 30 days. *Archer Daniels Midland Co. v. Barth*, 103 Ill.2d 536, 83 Ill.Dec. 332, 470 N.E.2d 290 (1984); *In Matter of Application of County Treasurer*, 208 Ill. App.3d 561, 153 Ill.Dec. 528, 567 N.E.2d 486 (1990). A motion to reconsider is a post-trial motion (*Elmhurst Auto Parts v. Fencl-Tufo Chevrolet*, 235 Ill.App.3d 88, 175 Ill.Dec. 771, 600 N.E.2d 1229 (1992)), and therefore "falls within the purview of post-judgment motions which must be filed within 30 days after the challenged judgment is entered." *Sho-Deen, Inc. v. Michel*, 263 Ill.App.3d 288, 290, 200 Ill.Dec. 729, 732, 635 N.E.2d 1068, 1071 (1994). Only if a post-trial motion is timely filed pursuant to section 2-1203 will it extend the time for filing the notice of appeal under Rule 303(a). *In Matter of Application of County Treasurer.*

[4] Thus, the question as to whether the appellant's notice of appeal was filed beyond the 30 day period allowed under Rule 303(a), thereby depriving this court of its jurisdiction, depends upon whether the failure to file a certificate of service vitiated the filing of the plaintiff's motion to reconsider. If we determine that the filing of plaintiff's motion to reconsider on August 25 within 30 days after the July 27 summary judgment order was timely, notwithstanding the failure to file an accompanying certificate of service within that 30-day period, then plaintiff's notice of appeal from both the July 27 and the January 13 orders was timely. This would follow under Rule 303(a), since the notice of appeal was filed on January 25, within 30 days after the trial court's disposition on January 13 of plaintiff's motion to reconsider. On the other hand, if the trial court was correct in its determination that under section 2-1203, the timely filing of a certificate of service is

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The rule is clear that the absence of a certificate of service will not vitiate the filing of a motion to reconsider. This matter has been specifically preempted by Illinois Supreme Court Rule 104 (134 Ill.2d Rule 104), which provides at parts (b) and (d) as follows:

"(b) Filing of Papers and Proof of Service. Pleadings subsequent to the complaint, written motions, and other papers required to be filed shall be filed with the clerk with a certificate of counsel or other proof that copies have been served on all parties who have appeared * * *.

* * * * * *

(d) Failure to deliver or serve copies as required by this rule *does not in any way impair the jurisdiction of the court* over the person of any party, but the aggrieved party may obtain a copy from the clerk and the court shall order the offending party to reimburse the aggrieved party for the expense thereof." 134 Ill.2d R. 104(b), (d) (Emphasis added).

Thus, under Rule 104(d), the failure to deliver or serve copies does not impair the jurisdiction of the court. This rule has been applied to post-trial motions in *In re Marriage of Collins*, 154 Ill.App.3d 655, 107 Ill.Dec. 109, 506 N.E.2d 1000 (1987) and in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d 353, 321 N.E.2d 344 (1974), which held that the failure to include proof of service with a post-trial motion will not invalidate the motion or render it untimely.

Defendant contends that Rule 104(d) only addresses the failure to actually serve copies of the motion but does not address the failure to file a certificate of service. This contention is devoid of any rationale since a failure to serve will preclude the filing of a certificate, unless the movant seeks to perjure himself. Thus, if the failure to actually serve notice does not impair jurisdiction, then *a fortiori*, the failure to serve a certificate of service will not impair the validity or timeliness of the motion. See *In re Marriage of Collins*.

Defendant's reliance on *Vlahakis v. Parker*, 3 Ill.App.3d 126, 278 N.E.2d 523 (1971) (abstract of op.) and *Ingrassia v. Ingrassia*, 156 Ill.App.3d 483, 109 Ill.Dec. 68, 509 N.E.2d 729 (1987) is misplaced. Although *Vlahakis* reached a contrary result, it is clear that that opinion did not purport to in any way consider or confront the impact of Rule 104(d) in its determination. That opinion has therefore been distinguished and rejected on that basis in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d at 357–58, 321 N.E.2d at 348 ("Rule 104(d) renders a failure to comply with Rule 104(b) * * * non-jurisdictional * * * [and] the only cases decided since enactment of rule 104(d) which reached a contrary result [, including *Vlahakis v. Parker*,] did not consider that provision at all"). Likewise, the opinion in *Ingrassia* does not purport to consider rule 104(d) in its determination. Moreover, *Ingrassia* does not purport to deal with the validity or timeliness of the filing of a post-trial motion, but, rather, with the sufficiency of the notice of that motion when given to the opposing party only a few hours before the hearing on the motion. Hence, *Ingrassia* is not in point, since here there is no question that defendant had actual knowledge of the pendency of plaintiff's motion to reconsider well in advance of the scheduled hearing date on that motion.

Consequently, plaintiff's August 25 motion to reconsider, and therefore his January 25 notice of appeal, were seasonably filed, notwithstanding that no certificate of service was filed until long after 30 days had passed since summary judgment was entered on July 27. Since the August 25 motion was timely, the notice of appeal filed on January 25 complied with Rule 303(a) since it was filed within 30 days after the trial court disposed of the motion to reconsider, albeit on jurisdictional grounds, on January 13. Accordingly, our jurisdiction to review both the July 27 and January 13 orders of the trial court remains unimpaired.

[5] Defendant next would urge that if we determine that the January 13 order is reviewable, we should confine our review solely to the correctness of the trial court's denial of its jurisdiction over the motion to reconsider. Defendant contends that if we find that the trial court's jurisdictional determination was erroneous, we should remand the matter to the trial court to allow the trial court to first consider the merit of that motion. We disagree for the same reasons as articulated in *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 167 Ill.Dec. 225, 587 N.E.2d 494 (1992). There, the court stated as follows:

> "Defendant initially urges us, without citation to authority, to remand this matter to the circuit court because that court did not address the merits of plaintiff's motion. This argument betrays a misperception of the nature both of the question presented and of our review. As noted above, we consider summary judgment orders *de novo*: we, like the circuit court, must decide only whether the parties' pleadings and other submissions present an issue of triable fact and if not, whether plaintiff is entitled to judgment as a matter of law. This is a question of law, not of fact." *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 76, 167 Ill.Dec. 225, 231, 587 N.E.2d 494, 500 (1992).

Here, too, the grant of summary judgment is subject to *de novo* review, requiring our *de novo* determination whether the submissions of the parties presented triable issues of fact and if not whether defendant was entitled to a judgment as a matter of law. Thus, here, as in *Myers*, we may consider this appeal on its merits without the necessity of a remand.

II. MERITS

[6] As noted earlier, plaintiff contends on appeal that the trial court erred in granting summary judgment because the facts are sufficient to create an inference that AT & T voluntarily assumed a duty to properly secure the battery hoist for transport, a duty which was breached as a result of AT & T's negligence. Additionally, plaintiff contends, for the first time on appeal, that there was error in granting summary judgment because the facts are sufficient to create an inference that as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that even if summary judgment was properly entered in favor of AT & T under the issues framed by the existing complaint, the trial court abused its discretion in denying him leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)).[1]

[7, 8] We first address plaintiff's contention that the trial court erred in entering summary judgment pursuant to the issues framed by the existing complaint. Summary judgment is proper when the pleadings, depositions and affidavits on file, construed in the light most favorable to the nonmoving party, establish that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. See generally 735 ILCS 5/2–1005 (West 1994); *First State Insurance Co. v. Montgomery Ward & Co.*, 267 Ill.App.3d 851, 204 Ill.Dec. 814, 642 N.E.2d 715 (1994); *Torres v. City of Chicago*, 261 Ill.App.3d 499, 197 Ill.Dec. 985, 632 N.E.2d 54 (1994); *Giannoble v. P & M Heating & Air Conditioning, Inc.*, 233 Ill.App.3d 1051, 175 Ill.Dec. 169, 599 N.E.2d 1183 (1992). Appellate review of an order granting summary judgment is *de novo*. *E.g., Hesselink v. R.L. Perlow Corp.*, 265 Ill.App.3d 478, 202 Ill.Dec. 36, 637 N.E.2d 575 (1994); *La Salle National Bank v. Skidmore, Owings & Merrill*, 262 Ill.App.3d 899, 200 Ill.Dec. 225, 635 N.E.2d 564

1. As previously noted, at the trial level, plaintiff urged liability both on the basis of premises liability and the law governing voluntary undertakings. Plaintiff has conceded on appeal that he cannot base his action against AT & T upon a theory of premises liability as a matter of law, due to the holding in *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994), insofar as he incurred his injuries in the bed of his truck, and not due to any condition of AT & T's premises. See also *Jackson v. Hilton Hotels Corp.* 273 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995) (in action based on premises liability, no duty to plaintiff existed where plaintiff failed to show that his injuries were caused by any condition of the premises).

(1994). To withstand a motion for summary judgment in an action based in negligence, a plaintiff must allege facts sufficient to show that the defendant owed him a duty, that defendant breached that duty, and that his injury proximately resulted from that breach. See *DiBenedetto v. Flora Township*, 153 Ill.2d 66, 178 Ill.Dec. 777, 606 N.E.2d 571 (1992); *Ziemba v. Mierzwa*, 142 Ill.2d 42, 153 Ill.Dec. 259, 566 N.E.2d 1365 (1991).

[9, 10] With respect to plaintiff's contention concerning AT & T's duty arising from its purported voluntary undertaking, section 323 of the Restatement (Second) of Torts provides as follows:

"One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking." Restatement (Second) of Torts § 323, at 135 (1965).

See generally, *Cross v. Wells Fargo Alarm Services*, 82 Ill.2d 313, 45 Ill.Dec. 121, 412 N.E.2d 472 (1980); *Jackson v. Hilton Hotels Corp.*, 277 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995). Whether a duty has been voluntarily undertaken is a question of law to be determined by the court. *Gouge v. Central Illinois Public Service Co.*, 144 Ill.2d 535, 163 Ill.Dec. 842, 582 N.E.2d 108 (1991); *Jackson v. Hilton Hotels Corp.*

In the instant case, plaintiff has failed to allege facts sufficient to establish in the first instance that defendant voluntarily assumed or undertook any duty to properly maintain and secure the battery hoist for transport. First, it is undisputed that AT & T had neither control nor influence over the manner in which plaintiff, an independent contractor retained by Quinn (who was also an independent contractor), readied or moved the hoist, and that plaintiff had total discretion in preparing and moving the hoist. Moreover, plaintiff did not submit any evidence that AT & T strapped the motor to the hoist, nor any evidence regarding whether the strapping was undertaken as protection for the plaintiff. Lastly, and more overridingly, even if we were to presume that the strapping was effected by AT & T, there is no evidence whatsoever submitted by plaintiff that he relied upon the safety of that strapping. In fact, the record is clear that plaintiff himself checked the strapping of the motor to ensure it was fastened securely prior to moving the hoist, as was his customary practice when moving that particular hoist.

[11–13] Plaintiff urges that even if there is no basis for liability under a theory of voluntary undertaking, there is a basis established for liability under a theory of gratuitous bailment. In that regard, he contends that there is a genuine issue of material fact that AT & T, as a gratuitous bailor of the hoist, breached a duty to plaintiff to provide a safe hoist or to warn plaintiff of its dangers. We first note that contentions not raised in the trial court are waived on appeal, even in a summary judgment case. *Witek v. Leisure Technology Midwest, Inc.*, 39 Ill.App.3d 637, 640, 350 N.E.2d 242, 245 (1976) ("This rule of waiver applies even in a summary judgment case"); *Wilson v. Gorski's Food Fair*, 196 Ill.App.3d 612, 143 Ill.Dec. 477, 554 N.E.2d 412 (1990). However, even if the argument were preserved, we note that there was no evidence presented that AT & T breached a duty to plaintiff as a gratuitous bailor of the hoist.

"[A] gratuitous bailor may be liable for physical harm caused by the use of his chattel when he knows or has reason to know that the chattel is or is likely to be dangerous when put to the use for which it is supplied; has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition; and fails to exercise reasonable care to inform the user of its dangerous condition or of the facts which make it likely to be dangerous." *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994).

[14] Plaintiff has not produced evidence as to any specific defect either in the design or manufacture of the hoist itself which would indicate that AT & T had actual or constructive knowledge that the hoist was unsafe when it was handed over to plaintiff. Plaintiff himself did not testify as to the condition of the hoist except to say that the strap loosened. The only other evidence that plaintiff has presented consists of unsubstantiated hearsay statements. In that regard, plaintiff testified in his deposition to a conversation which took place after the accident with an AT & T installer who told plaintiff that certain other fellow employees had stated that after plaintiff's accident they refused to use the hoist because it was unsafe, and that AT & T ultimately returned the hoist to its manufacturer. However, plaintiff was unable to identify those other AT & T employees, and he did not provide any further detail regarding the specific contents of their statements. Such unsubstantiated hearsay statements cannot be considered in a ruling on a motion for summary judgment. See *Certified Mechanical Contractors, Inc. v. Wight & Co., Inc.*, 162 Ill.App.3d 391, 113 Ill.Dec. 888, 515 N.E.2d 1047 (1987) (in deciding a motion for summary judgment, court should ignore personal conclusions, opinions and self-serving statements and consider only facts admissible in evidence under the rules of evidence); *Seefeldt v. Millikin National Bank of Decatur*, 154 Ill.App.3d 715, 107 Ill.Dec. 161, 506 N.E.2d 1052 (1987) (although a complaint may purport to raise an issue of material fact, summary judgment is appropriate if such issue is not further supported by evidentiary facts, and in determining the genuineness of a fact, a court should ignore personal conclusions and opinions and consider only admissible facts).

Plaintiff's reliance on *Pagano* is not well taken. There, the court on appeal did find an issue of fact as to whether a defective dolly supplied by the defendant to help move certain barrel drums of ink rendered the defendant liable under a theory of gratuitous bailment. However, in that case, plaintiff gave direct testimony as to specific, observable defects in the dolly which, if believed, would establish that the dolly was defective. Here, aside from the inadmissible hearsay rumors which were reported, the plaintiff himself presented no evidence to show either a defect in the hoist or that AT & T knew or should have known of any dangerous propensities in the hoist. Consequently, the evidence presented here was not effective to support a counterinference for purposes of summary judgment.

[15] Plaintiff next contends that the trial court erred in its refusal in its July 27 order to allow him leave to amend his complaint to more specifically allege facts that there was a voluntary undertaking and that it was implemented negligently. We disagree.

Section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)) provides as follows:

"(g) Amendment of pleading. Before or after the entry of a summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms."

The allowance of an amendment to the pleadings is in the trial court's discretion, and reversible error can only be found if there is a manifest abuse of discretion. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992). See also *Misselhorn v. Doyle*, 257 Ill.App.3d 983, 195 Ill.Dec. 881, 629 N.E.2d 189 (1994); *Eyman v. McDonough District Hospital*, 245 Ill.App.3d 391, 184 Ill.Dec. 502, 613 N.E.2d 819 (1993).

As noted, on July 27, immediately after the trial court entered summary judgment against him, plaintiff made an oral motion to amend his complaint, as follows:

"MR. JOHNSON [Plaintiff's attorney]: [I] set it out to specifics that they undertook the duty to secure the hoist and they negligently performed that duty and as a result Plaintiff was injured based upon the *Nelson v. Pippen, Phillips* [*sic*] case, that once undertakes a duty to do something, to do so negligently, and someone is injured they are absolutely liable.

* * * * * *

If the fact that the Court feels that the premises liability count cannot stand does not mean then that a negligent voluntary [*sic*] undertaking is not proper be-

There will be no ... position."

The court denied ... stating that "It's a ... motion [to amend]."

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Notwithstanding ... to review the amen... ly proposed, we w... erction by the trial ... leave to amend. A ... was ample evidence ... support its conclus... case as revealed i... submissions would ... which could allege ... Moreover, by the ... complaint were am... allege a voluntary ... by the plaintiff, th... plaint would be su... facts already subm... pleadings for summa... ...*v. Burton*

There will be no new deps. That's what the evidence is through the Plaintiff's deposition."

The court denied plaintiff's motion to amend, stating that "It's an '89 case. I'll deny the motion [to amend]."

We first note that plaintiff never made the proposed amended complaint a part of the record on appeal, except for his oral proposal before the trial judge which, without any offers of new evidence, essentially duplicates the voluntary undertaking theory which has already been argued and rejected. Plaintiff's failure to include the proposed amendment and supporting facts therefor in the record could be found to constitute a waiver in this court of his right to have the denial of his request for leave to amend reviewed. See *Mendelson v. Ben A. Borenstein & Co.*, 240 Ill.App.3d 605, 181 Ill.Dec. 114, 608 N.E.2d 97 (1992) (plaintiff's failure to tender amended complaint or to include it in the appellate record diminished the appellate court's ability to determine whether the proposed amendment would provide a viable theory against defendant, and constituted waiver of right to a review of the denial of his request for leave to amend). See also *Ignar v. Norbut*, 271 Ill.App.3d 522, 207 Ill.Dec. 9, 648 N.E.2d 285 (1995) (no abuse of discretion in denying motion for leave to amend complaint where movant orally moved to amend yet failed to submit proposed amendment to trial court).

Notwithstanding waiver, even if we were to review the amendment which plaintiff orally proposed, we would find no abuse of discretion by the trial court in denying plaintiff leave to amend. As already discussed, there was ample evidence before the trial court to support its conclusion that the facts in this case as revealed in the summary judgment submissions would not permit a pleading which could allege a valid cause of action. Moreover, by the same token, even if the complaint were amended to more specifically allege a voluntary undertaking as requested by the plaintiff, the allegations of the complaint would be superseded by the extrinsic facts already submitted which as noted would dictate for summary judgment. See *Werckenthein v. Bucher Petrochemical Co.*, 248 Ill.App.3d 282, 188 Ill.Dec. 332, 618 N.E.2d 902 (1993) (where allegations in nonmovant's complaint are contravened by movant's extrinsic submissions in summary judgment proceedings, extrinsic submissions control); *East Side Fire Protection District v. City of Belleville*, 221 Ill.App.3d 654, 164 Ill.Dec. 192, 582 N.E.2d 755 (1991) (nonmovant must controvert proofs offered by movant in support of motion for summary judgment and cannot merely rest on pleadings); *Seefeldt v. Millikin National Bank of Decatur.* The issue here is not simply that plaintiff's complaint is deficient in its framing of the issues, but that, as discussed, the testimony and evidence presented in support of his negligent voluntary undertaking theory are deficient, and fall short of establishing a genuine issue of material fact such that judgment should not be entered as a matter of law on that theory of action.

Plaintiff's reliance on *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992) is not well taken. In *Loyola*, the court on appeal set forth four factors to determine whether the trial court had abused its discretion in denying a section 2–1005(g) amendment, including whether the proposed amendment would cure the defective pleading, whether it would cause prejudice or surprise to other parties, whether it was timely, and whether previous opportunities to amend the pleading could be identified.

Applying these factors in order, in the instant case the question of whether plaintiff's proposed amendment would cure the defective pleading is not relevant, because as already discussed, AT & T succeeded in its motion for summary judgment not because plaintiff's complaint was improperly pleaded, but because the evidence presented at summary judgment shows no genuine issue of material fact regarding the allegations in the complaint. *Werckenthein v. Bucher Petrochemical Co.*; *East Side Fire Protection District v. City of Belleville.* Taking the second and third *Loyola* factors together (whether there would be prejudice or surprise to AT & T and whether the proposed amendment was timely), the record is ample to support the trial court's determination that the allowance

of an amendment would in fact be prejudicial to AT & T, insofar as the amendment was being sought on the eve of trial, five years after the inception of this lawsuit, with no explanation from plaintiff as to why he never before attempted to develop the facts which would be necessary to withstand AT & T's motion for summary judgment. See *Mendelson v. Ben A. Borenstein & Co.* (no abuse of discretion in denying leave to amend following grant of summary judgment where proposed amendment was sought beyond the pleading stages). See also *Ignarski v. Norbut.*

The final *Loyola* factor is whether plaintiff had sufficient prior opportunities to amend. To that extent, we note that plaintiff indeed had substantial opportunities to amend. Although plaintiff complains that AT & T never gave him notice of any deficiency in his complaint which would require amendment because AT & T never filed a motion to dismiss prior to filing its motion for summary judgment, it is axiomatic that a party can amend its pleading on its own motion. See 3 R. Michael, Illinois Practice, ch. 26, at 446 (West 1989). The case of *Evans v. United Bank of Illinois, N.A.*, 226 Ill.App.3d 526, 168 Ill.Dec. 533, 589 N.E.2d 933 (1992), upon which plaintiff relies, does give credence to plaintiff's contention under the fourth *Loyola* factor that the failure of AT & T to challenge his pleadings prior to its motion for summary judgment deprived plaintiff of any prior opportunity to amend. However, we note that in *Evans* the court on appeal did not rely on that factor alone in finding that the trial court abused its discretion in denying the plaintiff in that case leave to amend, but found that *all* of the *Loyola* factors supported that plaintiff's motion for leave to amend.

In any event, even if plaintiff were correct in his reliance upon *Evans*, we need not consider its application here. As already discussed, the issue here is not whether the allegations of the complaint were sufficient to state a cause of action based upon a voluntary undertaking theory, but whether the facts adduced were sufficient to create an inference to support such allegations. See *Werckenthein v. Bucher Petrochemical Co.; East Side Fire Protection District v. City of Belleville.* As previously noted, the fa submitted here are insufficient to raise s an inference. Hence, we find that the t court's denial of the motion to amend was an abuse of discretion. See *Regas v. Asso ated Radiologists, Ltd.*, 230 Ill.App.3d 9 172 Ill.Dec. 553, 595 N.E.2d 1223 (19 (where a cause of action cannot be sta even after amendment, leave to am should be denied).

For the foregoing reasons, the judgment the Circuit Court of Cook County is affirm

McNULTY, P.J., and HOURIHANE, J. concur.

283 Ill.App.3d 112

669 N.E.2d 655

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Vernetta CASSELL, Defendant-Appellant.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Curlee SIMMONS, Defendant-Appellan

Nos. 1-94-2782, 1-95-1380.

Appellate Court of Illinois, First District, Fifth Division.

Aug. 9, 1996.

Rehearing Denied Sept. 11, 1996.

Defendants were convicted in the Cir Court, Cook County, John J. Moran, J., aggravated criminal sexual assault, and defendant was convicted of additional cri of home invasion and aggravated kidnapp Defendants appealed. The Appellate Co McNulty, P.J., held that: (1) circuit c had adequate basis for its determination t victim was not entitled to assert privil

Cite a

against self-incrimination: sufficient evidence that defer threat of force in order t course with victim to sup aggravated criminal sexua was sufficient evidence tha confined victim to supp napping conviction; (4) denied effective assistan defendant who drove vehi assault occurred was cri for the assault; and (6) e of emergency room nurse that victim identified d and who dragged her fr harmless error.

Affirmed.

1. Witnesses ⇐297(13.1)

Trial court had adequ motion for aggravated cri for its determination th entitled to assert Fifth A against self-incrimination court did not conduct he whether victim's testimon ver, where, in response t tions as to why she wan age, victim never expres fear of being charged wit that she could not remem clearly. U.S.C.A. Const.

2. Witnesses ⇐297(1)

Privilege against guards against compulsor leading to establish U.S.C.A. Const.Amend. 5

3. Witnesses ⇐297(1)

Although witness ir privilege to refuse to an tend to incriminate him secured by Fifth Amend those instances where wi cause to believe he or himself or herself to pro answers. U.S.C.A. Const

4. Witnesses ⇐297(1)

Once witness asser Amendment privilege no self or herself, trial cou

appointed to you and we will not ask questions until he has been appointed—"I told him, without his attorney I wouldn't talk to him and that would be it. That he didn't have to say anything." (He said he didn't want a lawyer.) (5) If you decide to answer now with or without a lawyer, you have the right to stop questioning at any time or stop questioning and consult a lawyer—"I told him, if I start talking to you and it becomes apparent to you that you suddenly think you want an attorney to tell me and we will stop right there and we won't ask any further questions at that point. In other words, he could stop me from asking anything, at any time and I will just stop and leave the room." (He said he still wanted to talk to me.)

Dickett testified that she gave defendant the *Miranda* warnings one at a time, speaking slowly. After each one she asked defendant if he understood and he said he did. She testified that she told him the word attorney meant lawyer and instead of the phrase, "appoint a lawyer", she told him the court would give him a lawyer.

In contrast to this questioning by Kill and Dickett, Smith testified that she interviewed defendant on December 15, 1989, six months after the fire. In questions she posed which were intended to determine whether or not he could intelligently waive what are commonly known as "Miranda rights or Miranda warnings" she would ask him "what does this mean, and then I would say what the particular right was" and his reaction would be to "look around, scratch his head and draw a blank. He didn't say anything." From these reactions she concluded that "he didn't understand what these rights meant."

The contrast in the manner in which the police officer and assistant State's Attorney advised the defendant and the form of the questions posed to the defendant by the psychologist lead us to the conclusion that the record does not support the trial court's conclusion that defendant did not understand his rights and therefore did not knowingly and intelligently waive them. The court's grant of defendant's motion to suppress is not supported by the record.

Here we find the defendant was advised of his right to remain silent and his right to have an attorney present in language he could understand. He was advised that anything he told the officer could be used against him in court. Defendant then stated that he wanted to tell the police about the fire. He repeated the story to the officer and to the assistant State's Attorney in a coherent manner. Although he was asked to do so, he chose not have his statement taken down verbatim in writing. Since he was unable to read, he could not verify what a written statement contained.

While the State has a heavy burden to show that a defendant has waived his constitutional rights in a knowing, intelligent and voluntary manner, (*Brownell*, 79 Ill.2d at 516, 38 Ill.Dec. 757, 404 N.E.2d 181) we find the State has met that burden. We find the weight of the evidence establishes that defendant waived his *Miranda* rights in a knowing and intelligent manner. For all of the foregoing reasons the order of the trial court granting defendant's motion to suppress his statements is reversed.

REVERSED.

RAKOWSKI, P.J., and EGAN, J., concur.



217 Ill.App.3d 952
578 N.E.2d 33

Byong K. CHOI, Plaintiff-Appellant,

v.

COMMONWEALTH EDISON COMPANY, Defendant-Appellee.

No. 1-89-2177.

Appellate Court of Illinois, First District, Third Division.

July 10, 1991.

Rehearing Denied Aug. 26, 1991.

Independent contractor's employee brought action against owner of nuclear

power plant to recover for injuries sustained when he slipped and fell on wet concrete floor. The Circuit Court, Cook County, Dean Sodaro, J., granted summary judgment for owner, and employee appealed. The Appellate Court, Cerda, P.J., held that owner's duty to maintain safe workplace did not include mopping up water that accumulated on floor when snow and ice from pipes used in construction project melted onto floor, causing puddles of water.

Affirmed.

1. Judgment ⇐185(2)

Although plaintiff does not have to try his case on defendant's motion for summary judgment, he must provide factual basis which would arguably entitle him to judgment.

2. Appeal and Error ⇐949

Determination that summary judgment is appropriate will not be reversed absent abuse of trial court's discretion such that plaintiff's right to fundamental justice is violated.

3. Negligence ⇐32(2.10)

Landowner owed duty to independent contractor's employee to maintain reasonably safe workplace.

4. Negligence ⇐50

Landowner's duty to independent contractor's employee to maintain reasonably safe workplace did not extend to taking precautions against water tracked inside from natural accumulation outside.

5. Negligence ⇐2, 10

Duty is determined by considering number of factors, including foreseeability of harm, likelihood of injury, magnitude of burden of guarding against it, consequences of placing that burden on defendant, public policy, and social considerations.

6. Negligence ⇐29, 44

Landowner owes no duty where natural accumulation of snow, ice or water exists on outside or is tracked into building by pedestrian traffic.

7. Negligence ⇐28

Property owner has duty and may be liable in negligence when injuries are result of unnatural or artificial accumulation of snow, ice or water, or natural condition aggravated by owner's use of area and creation of condition.

8. Negligence ⇐50

Duty owed by owner of nuclear power plant to independent contractor's employee to provide reasonably safe workplace did not include duty to mop up water that accumulated on concrete floor when snow and ice from pipes being brought in from outside for use in construction project melted onto floor, causing puddles of water, where there was no evidence that owner did anything to aggravate that condition, but instead condition was continuation of natural accumulation.

Lane and Munday, Thomas J. Nathan, Chicago, for plaintiff-appellant.

Johnson, Cusack and Bell, Ltd., John W. Bell, Michael B. Gunzburg and Thomas H. Fegan, Chicago, for defendant-appellee.

Presiding Justice CERDA delivered the opinion of the court:

Plaintiff, Byong K. Choi, brought this action against defendant Commonwealth Edison Company seeking recovery for injuries sustained when plaintiff fell on a concrete floor while working at a construction site. The trial court granted defendant's motion for summary judgment. On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary judgment because a genuine issue of material fact exists. In addition, he argues that the trial court erred by failing to recognize defendant's duty to provide a safe workplace for workmen engaged in construction work on its premises and by failing to extend that duty to include taking precautions against the accumulation of water inside the building.

On January 10, 1979, plaintiff Choi was employed by Universal Power Piping, Inc. (UPP) as a welder at the Dresden Nuclear Power Plant, which is owned by defendant

Commonwealth Edison Company. UPP was a subcontractor hired by Commonwealth Edison to complete installation of a decontamination flushing system in the Reactor 1 building. Plaintiff was working on the third-floor turbine deck receiving pipes brought in from the outside by UPP employees. While stored outside, the pipes became encrusted with snow and ice. Once inside, the pipes were raised from the ground floor to the third-floor turbine deck area by an overhead crane, which was operated by a Commonwealth Edison employee. Then, the pipe was taken from the crane, placed on a cart, and moved through the interlock hatch to the reactor building by UPP employees, including plaintiff. Snow and ice melted from the frozen pipes, forming puddles of water on the deck wherever the pipes were transported. Plaintiff was working in this manner all day prior to the accident.

As plaintiff and a co-worker were carrying a pipe, approximately 20 feet long and 10 inches in diameter, plaintiff slipped on water that was on the concrete floor. He fell backward, hitting his back on a pipe, and a floor spacer fell across his mid-section, causing injuries.

Previously, the appellate court upheld the trial court's summary judgment order for defendant regarding a Structural Work Act (Ill.Rev.Stat.1983, ch. 48, pars. 60 through 69). (*Choi v. Commonwealth Edison Co.* (1984), 129 Ill.App.3d 878, 85 Ill. Dec. 17, 473 N.E.2d 385.) In plaintiff's second amended complaint, he alleged that defendant was guilty of several negligent acts in its supervision of the construction work. Defendant filed a motion for summary judgment, arguing that under Illinois law, it had no duty to take precautions against natural accumulations of snow, ice or water that were tracked into a building. Defendant noted that the UPP foreman's deposition stated that he did not inform Edison of the condition because it was the duty of the contractor's own employees to clean up after themselves. Defendant pointed out that the snow came from pipes that plaintiff and his co-workers had brought in and carried to the area.

In response to defendant's motion for summary judgment, plaintiff argued that defendant owed him a duty to maintain a reasonably safe work place because it retained control over the construction work performed by UPP employees and could stop the work in progress for safety or other reasons. Plaintiff also argued that defendant breached that duty by failing to provide a reasonably safe workplace and by failing to stop work that was being performed in an unsafe manner. In addition, plaintiff contended that the melted snow and ice that caused the unsafe condition did not accumulate naturally, was not transported into the building by pedestrian traffic, and was caused by defendant's refusal to allow the pipes to be brought into the building and cleaned off before being transported to the work area. Plaintiff notes that the deposition of Commonwealth Edison's superintendent stated that Commonwealth Edison employees had the responsibility to clean snow and ice which came into the building, had the authority to stop work being performed in an unsafe manner, and regularly inspected the area.

Concluding that the facts were essentially undisputed, the trial court ordered summary judgment for defendant. The trial court stated that there was a common law duty of an occupier of land to exercise reasonable care for the safety of people lawfully on the premises, but that duty did not extend to a building owner being required to mop up water from an accumulation of snow, ice or water brought inside a building construction site. The trial court indicated that it would be an impossible burden placed on an owner of a building construction site to require following the independent contractor's employees around, mopping up every drip of water brought in from the outside. The trial court further ruled that Commonwealth Edison did not create the dangerous condition, but merely failed to clean up a mess which is common whenever building materials from the outside of a building are moved into a building.

The trial court analogized this case to *Lohan v. Walgreens Co.* (1986), 140 Ill. App.3d 171, 173, 94 Ill.Dec. 680, 488 N.E.2d 679, which ruled that a landowner has no duty to clean up snow, ice or water that is

tracked into a building from a natural accumulation on the outside. The trial court made no finding whether the accumulation inside the building was natural or unnatural, but did state that the water began as a natural accumulation of snow and ice on the pipes outside, and was brought into the building the same way as people tracking it on their feet. The trial court did not consider the expert's affidavit and deposition because it was not factually based. The expert did not actually examine the premises, the court noted, but merely looked at photographs.

After the trial court denied plaintiff's motion to reconsider, plaintiff appealed the summary judgment order. Plaintiff's argument emphasizes that Commonwealth Edison owed him a duty to maintain a safe workplace even though he was employed by an independent contractor hired by Commonwealth Edison. He asserts that the duty included mopping up water that accumulated on the building's floor when snow and ice from the pipes melted onto the floor, causing puddles of water. Plaintiff relies on cases holding that the landowner owes a duty to the employee of an independent contractor if the owner retains sufficient control over the contractor's work. *Claudy v. City of Sycamore* (1988), 170 Ill.App.3d 990, 120 Ill.Dec. 812, 524 N.E.2d 994; See *Haberer v. Village of Sauget* (1987), 158 Ill.App.3d 313, 110 Ill.Dec. 628, 511 N.E.2d 805; *Tsourmas v. Dineff* (1987), 161 Ill.App.3d 897, 113 Ill.Dec. 758, 515 N.E.2d 743; *Weber v. Northern Illinois Gas Co.* (1973), 10 Ill.App.3d 625, 295 N.E.2d 41; *Pasko v. Commonwealth Edison Co.* (1973), 14 Ill.App.3d 481, 302 N.E.2d 642. These cases state that the duty owed is to maintain a reasonably safe workplace.

Even if the water began as a natural accumulation on the outside, plaintiff asserts, Commonwealth Edison's intervening acts caused the water to be unnaturally accumulated on the inside of the building. In the alternative, plaintiff states, the condition was aggravated by Commonwealth Edison because it would not allow the pipes to be stored inside where the snow and ice could be safely removed after it melted. Furthermore, plaintiff argues, the pipes were brought in from the outside and loaded onto an overhead crane operated by a Commonwealth Edison employee. The overhead crane then took the pipes to the third floor of the building, where UPP employees transported the pipes through a tunnel into the reactor building. By the time the pipes reached the third floor, the snow and ice was melting, and water from the pipes was dripping on the floor. It is on that water that plaintiff fell and injured himself.

Defendant responds that the water was a natural accumulation tracked in from the outside by UPP employees, including plaintiff. It asserts that this situation should be treated the same as a natural accumulation tracked in from the outside by pedestrian traffic, thus creating no duty by the landowner.

Defendant relies on two types of cases: those concerning natural accumulations of snow, ice or water outdoors and those concerning snow, ice or water tracked into a building from the outside, whether tracked in by pedestrians' shoes, coats or umbrellas. In *Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679, the plaintiff slipped and fell on water that had been tracked from the outside into the common hallway of the defendants' stores. The appellate court ruled that the owners did not have a duty to continuously remove the tracks left by customers who had walked through the natural accumulations of snow or water outside, tracking them inside. Even if the owner has knowledge that the accumulation caused a dangerous condition, the court stated, there is no duty if the accumulation is natural. (*Lohan*, 140 Ill.App.3d at 173, 94 Ill.Dec. 680, 488 N.E.2d 679.) See also *Handy v. Sears, Roebuck & Co.* (1989), 182 Ill.App.3d 969, 131 Ill.Dec. 471, 538 N.E.2d 846 (summary judgment in favor of defendant store affirmed where plaintiff slipped and fell on water located within store); *Shoemaker v. Rush-Presbyterian-St. Luke's Medical Center* (1989), 187 Ill.App.3d 1040, 135 Ill.Dec. 446, 543 N.E.2d 1014 (hospital had no duty to clean up natural accumulation of water tracked into hospital on pedestrians' coats and umbrellas); *Serritos v. Chicago Transit Authority* (1987), 153 Ill.App.3d 265, 106 Ill.Dec. 243, 505 N.E.2d 1034 (city transit authority had no duty where plain-

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tiff fell on snow and slush covered steps of bus owned and operated by defendant).

[1, 2] The purpose of summary judgment is to determine whether a triable issue of fact exists. (*Haberer*, 158 Ill.App.3d at 316, 110 Ill.Dec. 628, 511 N.E.2d 805.) It may be granted if the pleadings, exhibits, affidavits, and depositions on file establish that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (Ill.Rev. Stat.1985, ch. 110, par. 2–1005(c); *Branson v. R & L Investment, Inc.* (1990), 196 Ill. App.3d 1088, 1090, 143 Ill.Dec. 689, 554 N.E.2d 624.) Although the plaintiff does not have to try his case, he must provide a factual basis which would arguably entitle him to judgment. (*Handy*, 182 Ill.App.3d at 972, 131 Ill.Dec. 471, 538 N.E.2d 846.) The determination that summary judgment is appropriate will not be reversed absent an abuse of the trial court's discretion such that the plaintiff's right to fundamental justice is violated. *Breeze v. Payne* (1989), 181 Ill.App.3d 720, 727, 130 Ill.Dec. 386, 537 N.E.2d 453.

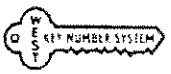
[3–5] Commonwealth Edison owed plaintiff the duty to maintain a reasonably safe workplace, but it did not extend to taking precautions against water tracked inside from a natural accumulation outside. Duty is determined by considering a number of factors: the foreseeability of harm (*Breeze*, 181 Ill.App.3d at 727, 130 Ill.Dec. 386, 537 N.E.2d 453), the likelihood of the injury, the magnitude of the burden of guarding against it, the consequences of placing that burden on the defendant, public policy, and social considerations. *Dealers Service & Supply Co. v. St. Louis National Stock.* (1987), 155 Ill.App.3d 1075, 1080, 108 Ill.Dec. 664, 508 N.E.2d 1241.

[6, 7] In Illinois, a landowner owes no duty where a natural accumulation of snow, ice or water exists on the outside or is tracked into a building by pedestrian traffic. (*Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679.) However, a property owner does have a duty and may be liable where the injuries are a result of an unnatural or artificial accumulation, or a natural condition aggravated by the owner's use of the area and creation of the condition. (*Handy v. Sears, Roebuck & Co.* (1989), 182 Ill.App.3d 969, 971, 131 Ill. Dec. 471, 538 N.E.2d 846.) To establish a duty, the plaintiff must make an affirmative showing of an unnatural accumulation or an aggravation of a natural condition before recovery will be allowed. (*McCann v. Bethesda Hospital* (1979), 80 Ill.App.3d 544, 549, 35 Ill.Dec. 879, 400 N.E.2d 16.) Plaintiff made no such showing in this case.

[8] Therefore, summary judgment for defendant was proper. The water in the nuclear power plant was a continuation of a natural accumulation. There was no evidence presented that Commonwealth Edison did anything to aggravate the condition. To require an owner of a construction site to follow workmen around and immediately clean up any melting snow, ice or water that had been brought in from the outside would be too high a burden.

Affirmed.

WHITE and GREIMAN, JJ., concur.



217 Ill.App.3d 958
578 N.E.2d 37

FISTER/WARREN, successor in interest to Charles L. Fister and Associates, Inc., a corporation; Charles L. Fister and Robert J. Warren, Plaintiffs–Appellants/Counter–Defendants–Appellees,

v.

BASINS, INC., a Wyoming corporation, and Georgia Marble Company, a Georgia corporation, Defendants–Appellees/Counter–Plaintiffs–Appellants.

Nos. 1–90–2260, 1–90–2882.

Appellate Court of Illinois,
First District, Sixth Division.

July 12, 1991.

Rehearing Denied Aug. 30, 1991

Stock sellers brought action against buyer of corporation and corporation, seek-

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	Case No. 12 LA 178

ANSWER TO PLAINTIFF'S INTERROGATORIES TO DEFENDANTS BILL McGUIRE AND CAROLYN McGUIRE

TO: Paul Dulberg
c/o Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

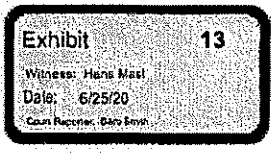
Defendants, BILL McGUIRE AND CAROLYN McGUIRE (improperly named Caroline), by and through their attorneys, Cicero, France, Barch & Alexander, PC, and for their Answer to Plaintiff's Interrogatories, state as follows:

1. State the full name of the defendant(s) answering, as well as your current residence address, date of birth, marital status, and social security number, and, if different, give the full name, as well as the current residence address, date of birth, marital status, and social security number of the individual(s) signing these Answers.

ANSWER:

William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051 Married: Carolyn DOB: July 29, 1952	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051 Married: Bill November 26, 1946

Defendants object to providing Social Security Numbers. Such information is highly sensitive and private and is furthermore irrelevant to any issues in the pending lawsuit.



2. State the full name and current residence address of each person who witnessed or claims to have witnessed the accident to the Plaintiff on the premises as described in the complaint.

ANSWER: David Gagnon
39010 90th Place
Genoa City, WI 53128

Paul Dulberg
4606 Hayden
McHenry, IL 60051

3. State the full name and current residence address of each person who witnessed or claims to have witnessed the work and/or conditions existing as described in the complaint at the location of the accident on the date of the accident described.

ANSWER: See answer to Interrogatory No. 2.

4. State the name and address of the person(s) or entity that owned the property premises whereat the accident occurred as alleged, as of the date in question.

ANSWER: Bill and Carolyn McGuire
1016 W. Elder Avenue
McHenry, IL 60051

5. State the name and address of the person(s) or entity that was involved in the work and/or maintenance of the exterior of the premises as alleged on the date in question.

ANSWER: See response to Interrogatory No. 2.

6. State the name and address of the person(s) or entity that decided or chose to undertake the work and/or maintenance of the exterior of the premises as alleged on the date in question, including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

7. State the name and address of the person(s) or entity that was to supervise or oversee the work and/or maintenance at the exterior of the premises as alleged on the date in question including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

8. State the full name and current residence address of each person, who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after said occurrence.

ANSWER:

Before:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
At Time Of Occurrence:	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
After:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051

9. State the name and address of each witness that knows or claims to know the circumstances of the alleged accident, how it occurred or how the Plaintiff became injured – as alleged in the Complaint.

ANSWER: On information and belief, David Gagnon and Paul Dulberg were present at the time of the alleged occurrence and therefore know the circumstances surrounding the occurrence. Answering further, Defendants Bill McGuire and Carolyn McGuire were not present at the time of the occurrence but knew that David Gagnon and Paul Dulberg were present on the date of the occurrence. From conversations with David Gagnon, the answering Defendants believe that Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Investigation continues.

10. With respect to the chain saw that was being operated on the premises at the time of the alleged injury, state as follows:

a. Who was operating the chain saw at the time of the Plaintiff's alleged injury;

b. Who owned the chain saw at the time of Plaintiff's alleged injury;

c. who requested that the chain saw be used to perform work at the time of Plaintiff's injury.

ANSWER:

a. On information and belief, David Gagnon was operating the chain saw at the time Mr. Dulberg was injured.

b. Bill McGuire was the owner of the chain saw on the date of the occurrence.

c. David Gagnon had Bill McGuire's permission to use the chain saw.

11. With respect to David Gagnon's experience in use of a chain saw prior to the date of the alleged accident, state as follows:

a. How many times had David Gagnon operated the same or similar chain saw prior to the date of alleged accident;

b. What formal training did David Gagnon receive in use or operation of a chain saw prior to the occurrence alleged;

c. Who, if any, (names and addresses) trained David Gagnon in use or operation of a chain saw prior to the occurrence.

ANSWER:

a. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, and to the best of the answering parties' knowledge, David Gagnon has used chain saws in the past but the answering parties do not known how often he has used chain saws in the past.

b. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering parties do not know whether David Gagnon has been formally trained the use or operation of a chain saw. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

c. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering party do now know whether or by whom David Gagnon was trained in the use of chain saws. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

12. What was the scope of work or task David Gagnon was engaged in with use of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent "scope of work" or "engaged" constitute legal conclusions, the answering Defendants object to Interrogatory No. 12. Answering subject to objection, at the time of the alleged occurrence, the answering Defendants were in the process of replacing an old shed on their property. Paul Dulberg helped David Gagnon tear down the old shed. The answering Defendants further believe that Mr. Dulberg took the components of the old shed to his property for eventual reassembly. On the date of the occurrence, Mr. Dulberg was helping David Gagnon take down several trees to make room for a new shed. On information and belief, prior to the occurrence Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Answering further, the answering Defendants did not engage, hire or pay either individual for their activities on site. Nor did either answering Defendant dictate, control or otherwise supervise the methods and means by which Mr. Gagnon and Mr. Dulberg performed the tree and branch cutting at issue.

13. Who (names and addresses) requested or chose to engage Gagnon in the "task" of use and operation of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent the words "chose" and "engage" constitute legal conclusions, the answering Defendants object to Interrogatory No. 13. Answering subject to objection, David Gagnon undertook the tree cutting and trimming in question as a favor to his parents. He was not engaged, hired or paid for the activities in question.

14. What instructions or guidance, if any, was given to Gagnon prior to Plaintiff's alleged injury/accident with regard to how he was to perform the chain saw work at the premises.

ANSWER: See response to Interrogatory No. 11.

15 Were you (Defendant) covered under any policy of insurance at the time of the occurrence. If so, were you named or covered under any policy, policy, or policies, of liability insurance effective on the date of said occurrence, and: State the name of each such company or companies, the policy number of numbers, the effective period(s) occurrence, including umbrella or excess insurance coverage, property damage and medical payment coverage.

ANSWER: Yes.
Auto-Owners Insurance Company
Policy No. 48-010-965-01
Eff.: May 9, 2011 thru May 9, 2012
Personal Liability (Each Occurrence): $300,000.00
Medical Payments (Each Person): $1,000.00

16. Do you have any information:

(a) That any plaintiff was, within the 5 years immediately prior to said occurrence, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than person injury? If so, state each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or other health care professional, the approximate date of such confinement or service and state the reason for such confinement or service;

(b) That any plaintiff has suffered any serious personal injury and/or illness prior to the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(c) That any plaintiff has suffered any serious personal injury and/or illness since the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(d) That any plaintiff has ever filed any other suit for his or her own personal injuries? If so, state each plaintiff so involved, state the court, and caption in which filed, the year filed, the title and docket number of said case.

ANSWER:

a. On information and belief, the answering parties believe that Paul Dulberg was involved in a motor vehicle accident that resulted in a shoulder injury of some sort. The answering parties do not know of any other details about the auto accident or injuries, if any.
b. See answer to Interrogatory No. 16(a).
c-d. No.

17. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, the name, address and occupation and employer of the person taking them.

ANSWER: None, other than those furnished as part of Plaintiff's discovery response.

18. Have you (or anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with regard to the injuries complained of by plaintiff or the manner in which the occurrence complained of occurred? If the answer to this Interrogatory is in the affirmative, state the following:

(a) The date or dates of such conversations and/or statements;
(b) The place of such conversations and/or statements;
(c) All persons present for the for the conversations and/or statements;
(d) The matters and things stated by the person in the conversations and/or statements;
(e) Whether the conversation was oral, written and/or recorded; and
(f) Who has possession of said statement if written and/or recorded.

ANSWER: (a) thru (f): See summary of oral communication received from David Gagnon set forth in response to Interrogatory No. 9. Answering further, on information and belief, a few weeks after the subject occurrence Paul Dulberg did roofing work and moved heavy pieces of lumber for Mike Thomas, 460 Walbeck Drive, Twin Lakes, WI 53181 (312/961-9655). Investigation continues.

19. Do you know of any statements made by any person relating to the occurrence complained of by the plaintiff? If so, give the name and address of each such witness, the date of said statement, and state whether such statement was written and/or oral.

ANSWER: See answers to Interrogatories No. 9 and 18.

20. State the name and address of each person having knowledge of Plaintiff's activities on the premises PRIOR to the accident in question.

ANSWER: Paul Dulberg and David Gagnon.

21. State the name and address of each person having knowledge of Plaintiff's activities on the premises AFTER the accident in question.

ANSWER: Paul Dulberg, David Gagnon, Bill McGuire and Carolyn McGuire.

22. Had the Plaintiff ever used or operated a chain saw on the premises or for the Defendant's prior to his alleged accident. If so, state the dates and times such occurred.

ANSWER: Yes. In June 2011 Carolyn and Bill McGuire had a contractor take down a large tree on their property. The contractor left the fallen limbs. Shortly thereafter, Paul Dulberg brought his own chain saw down to the property. He cut the limbs into logs. David Gagnon helped him cut and load the logs.

23. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial, and state the subject of each witness' testimony, giving the following information:

(a) The subject matter on which the opinion witness is expected to testify;
(b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of said witness, if any;
(c) The qualifications of each opinion witness, including a Curriculum Vitae and/or resume, if any; and
(d) Identify any written reports of the opinion witness regarding this occurrence.

ANSWER:

Illinois Supreme Court Rule 213(f)(1) – Lay Witnesses:

The answering party has not yet determined the identity of the witnesses that might be called upon to offer lay witness testimony and opinions at trial. However, each of the following individuals are possible trial witnesses:

a. Paul Dulberg. Presumably, Mr. Kemp will testify about his age, education and work experience. He may testify concerning all the events and occurrences alleged in his complaint. He may also testify concerning his state of health before the events and occurrences alleged in his complaint, the injuries he attributes to the events and occurrences alleged in his complaint, and his current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

b. David Gagnon. The answering party does not know the specifics of Mr. Gagnon's potential trial testimony. Presumably, however, Mr. Gagnon will testify about his age, education and work experience. He may testify concerning his connection to Bill McGuire and Carolyn McGuire. He may testify concerning the events and occurrences alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health before the events and occurrences alleged in Plaintiff's Complaint, observations he made about the injuries Mr.

Dulberg attributes to the events and occurrences alleged in Plaintiff's Complaint, and observations he made about Mr. Dulberg's current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

c. Bill McGuire. If called upon to testify, Mr. McGuire will testify about his age, education and work experience. He will testify concerning his connection to David Gagnon and Carolyn McGuire. He may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations he made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

d. Carolyn McGuire. If called upon to testify, Mrs. McGuire will testify about her age, education and work experience. She will testify concerning her connection to David Gagnon and Bill McGuire. She may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. She may also testify concerning observations she made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations she made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that she will testify concerning all matters covered by her discovery responses and discovery deposition, if taken. Investigation continues.

e. Mike Thomas. If called upon to testify, Mr. Thomas may testify about his age, education and work experience. He may testify concerning his connection to Paul Dulberg. He may also testify concerning observations he made about Mr. Dulberg's state of health after the occurrence alleged in Plaintiff's Complaint, including observations he made of Mr. Dulberg performing roofing work and moving lumber. Lastly, it is anticipated that he will testify concerning all matters covered in his discovery deposition, if taken. Investigation continues.

f. Investigation continues.

Illinois Supreme Court Rule 213(f)(2) – Independent Opinion Witnesses.

To the extent any of the individuals disclosed above as potential Rule 213(f)(1) witnesses also qualify for disclosure as an independent expert witness within the meaning of Illinois Supreme Court Rule 213(f)(2), the responding Defendants incorporate the above Rule 213(f)(1) disclosure as though fully and completely set forth herein as a Rule 213(f)(2) disclosure. Answering further, the responding Defendants further incorporate the identity and opinions of any medical provider that treated Plaintiff for injuries he claims are associated with the occurrence alleged in his Complaint. For additional detail, see the medical records and materials produced by Plaintiff as part of his production response. Investigation continues.

Illinois Supreme Court Rule 213(f)(3) – Controlled Opinion Witnesses.

None at this time. Answering further, Defendants reserve the right to retain and disclose controlled opinion witnesses and will do so, if necessary, in accordance with all applicable court orders and discovery rules.

24. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of said occurrence and/or of the injuries and damages claimed to have resulted therefrom.

ANSWER: None, other than as disclosed in response to the interrogatories above.

25. Identify any statements, information and/or documents known to you and requested by any of the foregoing Interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each Interrogatory, specify the legal basis for the claim as required by Supreme Court Rule 201(n).

ANSWER: None at this time.

26. State the name and address of each person at the premises (although maybe at different location or not a witness to the incident) described at the time of the occurrence.

ANSWER: See response to Interrogatory Nos. 1 and 2.

27. Was the Plaintiff struck and injured by the chain saw while in operation on the date and time alleged. If so, what caused the chain saw to strike the Plaintiff.

ANSWER: On information and belief, yes. Answering further, Defendants were not present at the time of the occurrence. See answer to Interrogatory No. 9.

28. Describe what, if any, of the Plaintiff's conduct caused or contributed to his injury on the date and time in question.

ANSWER: See answer to Interrogatory No. 9.

29. Did the chain saw malfunction at any time during its use prior to Plaintiff's alleged injury.

ANSWER: To the best of the answering parties' knowledge, no.

30. Prior to Plaintiff's alleged injury, was the subject chain saw operating safely and properly.

ANSWER: To the best of the answering parties knowledge, yes.

CAROLYN MCGUIRE and BILL MCGUIRE,
Defendants, by their attorneys,
CICERO, FRANCE, BARCH & ALEXANDER, P.C.,

By _____
RONALD A. BARCH (6209572)

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

BILL McGUIRE, being first duly sworn on oath, deposes and states that he is one of the defendants herein; that he has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of his knowledge and belief.

Bill McGuire

Subscribed and sworn to before
me on the 6TH day August, 2012.

Notary Public

OFFICIAL SEAL
RONALD A BARCH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 08/07/14

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

CAROLYN McGUIRE, being first duly sworn on oath, deposes and states that she is one of the defendants herein; that she has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of her knowledge and belief.

Carolyn McGuire

Carolyn McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

Notary Public

OFFICIAL SEAL
RONALD A BARCH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 05/07/14

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon:

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid, at Rockford, Illinois, at 5:00 o'clock p.m. on 8/6/12.



Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

0245281968.1/SKO/ACCARDO/PAA

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

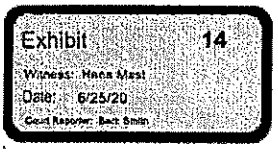
Plaintiff(s),

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendant(s).

CASE NO. 12LA000178



ANSWERS TO CO-DEFENDANT INTERROGATORIES

The Defendant, DAVID GAGNON, in response to the Interrogatories propounded states as follows:

1. State the full name, present residence address and birth date of the person answering these Interrogatories.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128
DOB: 4/3/1697

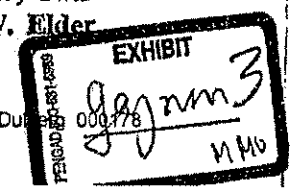
2. State your marital status on the date of the occurrence in question and, if married, your spouse's name and age on said date.

ANSWER: Married; Pamela Gagnon, 39010 90th Place, Genoa City Wisconsin 53128.

3. State the full name and present or last known address (indicating which) of each person who:

(a) Witnessed or claims to have witnessed the occurrence in question.
(b) Was present or claims to have been present at the scene immediately before said occurrence.
(c) Was present or claims to have been present immediately after said occurrence.
(d) Otherwise has or claims to have any knowledge of the facts or possible causes of the occurrence to include any damages or injuries alleged to have resulted from said occurrence.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128; Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050; Carolyn McGuire, 1016 W. Elder



Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051.

4. State specifically and with certainty the personal injuries and property damage, if any, sustained by PAUL DULBERG as a result of said occurrence.

ANSWER: Defendant has no knowledge regarding the plaintiff's personal injuries and/or property damage claims.

7. State whether PAUL DULBERG was hospitalized or had suffered any illness or personal injury prior to or subsequent to the date of said occurrence, and if so, state the nature and date of each such hospitalization, illness or personal injury.

ANSWER: I do not know.

8. State whether PAUL DULBERG suffered any permanent scarring as a result of the accident alleged in the complaint. If so, state the location of such scar, the width and length of such scar or scars. (Pursuant to Supreme Court Rule 214, please attach any photos of any such scar to your answers hereto.)

ANSWER: I do not know.

9. State whether prior to the accident alleged in the complaint PAUL DULBERG suffered any physical disability or impairment of any kind whatsoever. If so, state the nature of such physical disability or impairment and how PAUL DULBERG came to have such physical disability or impairment.

ANSWER: I do not know.

10. State the location of the alleged occurrence, pinpointing such location in feet, inches and direction from fixed objects or boundaries at the scene of the occurrence.

ANSWER: The accident occurred in ~~front~~ BACK of my parent's home at 1016 W. Elder Avenue, McHenry Illinois 60051.

11. State with particularity the nature of the alleged defect, object substance or condition which caused the alleged occurrence giving the exact dimensions and physical description of such including the size, shape, color, height, length and depth of such defect or object.

ANSWER: Chainsaw, EFCO, Model # MT3500, 2.38 Cubic Inch, 16" blade.

12. State with particularity what PAUL DULBERG was doing at the time of the accident alleged in the complaint.

ANSWER: He was helping me trim a tree by holding a branch.

13. State with particularity what DAVID GAGNON was doing at the time of the accident alleged in the complaint.

ANSWER: I was cutting through a branch with the chainsaw.

14. State with particularity the address for David Gagnon on June 28, 2011.

ANSWER: 39010 90th Place, Genoa City Wisconsin 53128.

15. State with particularity all the reasons why PAUL DULBERG was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I asked him to help me trim the tree at my parents' home.

16. State with particularity all the reasons why DAVID GAGNON was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I was trimming a tree for my parents.

17. State with particularity your basis for alleging that David Gagnon was working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

18. State with particularity your basis for alleging that Defendants Bill McGuire and Carolyn McGuire instructed and/or advised David Gagnon in the use of a chain saw on or before the date of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

19. State with particularity your basis for alleging that David Gagnon was under the supervision and control of Defendants Bill McGuire and Carolyn McGuire and working as their apparent and actual agent on the date of and at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

20. State with particularity any and all defects associated with the chain saw you believe or claim was involved in the occurrence alleged in Plaintiff's Complaint.

ANSWER: None.

21. State whether any photographs or videos were taken of the scene of the occurrence or of the persons, objects or premises involved, and if so, state the number of photographs or videos taken, their subject matter and who now has custody of them.

ANSWER: No.

22. Pursuant to Supreme Court Rule 213(f), furnish the identity and addresses of witnesses who will testify at trial and the following information:

(a) For each lay witness, identify the subjects on which the witness will testify.

(b) For each independent expert witness, identify the subjects on which the witness will testify and the opinions the party expects to elicit.

(c) For each controlled expert witness, identify:

(i) the subject matter on which the witness will testify;

(ii) the conclusions and opinions of the witness and the bases therefor;

(iii) the qualifications of the witness; and

(iv) any reports prepared by the witness about the case.

ANSWER: **David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128**— This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his insurance policy and coverage; maintenance, repair and inspection of the chainsaw; as to any dangerous or defective area on the premises. This witness is also expected to testify regarding his observations of the plaintiff before, during and after the alleged occurrence; his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050—This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his relationship to the tenants of the building; his observations prior, during and after his alleged injury; the nature of his injury, medical bills, medical records and recovery; his understanding of his injury and recovery. This witness is also expected to testify to his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Carolyn McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051— These witnesses are expected to testify as to their ownership of the property in question; their insurance policy and coverage; their knowledge of the area, chainsaw and tree; maintenance, repair and inspection of the chainsaw; as to any violations the premises; as to any dangerous or defective area on the premises. These witnesses are also expected to testify regarding their observations of the plaintiff before, during and after the alleged occurrence; their understanding as to the facts of the accident; their observations of the scene and they are expected to testify as to any conversations which took place between the parties and witnesses. These witnesses are also expected to testify consistent with any testimony they may have given and/or may give at a discovery deposition.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

David A. Gagnon

DAVID GAGNON

I HEREBY CERTIFY that on 1/31/13, a true and correct copy of the foregoing Answers to Interrogatories were filed with the Clerk of the Circuit Court of McHenry County and a copy of same was also mailed to:

Hans A. Mast
Law Offices of Thomas J. Popovich, P.C.
3416 W Elm St
McHenry IL 60050

Attorney for Plaintiff(s) Paul Dulberg

Cicero, France, Barch & Alexander PC
6323 East Riverside Blvd
Rockford, IL 61114

Attorney for Co-Defendants, Caroline and Bill McGuire

LAW OFFICE OF M. GERARD GREGOIRE
200 N LaSalle St Ste 2650
Chicago, IL 60601-1092
Telephone: 312-558-9821

By: _____
PERRY A. ACCARDO
Firm No.: 46878
E-MAIL ADDRESS:
ILLINOISLEGAL@ALLSTATE.COM
Attorney Bar No.: 6228720
Attorney for Defendant(s):
David Gagnon

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
McHenry County, Illinois
MAR 13 2015
KATHERINE M. KEEFE
Clerk of the Circuit Court

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, Individually, Defendants.	)	No. 12 LA 178

COPY

NOTICE OF MOTION

TO: *VIA FIRST CLASS MAIL:*
Perry Accardo
Law Office of Steven A. Lihosit
200 N. LaSalle Street, Suite 2550
Chicago, IL 60601-1092

VIA CERTIFIED MAIL:
Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

On **March 13, 2015 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Thomas A. Meyer** or any judge sitting in his stead, in courtroom 201 in the Circuit Court of McHenry County in Woodstock, Illinois and shall then and there present **MOTION TO WITHDRAW AS COUNSEL**, a copy of which is hereby served upon you

AFFIDAVIT OF SERVICE

I certify that I served this Notice by mailing to whom it is directed at approximately 5:00 p.m. on March 5, 2015 in McHenry, IL and further that the statements set forth in this Affidavit of Service are true and correct.

Hans A. Mast, Attorney for Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, IL 60050
815-344-3797
Attorney ID No. 06208070

Exhibit 15
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

ORD

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	Case No. 12 LA 178

FILED
McHenry County, Illinois
JAN 2 2 2014

GOOD FAITH FINDING AND ORDER OF DISMISSAL

THIS CAUSE coming on to be heard on the Motion for Good Faith Finding and for Order of Dismissal with Prejudice filed by Defendants Bill McGuire and Carolyn McGuire, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That settlement between Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire (improperly named Caroline) constitutes a fair and reasonable and good faith settlement within the meaning of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 0.01 et seq.

2. That the good faith settlement shall henceforth constitute a bar to any and all claims that Plaintiff Paul Dulberg and Defendant David Gagnon and other known or unknown tortfeasors may have against Defendants Bill McGuire and Carolyn McGuire on account of or arising out of the injuries, if any, sustained by Plaintiff Paul Dulberg as a result of the alleged chain saw accident that occurred on June 28, 2011, whether by way of original action, third party claim, cross-claim, counterclaim, claim for contribution or otherwise.

EXHIBIT
tabbies
D

EXHIBIT H

3. That Defendants Bill McGuire and Carolyn McGuire be and are hereby dismissed from the above-captioned lawsuit as party defendants and cross-claimants, with prejudice, and in bar of further suit.

4. That that there is no just reason to delay the enforcement or appeal of this good faith finding and order of dismissal.

DATED: _____

JUDGE Thomas A. Meyer

Prepared by:
Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700

February 17, 2016

To: Mr. W. R. Baudin II, Plaintiff Attorney
PO Box 1678
Crystal Lake, IL 60039-1678
lawbaudin@gmail.com
(815) 307-6197

From: Dr. Bobby L. Lanford, PhD
2066 Girls Ranch Road
Camp Hill, AL 36850
bob@lanfordintl.com
(406) 531-3541

Subject: Findings and Conclusions for Dulberg v. Gagnon and McGuire

After reviewing the Depositions of Mr. Dulberg and Mr. Gagnon and the chainsaw owner's manual, the following observations and conclusions were made:

Mr. Dulberg was cut on the forearm (bottom) by a chainsaw while helping Mr. Gagnon limb a pine tree on the property of Mr. Gagnon's parents – Bill and Carol McGuire. While power tools such as this chainsaw make work more efficient, they carry hazards such as experienced in this incident. Manufacturers and retailers of power equipment go to great lengths to reduce the dangers associated with such equipment through training and warnings listed in owner's manuals. The chainsaw in this incident appears from a photograph to be a EFCO MT3500 purchased by the McGuires close to the date of the incident and probably was a new saw and probably equipped with an owner's manual. Depositions from both Mr. Gagnon and Mr. Dulberg indicated that they received no additional chainsaw training. Therefore, the owner's manual and their field experience were the primary sources of instructions for the safe use of the saw.

Mr. Gagnon was the only operator of the saw and, therefore, was responsible for its use. While the saw was appropriate for the tasks involved, there are safe and unsafe activities that could have taken place. The owner's manual shows 2 bar lengths for this saw – 14 and 16 inches. It appears that the McGuires chose the 16 inch bar. For the work involved, the shorter bars would have been safer and might have prevented or reduced the injury. It appears that Mr. Gagnon performed some unsafe acts which lead to Mr. Dulberg being cut. Also, Mr. and Mrs. McGuire who owned the saw apparently did not heed the warnings posted on page 2 of the owners manual which states: "Allow persons only who understand this manual to operate your chainsaw."

Cuts with chainsaws cause more damage than those caused by power or hand tools having a thinner blade such as that of a table saw. Chainsaws are designed to take out a "kerf" of about ¼ -inch, so if someone is cut, the sides of the cut are separated by this gap (or kerf) removing a chunk of meat and causing excessive bleeding and organ damage.

From the depositions, there is no mention of safety apparel – hard hat with ear and eye protection, safety chaps or pants nor safety gloves. (See page 7 of the owners manual for proper safety apparel.)

EXHIBIT I

Proper safety apparel may have eliminated or reduced the severity of the injury.

Mr. Gagnon and the McGuires' goal was to remove a tall pine tree (40 – 50 feet in height) in their yard without damaging their buildings. From depositions, Mr. Gagnon chose to delimb this tree as it stood in a vertical position. According to Mr. Dulberg, Mr. Gagnon did this by climbing and cutting off limbs as he climbed the tree using limb stubs as a ladder where he placed his feet. In the owner's manual on page 9, it tells to never cut limbs from a ladder or a tree and always cut from a firm foundation or platform. Not having seen the exact circumstances, it cannot be stated unequivocally, but my recommendations would have been to fell the tree first before trying to remove any limbs higher than could be reached safely from the ground. Once the tree has been felled on the ground, the secondary limbs could have been removed while the primary limbs were still attached to the main bole. Bucking the primary limbs into firewood lengths could also be done in a safer fashion with them attached to the bole. Doing the work in this fashion would have eliminated the conditions of where Mr. Dulberg was cut. From Mr. Gagnon's deposition, there was room to fell the pine tree with its described height.

The EFCO MT3500 has a number of features designed to operate it safely. The handle where the accelerator trigger is located has a throttle trigger lockout device that must be depressed before the engine can accelerate which means that Mr. Gagnon had a tight hold on the trigger handle when the saw accelerated before cutting Mr. Dulberg. Mr. Dulberg states in his deposition that he was holding the butt end of a primary limb, and Mr. Gagnon was removing the secondary limbs moving from the tip of that primary limb toward the butt. The accident occurred after Mr. Gagnon removed the last secondary limb and was moving toward him with the saw. The saw accelerated with the bar and chain moving upward contacting the bottom of Mr. Dulberg's arm.

There was no mention of the chain brake being used. The MT3500 has a lever mounted just forward of the front handle. This lever serves to stop and lock the cutting chain movement when pushed forward; when in the rear position, the chain travels freely on the bar. On page 8 of the owners manual, it is recommended that the chain brake be set whenever the operator moves from place to place. Also, the bar should be facing to the rear of the direction of travel so that the sawyer would not fall on the bar and chain if he were to trip and fall. This applies directly to this incident. If Mr. Gagnon had set his chain brake and/or put the bar in a rearward position as he finished cutting the last secondary limb, Mr. Dulberg would not have been cut.

The MT3500 comes with a saw chain designed to reduce kickback. Kickback is a violent upward action of a chainsaw bar when the chain on the upper quadrant of the bar's tip comes in contact with an object. While this chain does not completely eliminate kickback, it helps. It is assumed here that the chain supplied by the manufacturer had not been replaced. In addition, if the saw chain had come in contact with some object that caused a kickback, the chain brake would have instantly stopped the chain as the bar traveled vertically and Mr. Gagnon's hand activated the chain brake. This brake activation would probably have protected Mr. Dulberg. Therefore, it is doubtful that a kickback occurred.

Page 7 of the owner's manual recommends that other people (bystanders) be kept at least 35 feet from someone operating a chainsaw. This is because the chainsaw operator should be focusing his attention on his task, not bystanders. Chainsaws are noisy and anyone around them should be wearing ear protection thus muffling emergency calls for help. It is recommended that bright clothing be worn by all bystanders and operators to help operators see people who might inadvertently move into the danger

zones. This distance of 35 feet may be a bit overcautious, but the intent is to keep bystanders beyond the reach of the saw, limbs or trees being cut. The operator is the person in control of his saw and responsible for whatever results from his cutting. When trees are being felled, bystanders should be beyond the height of the tree; 2 tree heights is the recommended distance. If this rule had been followed, Mr. Dulberg would not have been cut.

Page 7 of the owner's manual has some additional recommendations that might apply to this incident. Cutting with chainsaws is fatiguing even for professional sawyers who use their saws everyday. For the occasional operator, chainsaw work can be very exhaustive. In this incident, Mr. Gagnon not only used a chainsaw when he was not accustomed to using one, but he also climbed a tree and delimbed it as he climbed. By the time Mr. Gagnon stop limbing and started removing secondary limbs from the primary limbs, he must have been very fatigued even with frequent breaks as described by Mr. Dulberg. The warning of the owner's manual not to cut when fatigued is very important in that fatigue impairs judgment, reduces response time and probably impairs reflexive actions. Simply put, we make mistakes when we are tired.

Another factor of this incident may have been a loose chain. New saw chains stretch when first used. This saw was probably new; this may have been its first application. The owner's manual discussed how to tension the chain on page 17 and describes proper break-in of the chain. The chain should have been tightened after the engine had become warm and later after some use. A loose chain might jump off the bar. Pertinent to this incident was that a loose chain will not decelerate as fast as a properly tightened one. Without the chain brake engaged, the chain continues to travel along the bar until it naturally comes to a stop. Mr. Dulberg said he tried to move away from the saw chain but could not escape its travel path. With a properly tensioned chain, it may have stopped before contacting his arm or at least been traveling at a slower speed and caused less damage to his arm.

After the review of the above evidence, it is my opinion that Mr. Gagnon was fully responsible for this accident and his parents – the McGuires – were also somewhat responsible by letting their son, Mr. Gagnon, use their chainsaw – a potentially dangerous tool – without enforcing the warnings and instructions available in the owner's manual. Mr. Gagnon was in full control of the saw and Mr. Dulberg was his assistant. Mr. Gagnon could have prevented this accident by following the instructions given in the owner's manual. The instructions in the owner's manual are quite clear and unambiguous, and if followed, would have prevented this accident. Mr. Gagnon admits that he was relatively inexperienced in the use of chainsaws, and therefore, should have been more careful while using such a potentially dangerous tool.

Respectfully submitted,

Bobby L. Lanford

Dr. Bobby L. Lanford, PhD

** FILED ** Env: 10675216
McHenry County, Illinois
17LA000377
Date: 10/5/2020 3:27 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast ("Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, for their motion to compel Plaintiff to answer written discovery, state as follows:

1) On November 28, 2017, Plaintiff Paul Dulberg ("Dulberg") filed a complaint for legal malpractice against Defendants, more than two years after Defendants withdrew their appearance for Dulberg in his personal injury action against Defendant David Gagnon in *Dulberg v. Gagnon*, Case No. 12 LA 178 in the Circuit Court of McHenry County, Illinois (the underlying complaint), which arose out of a chainsaw accident.

2) At the time of the original filing in the instant matter, Plaintiff was represented by the Gooch Law Firm, and the complaint against Popovich was signed by Thomas W. Gooch, III. (Complaint, Ex. A)

3) In ¶20 of Exhibit A, Dulberg invoked the "discovery rule" in an attempt to toll the two year statute of limitations for legal malpractice claims under 735 ILCS 5/13-214.3. He alleged that Mast and Popovich had provided Dulberg false and misleading information in

GROUP EXHIBIT J

connection with his settlement in the premises liability case with Gagnon's co-defendants, Bill and Carolyn McGuire in the premises liability case, and that Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016.

4) The Gooch firm withdrew from representing Dulberg in the instant case, and the Clinton Law Firm substituted as his counsel, with attorney Julia Williams as the primary handling attorney.

5) On December 6, 2018, Dulberg filed his second amended complaint in this case (Ex., B) filed by the Clinton Law Firm. As compared to Exhibit A, Dulberg's allegations regarding the "discovery" on his cause action against Popovich are slightly different. In ¶¶ 56 and 57 of his second amended complaint, Dulberg alleges that he did not learn that false and misleading information had been provided to him until the mediation in December 2016 based on the expert opinions that Dulberg retained for the mediation.

6) Dulberg gave a discovery deposition in this case on February 19, 2020 (Ex. C). Dulberg was questioned about the "discovery" of his cause of action against Popovich and his law firm beginning on page 106 of his deposition (See also, page 108 where plaintiff Dulberg testified that his attorney at the time, Randy Boudin had told him to seek an independent opinion from an attorney that handles malpractice matters, and that Dulberg received that opinion on or about December 16, 2016 from Thomas Gooch.) Dulberg again confirmed that Gooch provided him with the legal opinion on December 16, at page 112 of his deposition. See also, pp. 113 and 114.

7) At Dulberg's deposition, Ms. Williams asserted the attorney-client privilege on behalf of her client relative to Gooch's advice in December 2016, but over the objection allowed

Dulberg to testify concerning the substantive the discussions. The substantive testimony was sparse and vague. At p. 126 of his deposition, Dulberg agreed that his discussion with any malpractice lawyer in December 2016 is responsive to interrogatory no. 1 from Hans Mast (Ex. D). At p. 127 of his deposition, Dulberg responded to the following question:

Q: How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?

A: Yes.

Q: That's what you've alleged here in this complaint.

A: Yes.

8) On July 2, Popovich served supplemental production requests aimed at Dulberg's discovery of the malpractice as alleged in December of 2016, including the following production requests. (Ex. E)

9) On July 30, 2020, Julia Williams, then Dulberg's counsel requested 28 days to respond to Popovich's supplemental request for production. Counsel for Popovich agreed, but then received notice of the Clinton Law Firm's motion to withdraw on August 18, 2020.

10) On September 10, 2020, this Honorable Court granted the Clinton Law firm's motion to withdraw as Dulberg's counsel. Dulberg currently has a *pro se* appearance filed on his own behalf.

11) The attorney-client privilege exists to encourage and promote full and frank consultation between a client and legal advisor by removing the fear of compelled disclosure of information. *Waste Management, Inc. v. International Surplus Lines Ins. Co.*, 144 Ill. 2d 178, 190 (1991); *Daily v. Greensfelder, Hemker & Gale, P.C.*, 2018 IL App (5th) 150384, ¶1122-23. However, it is not unconditional, and it is the privilege, not the duty to disclose, that is the exception. Id. Illinois adheres to a strong policy of encouraging disclosure, with an eye toward

ascertaining that the truth which is essential to the proper disposition of a lawsuit. *Center Partners, Ltd. v. Growth Head GP, LLC*, 2012 IL 113107, ¶ 35; Daily, 2018 IL App (5th) 150384 at ¶ 23. Accordingly, "the privilege ought to be strictly confined within its narrowest possible limits." *Waste Management, Inc.*, 144 Ill. 2d at 190; Daily, 2018 IL App (5th) 150384, ¶ 23.

While the Illinois Supreme Court has not had occasion to find an "at issue" exception to the attorney-client privilege, it has clearly recognized that such an exception exists where the client voluntarily injects into a case either a factual or legal issue, the truthful resolution of which requires examination of confidential communications. *Center Partners, Ltd.*, 2012 IL 113107 at ¶ 35; Daily, 2018 IL App (5th) 150384 at Irri 24-25. The Illinois Supreme Court in *Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc.* illustrated that the test in determining whether the exception exists is whether or not the communications in question are necessary to resolve the truthfulness of a factual or legal issue that was introduced by the client holding the privilege. 189 Ill. 2d 579 (2000). Furthermore, when a plaintiff places at issue in a case the extent to which multiple attorneys representing it proximately caused its alleged damages, all communications between the plaintiff and its attorneys are discoverable "to truthfully resolve the factual and legal issues necessary to adjudicate the causation element of plaintiff's claims." *Daily*, 2018 IL App (5th) 150384 at ¶¶31- 32 (finding that the "at-issue" exception applied because "there is an issue of whether [plaintiffs' attorneys] contributed to the cause . . . and the relative contribution of each to the plaintiffs' damages").

12) In *Lama v. Preskill*, 353 Ill. App. 3d 300 (2nd Dist. 2004), the Plaintiff's husband met with an attorney 4 days after her medical procedure (in March 1999) that was the subject of a medical malpractice claim. The claim was untimely filed, and the doctor sought production of

records relative to the husband's meeting with the attorney. The patient asserted that production would violate the attorney-client privilege. The court affirmed the trial court's finding that the privilege was waived when she voluntarily injected the statute of limitations issue into her case, alleging she did not discover her medical malpractice claim until June 1999. This case is on point and binding.

13) At pages 133-142 of his deposition, Dulberg admitted that he communicated in writing with Gooch regarding Popovich's breaches of the standard of care, and the bases for same.

14) Based on all of the above, Dulberg has placed the discovery of his malpractice claim "at issue" and must produce any and all communications which form the basis for his "discovery" of his malpractice claims, and the bases for his argument that the 2 year statute of limitations should be tolled.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court grant their motion to compel Plaintiff to answer written discovery and produce requested documents and that Plaintiff be required to answer the outstanding written discovery and produce all documents requested in Exhibit D within 14 days of the presentation of this motion, deny any and all objections to said production, including any objection based on the attorney-client privilege, and for any and all further relief this Court deems just and appropriate.

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/26/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT A

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-28-2017 09:53 AM / Transaction #17111117451 / Case #17LA000

COPY
MAY 15 2012
KATHERINE M. KEEPE
McHENRY CITY, CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT B
ALL-STATE LEGAL®

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 11-18 20 12 AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON 20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, RAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
9416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06209684

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kobliak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Friesman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT
C
ALL-STATE LEGAL

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #1711111174517 Case #17LA000377

GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

ALL STATE LEGAL

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000

** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendant.	)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT B

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4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

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15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

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27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

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44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

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53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing

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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

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Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to _____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
A

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA00
Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA00037

CORY
FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs. No.: 17LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 9/18/2012 AT 9:00 AM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____ 20__ AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
2

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06209684

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> —— Original Message ——
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:

Im waiting to hear from John. I tried calling him last week, but no one answered.

In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....

Let me know what you think..

Hans
----- Original Message -----
From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
Subject: Dave's Best and oldest friend John
Hans,
Just spoke with John Choyinski again about talking with you.
I am leaving your number with him as he has agreed to talk with you about David Gagnon.
I believe he will try and call sometime tomorrow.
Paul
Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
Sorry for the rant but Dave was a complete ass all the way and deserves this.
Paul Dulberg
847-497-4250
Sent from my iPad

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kobliak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
Exhibit D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No: 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

6. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire setilement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
> > ----- Original Message -----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
> > Subject: McGuire settlement
> > Here is a copy of the first page.
> > It has check boxes and one of the check boxes says;
> > I am not eligible to receive SSI or SSDI.
> > Another says;
> > I am not receiving SSI or SSDI.
> > As you know, I have applied for SSDI and SSI

EXHIBIT
tabbies
F

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of ccarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.



ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

EXHIBIT

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Pamela Walker

From: McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
Sent: Monday, December 10, 2018 1:37 PM
To: George K. Flynn; Pamela Walker
Subject: 17LA000377 - 2 Documents Filed

17LA000377

DULBERG, PAUL VS MAST, HANS, ET AL

Doc Type	**COAA**
Description	**COMPLAINT - AMENDED**
Date Filed	**12/6/2018**
Image Link	View Document Image

Doc Type	**NOTF**
Description	**NOTICE - FILING**
Date Filed	**12/6/2018**
Image Link	View Document Image

NOTE: E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

Page 1

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

The deposition of PAUL DULBERG, called for examination, taken pursuant to the provisions of the Code of Civil Procedure and the rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Realtime Reporter of said state, at 150 South Wacker Drive, Chicago, Illinois, February 19, 2020, at the approximate hour of 1:00 p.m.

Page 2

PRESENT:

THE CLINTON LAW FIRM,
111 West Washington Street, Suite 1437,
Chicago, Illinois 60602,
312-357-1515, by:
MS. JULIA C. WILLIAMS,
juliawilliams@clintonlaw.net,
appeared on behalf of the Plaintiff;

KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC,
150 South Wacker Drive, Suite 1700,
Chicago, Illinois 60606,
312-431-3700, by:
MR. GEORGE K. FLYNN,
gflynn@karballaw.com,
appeared on behalf of the Defendants.

REPORTED BY: Karen Pileggi, CSR, RPR, RMR, CRR,
CSR License No. 84-3404

Page 3

(WHEREUPON, the witness was duly sworn.)

PAUL DULBERG,

called as the plaintiff herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FLYNN:

Q. Let the record reflect that this is the discovery deposition of Paul Dulberg taken by agreement of the parties and pursuant to notice.

This deposition is being taken pursuant to the Rules of the Illinois Supreme Court, the Illinois Code of Civil Procedure and any applicable local rules in McHenry County.

Sir, could you state your name and spell your last name for the record.

A. Palm Dulberg, D-u-l-b-e-r-g.

Q. What is your address?

A. 4606 Hayden Court, McHenry, Illinois 60051.

Q. How long have you lived there?

A. Forty-nine years.

Q. Who do you live there with now?

A. Mike McArtor.

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Q. Did your mother live there at some point throughout the history of this case?

A. Yes.

Q. I'm just going to go over a few rules for the deposition. I know you've testified at least one time in a deposition before because you testified in the underlying personal injury case, correct?

A. Correct.

Q. Have you testified in any other depositions before?

A. No.

Q. I'll just remind you of a few rules that I'm sure you were aware of back then when you gave your deposition.

The court reporter is here to take down everything that you and I say. She can only take down one at a time so I'd ask that before you answer a question, let me finish the entire question. Okay?

A. Yes.

Q. I'll try to do the same. I'll try to let you respond before I ask a follow-up question.

You just nodded your head. That's

EXHIBIT C

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another good point to make. She can't take down nods of the head, shrugs of the shoulders or other hand gestures. Your answers need to be verbal.

From time to time we forget those rules and I may just point to the court reporter as a reminder, if that's okay.

A. Yes.

Q. If you need to take a break at any time, feel free to stop me. I just ask that it's not while a question is pending that has not been answered. Fair enough?

A. I'll try to do that.

Q. If you've answered a question, I will assume you understood it. Okay?

A. Yes.

Q. I was asking you about your mother. She lived at the house during the pendency of the underlying case?

A. Yes.

Q. Is she still alive?

A. Yes.

MS. WILLIAMS: Can we define "underlying case"?

BY MR. FLYNN:

Q. The underlying case is a personal injury

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case that you filed against Bill and Caroline McGuire and David Gagnon.

A. That sounds correct.

Q. We'll get into the dates of the filing a little bit later. We'll call that, generally, the underlying case.

Your mother lived at the house at that time?

A. Yes.

Q. Did she own the house?

A. No.

Q. Do you own the house currently?

A. Yes.

Q. Does anyone else own the house?

A. No.

Q. How long have you owned it?

A. I think I first purchased it off my parents in '97, '98, something like that.

Q. Did you hire a lawyer in connection with that transaction?

A. No.

Q. Were your parents represented by a lawyer?

A. No.

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Q. The building, as I understand it, is a duplex; is that right?

A. No.

Q. Were there two apartments in the building at one time?

A. No.

Q. Was there a point in time where you and your mother lived in one half of the house and Mike McArtor lived in the other half?

A. Yes.

Q. How was that arrangement with respect to the location of the living spaces, if you can describe it?

A. It has a walkout basement. He had the downstairs with an exit out the back. We had the upstairs with an exit out the front.

Q. Have you ever been convicted of a crime of fraud, dishonesty or deceit?

A. No.

Q. Besides the hiring of the Popovich firm in connection with the underlying personal injury case, up to that point in time had you ever had an occasion to hire a lawyer?

A. I did during a traffic accident, and I

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don't remember the year.

Q. Were you injured in about 2002? Does that sound right?

A. Roughly.

Q. Who did you hire?

A. I might get the name wrong because it's been a long time. I think it was Weiss and Michling and something else. It was a lawyer right outside the courthouse in Woodstock.

Q. A McHenry County lawyer?

A. Yeah.

Q. It was a personal injury case?

A. Yeah. It was a car accident.

Q. Did you file a lawsuit in that case?

A. I don't think we needed to.

Q. You just filed an insurance claim?

A. They did, yes.

Q. You settled it?

A. Yes.

Q. Any other occasions to hire a lawyer between that time and the time you hired the Popovich firm?

A. May I consult for a minute because I'm not sure how to answer that.

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Q. Why don't you just tell me why you can't answer it.
A. Because I've hired lawyers, but they were for the company that I had. That's different.
Q. I'm asking general questions about any interaction you've had with hiring lawyers. Any experience you've had with hiring lawyers.
A. I had a corporate lawyer. My mom and dad hired a lawyer for me when I was a kid. It was something. And myself, just the corporate lawyer, the car accident lawyer and the Popovich firm.
Q. Have you ever been married?
A. No.
Q. So you never hired a divorce lawyer. Good. How old are you now?
A. Forty-nine.
Q. The underlying case arose out of an injury that occurred on June 28, 2011, correct?
A. That sounds correct.
Q. How old were you at that time?
A. Forty-one.
Q. Besides the underlying lawsuit against the McGuires and Mr. Gagnon, had you ever filed any other lawsuit up until that point in time?

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A. No.
Q. Have you filed any lawsuits since that time besides the lawsuit against Popovich and Mast?
A. No.
Q. Do you have any military experience?
A. Yes.
Q. Please tell me about that.
A. Army National Guard. Illinois Army National Guard.
Q. How long have you been in the National Guard?
A. I'm not currently in it.
Q. When were you, from when to when?
A. I may not get the year correct. '88 or '89 to '92 or '93, somewhere in there.
Q. What was your highest rank when you were discharged from the National Guard?
A. When I was discharged?
Q. Correct.
A. I don't know. I've gotten moved up and moved down. I don't know where I ended up.
Q. How was it that you were discharged?
A. Less than honorable.
Q. What was the cause?

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A. I missed morning call, roll call. If you're not there, you're AWOL.
Q. Absent without leave?
A. Yes.
Q. What is the highest level of education that you've attained?
A. I do not have a degree. Two years of college.
Q. You graduated from high school?
A. Yes.
Q. Was that in Johnsburg in 1988?
A. Yes.
Q. Did you know Mr. Gagnon from Johnsburg High School?
A. Not from high school but just after high school.
Q. Just coincidentally you attended the same high school?
A. He was three years older than I was. I didn't know who he was until after high school.
Q. You had some education after high school but did not receive a degree, correct?
A. Correct.
Q. Where did you study?

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A. I had a couple classes at McHenry County College and McMurray College.
Q. What did you study?
A. The first two years. The basics.
Q. General studies?
A. Yeah. I did a criminal justice course. I did a macro/microeconomics. I did psychology, sociology. The normal stuff.
Q. How did you meet David Gagnon?
A. Through a mutual friend.
Q. When was that?
A. I want to say, roughly, 1990.
Q. Was your home located somewhere fairly close to his parents' home or his mom and stepdad's home?
A. Two streets away.
Q. That's where you were injured on June 28, 2011, was at David Gagnon's mom's house and his stepdad's house?
A. Yes.
Q. And their name is McGuire?
A. Yes.
Q. Generally speaking, you were injured assisting David with a chainsaw trying to cut down a

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tree?
A. He was cutting a branch.
Q. Cutting branches off a tree, correct?
A. Cutting up the branches after they were off the tree.
Q. Could you tell me a little bit about your work history. Do you have any licenses or certifications?
A. I'm certified to run printing presses. Or at least I was.
Q. You worked for Sharp Printing, Inc. from '91 to 2011; is that right?
A. Ninety-one? No. I would say 1999.
Q. Did you own that corporation?
A. Yes. Well, partner. I was a partner. I didn't own like...
Q. It was an Illinois corporation?
A. Yes.
Q. Were you –
A. A stockholder.
Q. Let me just finish my question so she can take us down.
You were a stockholder in Sharp Printing, Inc.?

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A. Yes.
Q. Who else were the stockholders?
A. Mike McArtor and Scott Dulberg and at that time it was Herbert Dulberg.
Q. What does that mean? Do you mean Scott's name was Herbert?
A. No. Scott Dulberg was an owner and Herbert Dulberg was an owner. Three different Dulbergs: me, my brother, my dad.
Q. And Mike McArtor?
A. Yes.
Q. There were four owners at what time?
A. Until my dad died and then it went to three.
Q. Was that business incorporated?
A. Yes.
Q. Did a lawyer assist the corporation with setting up the corporation?
A. Yes.
Q. When did that happen?
A. 1999.
Q. Did you hire the lawyer yourself?
A. All three of us did. All four of us. Sorry.

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Q. What was the name of that attorney?
A. McAndrews, and I don't remember the rest of it. It was McAndrews in McHenry. I can get you the rest of that information.
Q. They are based in Crystal Lake, Illinois?
A. It used to be in McHenry when we did that.
Q. Patrick McAndrews, he was also identified as the registered agent of that corporation?
A. Yes.
Q. It was voluntarily dissolved on April 8, 2011; is that right?
A. That's what the Secretary of State's Office has, yes.
Q. Is that your understanding as well?
A. I was corrected. My partners – I was corrected. It was actually after the accident. How it got to end up with that date, I'm not sure.
Q. What was corrected, exactly?
A. Well, do you want me to – Mike read my deposition and he said, "You got that wrong." I said, "What do you mean?" because I answered it twice in that deposition.
I was thinking that Juskie happened

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before the accident. Sharp Printing wasn't actually dissolved until after the accident when we decided to sell off the equipment and end it all. That's the honest truth.
Q. I will represent to you that the Illinois Secretary of State's Website as of today shows that the company was involuntarily dissolved on April 8, 2011. So it's your testimony that that is not true?
A. I don't know how they come up with that.
Q. Why don't we break it down and start with why the corporation was involuntarily dissolved. Do you know that?
A. Involuntarily? I don't know. It may be that I was late on paying the corporate licensing thing, which we just pay a fine and did it. We didn't renew it because we decided to end it.
We had a ten-year thing, I think, on it. I may be wrong. I've got to go back and look at the records.
Q. Is it possible that the corporation was actually involuntarily dissolved by the Illinois Secretary of State on April 8, 2011?
A. Sure.
Q. Did Sharp Printing, Inc. file corporate

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tax returns while it was a going concern?
A. We had a problem the couple of years before the accident because I was not up in Illinois and I usually did that with the lawyer and the accountant and things got screwed up while I was taking care of a loved one who was dying down in Florida.
Q. Did the corporation ever file tax returns?
A. Oh, yes.
Q. When did they file?
A. Quarterly and annually.
Q. Until what year?
A. Roughly somewhere in 2008. I was missing things because I was not here. I know we missed a few.
Q. I believe you testified in your underlying deposition that Sharp Printing, Inc. was not dissolved as a result of your June 28, 2011 chainsaw accident, correct?
A. Yes, I did. I stood corrected by my partners.
Q. So is it your testimony that the corporation was dissolved because of your personal

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injury?
A. I don't know how to answer that without going back and looking at records.
Q. Was the company winding down up until about the time you were hurt?
A. The company books got screwed up when I was down in Florida and I was back up in Illinois in 2010 getting back on my feet and I was going to pick things back up, get everything paid up, the fines and everything.
Q. Who were you taking care of in Florida?
A. My grandmother.
Q. You were gone from when until when?
A. I want to say from the mid to end of 2007 until somewhere in the beginning of 2010.
Q. Was anyone running Sharp Printing during that period of time?
A. Mike McArtor.
Q. Did Sharp Printing have any customers for that three-year period?
A. Yes, they did.
Q. How many?
A. I'm not sure, without looking at the books.

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Q. Can you estimate what the yearly revenues were for Sharp Printing in the year 2007?
A. In 2007? I'd have to look at the books, to be honest with you.
Q. Was it more than $5,000?
A. Yes.
Q. Was it more than $100,000?
A. No.
Q. Was it more than $20,000?
A. Yes.
Q. Same line of questioning with respect to 2008. Do you know what the revenues were for Sharp Printing in '08?
A. Are you asking me what we reported or what we made and put into accounts for equipment?
Q. I'm asking you about revenues.
A. Total sales?
Q. Total revenues.
A. In two thousand...?
Q. 2008.
A. I'd have to go back and look.
Q. Can you estimate what they were?
A. No, because I wasn't there.
Q. Do you know how many customers the

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company had in 2008?
A. We had a few, I know that. I don't know how many. Mike was handling it and it got messed up.
Q. What types of customers did Sharp Printing have in 2007 and 2008?
A. What kind of customers?
Q. Right. What did you do?
A. We printed on t-shirts. We printed on CDs. We printed on anything that wasn't wet. We printed on glass, all different stuff.
Q. Were there any full-time employees of Sharp Printing in '07 and '08?
A. In '07 and '08, no.
Q. Just the owners?
A. Just the owners.
Q. Did all the owners operate the business?
A. Yes.
Q. Including your brother?
A. Yes.
Q. What were the yearly revenues of Sharp Printing in 2009?
A. I don't know.
Q. What about 2010, do you know?

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A. No.
Q. When did Sharp Printing start selling its equipment?
A. I put up the ad in August. I think August. I might be off by a month or two. August of 2011.
Q. Did you sell any equipment prior to August 2011?
A. No.
Q. What type of equipment did Sharp Printing, Inc. have or own?
A. Mostly textile screen printing equipment, but we had other screen printing stuff too. Paper.
Q. Where was the equipment located?
A. My home.
Q. Did you require a license to conduct this business out of your home?
A. We had what was called a temporary – we're in a rural area so we didn't have to have that.
Q. In any event, you didn't have a license, correct?
A. We had a license to do business there, yes.

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Q. In that location?
A. Yes.
Q. Did customers ever come to the shop?
A. Yes.
Q. Do you recall how many customers the business had in 2010?
A. Not in 2010.
Q. Was it more than five?
A. Yes.
Q. Was it more than 100?
A. It might be around that. I don't know, specifically.
Q. In 2010 you may have had 100 customers that you did t-shirt screen prints for?
A. Possibly. I'm not saying that is the number, but it's possible.
Q. Did Sharp Printing have any customers in 2011?
A. Mike was finishing up one customer's thing in the spring of 2011, yes. We don't – I'll give you – we don't typically get much work between January 1st and the first warm days of Spring. We sell t-shirts and not a lot of people buy during that period. They just don't.

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Q. You did not earn a salary from Sharp Printing, correct?
A. No.
Q. You did not earn an hourly wage, correct?
A. No.
Q. I think your interrogatory answers indicate you didn't take a profit or a draw, correct?
A. Correct.
Q. How much, if any, money did you earn from Sharp Printing in 2011?
A. Can I ask how to define that? In 2011 I didn't pull any.
Q. Did you earn any income whatsoever from Sharp Printing in 2010?
A. I don't think so.
Q. You were down in Florida for '07 to 2010?
A. Sometime in early 2010, yes.
Q. Did you earn any income from Sharp Printing from 2007 to 2010?
A. No.
Q. Were you working in Florida?
A. No.
Q. Is it fair to say you were unemployed

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from 2007 to 2010?
A. Yes. I was not officially collecting unemployment.
Q. You weren't an employee of any business or working for any individual, correct?
A. I did do some work for Mark. I did some traveling back and forth from Florida to Illinois back and forth during that time. When I was up here, I did do some work for Juskie Printing. Not much, though.
Q. What is Juskie Printing?
A. Juskie Printing is another one that I had listed as an employer in the underlying case.
Q. What are they?
A. Another print broker.
Q. Where are they located?
A. I don't know the exact address, but it's off of Chicago Avenue off of 355 going south.
MS. WILLIAMS: I think he's asking what city.
BY THE WITNESS:
A. I don't know how the cities break up down there.
BY MR. FLYNN:
Q. Somewhere in the western suburbs of

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Chicago?
A. Yes.
Q. How long did you have a relationship with Juskie Printing?
A. Since the early 2000s.
Q. What type of printing did Juskie do?
A. Offset, mostly.
Q. What does that mean?
A. Prints on paper.
Q. Did you have a set schedule at any time working for Juskie?
A. I don't know what you mean by "a set schedule."
Q. Did you have a particular number of hours per week?
A. No. The jobs I got were project based.
Q. How many projects did you have from 2007 to 2011 for Juskie?
A. Probably a few hundred quick little things, yeah. At least.
Q. Do you know what you earned from working at Juskie in 2007?
A. Not without looking at the returns, I don't know offhand.

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Q. How often were you in the Chicago area in 2007?
A. I didn't leave here until, I want to say, August or September of '07.
Q. And then thereafter?
A. I was not back that year.
Q. You didn't work for Juskie in 2008, correct?
A. I might have done some stuff.
Q. You're not sure?
A. I'd have to go back and look.
Q. Were you in Florida?
A. Part of the time, yeah.
Q. How often did you come back and forth between –
A. About every three months I tried to get back up here.
Q. For how long?
A. Sometimes a few weeks. Sometimes a month.
Q. Did you come back and work or did you take care of other things?
A. If I'd let Mark know I was back, "I've got something for you or I don't."

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Q. Who is Mark?
A. Mark owns Juskie Printing.
Q. I think your interrogatory answers indicated from 1999 through 2006 you were employed in a barter situation; is that right?
A. With Mark, yes.
Q. What does that mean, exactly?
A. Well, he would owe me money and he would give me printing equipment instead of cash.
Q. He owed you money for working for him?
A. Well, he owed both Sharp Printing and me, personally, money. They are two different things. But he would just pay by saying, hey, I've got this or I've got this paper cutter or this or that. It was a barter.
Q. So you worked for him from 1999 to 2006 but did not earn any income in the traditional sense?
A. No money changed hands.
Q. He gave you things to pay you for projects?
A. Correct.
Q. You gave a deposition in the underlying case on January 24, 2013. Does that sound right?

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A. If it says it on there, yes.
Q. You took an oath that day?
A. Yes.
Q. You told the truth?
A. I tried to, to the best of my knowledge, on that day, yes.
Q. You told the truth in response to all of the questions that day, correct?
A. I tried to, yes.
Q. You testified you were last employed prior to the accident in May of 2011?
A. That would be with Juskie, yes.
Q. It's accurate –
A. Actually, I wasn't employed. I was a 1099 so I was self-employment.
Q. When in May did you stop working for Juskie, whether it be as an employee or an independent contractor?
A. I believe it was the end of May.
Q. Then from the beginning of June until your accident on June 28, 2011, you were not employed; is that an accurate statement?
A. Correct.
Q. You were not even acting as an

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independent contractor for any business from that period of time, correct?
A. Not during that month, no.
Q. Your deposition testimony from 2013 is typed up on 175 pages. I don't intend to go back over each of those details.
A. Okay.
Q. It's fair to say you were injured, your arm was injured on June 28, 2011, correct?
A. Correct.
Q. Which arm was that?
A. My right arm.
Q. As a result of the injury, you hired the Popovich law firm to explore a recovery in the case?
A. I hired them to represent me, yes.
Q. You hired them to represent you and file a lawsuit against David Gagnon who was operating the chainsaw that injured you, correct?
A. He was one of them, yes.
Q. I'm asking you if you hired him to –
listen to the question, please.
David Gagnon was operating the chainsaw, correct?
A. Correct.

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Q. No one else was operating the chainsaw?
A. Correct.
Q. You also hired Popovich to sue Bill and Caroline McGuire, correct?
A. Correct.
Q. They were the land owners where your accident occurred?
A. They did own the land, yes.
Q. The accident occurred at their house, correct?
A. Correct.
Q. This was in the backyard, so to speak?
A. Yes.
Q. Hans Mast was the primary handling attorney at the Popovich firm for your case?
A. That's who I met with, yes.
Q. Did any other lawyer communicate with you while Popovich was handling your case?
A. The lady who sat in on my deposition. Ms. Freeman I think it is. I'm not sure about that.
Q. Generally speaking, Hans Mast, though, was the primary handling attorney?
A. Yes.
Q. Before you hired the Popovich firm in May of 2012, is that the correct time period?

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A. I don't think so. I don't think they filed it until then, but I might be wrong. I'd have to go back and look.
Q. Was there a retainer agreement executed in May 2012?
A. I don't think I paid a retainer.
Q. Did you execute an attorney engagement agreement in May 2012?
A. I believe it was much earlier than that.
Q. You only executed one engagement letter or engagement agreement with Popovich, correct?
A. Yeah.
Q. Before you executed or came to an arrangement with Popovich, had you talked to any other lawyers about investigating –
A. One.
Q. Let me finish the question.
– investigating or filing the lawsuit?
A. Yes.
Q. Who was that?
A. I went back to the same firm that handled the car accident for me years earlier.
Q. What was the name of that firm?

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A. They changed names when I went back there. It was Weiss – I have to go back through paperwork and get you the actual name.
Q. They are known as a personal injury firm; is that right?
A. Yes.
Q. Why did you not hire them to take your case?
A. The man who handled my case previously with the car accident was no longer with the firm and they said go find somebody else.
Q. I'm not sure what one has to do with the other.
A. I don't either. I just said okay and I went and found somebody else.
Q. Did you meet with an attorney at that firm?
A. Yes.
Q. Did you tell them what happened with your incident?
A. Yes.
Q. They told you that they did not want to take the case; is that right?
A. Yes.

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Q. They declined the case?
A. They declined the case.
Q. Did they tell you why they declined the case?
A. No.
Q. You next went to the Popovich firm?
A. Yes.
Q. They took the case?
A. Yes.
Q. They, ultimately, filed a lawsuit against Gagnon and the McGuires on May 15, 2012; is that right?
A. Yes.
Q. You reviewed the lawsuit and approved it, correct?
A. I didn't – I never got anything to review.
Q. Did you ever read the lawsuit?
A. No. I was never given any paperwork.
Q. Back to the incorporation of Sharp. What interaction did you have with corporate lawyers when they were first retained?
A. McAndrews?
Q. Correct.

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A. What relationship?
Q. What experience did you have with McAndrews when you first retained them?
A. He was good.
Q. How often did you meet with him or speak to him?
A. Once a year.
Q. Did he file corporate returns or other documents for the company?
A. No. I had to file them. He just made sure they were all done right, I believe.
Q. Have you ever had occasion to hire a criminal lawyer?
A. I did in 1990. My mom and dad had to hire one. Not me.
Q. Did you hire a criminal lawyer for your mom and dad?
A. No. They hired one for me.
Q. Who was that?
A. Give me a second. You're digging back far in my memory. Driscoll was the last name.
Q. This was a McHenry County-based criminal lawyer?
A. No. Des Plaines.

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Q. What was the general nature of the reason for the need for a lawyer?
A. Drug possession.
Q. Were you convicted of it?
A. Yes. I pled guilty.
Q. That was a Cook County case, then?
A. No. It was a McHenry County case.
Q. The lawyer was in Des Plaines, though?
A. Yes.
Q. But he represented you in McHenry County in criminal court?
A. Yes.
Q. Throughout the case you met with the lawyer?
A. A few times.
Q. While Popovich represented you in the underlying personal injury case, did you ever communicate with any other lawyers about your case?
A. At the end, yes.
Q. Popovich withdrew sometime in March 2015?
A. Correct.
Q. And Brad Balke entered his appearance on March 19, 2015. Does that sound correct?
A. That is correct.

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Q. Popovich also withdrew that day, right?
A. I don't know if it was on the same day. I'd have to look at the paperwork.
Q. Besides Mr. Balke, had you talked to any other lawyers towards the end of the relationship with Popovich?
A. Yes.
Q. How many?
A. Hundreds.
Q. Hundreds of lawyers?
A. I'm not kidding. Yes.
Q. Did you ask those lawyers to take your case?
A. I asked them to review it.
Q. Did any of them take the case?
A. No.
Q. They all reviewed it, though?
A. Yes. Most took the time to review it.
Q. Did any of them tell you why they didn't want to take the case?
A. There were different reasons I got from various. Some people just didn't get back to me and some people wrote me letters. I think I gave you some of those. But I got various reasons back from

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attorneys.
Q. I don't recall seeing any lawyers, but I would ask you to search for those.
MS. WILLIAMS: We'll search for those. I'll make a note.
BY MR. FLYNN:
Q. As you sit here, do you recall the basis for any attorney declining to take your personal injury case over from Popovich?
A. Say that again.
Q. As you sit here today, do you recall any of the reasons why any attorney declined to take your personal injury case over from the Popovich firm?
A. Yes.
Q. What were those reasons?
A. I remember a few. One I was looking at local lawyers in McHenry County and I was told like – I can name them. My sister was married to him.
Anyway, I was told if Tom Popovich says you don't have a case, you don't have a case and we're not even going to look at it. That I got a lot of it.

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Q. That's one reason. Any others?
A. That I got locally a lot of. As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that.
Q. Who said that?
A. Sal Ferris.
Q. When did you speak to Sal Ferris?
A. I don't know the exact date.
Q. When did he –
A. He wasn't the only one.
Q. When did he say that to you, that you just described?
A. He said it in a letter and he said it on the phone and he sent me an e-mail, I think. I don't remember the ways that he contacted me. I'd have to go back and look.
MS. WILLIAMS: We'll find it.
BY MR. FLYNN:
Q. Besides Sal Ferris, can you recall any other attorney, specifically, that told you they wouldn't take the case because of your settlement with the McGuires?

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A. Yes.
Q. Who was that?
A. There was at least three firms downtown here right near the Daley Center that I came down to see and I don't remember their names, but they – I got the same thing out of all three of them.
Q. Did any of the lawyers give you any other reason for declining your case?
A. Mostly it was because they knew Popovich or it was the McGuire settlement.
Q. Did any lawyer tell you that they didn't want to take your case because there was questionable liability against David Gagnon?
A. No.
Q. Did any lawyer tell you that there was questionable liability against the property owners, the McGuires?
A. No.
Q. We're jumping ahead, but did you have different lawyers that handled a binding arbitration or binding mediation for you in the underlying case?
A. Yes.
Q. Their name was Baudin?
A. Yes.

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Q. Why did Brad Balke not handle the binding arbitration?
A. I fired him.
Q. When did you fire Brad Balke?
A. I'd have to look at the dates. I'm not sure, exactly.
Q. Why did you fire him?
A. Because he forced me to undergo the exact mediation at the McHenry County court in front of Judge Meyer that Hans Mast set up that I specifically said no to.
Q. When was this mediation?
A. I'd have to look at the dates again.
Q. Was it a pretrial conference?
A. Yes.
Q. You actually attended this pretrial conference?
A. Yes, I did.
Q. What happened?
A. I said no.
Q. You said no about what?
A. They offered an amount of money and I said no.
Q. The defendants offered an amount of

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money?
A. Yes.
Q. Was this before or after the McGuires settled out of the case?
A. They were settled.
Q. So there was an offer of settlement from David Gagnon or his insurer?
A. Yes.
Q. Do you recall what that amount of money was?
A. $50,000.
Q. You refused the offer?
A. Yes.
Q. Why did that cause you to fire Brad Balke?
A. He wouldn't take it any further than that and he agreed to when I hired him. He agreed that that was not going to be the end of it and then he changed his tune, and I said, you know what – and the other thing was, I finally got through to the Baudins who I wanted to take the case because they had helped my family – his dad helped my family many eons earlier.
Q. Did you ever talk to Brad Balke about the

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liability or lack of liability by the McGuires, the property owners in the case?
A. I don't think so. We were on the Gagnon case.
Q. You didn't discuss the McGuires?
A. There may have been a word or something, but that's not what he was there for.
Q. He never gave you an opinion one way or the other whether the settlement was appropriate?
A. I don't believe Brad did, no. Like I said – I don't think he did.
Q. At some point after your accident did you hire the Daley Disability Law Firm?
A. Yes.
Q. Was that for –
A. I didn't hire.
Q. I know you're anticipating what I'm saying.
A. I was trying to correct myself. I did not hire.
Q. Either way, let me try to get out my question before you raise any kind of response, just so she can take down –
A. Count before I answer.

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Q. That's a good idea.
Did you ever retain the Daley Disability Law Firm?
A. NO.
Q. Did you have any relationship with Daley Disability –
A. Yes.
Q. – Law? Let me finish it before you answer. I know you're anticipating what you think I'm going to say, but it might not come out the way you think. Either way, she can't take down both of us talking over each other.
What relationship did you ever have with the Daley Disability Law Firm?
A. They stepped in as a substitute counsel for the law firm that I did hire.
Q. You originally hired some other law firm to represent you in connection with social security disability?
A. Yes.
Q. What was the name of that original law –
A. The lady's ladies name was Margaret Bradshaw.
Q. You terminated your relationship with her

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one way or another?
A. No.
Q. Why did Daley Disability Law substitute in for her?
A. I was told by – I have to go back and look at the communications exactly how it happened, but I was told that, basically, they are going to be taking over the hearing part of it. I don't know why. I don't know whether they sub out work. I don't know how it works.
Q. Would it be fair to say that you first retained Ms. Bradshaw in 2012 sometime?
A. I'd have to go back and look.
Q. Is that approximately when you applied for social security?
A. It sounds like it.
Q. The Daley Disability Law Firm came in sometime in 2012 as well?
A. I don't know exactly when. I don't know.
Q. Would it be 2012 or 2013?
A. I know that they were there and – I know that something had to be signed when we went in for the hearings. Margaret Bradshaw had to sign something for the judge allowing Daley Disability to

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represent me at the hearings. I don't know when exactly they got involved. That's behind the scenes. I didn't have anything to do with that.
Q. Did you file for bankruptcy while your personal injury case was pending?
A. Yes.
Q. When did you file for bankruptcy?
A. I'd have to look at the paperwork again, but I don't believe that was until, I want to say, about eight or nine months, but I'm guessing, after the McGuire settlement.
MS. WILLIAMS: The question was what month and year.
BY THE WITNESS:
A. I don't know exactly. I'd have to go back and look at the paperwork.
BY MR. FLYNN:
Q. Did you hire a lawyer to represent you in a bankruptcy?
A. Yes.
Q. Who was that lawyer?
A. David Stretch.
MS. WILLIAMS: If it helps, we can stipulate to the date the bankruptcy was filed.

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MR. FLYNN: That's fine. I think we've got some e-mails that may reflect when it was. I just wondered if he knew offhand.
MS. WILLIAMS: I can stipulate, at least, that it was 2014.
BY MR. FLYNN:
Q. You filed for bankruptcy while the Popovich firm was still representing you –
A. Yes.
Q. – in the underlying case, correct?
A. Yes.
Q. Sometimes I'll still pause in my question so if you could please pause before you answer.
In the underlying case you answered written discovery; is that true?
A. I believe so.
Q. Then you later testified at your deposition January 24, 2013, correct?
A. If that's the date, yes.
Q. Ultimately, David Gagnon was also deposed, true?
A. Yes.
Q. Were you present for his deposition?
A. No.

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Q. Did Caroline McGuire give a deposition in that case?
A. I believe so, yes.
Q. Were you present for that dep?
A. No.
Q. What about Bill McGuire's deposition?
A. I was not present.
Q. Did you e-mail back and forth with Hans Mast a fair amount during the Popovich firm's representation of you?
A. By "fair amount," what do you mean?
Q. Did you regularly e-mail with Hans Mast?
A. Yes.
Q. Those e-mail communications have all been produced in this case?
A. Yes.
Q. On to the exhibits. This will be 1.
(WHEREUPON, a certain document was marked Exhibit No. 1, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Let me show you what's been marked as Exhibit 1. These are one set of your Answers to Interrogatories in our case, the current legal

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malpractice case you filed against the Popovich firm and Hans Mast.
Do you recognize this document?
A. Yes.
Q. We've been providing you with various copies of the signature page in the case that's been back and forth between me and your counsel.
I don't, frankly, know if this verification that's attached is the one that went with this document, but I'll just ask you, for the record, if these are your answers, that's your signature, and that this verification is accurate?
A. That is my signature on there, yes.
Q. What was the e-mail address you used in the communication with Hans Mast?
A. Primarily it was pdulberg@comcast.net.
Q. His address was hansmast@comcast.net?
A. And he switched it to at&t.net.
Q. Did you use some other e-mail address as well?
A. I may have accidentally e-mailed him a couple of times from a Yahoo account.
Q. In answering discovery in our case, the legal malpractice case, did you search through both

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of those e-mail accounts of yours?
A. I no longer have the Yahoo account.
Q. Did you search through the Comcast account?
A. Yes.
Q. Did you search for PDFs or attachments to those e-mails that you produced?
A. Everything that I got, I turned over. I had converted the e-mails to PDFs because Comcast started purging the e-mails after so many years, so I turned them all into PDFs.
MS. WILLIAMS: The question was what did you search in your in box.
BY THE WITNESS:
A. What did I search?
BY MR. FLYNN:
Q. Let me ask you a different question. You produced e-mails in this case?
A. Yes.
Q. You turned e-mails into PDFs and sent them to your lawyer; is that right?
A. Yes.
Q. Some of the e-mails I reviewed have an icon that indicates there was a PDF or some other

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attachment to the e-mail. Do you understand that?
A. Yes.
Q. Did you produce the attachments to each of the e-mails in this case?
A. We went through that. I produced the attachments that I still had.
Q. There were some that were not available, correct?
A. Yeah. When I looked at them, 99 percent of them were already part of some other document that we turned over. I think 100 percent of them.
Q. At some point in time while Hans was handling your case, did he start to communicate with you relative to his analysis of the McGuires' liability in the case?
A. Yes.
Q. Did he start to generally advise you that he didn't believe that there was a strong case for liability against the McGuires?
A. Yes.
Q. Is it fair to say that Hans' opinion was that the McGuires did not have liability in the case because they did not control the work that David Gagnon was doing?

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A. Yes.
Q. That's generally a fair summary of Hans' opinion?
A. Not quite exactly those words, but yeah.
Q. The McGuires' liability as property owners was questionable because based on Hans' analysis of the evidence, they did not control the work or the manner of work of David Gagnon on the date of the accident; is that a fair summary?
A. Depends on which time he said that.
Q. Did he say things like that over and over again?
A. He did say things like that, yes.
Q. Again, I don't want to go over the facts you already testified to with regards to the date of the accident. At some point in time was William McGuire swimming in the swimming pool?
A. Yes.
Q. Was that an above ground pool or –
A. Above ground.
Q. Was there a fair amount of time during the day that Mr. McGuire was inside the house watching television?
A. Maybe – he went inside the house for

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probably about 45 minutes before the accident happened. I don't know that he was watching television.
MR. FLYNN: Let's mark the next exhibit as 2.
(WHEREUPON, a certain document was marked Exhibit No. 2, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 2, which is an e-mail chain including e-mails from November 18, 2013, are these e-mails between you and Hans Mast?
A. It looks like it, yes.
Q. I think the time stamps on these e-mails go from the bottom, which would be page 2, to the top of the first page, correct?
A. It's backwards, yes.
Q. In the original e-mail at 1:28 p.m., did Hans Mast relay to you a $5,000 settlement offer from the McGuires?
A. Which – where are you at?
Q. We're on Exhibit 2, which is also labeled as Bates label POP 181. At the bottom of the page, does Hans relay to you a settlement offer for

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$5,000?
A. Yes.
Q. He was telling you that the McGuires' attorney offered to settle the case for $5,000?
A. Yes.
Q. Did you have an understanding that that was a settlement just for the McGuires, not including David Gagnon?
A. Yes.
Q. In the e-mail Hans says, quote, "As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now."
Is that an accurate reading?
A. Of that sentence, yes.
Q. Is it fair to say that he suggested that you take the $5,000 but didn't force you to take it?
A. It says, "So my suggestion is..."
Q. Then did you respond to the e-mail?
A. Yes.
Q. Hans replied again at 8:07 p.m. that same day, right?
A. Yes.

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Q. He said, "Paul, whether you like it or not, they don't have a legal liability for your injury because they were not directing the work."
Is that right?
A. Part of it, yes.
Q. Was my prior summary of Hans' legal analysis a fair summary in view of these e-mails and his opinion that he relayed to you?
A. I think it went further than this, and other things, but yes.
Q. As far as these e-mails, I've accurately –
A. This e-mail, yes.
Q. What else did he tell you about the McGuires and why he didn't think they would be found liable in the case?
A. I'm pulling out of memory because I can't quote which document it's off of.
Q. That's what we're here for.
A. I can only give you the gist.
Q. I'll ask you for the exact language, but if you don't have it –
A. At one point he defined what an independent contractor is for me and he said that

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David was an independent contractor and that the McGuires weren't liable because they had hired somebody outside even though it's their own son, he's an adult, outside to do the work and that they weren't responsible.
Q. By the way, how old was David at the time that this accident occurred?
A. I'm adding. If I was 41 – I don't know what his birthday is, but I'm assuming he would be 44, 45.
Q. Is it fair to say that there were two 40-plus-year-olds, a 41- and a 44-year-old trimming trees with a chainsaw in David's parent's backyard that day, correct?
A. I was not using it. There was one 44-year-old using a chainsaw.
Q. You, the 41-year-old was holding some branches for him?
A. Yes. Just before the accident, yes.
Q. Up until this point in time when Hans is providing this legal analysis to you, you had a fair number of occasions to interact with lawyers, as we've discussed today, correct?
A. At this point, the only lawyer that I

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interacted with was the first one.
Q. I'm talking about in your lifetime. You had a corporate lawyer, you had a criminal lawyer, another personal injury lawyer –
A. I didn't hire –
Q. Let me finish. You had experience with lawyers representing you up to this point in time?
A. Yes.
Q. Did you have an understanding that lawyers evaluate cases differently?
A. Yes.
Q. And judges evaluate cases differently?
A. Sure. That's fair.
Q. Would it be fair to say that some laws in our country are clearer and some are open to interpretation?
A. I think all of them are.
MS. WILLIAMS: Objection. Calls for speculation.
If you understand the question, you can answer it.
BY MR. FLYNN:
Q. Would you say, for example, that the tax code is a little more clearcut than common law

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that's created by cases and case precedent?
A. I'm not real familiar with tax law. I have accountants for that.
Q. How about an easier question. The stop sign means that you stop, and if you go through it, it's pretty clear that you're liable for a traffic violation?
A. I'll agree with that.
Q. The legal liability for a property owner in Illinois might be a little more complicated; is that a fair statement?
A. I don't know.
Q. Would it be fair to say, in your opinion or your knowledge of the law, the property owner isn't necessarily liable because somebody is injured on their property?
A. Are you talking about what I know now or what I knew back when this was?
Q. At any time.
A. What I know now is in the circumstances that we were in, they were very liable.
Q. I'm just asking if – just because somebody is injured on a property owner's property, they are not necessarily liable, correct? Other

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factors are required too.
MS. WILLIAMS: I'm going to object for – he's not an expert and can't testify to legal analysis.
BY MR. FLYNN:
Q. As you sit here today, do you know whether a premises liability case involves multiple factors to prove liability against the property owner?
A. I don't know. I'd say that's fair. You're asking the wrong person for that.
Q. It was Hans' opinion that the McGuires did not control the work based on the evidence, correct?
A. In my opinion?
Q. That's not what I'm asking.
Was it Hans' opinion –
A. I can't –
Q. Let me just finish.
Did Hans tell you that it was his opinion that the McGuires were not liable because they did not control the work?
A. He said that right there, yes.
Q. Do you believe that he truly felt that way? That was his legal opinion?

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A. Do you want the Monday morning quarterbacking version or at the time?
Q. I'm asking if at that time you felt that he truly believed that the McGuires did not have liability?
A. At the time I trusted him, yes. I hired him to represent me, and yeah.
Q. You believed that he was relying his honest legal opinion to you at that time?
A. Yes.
Q. Including on November 18, 2013?
A. Yes.
Q. You did not accept the settlement offer of $5,000 that he relayed to you on that day, correct?
A. Correct.
Q. Did you ultimately meet with Hans to discuss the settlement offer?
A. I think it was the day before this, but I'm not sure. It was either the day before or the day after.
MS. WILLIAMS: I think the question was, did you meet with him, at all, not the date.

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BY THE WITNESS:
A. Yes.
MR. FLYNN: Can we mark this as Exhibit 3, please.
(WHEREUPON, a certain document was marked Exhibit No. 3, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 3. Do you recognize this memorandum?
A. Yes.
Q. You may have seen it from the document production that we made in this case. This is a memorandum drafted by Hans Mast, which purportedly memorializes a meeting that he had with you on November 20, 2013.
Does this refresh your memory as to when you met with him or if you met with him?
A. If he took the memorandum on the same day, then sure.
Q. In the memo Hans says, "I met with Paul and his friend."
Do you see that?
A. Yes.

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Q. Did you meet with Hans and some third person –
A. Yes.
Q. – at or about this time regarding the case?
A. Yes.
Q. Who was that friend?
A. Tom Kost.
Q. Who is Tom Kost?
A. My brother.
Q. Not that it matters necessarily for privilege purposes, but can you tell me how Tom Kost is your brother?
A. We have the same mom.
Q. He was with you and observed the meeting between you and Hans?
A. Yes.
Q. The $5,000 settlement offer was discussed, correct?
A. Yes.
Q. At that time did Hans, again, relay his opinion as to the questionable liability about the McGuires – strike that.
Did he relay to you his opinion about the

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questionable nature of the McGuires' liability?
A. At the meeting with Tom, yes.
Q. He advised you they maintain they were not directing Dave's work. That was the McGuires' position, correct?
A. I don't know that he stayed on that at that meeting. At different times he gave different reasons.
Q. The next line says, "Paul maintains the McGuires controlled everything that Dave was doing."
Is that an accurate reflection of your opinion?
A. Yes.
Q. As you sit here today, do you know if that statement is consistent with your own deposition testimony from the underlying case?
A. Yes.
Q. We'll come back to that. Did you tell Hans that you wanted to read the depositions of the McGuires and David Gagnon's depositions?
A. Say that again.
Q. Did you tell Paul that you wanted to read the depositions of the McGuires and Dave Gagnon's depositions?

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A. Did I tell Paul?
Q. I'm sorry. Did you tell Hans that?
A. That I wanted to read the McGuires and David Gagnon's depositions?
Q. Yes.
A. Yes, I did.
Q. What was the purpose of your wanting to review those depositions?
A. Hans had told me that what they said in their depositions meant that they had no liability.
Q. You wanted to review the testimony to determine whether you wanted to consider the $5,000 settlement offer; is that correct?
A. Right.
Q. Did you do that?
A. Eventually, yes.
Q. Before you accepted the offer?
A. I think so.
Q. So sometime after this meeting on November 20, 2013 and before you accepted the settlement offer on January 29, 2014, did you review those three deposition transcripts?
A. I'll correct you. I did not accept the offer on January 20th. I signed a release on

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January 29th.
Q. Fair point. Did you read the depositions between those two dates, November 20, 2013 and January 29, 2014?
A. Yes.
Q. Those are –
A. I believe I asked him – I don't know – it may be a little earlier because I don't know that I asked him before or after the meeting. I don't remember. I'd have to go back in the e-mails to give the date.
Q. Some point in time between those two dates you read the deps?
A. I may have asked for them before. I don't know without seeing the e-mail. It was, roughly, in the last quarter of that year, yes. Or the first month. I don't remember the first time that I asked to read them. I don't remember off the top of my head.
Q. At any point in time did you ever grant Hans authority to make a settlement demand in the case?
A. No.
MR. FLYNN: Mark this as Exhibit 4.

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(WHEREUPON, a certain document was marked Exhibit No. 4, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. Showing you what's been marked as Exhibit 4. This is a copy of the original complaint in this instant case. It reflects a filing date of November 28, 2017.

Is this your original legal malpractice complaint against the Popovich firm and Hans Mast?

A. I believe so.

Q. Did you review and approve the allegations in this complaint?

A. For the most part. I wanted to reword some things, but the lawyer, they do their thing.

Q. At the time you were represented by the Gooch firm is when you filed this lawsuit, correct?

A. Yes.

Q. Directing your attention back to Exhibit 1, if you still have it. If you could turn to page 10.

The answer to Interrogatory No. 24 indicates that on November 4, 2013, Mast was granted authority to investigate a settlement but a specific

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dollar amount was never provided. Do you see that?

A. He was verbally granted authority to investigate, yes.

Q. Who did you want him to investigate a settlement with?

A. The McGuires.

Q. Just the McGuires or the McGuires and –

A. He wanted to do it. I didn't. I said, "If you want to look at that, go ahead."

Q. Did you grant him authority to investigate a settlement with David Gagnon as well?

A. I don't know if I did or not, off the top of my head, but that would have been much later.

Q. Eventually did you tell Hans that you would agree to accept the $5,000 settlement offer from the McGuires?

A. Eventually did I tell him that?

Q. Yes.

A. Yes.

Q. When did you tell him that?

A. I want to say just before Christmas in December of 2013.

Q. There's no doubt in your mind that you relayed your acceptance of the $5,000 settlement

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offer to Hans Mast before Christmas Day, which would be December 25, 2013?

A. Right.

Q. Then did Hans mail to you a settlement release by letter dated January 24, 2014?

A. I'd like to see the letter, but yeah, I believe so.

Q. I believe it's –

A. I believe he had to mail it a couple times because I didn't get it.

MR. FLYNN: Let's mark Exhibit 5.

(WHEREUPON, a certain document was marked Exhibit No. 5, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. Showing you what's been marked as Exhibit 5. I'll represent to you that this is a copy of the second amended complaint that you filed in this case by your new lawyers, your current lawyers. If I could direct your attention to Exhibit D attached to this Exhibit 5.

Is Exhibit D a January 24, 2014 cover letter from Hans Mast to you enclosing the general release and settlement agreement from defense

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counsel for Caroline and Bill McGuire?

A. That's what it says.

Q. In the letter did he ask you to – it looks like it might be a typo. It says, "Please release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience."

A. Right, but I believe it was just a release – it was all tied into one.

Q. This letter is unsigned. Did you receive the letter unsigned?

A. Did I receive this unsigned?

Q. Yes.

A. Yes.

Q. Have you ever seen a signed copy of this letter?

A. No.

Q. If I could direct your attention to the next page of Exhibit D. Is that page 1 of the general release and settlement agreement?

A. Exhibit D?

Q. Correct.

MS. WILLIAMS: Turn the page.

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BY MR. FLYNN:
Q. Is this what you received attached to the cover letter?
A. I don't think so. Let me see. Yes, this looks like it because it's got these things I remember.
Q. When did you receive this letter and the attachment?
A. I would say I wrote back on January 29th and I probably got it that day, signed it and sent it back.
Q. The copy of the release is also unsigned. It's attached as exhibit -- part of Exhibit D to your second amended complaint.
Do you see the signature lines and the notary signature here that's missing?
A. Yes.
Q. Is this the document that you signed and sent back to Hans Mast?
A. The document that I signed had my signature.
Q. I'm asking if this is the same document that you signed and sent back to him?
A. Yes.

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Q. Right now we don't have a signed copy. I don't know that I've seen one in the case.
MS. WILLIAMS: Can we go off the record for a second?
MR. FLYNN: Sure.
(WHEREUPON, discussion was had off the record.)
BY MR. FLYNN:
Q. Is there any doubt, in your mind, that Exhibit D is the letter and attachment that you received from Hans Mast?
A. No. I believe that this is it.
Q. You signed some copy of this release and sent it back to Hans on January 29; is that correct?
A. Yes.
Q. You accepted the settlement offer prior to Christmas and presumably defense counsel or Hans drafted the settlement release and then Hans mailed it to you, correct?
A. Yes.
Q. At any point in time from December 25th until you received this settlement release, did you contact any lawyer to discuss whether it would be appropriate to let the McGuires out for 5,000?

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A. I believe I contacted Hans again.
Q. Besides Hans, did you talk to anyone else?
A. No.
Q. Was there anything preventing you from seeking a second opinion from some other lawyer at that time?
A. No.
Q. Directing your attention to Exhibit E attached to the second amended complaint, the second amended complaint, again, being Exhibit 5. Is this an e-mail from you to Hans on January 29, 2014?
A. This is the e-mail chain between me and Hans, yes.
Q. Down below at the bottom of the page, January 29 at 10:51 a.m., it appears that you were questioning Hans regarding some of the language in the release, including social security disability check boxes. Do you see that?
A. Yes.
Q. Hans responded to you and then at the top of the page here at 1:59 p.m. it says, "Okay, it's signed and in the mail."
A. Correct.

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Q. What did you mean by that?
A. I signed it and mailed it.
Q. Did you -- where did you mail it from?
A. My home.
Q. How did you do that?
A. Put a stamp on the envelope and put it in the mailbox, put the flag up and waited for the mailman.
Q. Is the mailbox attached to your home or is it –
A. It's out on the street.
Q. You walked down there and you put the mail -- the envelope in the mailbox, put the flag up and –
A. That is correct.
Q. Your understanding of signing that release and sending it back to your lawyer was that you would agree to take the $5,000 settlement, correct?
A. Yes.
Q. Hans didn't deliver the letter to you personally. He mailed it to you, correct?
A. He mailed it to me?
Q. He mailed it to you.

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A. Correct. U.S. mail.
Q. Do you recall an allegation in your complaint or amended complaint or second amended complaint in this case alleging that you were pressured or alleging undue influence by Hans in urging you to accept the $5,000 settlement from the McGuires?
A. Yes.
Q. How is it, as you sit here today, can you tell me how Hans unduly influenced you to accept the $5,000 settlement offer?
A. I don't know what Hans was thinking. How did I feel influenced?
Q. Unduly influenced.
Let me put it this way. He didn't put a gun to your head?
A. No.
Q. He suggested that you take the settlement?
A. Correct.
Q. He didn't force you to take the settlement?
A. Correct.
Q. It was your decision?

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A. Correct.
Q. You signed it and you sent it back to him in the mail?
A. Yes.
Q. Aside from your e-mails with Hans on January 29, did you call him that day?
A. I believe so.
Q. Did you also discuss whether it was appropriate to accept the McGuires' $5,000 settlement offer at that time?
A. Yes.
Q. You deliberated on it and decided to take it, correct?
A. There wasn't much – it was take it or get nothing.
Q. You had the opportunity to deliberate on it, correct?
A. For that day, yeah.
Q. You had reviewed the transcripts of the McGuire depositions and David Gagnon's depositions in order to provide you with some information in order to determine whether to accept the settlement offer, correct?
A. I believe I did try to read those, yes.

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Q. Did you call Hans or e-mail him and question him with respect to the evidence, the testimony contained in those deposition transcripts?
A. Yes.
Q. What did you say to him and what did he say to you?
A. There were many conversations over the phone and I'm sure some through e-mails.
Q. He continued to tell you that it was his opinion that the liability on the McGuires is questionable because they did not control David Gagnon's work that day, correct?
A. It depends on which time. Sometimes he said because they didn't tell them how to squeeze the trigger. It depends which time you are talking about.
Q. Again, there was nothing preventing you from seeking a second opinion from some other lawyer at the time you signed the settlement release and sent it back to Hans, correct?
A. From the time I received it, signed it and sent it back?
Q. Right.
A. No. It was a matter of hours. I got it

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that morning.
Q. You decided to mail it that day, right?
A. He needed it. He said now or you're not going to get anything.
Q. There was nothing preventing you from seeking the advice of another attorney at that time?
A. At that time it was time. It was now or nothing.
Q. You were in the comfort of your own house when you received the letter, correct?
A. Yes.
Q. You had the ability to go find another lawyer and ask them to discuss the case at that time. You had done it hundreds of times earlier – strike that.
After the settlement with the McGuires, you continued to prosecute the case against Gagnon, correct?
A. Yes.
Q. Did you have an understanding as to what, if any, insurance coverage he had?
A. Yes.
Q. How much was that?
A. What time frame are you talking about?

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Q. What was your initial understanding as to the limits on David Gagnon's insurance coverage?
A. Hans Mast told me he had $100,000.
Q. Was that in an e-mail?
A. There were – not initially, no, but later on he reiterated that in e-mails, yes.
Q. Did you, ultimately, learn that there was some additional amount of coverage with respect to Gagnon's policy?
A. Long after Hans Mast was gone, not part of the case.
Q. How much was the coverage?
A. The Allstate coverage, I believe, was 300,000.
Q. We'll talk about the settlement later, but did you ultimately settle the case again Gagnon for 300,000?
A. I believe it went to binding mediation.
Q. Was there an award of $300,000 based on a high/low agreement?
A. Yes.
Q. Is it fair to say that if Hans made a mistake about the $100,000 in coverage, that that was corrected and there was never any harm done as a

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result of his –
A. No.
Q. Explain to me how you were harmed by the representation that there was $100,000 in coverage.
A. You want me to explain?
Q. Yes.
A. Had I known the value of the case, I would have not filed for bankruptcy.
Q. Explain to me why one has something to do with the other.
A. Is my family and me going to dump money into a black hole that we can't recover or is there a light at the end of the tunnel where I can pay them back.
Q. At the time that you filed for bankruptcy, had any settlement offer been made from David Gagnon or his lawyers to you?
A. At the time of when?
Q. When you filed for bankruptcy.
A. I don't think so. I'd have to check the dates, but I don't think so.
Q. As the case was progressing against David Gagnon, were your doctors deposed?
A. As the case progressed with David Gagnon,

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I believe they were deposed. I don't remember. I'd have to look at the dates.
Q. Discovery continued on in the case?
A. I believe one doctor was deposed after the McGuire settlement. I'm not sure, though.
Q. Did Hans continue to represent you for some period of time?
A. Yes.
MR. FLYNN: I'll have you mark this as Exhibit 6.
(WHEREUPON, a certain document was marked Exhibit No. 6, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 6. Do you recognize this e-mail chain?
A. Yes.
Q. This is from September 23, 2014. If we go from the bottom up, it appears that Hans said to you that he wanted to give you the option of finding other counsel at this point if you really want to take the case to trial, which I think ultimately will be necessary. Correct?
A. Are we at "before I proceed" or "that's

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the very reason"?
Q. "That's the very reason."
Is it fair to say he was suggesting you find another counsel in the case at that point?
A. Yes.
Q. He also said, "I just do not believe strongly that defense counsel will offer much in the way of settlement."
Do you see that?
A. Yes.
Q. That's his opinion regardless of what he believed the coverage limits to be; is that a fair statement?
A. Yes.
Q. You responded to him, he responded to you and then you wrote an e-mail to him at 8:25 p.m. that night?
A. Okay.
Q. Do you see that? Did you say, "First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw"?
A. Yes.
Q. Did you start to look for other lawyers to help you in your case against Gagnon at that

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point in time?
A. I believe I did, that summer. This is fall, September.
Q. You had already started looking for new lawyers?
A. I believe that Hans had told me to start looking for a new lawyer in April of that year.
Q. Did he say why?
A. We'd have to read his thing. He says why.
Q. Do you recall why he said that to you?
A. He did not feel that the case was provable against David. He did not feel the value of the case was worth it. He did not feel -- actually, this is 2014. The dates are rough.
Q. He thought the case against David was difficult, correct?
A. Yes.
Q. Have you ever described the case as a he said, she said with respect to the facts of the accident?
A. He described that to me many times.
Q. Have you also --
A. And I used that back, yes.

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Q. Have you ever described this case as a he said, she said case?
A. I may have. I don't know.
Q. It is your word against David Gagnon's as to what happened and whose fault it was that day?
A. That's what Hans explained to me as what the problem was.
Q. Did you ever describe the accident as a he said, she said?
A. I don't think I called David a "she said" or me a "she said." I don't know. Right here I do.
Q. What do you say there?
A. I said, "I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw."
Q. He was denying that he even cut you, correct?
A. No, he never denied that.
Q. What was your reason for writing this sentence in that way?
A. Because Hans said that he believed David over me.
Q. With respect to what fact at issue?
A. His deposition versus mine. He said that I didn't make a good witness.

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Q. With respect to what points?
A. All of it. He was dumping me and he was coming up with his own excuses.
Q. You and David were the only ones that witnessed this accident?
A. Correct.
Q. Based on your understanding of how the evidence came out in the case, would you agree that there were differences with respect to the version of events?
A. Oh, yeah.
Q. There were differences between what he said happened and what you said happened?
A. Oh, definitely.
Q. Would it be fair to say, then, it would be up to the trier of fact, whether it be a judge or a jury, to determine who they believed?
MS. WILLIAMS: Objection. Calls for a legal conclusion.
You can answer, if you understand.
BY THE WITNESS:
A. I believe it would be up to a judge or jury, sure.

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BY MR. FLYNN:
Q. At the bottom of Exhibit 7 you say, "Bottom line Hans... do the best you can with what you got."
I'm sorry. I didn't mark this one yet. My apologies.
(WHEREUPON, a certain document was marked Exhibit No. 7, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 7. Is this an e-mail chain between you and Hans?
A. I don't think it's a chain. I think it's one.
Q. Point is well taken. It's you writing to Hans?
A. Yes.
Q. At the bottom it sounds like you had been in the hospital with a migraine and then you wrote, "Bottom line, Hans... do the best you can with what you got."
A. Yes.
Q. What did you mean by that?

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A. He wanted to settle, and I can tell you right now this letter was written after a very traumatic experience and -- let me read it and refresh myself. I'm melting down in this letter.
Q. You said after a traumatic experience. Are you referring to the bankruptcy filing from that day?
A. That, in combination with migraines, yes.
Q. David Stretch was your lawyer that filed bankruptcy for you?
A. Yes.
Q. Did you meet with Mr. Stretch and discuss the bankruptcy process before you hired him?
A. Yes.
Q. How long did you meet with him?
A. I think I asked about it. I don't know. It may have been a couple of months or a couple weeks before it got filed. I wanted to learn about it.
Q. Did you, ultimately, list the case against David Gagnon as an asset in your bankrupt filing?
A. Yes, I did.
Q. Is that why the bankruptcy trustee became

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involved with the binding mediation?
A. Yes.
Q. Did you ever meet the bankruptcy trustee?
A. Yes. The first one.
Q. What was the name of that person?
A. The first one was Heeg was her last name. H-e-e-g, I think.
Q. Again, we established that Brad Balke became your lawyer in the case on March 19, 2015, correct?
A. Yes.
Q. Is it fair to say that your relationship with Hans Mast was deteriorating over the fall and beginning of the winter of 2015?
A. I would say it had been deteriorating long before that. You can see from the last exhibit I'm melting down and it was already started deteriorating.
Q. By the time you drafted Exhibit 7, had you talked to other lawyers about taking your case?
A. I have to go back and look, but probably. If he told me to look at other lawyers in April before this, yes.
Q. How many lawyers would you say you talked

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to between April and the time you drafted this e-mail on September 26?
A. I couldn't count that high, probably.
Q. Quite a few?
A. Yeah.
Q. Did any of them take your case?
A. No.
MR. FLYNN: Mark this as Exhibit 8.
(WHEREUPON, a certain document was marked Exhibit No. 8, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 8. Is this an e-mail from you to Hans Mast?
A. Yes. It's an e-mail chain, yes.
Q. On February 22, 2015 at 7:42 p.m. you wrote to Hans, correct?
A. Yes.
Q. Halfway down in that e-mail message you said, quote, "Now I'm left wondering... how hard it is to sue an attorney?"
A. That is true.
Q. You wrote that?
A. Yes.

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Q. The next line you wrote, "And yes, I am and have been looking for someone who will take this case..."
A. That is not in reference to suing the attorney. That was in reference to the Gagnon case.
Q. What did the reference to suing an attorney mean?
A. That was me being angry.
Q. With Hans?
A. Yes. I was seeing red.
Q. You're suggesting that you may sue him?
A. Yeah. I didn't know that I could. I'm wondering about it.
Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?
A. Yes.
Q. You, ultimately, sued him for legal malpractice, right?
A. Yes.
Q. Is that what you had in mind when you wrote this?
A. No. This was about dropping Gagnon. The malpractice is about dropping the McGuires.

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Q. This –
A. We're talking – this is 2015.
Q. In this 2015 e-mail you are suggesting to Hans that you may sue him because of the McGuire settlement; is that right?
A. No.
Q. Then what is it that you're saying to him?
A. That if he damaged the Gagnon case, I didn't know if he did or didn't, and I'm threatening because I'm angry. You can see, again, I'm melting down here. These are emotional outbursts, I guess.
Q. Moving up the page a little bit also on February 22, 2015 at 8:14 p.m., you say, "To be honest, you took this case knowing it was my word versus his."
A. Yes.
Q. He said, he said, right?
A. Yes.
Q. Is that a fair characterization of the case, your word against David's?
A. That's how Hans kept describing it. That's the way I put it back to him, yes.
Q. You didn't correct him or dispute his

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characterization, did you?
A. No. I used his characterization.
Q. You agreed with it?
A. He said – how did it go? We had conversations between these e-mails on the phone. Then we would hang up and I would get angry and type it in an e-mail, type whatever it was that bothered me so he had it.
Q. Let me ask another question, if that's okay.
Did you ever correct Hans if he called this a he said, he said case? Did you ever say it's more than that?
A. Do I ever say it's more than that?
Q. Did you ever correct him? If he said it's a he said, he said case, did you say no, that's not right?
A. He said there's no witnesses. I said, "I'm a witness."
Q. You're one of the hes. It's your word against David Gagnon's, as you said in this e-mail?
A. Yes.
MR. FLYNN: If I could have you mark that as Exhibit 9.

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(WHEREUPON, a certain document was marked Exhibit No. 9, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Exhibit 9, is that Brad Balke's substitute appearance that was filed on March 19, 2015 in the case against Gagnon?
A. It looks like it, yes.
Q. Back to Exhibit 5, which is the second amended complaint. If I could direct your attention to Exhibit F. This appears to be a more complete copy of another e-mail we just talked about. Is Exhibit F more of the February 22, 2015 e-mail chain?
A. I'm not sure if that's separate or the same. Oh, it looks like it.
Q. At 7:20 p.m. Hans wrote to you and said, "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case."
Right?
A. Yes.
Q. He says, "I've been telling you over a year now the problems with the case and you just

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don't see them."
Correct?
A. That's what it says.
Q. Obviously, a difference of opinion, right?
A. Yes. Are you talking about difference of opinion as to the value or difference of opinion of the problems within the case?
Q. Let's go on. He says, "You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear, it is not. My guess is that seven out of ten times you will lose the case outright. That means zero. That's why I've been trying to convince you to agree to a settlement. You clearly do not want to."
Did I accurately read that?
A. Just that part of that paragraph, yes.
Q. So Hans is telling you that in his opinion your case against Gagnon you're going to lose it seven out of ten times, correct?
A. In this one, yes.
Q. He's acknowledging that you may have a

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chance.
A. I think later on he says nine out of ten.
Q. In this e-mail he says seven out of ten you will lose.
A. Yes.
Q. He's recognizing three times out of ten you may win, right?
A. I don't know what Hans is thinking.
Q. Is that what he said?
A. He says seven out of ten times you lose.
Q. You understood that there are risks in taking the case to trial that you could lose?
A. There are unforeseen risks, yes.
Q. There are always risks, period, in taking a case to trial?
A. Yes.
Q. Before you hired Brad Balke and after Hans told you he couldn't represent you, did you talk to any other lawyers about taking your case?
A. Yes.
Q. How many?
A. I can't tell you. A lot.
Q. Did any of them tell you that they wouldn't take the case because they didn't think you

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could prevail against Gagnon?
A. No.
Q. Not one?
A. No.
Q. What are the names of any of the lawyers you talked to about taking your case over from Popovich?
A. I can't tell you without looking at documents who it was and what date it was, what it was between these two.
Q. I don't think documents I produced would help you in that regard.
I'll just ask you based on your memory the names of any lawyers you met with from the time Hans wrote this February 22 e-mail –
A. I believe –
Q. Let me finish.
A. I believe –
MS. WILLIAMS: He has not finished his question.
THE WITNESS: Sorry.
BY MR. FLYNN:
Q. From the time that Hans wrote this February 22 e-mail and the time that Brad Balke

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enters an appearance on March 19. Just the name of any lawyer you –
A. I believe that Sal Ferris that I was talking about was one of the lawyers that I talked to.
Q. You're not sure? You believe that he was?
A. In between this time and this time?
Q. Yes.
A. I believe it's right around then.
Q. What type of law practice does Sal Ferris have?
A. I believe personal injury.
Q. Did you ever talk to him about taking your case before that date?
A. Before the date of this e-mail?
Q. Yes.
A. I'd have to look at it.
Q. He wasn't one of the original attorneys that you spoke with at the beginning of the case?
A. No.
Q. Fair to say once Balke entered his appearance on March 19, 2015 that Mast and Popovich were no longer your attorneys, correct?

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A. When Balke enters his appearance?
Q. Yes.
A. I would believe that, yes.
Q. They were terminated and Balke stepped in?
A. Yes.
Q. Can you tell me how the binding mediation which proceeded on December 8, 2015 evolved and came to be.
A. I was ordered into it from a bankruptcy court.
Q. Why is that?
A. I believe that the trustee put a motion up. I don't know who did it. I assume it was the trustee and the court ordered that it be put into binding mediation.
Q. Did you appear at the mediation?
A. Yes.
Q. Do you recall the name of the mediator?
A. Not off the top of my head, no.
Q. One of the exhibits to your second amended complaint indicates it was retired Judge James Etchingham.
A. That sounds familiar.

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Q. Do you recall how long the mediation lasted?
A. All day.
Q. Do you know if the parties submitted mediation briefs or statements to the judge?
A. I believe both sides submitted a whole bunch of things.
Q. The Boudins represented you in this mediation?
A. Yes.
Q. Because you had fired Balke by this point?
A. Oh, yes.
Q. Directing your attention, again, to Exhibit 5, the second amended complaint and Exhibit G. Exhibit G is, apparently, a memorialization of the mediation award. Do you see that?
A. It's how the judge decided to break it down, yes.
Q. Do you see that there's an award for future medical expenses of $200,000?
A. Yes.
Q. Since that date of December 8, 2015, have you received any medical treatment relative to your

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injuries –
A. Yes.
Q. Let me finish. Strike the question.
Since that date, December 8, 2015, have you received any medical treatment for your injuries incurred on January 28, 2011?
A. You're asking since the date of the binding mediation?
Q. That's right.
A. Yes.
Q. What medical treatment have you received?
A. I do an ongoing with the neurologist for the dystonia.
Q. That's in your right arm?
A. Yes.
Q. Have you calculated the medical bills that you've incurred since that day?
A. No, I have not.
Q. Are they anywhere near $200,000?
A. It depends if you calculate with or without insurance. I know what I pay, but then I have to pay for the insurance that pays for that.
Q. How much have you paid out of pocket since that date for medical treatment on your arm?

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A. I don't know, offhand.
Q. Was there any doctor that opined that you would require $200,000 in future medical expenses?
A. I believe so.
Q. Who was that?
A. I believe that was Dr. Patel. I don't know that she said $200,000. She was the doctor that was handling it at the time.
Q. Did you discuss your injury with the mediator at the mediation?
A. He did ask me a few questions.
Q. How much time did you spend with him?
A. On and off. He would come in and ask me questions and then go away and then come in and would ask me questions and then go away.
I don't remember which one was the mediator, which one was the Allstate adjuster, which one was the – I don't remember.
Q. You're not sure which one was the mediator?
A. They came in and they said they are going to ask you some questions and I answered them.
Q. As you sit here today, you don't know how much face time you had with the mediator that day?

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A. I don't remember the face of which one is which.
Q. Did the issue of lost wages ever come up?
A. At the mediation with me?
Q. Yes.
A. I don't remember.
Q. Did you ever make a claim of lost wages of $250,000?
A. I may have.
Q. Do you know what that was based on?
A. Yeah.
Q. What is that based on?
A. Past and future.
Q. What past wages had you ever earned that could lead to an award of $250,000?
A. To me, that's not a very high number. I think I asked for more than that. It would be an average over a certain number of years plus benefits and that's all lost.
Q. Would it be fair to say that your income would be accurately reflected in the tax returns you've produced in this case, so I don't want to ask you about each one of them?
A. I would say my personal income, yeah.

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Q. Have you filed personal tax returns since 2015?
A. Tried.
Q. I didn't ask you if you tried.
A. No. They won't let me. They said I don't make enough anymore.
MR. FLYNN: I believe the next exhibit is 10.
(WHEREUPON, a certain document was marked Exhibit No. 10, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what's been marked as Exhibit 10. This is a six-page binding mediation agreement. The copy I have is unsigned.
Do you recognize this as the mediation agreement that governed your December 8, 2016 mediation?
A. Yes.
Q. If I could direct your attention to -- first, let me ask you.
Do you know why the bankruptcy trustee or the bankruptcy court ordered binding mediation as opposed to nonbinding?
A. I have no idea.

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Q. On page 4, section F, subsection B – I'm sorry, 1B. It says, "The parties agree that for this mediation the minimum award to Paul Dulberg will be $50,000. Also, the maximum award to Paul Dulberg will be $300,000."
Do you see that?
A. Yes.
Q. Do you know why the parties agreed to this high/low agreement?
A. No.
Q. Do you recall alleging in your original complaint against Popovich that there was a high/low agreement?
A. There is. There was.
MS. WILLIAMS: Can you repeat the question, please.
(WHEREUPON, the record was read by the reporter as requested.)
BY THE WITNESS:
A. I don't know. I'd have to read it.
MS. WILLIAMS: I asked her to read it. And you had answered it previously.
BY MR. FLYNN:
Q. Directing your attention back to

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Exhibit 4, which is the original complaint in this case. Page 4, paragraph 16.
A. Okay.
Q. There's a sentence that begins with, "Unfortunately, a high/low agreement had been executed by Dulberg reducing the maximum account he could recover to $300,000 based upon the insurance policy available."
Do you see that?
A. Yes.
Q. It's not your position or testimony that Popovich had anything to do with the high/low agreement?
A. That was a mistake in there. No.
Q. You would agree that Popovich had nothing to do with the high/low agreement?
A. I believe that events that unfolded the way they did was due to Hans Mast's initial assessment of the value of the case.
Q. Let me ask it a different way.
Did Popovich have any idea that this high/low agreement existed when it was entered into?
A. I don't know.
Q. Do you have any reason to believe that he

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did?
A. I don't know. I don't know how much the Boudins were in contact with them because they worked together. I don't know.
Q. What do you mean, "they worked together"?
A. They worked together on all different cases. That's a small county out there.
Q. Did you ever write to Hans and accuse Popovich of having a conflict of interest because he may have gone to high school with David Gagnon?
A. I did learn that.
Q. Do you believe the fact that someone went to high school with another person may give rise to a conflict of interest in a lawsuit?
A. I was shooting in the dark and guessing why they didn't see this as a viable case.
Q. Do you think that was appropriate to send to your lawyer at the time?
A. When you're wondering why they are doing what they are doing and you learn that and they were pretty much in the same class and they all knew each other and it's a small town, let me ask you, are you friends with the guy I'm suing? That's an appropriate question.

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Q. You didn't say that. You asked if they went to school together.
A. Correct.
Q. Popovich did not enter into this high/low agreement on your behalf, correct?
A. Popovich, no.
Q. When I say "Popovich," I mean generally the Popovich firm and your lawyers.
A. This was years later. No.
Q. They had nothing to do with it, right?
A. I wouldn't say anything to do with it.
Q. Withdrawn.
Who drafted this high/low agreement that's contained in the mediation agreement?
A. I'm not sure who drafted it.
Q. Would it have been either the mediator, the bankruptcy trustee, your lawyers or the defense attorneys?
A. I assume that this would have been an agreement of all of them.
Q. You don't think Popovich had anything to do with drafting this high/low agreement, do you?
A. I don't know that he did or didn't.
Q. Do you have any reason to believe that he

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did?
A. At this point, no.
Q. Continuing on in Exhibit 4. Directing your attention to the bottom of page 4, paragraph 10.
A. Exhibit 4. Say it again.
Q. The bottom of page 4, paragraph 20. This is your complaint against Popovich and Mast.
A. This has been amended since then.
Q. I understand. Paragraph 20 reads, "Following the execution of the mediation agreement with the high/low agreement contained therein and the final mediation award, Dulberg realized for the first time that the information Mast and Popovich had given Dulberg was false and misleading and that, in fact, the dismissal of the McGuires was a serious and substantial mistake."
Do you see that?
A. Yes.
Q. Can you tell me, as you sit here today, what false and misleading information did Mast and Popovich give you?
A. That I realized on the day of the – following the execution of the mediation agreement?

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Q. Correct.
A. The liability of the McGuires.
Q. What was false about it?
A. What made them liable and what didn't.
Q. What is it you learned to dispute what you were told?
A. I learned from a reliability expert that had the report there that day that the McGuires provided the tools which made Gagnon an agent of the McGuires. He was working at their behest.
Q. Who was this liability expert?
A. What's his name?
Q. He's a doctor?
A. Yes.
Q. Continue on with that paragraph. "Following mediation, Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016."
Do you see that allegation?
A. Yeah.
Q. Who advised you to seek an independent opinion from an attorney handling legal malpractice matters?

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A. I believe that was Boudin.
Q. You believe that or you know that?
A. I know that.
Q. You alleged it in this complaint so it's important that we know who that was.
A. Yes, that was Boudin.
Q. Boudin told you to seek an independent opinion from an attorney that handles malpractice matters?
A. Yes.
Q. It says you received that opinion on or about December 16, 2016.
A. Yes.
Q. That's separate and apart from any opinion you may have received from a liability expert, a doctor, an expert on chainsaws?
A. Yes.
Q. Who was the lawyer that you received a legal opinion from on December 16, 2016?
A. I believe that would be Thomas Gooch.
Q. The drafter of this complaint?
A. I'd have to look at the dates because I think – December 8th was the mediation; is that right?

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Q. Correct.
A. So the 16th would sound about right to be meeting with Gooch, but I can get that date.
Q. You met with Gooch –
A. Soon, within weeks. It was quick.
Q. Now that the door has been opened, you fired Gooch in this case, correct?
A. Yes.
Q. He drafted this complaint and he's also the one that gave you an opinion about legal malpractice liability on the part of my clients?
A. Yes.
Q. What is it that he told you on December 16, 2016?
MS. WILLIAMS: Objection. I don't think we've waived that privilege, but – can we go off the record for a second?
MR. FLYNN: I don't want to go off the record. I've asked this interrogatory in about five different ways and it hasn't been answered appropriately.
The allegation was made in the complaint. That's why I drafted the interrogatory the way I did. I don't think that there's been a square

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answer to it. This is clear that you're talking about a legal opinion.
BY THE WITNESS:
Q. Is this the same wording as we have in the current complaint?
BY MR. FLYNN:
Q. It's not exactly.
A. What would this be valid for, then?
Q. You've raised a response to a statute of limitations defense in this case and placed your knowledge of the malpractice and the date of incurring of an injury at issue.
Because your discovery of malpractice has been placed at issue, it's our position that you've waived privilege anyhow with respect to this conversation on December 16, 2016.
A. I'm not sure –
MS. WILLIAMS: There's not a question pending. I'm going to make a standing objection as to privilege with Gooch.
If we can agree that that objection will stand, we can go through this line of questioning and then if we need to later, have a judge determine whether or not that line of questioning is

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admissible. Are you agreeable to that?
MR. FLYNN: I'm agreeable to continuing on for a few minutes. I want to explore. I'll try to lay foundation for – to confirm this wasn't anyone else, for starters. Why don't we continue on and if you need to raise it again, we can talk.
MS. WILLIAMS: Otherwise, I'm just going to raise it to every single question you ask. I just don't want to have to continue to make the objection as to – if questions are asked about advice given by a legal malpractice attorney, I'm going to raise an objection as to that.
MR. FLYNN: Okay. But this is why we had the 201K conferences, multiple 201K conferences. It was made clear, to me, that there was a waiver with respect to subsequent counsel.
MS. WILLIAMS: Tom Gooch isn't subsequent counsel.
MR. FLYNN: The allegation has been made in this complaint and apparently this is subsequent counsel subsequent to my client's representation.
MS. WILLIAMS: It is a different case. It's not subsequent counsel in the underlying case. It's a new case.

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MR. FLYNN: We'll get to the interrogatory in a few minutes. I'll pull that out.
BY MR. FLYNN:
Q. Let me ask you. Is there any other attorney besides Mr. Gooch that gave you an opinion that's referenced here on December 16?
A. No one that isn't privileged.
Q. Could it have been anyone else?
A. No.
Q. So Gooch is the only person that's being referenced here in this allegation that's in your complaint that's a public record?
I'm not asking you right now what the opinion is. I'm going to do that later. I'm asking you who gave it to you. It's not anyone besides Mr. Gooch, correct?
A. Yes. It was Thomas Gooch.
Q. He drafted the very complaint that that allegation is contained in?
A. Yes.
Q. Dr. Landford was the liability expert that you referenced earlier, correct?
A. Yes.
Q. Back to the allegation that Gooch and –

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that Popovich and Mast provided you false and misleading information. That information was simply their legal opinion on the McGuires' liability; isn't that correct?
A. No. There was nothing simple about that. That's a very complex series of things that go all the way back to before the McGuire settlement.
Q. They didn't lie to you, did they?
A. It depends on how you define lie.
Q. How do you define lie?
A. If you know better and you say something else, that's a lie. Omission is a lie.
Q. Did they provide you with anything other than a legal opinion as to the McGuires' liability?
A. Yes. They provided me with case laws. They provided me with all different stuff. Yes.
Q. Whatever the advice that was given to you on December 16, 2016, you felt that you were mislead by Popovich and Mast at that point in time, correct?
A. At that point in time it was confirmed to me that I had a valid case against Popovich.
Q. You had a valid malpractice case against Popovich?
A. Yes. I did not know before that.

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Q. As of December 16, 2016?
A. Yes.
Q. Why is it that you didn't file that lawsuit until nearly a year later on November 28, 2017?
A. I believe because Thomas Gooch had some health issues and then his wife had some health issues. It took a while.
(WHEREUPON, a certain document was marked Exhibit No. 11, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what has been marked as Exhibit 11. This is one set of your supplemental Answers to Interrogatories.
First, I'll ask you if that is your verification and signature at the end?
A. That is my signature.
Q. Again, I don't know if that verification was attached to this original document. It may have been. But there's been some confusion with respect to these verification pages. This is your signature and you answered these interrogatories, correct?
A. Yeah.

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Q. So this is a valid verification page with respect to this discovery document; is that a fair statement?
A. This is supplemental to original answers.
Q. That's your signature and you agree these are your answers?
A. I've reviewed them and we went over them and yes, I agree.
Q. And they are accurate?
A. As accurate as we can be.
Q. If I could direct your attention to Interrogatory No. 26. Do you see that?
A. Okay. Yes, I see it.
Q. This is similar to what we just talked about a few minutes ago. I'll read the interrogatory to you. "Identify and describe the false and misleading information Mast and Popovich provided to you and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake as alleged in paragraph 56 of your second amended complaint."
Do you see your supplemental answer here?

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A. I see it, yes.
Q. You reference the mediation award and then you state, quote, "At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning."
A. I do.
Q. Can you explain what that means because I don't quite understand it.
A. Hans Mast assured me – I want to go back to 2013, the Fall between October and the signature of the final release for the McGuires.
He assured me that, he said -- at that time he didn't tell me what anybody's policies were. He assured me that if we let the McGuires out of the case, Gagnon has enough insurance, you're going to get everything from him, so it doesn't matter that you're carrying the McGuires in the case.
Q. The next interrogatory is 27. "Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint including the identity of the expert, any opinions and any other information

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provided by the expert which caused you to learn in the summer of 2016 and became reasonably aware that Mast and Popovich did not properly represent you."

What does the summer of 2016 have to do with your discovery of malpractice?

A. Technically, I was sent Dr. Landford's report – I might be off a little by a couple months here, but I think in July of that year. And I read it, but I didn't – you don't catch everything the first time you read it.

It was not until later that I caught the part of the report that was brought to the attention – it caught my eye when I was sitting there and reading it.

Q. You didn't read any of this interrogatory or the original interrogatory as requesting legal opinions that you had alleged that gave you notice that there was a malpractice claim against Mast and Popovich?

A. Excuse me?

MR. FLYNN: Can you read that back.

(WHEREUPON, the record was read by the reporter as requested.)

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BY THE WITNESS:

A. The way she said it, I don't understand.

BY MR. FLYNN:

Q. I'll rephrase it.

We've known about this allegation in the original complaint since it was filed. You received some legal opinion in 2016. That's why you didn't know you had a malpractice case against Mast and Popovich.

We asked you in discovery answers a couple different ways what those legal opinions are. You didn't read 26 and 27 as requesting information about legal opinions?

A. I don't know that an expert witness would be considered a legal opinion. Wouldn't that be more like an attorney?

Q. I'll ask you again. Why is it that you first became aware of a legal malpractice matter against Mast and Popovich on or about December 16, 2016?

A. December 16th I was talking to a legal malpractice attorney.

Q. You were told that there was a case against –

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A. A valid case, yes.

Q. – Mast and Popovich?

A. Yes.

Q. Why is it you didn't know about this valid case prior to that date?

A. Because I hadn't talked to anybody that was a lawyer that specialized in that area.

Q. Whatever it is that he said to you gave you the basis for believing you had a valid case against Mast and Popovich?

A. Very much so, yes.

Q. You're withholding that information from me right now, as we sit here. You won't tell me what that expert said, correct?

MS. WILLIAMS: Repeat the question.

(WHEREUPON, the record was read by the reporter as requested.)

MS. WILLIAMS: I'm asserting attorney-client privilege on behalf of my client for Gooch's advice on December – in December of 2016.

However, because I want to move forward with this deposition, if he can answer the question, I believe we should go ahead and move forward and have him answer the question.

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I'll assert the privilege with the understanding that this may have to be briefed later.

MR. FLYNN: To be stricken later?

MS. WILLIAMS: Right.

MR. FLYNN: The substance of the answer he can put on the record. You're just saying you may move to strike it later?

MS. WILLIAMS: Right. I want to maintain the privilege with the objection, but I don't want to have to call the judge right now. I don't think it's something we should have to call the judge about right now.

MR. FLYNN: Just for the record, I believe it's been placed at issue by virtue of the first amended complaint. The responses to the statute of limitation defenses that were raised in very dispositive motions before Gooch withdrew from the case, the gist of that is the discovery rule has been raised and, therefore, it's our position that the date of discovery has been placed at issue and, accordingly, any legal opinions that were provided to this plaintiff have been exposed and that we're entitled to know what those are.

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MS. WILLIAMS: Can I also note one more thing?
MR. FLYNN: Sure.
MS. WILLIAMS: In the supplemental – in the request it specifically refers to paragraph 57 of the second amended complaint, which is different.
MR. FLYNN: It is different. I'll acknowledge that. I believe that the prior original interrogatories asked for any opinions relative to the discovery of the malpractice. I could be wrong. There was a reason I asked this and that's why I believe that's what it was about.
MS. WILLIAMS: So –
MR. FLYNN: That particular one I agree with you is not phrased as calling for –
MS. WILLIAMS: Right. That's the question that was asked. We answered the question that was asked, which that particular paragraph does not refer to a legal expert. It just merely – I'll read it out loud. "It was not until the mediation in December of 2016 based on the expert's opinion that Dulberg retain for mediation that Dulberg became reasonably aware."
I just want it clear that he did answer the question that was asked. I understand your line

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of questioning and we'll agree to move forward.
MR. FLYNN: I believe there were other discovery requests that did point to that and I think we can take a break here and I can find them fairly quickly because I think we're getting close to the end anyway.
MS. WILLIAMS: Okay.
BY MR. FLYNN:
Q. Did you ever receive any money from the mediation award?
A. No. I received money from the bankruptcy itself. It was a surplus bankruptcy.
Q. There was a $300,000 award given in the mediation.
A. That did not go to me. That went to bankruptcy.
Q. It was collected on your behalf and paid to the bankruptcy trustee, correct?
A. Correct.
Q. All $300,000?
A. I don't know that because I think – I don't know how exactly it works. I heard attorneys have a lien that's special. I don't know how they break it up. I assume it goes to the trustee.

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Q. The Boudins weren't working for free. They got something out of it, right?
A. Yes.
Q. The trustee took the remainder and paid off some of your creditors, correct?
A. Correct. All of them.
Q. But the award was paid to the trustee on your behalf?
A. I believe so. I don't know how it worked.
Q. How much was the surplus after your creditors were paid?
A. After just the creditors?
Q. How much did you get?
A. How much did I get?
Q. Yes.
A. A third.
Q. I'm asking how much money did you get?
A. A third of the award.
Q. Dollars. How much money did you get?
A. Roughly a hundred.
Q. $100,000?
A. I don't know the exact number. It's roughly a hundred.

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Q. Was there a check that was issued to you?
A. By the trustee, yes.
Q. Did you cash it?
A. Yes.
Q. At what bank?
A. McHenry Bank & Trust.
Q. Do you still have an account there?
A. Yes.
Q. Do you have a copy of the canceled check?
A. I'm sure the bank has a photo thing.
Q. You can request a copy of the check, correct?
A. I could. I could see if they got it.
Q. I would ask you to do that. If you have any other documentation relative to the payouts that were made by the bankruptcy trustee on your behalf, we are requesting that information.
MR. FLYNN: Why don't we take a break and I'm going to look for one document and then we're just about done here.
(WHEREUPON, a recess was had.)
MR. FLYNN: Mark these as the next two.

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(WHEREUPON, a certain document was marked Exhibit No. 12, for identification, as of 02/19/2020.)
(WHEREUPON, a certain document was marked Exhibit No. 13, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm going to show you what I've marked as Exhibits 12 and 13. Twelve are your answers to Hans Mast's interrogatories. Thirteen is your responses to Popovich's request for production.
Interrogatory No. 1 from Mast asks, "Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach."
Do you understand that?
A. Yes.
Q. So how is it they committed malpractice?
A. May I see it?
Q. I'm going to show it to you in a second. I only have one copy.
This is basically, how did you first become aware that they committed malpractice?

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That's the essence of that interrogatory.
Here is your response. I can show that to you. It doesn't reflect any discussion with any malpractice lawyer in December of 2016.
Tell me –
A. Let me read it again. We're talking about No. 1 on this?
Q. Correct.
A. Okay.
Q. You understand it?
A. Yes.
Q. Would you agree that the legal opinion you received on December 16, 2016 is responsive to that interrogatory, whatever it is that you were told?
A. Yes.
Q. You didn't identify this December 16, 2016 discussion in the answer to that interrogatory, correct?
A. Say that again.
Q. Your discussion with Mr. Gooch on December 16, 2016, that's referenced in your original complaint, you didn't respond and identify it in this answer to the interrogatory, correct?

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A. This asks for every way Popovich or Mast breached the duty of care. It didn't ask for Gooch's opinion.
Q. How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?
A. Yes.
Q. That's what you've alleged here in this complaint.
A. Yes.
Q. Here I'm asking you, each and every way that they ever breached a duty of care to you. I covered the waterfront. You didn't answer --
A. On the McGuire case it was between October 2013 and January 2014. Yes. There's a multitude of things and that's why I listed a range.
Q. I'm asking when you became aware of it, in that interrogatory. Do you see that?
A. I became aware of that when Thomas Gooch read them and said there's a problem here.
Q. That's not the way you answered the interrogatory, correct?
A. I answered the first part. I did not answer after the comma and the and.

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Q. There's no objection and indication that any information is being withheld, correct?
A. Excuse me?
Q. There's no objection and an indication that you're withholding –
A. I was not withholding.
Q. I'll show you Exhibit 13. It asks – Exhibit 13 are the production requests to you. Number 8 asks for you to produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created and the date the recipient received the document.
The answer is, "The plaintiff is only withholding attorney-client communication between his successor counsel."
Is that your answer to the production request and did I accurately read No. 8?
A. May I consult with her for a minute?
Q. Sure.
THE WITNESS: Can we go off the record?
MS. WILLIAMS: If you can answer the question, answer the question first.

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BY THE WITNESS:
A. It's been a while since I've done this, so I'm not sure who the successor counsel is. Is it her or is it the Boudins or Balke?
BY MR. FLYNN:
Q. I think successor counsel, we can both agree, the successor counsel in the underlying case which would be Balke and then Boudin.
You didn't identify any documents withheld other than documents between you and successor counsel, correct?
THE WITNESS: I believe we waived those, didn't we, for Balke and Boudin?
MS. WILLIAMS: For Balke and Boudin we can represent that we waived those.
BY MR. FLYNN:
Q. Let me ask a different question.
Did Gooch communicate with you in writing relative to his opinion that you had a legal malpractice case against Mast and Popovich?
A. In writing?
Q. Yes.
A. I suppose the agreement between us that he would represent me because I had the case is a

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document in writing.
Q. Did he tell you – strike that.
The discussion that you reference in the complaint, paragraph 20 of December 16, 2016, was that a face-to-face communication with Gooch?
A. What number is that?
Q. Exhibit 4, paragraph 20. The legal opinion you received, was it verbal, was it written?
A. I believe it was verbal.
Q. Now, I'm going to ask you what he said. There was an objection and that will be addressed by the Court later. Please tell me what Gooch told you.
A. He read what I brought him, looked through some things, and I don't remember if it was the same day that we talked to him or he took a day or two. I don't remember. He got back to me and he said, "You have a case here. You have a valid case."
Q. Did he say why?
A. On the basis of what I brought to him. Yes.
Q. Specifics, though. I don't want to talk about generalities. Did he tell you what Mast and

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Popovich did wrong and how it injured you?
A. How it injured me? Yeah.
Q. The first part of my question was, did he tell you exactly what they did wrong in connection with your – their representation of you?
A. He probably did. I'm not recalling it right now. I'm pulling a blank.
The parts of the conversation I'm remembering, and for some reason I'm not pulling it. We've been at this a while and this is a long thing. Yes, he said based on what he saw, he saw reason for malpractice.
Q. You don't remember any details, as you sit here? Did you discuss the liability of property owners in Illinois?
A. Well, if they were just property owners in the case, that would be one thing, but they weren't just property owners.
Q. That wasn't my question. I'm asking if you discussed it?
A. Certainly.
Q. You and Gooch discussed the liability of the McGuires in the case?
A. Yes.

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Q. What did you say to him and what did he say to you?
A. I showed him the expert opinion.
Q. The chainsaw expert?
A. Yes.
Q. Did you show him any deposition transcripts?
A. Yes.
Q. Which ones?
A. All of them.
Q. And he read them before you talked?
A. I don't remember. Like I said, it may have been a few days between our initial meeting and bringing the whole file that I had and trying to get what the Boudins had and letting him go through it. I don't remember how long that took.
Q. How did you transmit the documents to him –
A. My brother carried them.
Q. Let me finish.
How did you transmit the documents to Mr. Gooch, including the deposition transcripts?
A. I believe we brought him a box.
Q. So you physically handed the documents to

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him?
A. I didn't physically hand them. My brother did.
Q. Did you communicate with Mr. Gooch by e-mail, at all, leading up to this meeting?
A. No.
Q. Did he ever write you any letters?
A. An e-mail or regular mail or what are you talking about?
Q. Any letters whatsoever.
A. Throughout the course of his representation, yes.
Q. What about in December of 2016?
A. I believe we started communicating in December, yes.
Q. But in writing?
A. In e-mails, sure.
Q. Did he discuss –
A. We may have. I'm not – whenever we started – whenever he started sending me things and going back and forth, I don't remember the exact date, but it was right after he started representing me, sure, we exchanged e-mails and started, yes.
Q. When did Gooch begin representing you?

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A. The day that he agreed to represent me. I believe it would have been the day that he decided that he had a case.
Q. On or about December 16?
A. Yes.
Q. At that point in time, or shortly thereafter, he communicated with you in writing the details of the breach of the standard of care committed by Popovich and Mast; is that correct?
A. I believe he started to detail those out in the complaint and we were working it back and forth trying to get it right.
Q. When did you first exchange drafts of the complaint?
A. I'd have to look back in the e-mails. I don't remember the dates.
Q. Did you look for any of these e-mails in connection with my discovery requests in this case?
A. At the time I think we thought they were privileged.
Q. That privilege objection wasn't exactly made. My question is, did you look for them?
A. Did I look for them? I have them.
Q. I would ask that you preserve each and

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every communication between you and Mr. Gooch, all written communications, even phone records that might reflect the dates and times of your phone communications, if any. Did you use a cell phone back then?
A. I used VOIP over a data line.
Q. Who was your carrier?
A. Comcast.
Q. Is that still your carrier?
A. Yes.
Q. Do you have the same phone that you utilized?
A. Same phone number for 50 years, yes.
Q. What else could you remember that Gooch told you on or about the 16th of December 2016 about Mast and Popovich breaching the standard of care and how it damaged you?
A. Say that again.
Q. What, if anything, else do you recall about your discussions with Gooch on December 16 regarding the breach of the standard of care by Popovich and Mast and how it injured you?
A. We discussed the whole scenario between October and January and what happened. It was

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pretty detailed. We discussed everything that you see that's been communicated in the e-mails. He didn't have much else to go on other than the documents and the e-mails.
Q. You're talking about the e-mails between you and Hans from the fall of 2013?
A. Yes.
Q. Ultimately leading to the $5,000 settlement?
A. Yes.
Q. Other than you have a case, what did Gooch say to you?
A. He said that they definitely committed malpractice.
Q. Did he ever put this in writing?
A. Did he ever put it in writing? I think he backed it up by filing a suit. That's documented.
Q. Again, the suit wasn't filed until November of 2017.
A. Yes, he had some health problems and then his wife had some health problems. Believe me, I was pushing for him to get that done.
Q. From December of 2016 until the complaint

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was filed, you exchanged some drafts of complaints with him?
A. I believe he let me see what he wanted to put in the complaint. I got to review some things. Of course I had, do this or that's not right. In fact, a couple of these things in here we had to definitely – you caught one. He totally worded it wrong. It was wrong. We had to amend.
MS. WILLIAMS: His question was, did he give you drafts for you to review?
THE WITNESS: Yes.
BY MR. FLYNN:
Q. These were exchanged by e-mail?
A. I believe so, yes.
Q. So you would have records of them?
A. Yes.
Q. Any comments with respect to the pleadings, as well, did you ever ask him questions? Did he explain to you the basis for the allegations in the draft complaints, similar to what you did with Hans?
A. Over many times, yes.
Q. This is all reflected in e-mails?
A. Yes.

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Q. Ultimately, you didn't file until November of 2017?
A. Correct.
Q. Popovich ceased being your lawyer March 19 of 2015, correct?
A. That sounds about right.
Q. Until December 16, 2016, you didn't have any reason to believe there was a malpractice case against –
A. Say the date again.
Q. Until December 16, 2016, you didn't have any other reason to believe there was a malpractice case against Popovich and Mast?
A. I did not know that I had a case, no.
Q. You threatened one with respect to the Gagnon case –
A. Yes.
Q. – at another point in time, correct?
A. I think I threatened him a few times in there. Yeah. I was actually nice to what I really wanted to say.
Q. Subject to the ruling on these objections, you don't recall any other specific details that you discussed with Popovich – I'm

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sorry – Gooch on December 16, other than what we already talked about?
A. I discussed the exact same things that you – the same documents that you already have. We went over the case that Mast and Popovich had against the McGuires. He followed through all the way to the end. We went over the whole case. You see as much as he did.
Q. Did Gooch ever explain to you why the McGuires would have been liable any more than Mast explained to you that they wouldn't be liable?
A. He said he agreed right away. He said that's obvious.
Q. Did Gooch ever provide you with any cases or statutes?
A. Provide to me, maybe. Maybe. I don't know.
Q. Would that be by e-mail?
A. It could be. I was in his office quite a few times. He may have.
Q. As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to

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the McGuires' liability?
A. That they were definitely liable. He tried to say that – like Popovich and Mast were first- or second-year lawyers and that they may have made a mistake here.
I said they've got 20 years in this. You think they'd know the difference. That's the kind of thing. He agreed with me. Twenty years, yeah, they should have known better.
Q. Did you ever discuss the specifics of the McGuires' potential liability with Gooch?
A. Liability with Gooch?
Q. With Gooch, did you ever discuss the specifics of the McGuires' liability other than he thinks you have a case?
A. Yes.
Q. Did he ever tell you why? What was it?
A. Because he agreed with the expert's opinion.
Q. The expert on the chainsaw?
A. Yes. The liability expert.
Q. The expert said you should use safety goggles and gloves and things like that?
A. He said more than that, but yes.

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Q. Do you know who commissioned that expert report?
A. Boudins.
Q. Do you know when the first draft of that doctor's expert report was circulated?
A. I heard that Boudin got it in February, maybe. I don't think I got it until July, but I'm not sure about that.
Q. July of what year?
A. The same year as the mediation.
Q. Of 2016?
A. Yeah.
Q. So you actually read it in advance of the mediation?
A. I talked about this earlier. I said yes. You don't catch everything the first time you read it. I was sitting there at the mediating table and I was reading it and I caught it and I turned to Randy and I said, after it was over, does this mean – that means.
Q. Means what?
A. Does this mean the McGuires are liable? Yeah, that means they are liable. He said, call my office after everything and I'll give you a name for

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an attorney you should go see.
MR. FLYNN: Any follow-up, Julia?
MS. WILLIAMS: I have two follow-up questions.

EXAMINATION

BY MS. WILLIAMS:
Q. Did you ever give Hans authority to make a settlement demand regarding Mr. Gagnon?
A. I think at one time in one of my meltdown letters I said get whatever you can, but no, I never actually signed anything saying you have the right to offer a settlement.
Q. Did you ever give Hans authority to make a settlement demand with regard to the McGuires?
A. A demand, no. He said he was going to probe and see what was out there, and I said, if you want to do that, that's fine.
MS. WILLIAMS: I have no further questions.
MR. FLYNN: Signature?
MS. WILLIAMS: We can waive signature.
THE REPORTER: Are you ordering this?
MR. FLYNN: Yes.
THE REPORTER: Regular delivery, e-tran?
MR. FLYNN: Yes.
THE REPORTER: Copy?

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MS. WILLIAMS: Yeah.
THE REPORTER: Regular delivery, e-tran?
MS. WILLIAMS: PDF.
(WHEREUPON, at 4:00 p.m., the deposition of PAUL DULBERG was concluded.)
* * * * *

Page 144

STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)

I, KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify:

That previous to the commencement of the examination of the witness, the witness was duly sworn to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction, and constitutes a true record of the testimony given and the proceedings had;

That the said deposition was taken before me at the time and place specified;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto

Page 145

set my hand and affix my seal of office at Chicago, Illinois this 3rd day of March, 2020.

Karen Piloggi

Notary Public, DuPage County, Illinois.
My commission expires 1/2/24.

CSR Certificate No. 84-3404

Page 146

EXAMINATION

	Page	Line
PAUL DULBERG		
Examination by Mr. Flynn	3	6
Examination by Ms. Williams	142	4

E X H I B I T S

Deposition Exhibit	Page	Line
Exhibit No. 1	47	19
Exhibit No. 2	52	6
Exhibit No. 3	60	6
Exhibit No. 4	65	2
Exhibit No. 5	67	13
Exhibit No. 6	79	12
Exhibit No. 7	84	8
Exhibit No. 8	87	10
Exhibit No. 9	91	2
Exhibit No. 10	101	9
Exhibit No. 11	114	10
Exhibit No. 12	125	2
Exhibit No. 13	125	5

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANT HANS MAST'S
INTERROGATORIES TO PLAINTIFF PAUL DULBERG

NOW COMES Defendant, Hans Mast, by and through his attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 213, propounds the following interrogatories on Plaintiff, Paul Dulberg, to be answered under oath within 28 days:

DEFINITIONS & INSTRUCTIONS

The pronoun "you" refers to Plaintiff, Paul Dulberg, to whom this production request is addressed, as well as their agents, representatives, employees, anyone acting on his behalf, and unless privileged, his attorneys.

The term "document" as used herein means all records, papers, and books, transcriptions, pictures, drawings, or diagrams of every nature, whether transcribed by hand or by mechanical, electronic, photographic, or other means, as well as sound reproduction of oral statements or conversations by whatever means made, whether in your actual or constructive possession or under your control or not, relating or pertaining in any way to the subject matters in connection with which it is used, and includes originals, all file copies, and all other copies, no matter how prepared, and all drafts prepared in connection with such writing, whether used or not, including by way of

EXHIBIT D

illustration and not by way of limitation, the following: books, records, contracts, agreements, expense accounts, canceled checks, catalogues, price lists, sound and tape recordings, memorandum (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts, and activities), minutes, diaries, calendar or desk pads, scrapbooks, notebooks, correspondence, emails, bulletins, circulars, forms, pamphlets, notices, statements, journals, postcards, letters, telegrams, reports, intra-office communications, photographs, microfilm, maps, and deposition transcripts, whether prepared by you for your own use or for transmittal or received by you.

INTERROGATORIES

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER:

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

ANSWER:

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

ANSWER:

4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than $100,000?

ANSWER:

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

** FILED ** Env: 9649054
McHenry County, Illinois
17LA000377
Date: 7/2/2020 9:30 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17 LA 377

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

PLEASE TAKE NOTICE that on the 2nd day of July 2020 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:

- **Supplemental Requests for Production to Plaintiff;**

a copy of which is attached hereto and herewith served upon you.

Dated this 2nd day of July 2020.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: */s/ George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

EXHIBIT E

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing DEFENDANT'S NOTICE OF SERVICE OF DISCOVERY DOCUMENT was served upon:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
312-357-1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

by email on July 2, 2020.

/s/ George K. Flynn
One of their Attorneys

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION TO PLAINTIFF

NOW COMES Defendant, The Law Offices of Thomas J. Popovich, P.C. by and through its attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 214, respectfully requests Plaintiff, Paul Dulberg, to produce within 28 days at the law offices of Karbal, Cohen, Economou, Silk & Dunne, LLC, 150 South Wacker Drive, Suite 1700, Chicago, Illinois 60606, the following photographs, documents, objects, and other tangible things:

SUPPLEMENTAL PRODUCTION REQUESTS

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

RESPONSE:

2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

RESPONSE:

3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

RESPONSE:

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their representation of you or provision of legal services to you.

RESPONSE:

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

RESPONSE:

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition from February 19, 2020.

RESPONSE:

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

RESPONSE:

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

George Flynn

From: George Flynn
Sent: Thursday, September 17, 2020 4:06 PM
To: Paul Dulberg
Subject: RE: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Thank you.

Pursuant to Illinois Supreme Court Rule 201(k), please advise when the supplemental discovery answers and documents will be served. As I indicated in court on September 10, I plan to file a motion to compel very soon if we do not receive the sworn answers and all responsive documents.

Best regards,

-----Original Message-----
From: Paul Dulberg <Paul_Dulberg@comcast.net>
Sent: Thursday, September 17, 2020 11:19 AM
To: George Flynn <gflynn@karballaw.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear Mr Flynn,

Please find the attached files named 2020-09-17_Appearance Pro se.pdf and 2020-09-17_ProofOfDelivery.pdf

I have filed these with the McHenry County Clerk via the i2file web site.

Thank you,
Paul

Paul Dulberg
847-497-4250

GROUP EXHIBIT F

George Flynn

From: George Flynn
Sent: Saturday, August 29, 2020 8:59 PM
To: Julia Williams
Cc: Ed Clinton; Mary Winch; Linda Walters
Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Julia:

I write pursuant to rule 201(k) and rule 219(c). Mr. Dulberg is late in responding to discovery pursuant the the extension you requested, and to which I agreed.

It is finally time for Mr. Dulberg to properly answer discovery in conformity to his allegations, and relative to the matters which he has placed at issue.

Once the Gooch discovery is produced, I would like to immediately depose Dulberg and Gooch. Please pass this along to your client.

You and your firm have been nothing but professional and it was a pleasure working with you.

Best regards,

> On Aug 18, 2020, at 2:13 PM, George Flynn <gflynn@karballaw.com> wrote:
>
> Julia:
>
> This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k).
>
> I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated.
>
> I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved).
>
> The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020.
>
> Please feel free to contact me if you would like to discuss this matter.
>
> Very truly yours,

From: Julia Williams <juliawilliams@clintonlaw.net>
Sent: Thursday, July 30, 2020 10:07 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
Subject: Fwd: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Begin forwarded message:

From: Linda Walters <lwalters@KARBALLAW.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)
Date: July 2, 2020 at 11:11:39 AM CDT
To: "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC

150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<image001.jpg>

P: (312) 431-3641

<image002.png>

F: (312) 431-3670

<image003.png>

E: lwalters@KARBALLAW.com

CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

George Flynn

From: George Flynn
Sent: Thursday, July 30, 2020 10:12 AM
To: Julia Williams
Cc: Ed Clinton; Mary Winch
Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Hi Julia. Yes, agreed.

On Jul 30, 2020, at 10:07 AM, Julia Williams <juliawilliams@clintonlaw.net> wrote:

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Begin forwarded message:

From: Linda Walters <lwalters@KARBALLAW.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)
Date: July 2, 2020 at 11:11:39 AM CDT
To: "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg>

P: (312) 431-3641

<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png>

F: (312) 431-3670

<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png>

E: lwalters@KARBALLAW.com

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<2691756v1 - Supplemental Request for Prod. to Plaintiff.PDF>
<2691837v1 - Notice of Service of Discovery Documents -- Supplemental RTP to Plaintiff (FS).PDF>

George Flynn

From: George Flynn <gflynn@karballaw.com>
Sent: Tuesday, September 1, 2020 10:31 AM
To: Julia Williams
Cc: Ed Clinton; Mary Winch; Linda Walters
Subject: RE: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Julia:

Thank you. I understand the position you and your firm are in. I will plan to either file a motion to compel, or advise the court of our intentions to file a motion on September 10.

Stay safe.

Very Truly Yours,

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

From: Julia Williams <juliawilliams@clintonlaw.net>
Sent: Monday, August 31, 2020 8:45 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>; Linda Walters <lwalters@KARBALLAW.com>
Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

I will certainly pass this along to our client.

Unfortunately, because we are withdrawing, we are not comfortable answering discovery when another counsel may be appearing. Mr. Dulberg is seeking new counsel and would like to have his new counsel answer. I expect that we will be withdrawing on September 10, 2020. The court will grant Mr. Dulberg 21 days to find alternative counsel. Based upon this, it is unlikely that any answers to supplemental discovery will be prepared prior to the end of September.

Thank you again for your time and courtesy in this case. It has been nice to work with you as well.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

> On Aug 29, 2020, at 8:58 PM, George Flynn <gflynn@karballaw.com> wrote:
>
> Julia:
>
> I write pursuant to rule 201(k) and rule 219(c). Mr. Dulberg is late in responding to discovery pursuant the the extension you requested, and to which I agreed.
>
> It is finally time for Mr. Dulberg to properly answer discovery in conformity to his allegations, and relative to the matters which he has placed at issue.
>
> Once the Gooch discovery is produced, I would like to immediately depose Dulberg and Gooch. Please pass this along to your client.
>
> You and your firm have been nothing but professional and it was a pleasure working with you.
>
> Best regards,
>
> **George Flynn**
>
> **Karbal | Cohen | Economou | Silk | Dunne | LLC**
> 150 S. Wacker Drive
> Suite 1700
> Chicago, IL 60606
> <phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
> <fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
> <envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
>
> **CONFIDENTIALITY NOTE:**
> This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.
>
> > On Aug 18, 2020, at 2:13 PM, George Flynn <gflynn@karballaw.com> wrote:
> >
> > Julia:
> >
> > This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k).

I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated.

I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved).

The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020.

Please feel free to contact me if you would like to discuss this matter.

Very truly yours,

From: Julia Williams <juliawilliams@clintonlaw.net>
Sent: Thursday, July 30, 2020 10:07 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
Subject: Fwd: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Begin forwarded message:

From: Linda Walters <lwalters@KARBALLAW.com>

Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)
Date: July 2, 2020 at 11:11:39 AM CDT
To: "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<image001.jpg>

P: (312) 431-3641

<image002.png>

F: (312) 431-3670

<image003.png>

E: lwalters@KARBALLAW.com

CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

<image002.png><image003.png><image001.jpg>

** FILED ** Env: 14019112
McHenry County, Illinois
17LA000377
Date: 7/13/2021 1:29 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO SUPPLEMENT DEFENDANTS' MOTION TO COMPEL AND TO REQUEST HEARING ON PLAINTIFF'S COMPLIANCE WITH APRIL 6, 2021 ORDER ON DEFENDANTS' MOTION TO COMPEL

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for their Motion to Supplement Defendants' Motion to Compel and To Request Hearing on Plaintiff's Compliance with April 6, 2021 Order on Defendants' Motion to Compel, state as follows:

1) Defendants are bringing this motion to supplement their prior Motion to Compel and request a hearing on Plaintiff's compliance with the Court's April 6, 2021 Order (attached as Ex. A).

2) The Defendants never received a file-stamped copy of the draft order which their counsel submitted to the Court for entry on April 2, 2021 (see Group Ex. B, April 2, 2021 email from Linda Walters, and attached Order). Defendants never received a response, nor received electronic notice of the entry of the Order on April 6, 2021, and accordingly did not diary the June 14, 2021 hearing, and thus did not appear.

3) In the Court's April 6, 2021 Order granting Defendants' motion to compel, the Court ordered the Plaintiff to serve a supplemental answer to Mast's Interrogatory No. 1, and amend its responses to Popovich's Supplemental Request. The Court further ordered, "Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

4) On June 1, 2021, the Plaintiff served Exhibit C (Plaintiff's Amended Additional Answer to Defendant Hans Mast's Interrogatory to Plaintiff Paul Dulberg), and Exhibit D (Plaintiff's Amended Additional Response to Defendant The Law Offices of Thomas J. Popovich, P.C.'s Supplemental Request for Production). Dulberg also produced fourteen pages of bates labeled records (See Ex. E).

5) The Plaintiff has not complied with the Court's April 6, 2021 Order. Accordingly, Defendants respectfully request that the Court strike the non-responsive portions of Exhibits C, D, and E and close written discovery.

6) With respect to Exhibit C, Dulberg provide a "non-answer." Dulberg was ordered to specifically answer each discovery request. Mast's Interrogatory No. 1 states as follows: Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach. Dulberg's amended additional answer does not describe how there was a breach of the standard of care, he simply identifies a discovery date (December 12, 2016) based upon a binding mediation order. He does not describe the breach of the standard of care, or how, specifically, he became aware of it. He simply writes, "He knew the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016." He does not describe the

discussion or explain how the standard of care was breached, or why his discussion with Tom Gooch enlightened him as to the breach.

7) Moreover, Popovich's supplemental requests for production are aimed specifically at identifying how Dulberg "discovered" his breach of the standard of care, and when he recognized damages as a result of same. In Exhibit D, Dulberg's amended additional response, Dulberg simply attaches various pages from pleadings in this case. He does not attach any discoverable materials, such as emails, letters, etc. Instead, he is simply regurgitating his position in this case. As previously argued in Defendants' Motion to Compel and at hearing, if Dulberg has no documents responsive to the discovery requests, and he has no basis for a tolling of the statute of limitations in this case, then his answer should simply state, "none." Enough is enough. Dulberg's non-responses to this discovery requests should be stricken, and he should be barred attempting to present any additional evidence in support of his tolling theory.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court grant their Motion to Supplement Defendants' Motion to Compel and set hearing on Plaintiff's compliance with April 6, 2021 Order on Defendants' Motion to Compel, and for any and all further relief this Court deems just and appropriate.

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17 LA 377

FILED
APR - 6 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

ORDER

This matter coming to be heard for status and continued hearing on Defendant's Motion to Compel, the court having heard argument, it is hereby ordered:

1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

2) Plaintiff's objections of "undue burden" raised in its initial responses to Popovich's Supplemental Requests for Production numbers 1-7 are overruled.

3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.

Prepared by:
Atty. No. George K. Flynn
ARDC #6239349
Name: Karbal, Cohen, Economou, Silk & Dunne, LLC
Attorney for: Defendants
Address: 150 S. Wacker Drive, Suite 1700
City: Chicago, IL 60606
Telephone: (312) 431-3700
E-Mail: gflynn@karballaw.com

....., 2021
ENTER:

.....
eSigned by THOMAS A. MEYER 04/06/2021 09:09:24 RNOhbggY

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

EXHIBIT A

Linda Walters

From: Linda Walters <lwalters@karballaw.com>
Sent: Friday, April 2, 2021 10:17 AM
To: proposedorders
Cc: contact@lawofficeofalphonsetalarico.com; George Flynn
Subject: RE: Paul Dulberg v. The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (Circuit Court of McHenry County, IL Case No.: 17 LA 000377)
Attachments: 2868280v1 - Proposed Order (4-2-21).PDF; 2867639v1 - Proposed Order (4-2-21).DOCX

On behalf of George Flynn, attached is a copy of a proposed order in both word and pdf format relative to the above. All counsel of record have been copied on this email.

Thank you.
Linda Walters
Asst. to George Flynn

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@karballaw.com

CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

Linda Walters

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GROUP EXHIBIT B

ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

ORDER

This matter coming to be heard for status and continued hearing on Defendant's Motion to Compel, the court having heard argument, it is hereby ordered:

1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

2) Plaintiff's objections of "undue burden" raised in its initial responses to Popovich's Supplemental Requests for Production numbers 1-7 are overruled.

3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.

Prepared by:

Atty. No.	**George K. Flynn ARDC #6239349**
Name:	**Karbal, Cohen, Economou, Silk & Dunne, LLC**
Attorney for:	**Defendants**
Address:	**150 S. Wacker Drive, Suite 1700**
City:	**Chicago, IL 60606**
Telephone:	**(312) 431-3700**
E-Mail:	**gflynn@karballaw.com**

....., 2021

ENTER:

.....

Judge **Judge's No.**

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S AMENDED ADDITIONAL ANSWER TO DEFENDANT HANS MAST'S INTERROGATORY TO PLAINTIFF PAUL DULBERG

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Amended Additional Answer to Defendant Hans Mast's Interrogatory #1 states as follows:

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER: Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

EXHIBIT C

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

AMENDED ADDITIONAL ANSWER: Dulberg discovered the pecuniary injury on December 12, 2016 based upon a binding mediation award and knew he had a legal malpractice case on December 16, 2016. He knew that the Defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

Dulberg discovered in the defendants' document disclosure, POP 000192, that Mast had in fact sent the McGuires' attorney a $7,500.00 offer on October 22, 2013 without Dulberg's knowledge and that was before the November 4, 2013 meeting in Mast's office when Mast first asked Dulberg if Mast could probe and see what was on the table for a possible settlement with the McGuires.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily belies the same to be true.

Paul Dulberg

June 1, 2021

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S AMENDED ADDITIONAL RESPONSE TO DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Amended Additional Response states as follows:

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016, 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

Objection-privileged Bates stamped e-mail string 8744-8746

EXHIBIT D

2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016 and 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

RESPONSE: Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

Bates stamped document 8709-8710 previously enclosed.

Objection-privileged Bates stamped e-mail string 8744-8746

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 006502. (attached)

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their

representation of you or provision of legal services to you.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931, 003133, and 004884. (attached)

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708

Misstates Plaintiff Paul Dulberg's contention was that he discovered the injury on December 16, 2016.

Dulberg actually discovered the pecuniary injury on December 12, 2016 and actually discovered he had a legal malpractice case on December 16, 2016.

2020 IL App (1st) 191953 Nos. 1-19-1953 & 1-19-1973 (consol.) Opinion filed November 30, 2020 Modified upon denial of rehearing December 31, 2020 which is equally available to all parties.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931.(Please see above)

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition

from February 19, 2020.

RESPONSE:

Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022

(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF COMPLETENESS

The undersigned, Paul Dulberg, being first duly sworn and under oath, deposes and states as follows:

1. I am the Plaintiff in the above-captioned action.

2. I have personal knowledge of the matters and facts set forth in this Affidavit and, if sworn as a witness, I can testify competently to those matters and facts.

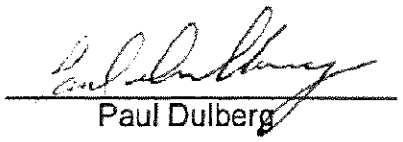
3. The documents that I produced in response to the Court ordered Amended Additional Supplemental Requests for Production propounded by Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C are complete in accordance with the Court Order and Supplemental Requests for Production.

4. Plaintiff Paul Dulberg reserves the right to supplement his response to Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'s Supplemental Requests for Production as additional documents become known to me or come into my possession, custody, or control.

VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid

that he verily belies the same to be true.



Paul Dulberg

June 1, 2021

LA 178. (Exhibit 2, ¶ 9, and Exhibit 2B)[1]. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of $5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 2, ¶ 18 and Exhibit 2D). Defendants continued to represent Dulberg until March 2015. (Exhibit 2, ¶ 21). Dulberg retained successor counsel and proceeded to a binding mediation and received a mediation award (Exhibit 2, ¶ 24 and Exhibit 2G). After the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 2, ¶ 28-29).

B. Alleged Acts of Negligence

Popovich's and Mast's alleged malpractice revolves around the settlement of the underlying case between Dulberg and McGuires. The allegations of a breach of the standard of care are all contained in ¶ 31, subsections a) through o) inclusive. Paragraph 31 states as follows:

> 31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:
>
> a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;
>
> b) Failed to thoroughly investigate liability issues against property owners of the subject property;

[1] The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 2A, 2B, 2C, 2D, 2E, 2F, and 2G.

EXHIBIT E

28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

Received 06-07-2018 01:29 PM / Circuit Clerk Accepted on 06-07-2018 03:53 PM / Transaction #17111166062 / Case #17LA000377
Page 6 of 24
Dulberg 001809

fact." *(Emphasis added)* (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." *See* 735 ILCS 5/13-215.

45. DULBERG's Complaint states that DULBERG discovery the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

46. Therefore DULBERG would have until December 2021 to file his claims under fraudulent concealment. DULBERG filed his claims well within the five-year fraudulent concealment statute.

CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants' Combined Motion to Dismiss, and for all other relief this Honorable Court

Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377

fact." *(Emphasis added)* (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." *See* 735 ILCS 5/13-215.

45. DULBERG's Complaint states that DULBERG discovery the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

46. Therefore DULBERG would have until December 2021 to file his claims under fraudulent concealment. DULBERG filed his claims well within the five-year fraudulent concealment statute.

CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants' Combined Motion to Dismiss, and for all other relief this Honorable Court

Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
Page 13 of 32

mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000377 Dulberg 009016
Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
Page 30 of 32

28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

LAW OFFICES
FERRIS, THOMPSON & ZWEIG, LTD.

SAUL M. FERRIS
GARY R. THOMPSON
MICHAEL L. ZWEIG*

RAFAEL J. GUZMÁN
ATTORNEYS AT LAW
*Licensed in IL & NY

103 S. GREENLEAF AVENUE, SUITE G
GURNEE, ILLINOIS 60031

TELEPHONE (847) 263-7770
FAX (847) 263-7771
www.ftzlaw.com

March 4, 2015

Mr. Paul Dulberg
3416 W. Elm Street
McHenry, IL 60050

RE: Your accident of January 24, 2013

Dear Mr. Dulberg:

Thank you for consulting with our firm on December 31, 2014 in regards to your personal injury case. Unfortunately, we have decided not to accept your case. Therefore, on behalf of Ferris, Thompson & Zweig, Ltd., we will not be taking any further action on your behalf as it relates to this matter. I believe you should not have settled with the property owners for $5,000.00. There are other reasons for my decision.

This is merely our professional opinion and does not mean you do not have a case. We recommend that you attempt to settle the case at the upcoming pretrial conference with your current attorney.

Sincerely,

Saul M. Ferris

SMF/cl

From: Randy Baudin II <randybaudin2@gmail.com>
Subject: award
Date: December 12, 2016 7:34:42 PM CST
To: pdulberg@comcast.net
1 Attachment, 45.2 KB

Congrats!!

Click to get my LinkedIn Profile

W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham. (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation	
Medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P/S	75,000.
L N L	75,000.

A.

The Honorable James P. Etchingham, (Ret.)

ADR Systems • 20 North Clark Street • Floor 29 • Chicago, IL 60602
312.960.2260 • info@adrsystems.com • www.adrsystems.com

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: award**
Date: December 13, 2016 10:48:50 AM CST
To: paul_dulberg@comcast.net
1 Attachment, 45.2 KB

Paul Dulberg
847-497-4250
Sent from my iPad

Begin forwarded message:

From: Randy Baudin II <randybaudin2@gmail.com>
Date: December 12, 2016 at 7:34:42 PM CST
To: pdulberg@comcast.net
Subject: award

Congrats!!

Click to get my LinkedIn Profile

W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

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Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation Medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P/S	75,000.
L/N/L	75,000.

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L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: award**
Date: December 13, 2016 10:46:50 AM CST
To: paul_dulberg@comcast.net
1 Attachment, 45.2 KB

Paul Dulberg
847-497-4250
Sent from my iPad

Begin forwarded message:

From: Randy Baudin II <randybaudin2@gmail.com>
Date: December 12, 2016 at 7:34:42 PM CST
To: pdulberg@comcast.net
Subject: award

Congrats!!

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W. Randal Baudin II's Linkedin Profile
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Dec 12 2016 3:06PM HP Fax page 2

ADR systems

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STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, Defendants.	No. 17 LA 377

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 19th day of July, 2021, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by
MR. ALPHONSE A. TALARICO (via Zoom)

On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN

On behalf of the Defendants.

THE COURT: Counsel?

MR. FLYNN: No. 10, your Honor. I see Mr. Talarico. George Flynn on behalf of defendant/movant.

THE COURT: Dulberg versus Mast?

MR. FLYNN: Yes.

THE COURT: Okay. I saw Mr. Talarico. All right. Mr. Talarico?

MR. TALARICO: Yes, Judge. Good morning.

THE COURT: All right. Counselor here in court, what's going on?

MR. FLYNN: Good morning, your Honor. We brought a motion to supplement our motion to compel. The Court ruled on April 6th and granted defendant's motion to compel and set a June 14 compliance date.

THE COURT: Okay.

MR. FLYNN: I'm sorry. June 1st compliance date with a June 14 hearing. Somehow I don't believe we got a copy of the file stamped order and it didn't get diaried, so I believe the case was called on June 14 --

THE COURT: Okay.

MR. FLYNN: -- and a continue date August 19th.

THE COURT: You got inadequate compliance, is

that ultimately --

MR. FLYNN: That's our position, yes.

THE COURT: All right. I'm going to pass this. We'll come back to it. And let me see if I can take a look at the compliance at issue.

Mr. Talarico, just hang in there. I'll be back at the end of the call.

MR. FLYNN: Thank you, your Honor.

(Whereupon the afore-captioned cause was recalled.)

THE COURT: Let's go to Dulberg. All right. Plaintiff's counsel for the record, if you could identify yourself.

MR. TALARICO: Good morning, your Honor. My name is Alphonse Talarico. I represent Paul Dulberg.

MR. FLYNN: And good morning again, your Honor. George Flynn on behalf of Popovich and Mast.

THE COURT: All right. So tell me what the issue is.

MR. FLYNN: Again, your Honor, the Court ruled on April 6th that the plaintiff was directed to provide the specific answers and responses to each interrogatory and production request. So we did

receive supplemental production responses and a supplemental interrogatory answer. With respect to the supplemental production, there is one document that I consider to be responsive and that is new.

THE COURT: I'm sorry?

MR. FLYNN: There is one document that was produced and I consider it to be responsive and a new production. The rest of the documents that were produced, it's unusual. There are actual pleadings from this case that were attached as responsive documents to my discovery requests. I don't see how those -- which basically just set forth the plaintiff's position in this case in response to the various arguments we've made in motions.

THE COURT: Well, what is it you're looking for? What didn't you get?

MR. FLYNN: I'm looking to strike any of those documents --

THE COURT: Okay.

MR. FLYNN: -- that are not responsive.

THE COURT: Is it -- I mean, really is it necessary to go to the trouble of striking them if they're -- I mean, ultimately they're not going to be relevant as a discovery response.

MR. FLYNN: Only -- I just want to make sure there aren't any additional documents that were --

THE COURT: Are there any additional documents, Mr. Talarico?

MR. TALARICO: Judge, I have no idea if -- it's our position we complied completely. We filed our answers on June 1st. If the Court had -- I don't know if the Court remembers, you had ordered us, plaintiff and defendant, to talk up through June 14th to see if there were any issues. The only response I got from the defendants was an e-mail with one word. As I told you on June 14th, the only word was, Thank you. Now I am totally surprised, 73 days later, Judge, and I don't know what else -- I want time to respond in writing, Judge. This is --

THE COURT: I don't -- I don't want to do that.

MR. TALARICO: This has been difficult.

THE COURT: This is --

MR. FLYNN: Yes, it has, Judge.

THE COURT: So what is it you -- what is it you are looking for? Because I have a representation on the record -- and I'm assuming there's an affidavit of compliance.

MR. TALARICO: There is.

THE COURT: Okay. Then -- and he says, I've given you everything.

MR. FLYNN: That's fine with respect to the production response. Now there's the interrogatory answer.

THE COURT: All right. Tell me -- we're moving on to the interrogatory.

MR. FLYNN: And again, this goes to the statute of limitations on a legal malpractice case. The plaintiff is claiming that he didn't discover it until after the 2 years --

THE COURT: Could you keep your voice up a little?

MR. FLYNN: Sure. Plaintiff is arguing for a tolling of the statute of limitations on a legal malpractice case. He was asked in Interrogatory No. 1, Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

His response -- his amended additional response discusses his pecuniary injury, that only addresses damages. With respect to the breach of

the standard of care and how he discovered it, he simply says he knew that the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

THE COURT: Okay.

MR. FLYNN: That describes the date. It doesn't describe how he became aware of it, what Gooch told him. Now, again, I know your Honor is aware of the deposition testimony in this case regarding that December 16 time period. If the answer is that Dulberg doesn't remember what Mr. Gooch told him, if Gooch said simply, You have a case, that's fine. That's what they should say. But I've already taken his deposition. There are no specifics that explain to me why Mr. Gooch crystallized this breach of the standard of care on December 16. But if this is all they have, then that's what he should say, is that I don't remember what Mr. Gooch told me.

THE COURT: I mean, he's -- I think he's complied. I'm not sure --

MR. FLYNN: What is the breach of the standard of care?

THE COURT: I'm sorry?

MR. FLYNN: And what is the breach of the standard of care? That's what I've asked in the interrogatory. They don't say.

THE COURT: Well, I think that -- all right. I guess that is -- my reading on it, it's implied it's a statute of limitations. But --

MR. FLYNN: No, the statute of limitations is the issue in this case.

THE COURT: All right. What is the --

MR. FLYNN: The underlying personal injury case --

THE COURT: What is the breach? Did Mr. Gooch advise him what the breach was?

MR. TALARICO: Judge, all that Mr. Dulberg recalls was relayed in the responses. There were no recordings that were going on. Nothing was done in writing. I'm not sure how I can possibly respond anymore, to give anymore.

THE COURT: I have a representation that this is all there is.

MR. FLYNN: That's satisfactory to me. As long as when I file my summary judgment motion there's not some new discovery discussion as to --

MR. TALARICO: Judge --

MR. FLYNN: -- what the breach was and what --

MR. TALARICO: I'm sorry. I hate to interrupt. Judge?

THE COURT: Yeah.

MR. TALARICO: We -- again, we were -- our response, I believe is in total compliance with the Court order of June 6th and your instructions on that day from the court record. And I'd like to respond in writing to establish that we did that.

THE COURT: No. No. I mean, you're -- you only need to respond in writing if we're going to have a hearing. If you want to file a brief that -- just in the file, that's fine, but I think we have a resolution today and I don't want to spend more time reading briefs resolving an issue that's moot. So I think this is resolved. What else is outstanding?

MR. FLYNN: I think that does resolve -- the representation resolves both issues, so --

THE COURT: I have -- you have advised -- well, you've advised that's all there is, so I'm finding you in compliance.

MR. TALARICO: Thank you, your Honor.

THE COURT: Okay. Is there anything else we need to do?

MR. FLYNN: I suppose with respect to the summary judgment motion that I anticipate, Judge, there was one document that was produced in order to avoid a second deposition of Mr. Dulberg to authenticate this document, which is a letter from Attorney Thompson -- I'm sorry -- Attorney Ferris -- that goes to the issue of the statute of limitations. If Mr. Talarico would stipulate to the authenticity of this March 4, 2015 letter on the record, I don't need to send a request to admit for --

THE COURT: Can you hear all that?

MR. TALARICO: I heard it, Judge, but I'm not familiar with that document. A request to admit would be welcome.

MR. FLYNN: Fair enough.

MR. TALARICO: Just so I can see what it is.

THE COURT: That's fine. We're back again on August 19th. Do you want to delay that date in light of the fact you may be issuing a request to admit?

MR. FLYNN: I think that would make sense.

THE COURT: All right. So let's strike August 19th and tell me when it makes sense to come

back.

MR. FLYNN: I'll need at least 30 days, so --

THE COURT: 60 days?

MR. FLYNN: A 60-day date would be great.

THE COURT: How's September 17th? That's a Friday.

MR. TALARICO: Fine with me, Judge.

MR. FLYNN: That works for me.

THE COURT: All right. So that will be at 8:45 and then we'll see what you guys want to do when you come back. And are you withdrawing your motion or ...

MR. FLYNN: I think that --

THE COURT: Or do you want me expressly to find compliance based on representations in open court?

MR. FLYNN: I'm not requesting a hearing any longer. I think we resolved the matter. So yeah, I'll withdraw it.

THE COURT: All right. Motion's withdrawn. The record still stands. I did find that you were in compliance and we'll deal with the next step whenever it comes up. But I will see you September 17th and if you could draft the order.

MR. FLYNN: I will. Thank you, your Honor.

THE COURT: All right. Thank you.

Mr. Talarico, anything else?

MR. TALARICO: No, Judge, thank you for your time.

THE COURT: All right. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, CRISTIN M. KELLY, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Cristin M. Kelly

Certified Shorthand Reporter
License No. 084-004529
Date: August 24, 2021

From:
Paul Dulberg
4606 Hayden Ct.
McHenry, IL. 60051

Dated: November 10, 2023

Re: ARDC No. 2023IN03135

To: Scott Renfroe
One Prudential Plaza
130 E. Randolph Dr., Ste. 1500
Chicago, IL 60601-6219
srenfroe@iardc.org

Dear Mr. Renfroe,

This reply is in response to Mr Flynn's October 27, 2023 letter.

ARDC Complaints were previously submitted:

Edward X. Clinton No. 2023IN02517 (submitted on July 27, 2023)

Julia C. Williams No. 2023IN02518 (submitted on July 27, 2023)

Thomas J. Popovich No. 2023IN03135 (submitted on September 15, 2023)

Hans Mast No. 2023IN03136 (submitted on September 15, 2023)

Brad J. Balke (submitted on November 8, 2023)

Kelly J. Baudin (submitted on November 8, 2023)

William Randall Baudin II (submitted on November 8, 2023)

Thomas W. Gooch (submitted on November 8, 2023)

Sabina Walczyk (submitted on November 8, 2023)

Dulberg is providing evidence that the accused attorneys act as a network. Dulberg's own legal malpractice attorneys protected Dulberg's personal injury attorneys from being discovered committing fraud. When Dulberg initiated a lawsuit against the PI attorneys, the defendants claimed that 2 years has already passed from the time Dulberg "first knew" of any "injury".

This is in fact what happened when Dulberg initiated a legal malpractice claim against Popovich and Mast (17LA377). It also happened when Dulberg initiated a legal malpractice claim against the Baudins (22L010905). In both cases defendants Popovich and Mast and the Baudin defendants moved to be dismissed since more than 2 years had passed since Dulberg "first knew" of any "injury".

This is why what Popovich and Mast did to Dulberg cannot be understood in its entirety without looking at what Gooch-Walczyk and Clinton-Williams also did to Dulberg. Dulberg's own legal malpractice attorneys were protecting Popovich and Mast (and others) against Dulberg.

The ARDC Complaint against Popovich and Mast describes how Popovich and Mast:[1]

- Redirected medical lien liability from the Defendants to Plaintiff
- Forged documents and destroyed evidence (at least 15 examples)
- Corrupted the interrogatory and document production process to sabotage client's case and to benefit defendants (in collaboration with opposing attorneys)
- Suppressed information on mental health issues related to Dulberg's injury
- Corrupted the deposition process to sabotage client's case and to benefit defendants in collaboration with opposing attorneys (9 out of 10 depositions have no valid certification pages)
- Knew Defendant Gagnon effectively admitted to negligence for Dulberg's injury
- Knew Defendant Gagnon committed perjury
- Knew Defendant Carolyn McGuire committed perjury
- Committed settlement fraud
- Violated federal bankruptcy laws

The ARDC Complaint against Balke describes how Balke:[2]

- Contracted with Dulberg and not with the Bankruptcy Trustee (who had standing as plaintiff)
- Told Dulberg (about 11 weeks later) he would withdraw counsel if Dulberg does not settle with Allstate for $50,000
- Violated federal bankruptcy laws

The Baudins were retained by Dulberg after Dulberg fired Balke. The Baudins:[3]

- Contracted with Dulberg instead of with the Bankruptcy Trustee
- Knew or should have known Defendant Gagnon effectively admitted to negligence for Dulberg's injury as early as March, 2013
- Moved to cap the value of PI case 12LA178 (with defendants Allstate alone)
- Closed the deal with an upper cap of $300,000 (in violation of the automatic stay)
- Coerced Dulberg to agree and misinformed him of where the 'upper cap' came from
- Moved to contract with Bankruptcy Trustee only after capping value of 12LA178
- Misled Bankruptcy Judge that Dulberg wanted Binding Mediation (about 11 weeks after the deal was closed)

---

1 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Thomas J. Popovich and Hans Mast"

2 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Brad J. Balke"

3 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Kelly N. Baudin and William Randall Baudin II"

Additionally:

- Dulberg's signature was forged onto the ADR Binding Mediation Agreement
- Dulberg was coerced into signing Allstate Release

After these horrendous experiences with PI attorneys, Dulberg retained legal malpractice attorney Gooch who was recommended by the Baudins. After firing Gooch-Walczyk Dulberg then retained legal malpractice attorneys Clinton-Williams.

The legal malpractice attorneys Gooch-Walczyk and Clinton-Williams collaborated with opposing counsel to conceal from Dulberg what the personal injury attorneys did to Dulberg. The Baudins covered for Popovich, Mast and Balke. Legal malpractice attorneys Gooch-Walczyk then covered for Popovich, Mast, Balke, and the Baudins. Legal malpractice attorneys Clinton and Williams then covered for Popovich, Mast, Balke, the Baudins and Gooch-Walczyk. It is a snowball of fraudulent concealment that keeps growing. For this reason it is not possible to fully understand what Popovich and Mast did and how they get away with it without understanding that Dulberg's retained legal malpractice attorneys were covering for Popovich and Mast, Balke and the Baudins (Dulberg's former personal injury attorneys).

'ARDC Complaint against Edward X. Clinton and Julia C. Williams' describes how Clinton and Williams collaborated with opposing counsel to benefit the defendants and sabotage Dulberg's case by suppressing large numbers of documents and playing 'hoaxes' on Dulberg including:[4]

- Document dump hoax[5]: where an attorney dumps over 6000 documents on their permanently disabled client just before resigning as counsel. The large dump is designed to hide the fact that many of these documents were being released for the first time (because they were being suppressed until then).
- Repeating document hoax[6]: where an attorney hides documents behind thousands of pages of duplicated, useless and dizzying material. In this case the attorney uses nearly the exact same list of documents arranged in alphabetical order that were released about 14 months earlier and releases them again, also in the exact same alphabetical order, with new bates-stamps claiming they may be new documents but they "aren't sure". This is a great way to appear to give thousands of new pages of documents to opposing counsel without providing a single new document in reality.
- Email hoax[7]: where an attorney horrendously butchers their own client's emails repeatedly before having them bates-stamped and turned over to opposing counsel.

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4 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint against Edward X. Clinton and Julia C. Williams" (The listed items are Chapter 2, Sections A though K)

5 Visual Aid 1 - Sources of bates order.png and paragraph 40 of "ARDC Complaint against Edward X. Clinton and Julia C. Williams"

6 Visual Aid 10 - Duplicating long alphabetical list hoax.png and paragraph 48 of "ARDC Complaint against Edward X. Clinton and Julia C. Williams"

7 Visual Aid 5 - Email hoax.png and paragraph 42 of "ARDC Complaint against Edward X. Clinton and Julia C. Williams"

- Lawyer emails by date hoax[8] : In this hoax an attorney receives the same email collection they already turned over to opposing counsel (which the client organized by month and year only for his own reference). The attorney treats it as a new release of documents to opposing counsel. The emails are then butchered before being bates-stamped and released to opposing counsel as 'new documents'.

- Hiding key evidence hoax (Tilschner)[9]: This hoax directly targets and suppresses a key piece of evidence. Even though an attorney downloads 3 documents together with very similar names, somehow the key document is 'mistakenly' placed in the wrong folder and is never given to opposing counsel or bates-stamped at all. Then, somehow, one of the accompanying documents is copied, given a new name, and placed back with the group to appear to substitute for the 'misplaced' document.

- 17LA377 document insertion hoax:[10] This is where an attorney takes many documents from the Common Law Record of the current case (that don't need to be bates-stamped and turned over to opposing counsel) and separates them from the others, renames all of them, and then adds them (in alphabetical order) to the documents that the attorney will bates-stamp and turn over to opposing counsel. This is a way to pad your bates-stamped documents with hundreds of pages of useless documents to further confuse your permanently disabled client.

Clinton and Williams used the massive suppression of documents and the hoaxes played on their permanently disabled client to:

- Conceal Dulberg's bankruptcy (from the 17LA377 Common Law Record and Reports of Proceedings)
- Suppress emails from Saul Ferris
- Suppress key evidence (Tilschner v Spangler certified slip ruling)
- Suppress large numbers of emails from Brad Balke
- Collaborate with opposing attorney to flood Dulberg with over 6,000 documents just before Clinton-Williams withdrew as Dulberg's counsel
- Suppress all information on what the Baudins did to Dulberg
- Suppress evidence that Defendant Gagnon effectively admitted negligence for Dulberg's injury as early as March, 2013.
- Collaborate with opposing counsel to suppress Barch documents before Dulberg's deposition

---

8 Visual Aid 6 - Lawyer Emails by date hoax.png and paragraph 42 of "ARDC Complaint against Edward X. Clinton and Julia C. Williams"

9 Visual Aid 4 - Tilschner hoax.png and Chapter 2 Section C and K of "ARDC Complaint against Edward X. Clinton and Julia C. Williams"

10 Visual Aid 3 - 377 document insertion hoax.png and paragraph 9 of "ARDC Complaint against Edward X. Clinton and Julia C. Williams"

- Collaborate with opposing counsel to weaken verification pages of discovery production
- Collaborate with opposing counsel during the deposition of Hans Mast and after

In addition, the ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk describes how Gooch-Walczyk and Clinton-Williams 'teamed-up' to:[11]

- Conceal key evidence in collaboration with each other (Tilschner v Spangler certified slip ruling)
- Conceal admission of negligence of Defendant Gagnon for Dulberg's injury in underlying case 12LA178 in collaboration with each other
- Conceal Bankruptcy and Violations of Federal Bankruptcy Laws (automatic stay, loss of standing to pursue claim, capping value of assets in BK estate, etc) in collaboration with each other
- Conceal true sources of $300,000 upper cap on the value of the PI claim in collaboration with each other
- Intentionally confuse Statute of Limitations toll date, date of "injury", and placing Dulberg's privileged attorney-client communications at issue in collaboration with each other

Duhlberg hoax[12] shows a common 'inside joke' of mocking Dulberg as 'Duh'-lberg that began with Popovich-Mast and was continued by Gooch-Walczyk and Clinton-Williams. A court reporter also shared the inside joke[13] by mocking Dulberg.

What Gooch-Walczyk and Clinton-Williams did to Dulberg has to be looked at to fully understand what Popovich and Mast did to Dulberg. The malpractice attorneys were intentionally deceiving Dulberg to hide from Dulberg what the PI attorneys did to him. The legal malpractice attorneys were setting up conditions which allowed the defendants to claim Dulberg did not file a complaint within 2 years of when he "knew" or "should have known" of any "injury" done to him by the PI attorneys. They even shared the same inside jokes, both referring to their permanently disabled client as 'Duhlberg'. The PI attorneys then claimed it was 'too late' for Dulberg to file a lawsuit since he "first knew" or "should have known" of a possible "injury" more than 2 years earlier (while the legal malpractice attorneys hide from Dulberg all the acts of fraud). This is how the network is intentionally designed to work: The legal malpractice attorneys help set up a 2 year statute of limitations Summary Judgment for the Defendants so the cases against them will be dismissed.

The overall methods of how Dulberg's legal malpractice attorneys worked together to sabotage Dulberg's legal malpractice case 17LA377 against Popovich and Mast can be seen in a series of 9 tables.

---

11 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk". (They are "TEAM-WORK" Examples 1 through 5)

12 Visual Aid 11 - Mocking client.png Gooch once again referred to his permanently disabled client as 'Duhlberg' in an angry letter Gooch sent to Dulberg (see "ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk", paragraph 93)

13 Group Exhibit 42_17LA377 purchased by Dulberg/Reports of Proceedings_Folders-Year-Month-Day-Case_Original file names/2018-11-13_17LA377_Duhlberg/

Table 1 shows[14] 4 different efforts that Popovich, Mast, Balke and the Baudins made to place an 'upper cap' on the value of Dulberg's PI case 12LA178. Dulberg reacted to the first effort by filing for bankruptcy. The next 3 attempts were made after Dulberg declared bankruptcy and in violation of the automatic stay and without informing the bankruptcy trustee. The 4th and final attempt place an 'upper cap' on the value of PI case 12LA178 was done successfully by the Baudins and Defendants Allstate, acting alone on or before August 10, 2016. Joseph Olsen, who first received permission to retain the Baudins about 11 weeks later, wasn't even appointed the bankruptcy trustee until August 31, 2016.

Table 2 shows[15] strategies and methods of 5 law firms retained by Dulberg. All successive attorneys to the same (fully disabled) client used the same overall strategy: To intentionally weaken or sabotage their own client's case.

All three personal injury attorneys retained by Dulberg acted in violation of the automatic stay. They continued to appear in the 22nd Judicial Circuit Court (which operated for approximately 25 months in violation of the automatic stay) claiming to represent Dulberg (who had no standing as plaintiff). All 3 PI attorneys made efforts to place a cap on the remaining case without having any authority from the Bankruptcy Court to do so. Both legal malpractice attorneys suppressed all information of how all 3 PI law firms violated federal bankruptcy laws from Dulberg and from the complaints.

All five law firms (3 personal injury law firms and 2 legal malpractice law firms) knew or could easily have discovered that personal injury defendant (who was operating the chainsaw that injured Dulberg) Gagnon effectively admitted negligence for Dulberg's injury as early as March, 2013. None of the 5 law firms ever informed Dulberg of this. The original defendant and operator of the chainsaw, Gagnon, admitted to being negligent:

> About 10 months before Dulberg was coerced into settling with the owners of the property (the McGuire's) on which the accident occurred and for whom Gagnon was working.
>
> About 21 months before Dulberg declared bankruptcy.
>
> About 39 months before any binding mediation agreement with Gagnon was mentioned.
>
> About 40 months before any cap was placed on any binding mediation award from Gagnon.

There was no reason for any of these activities to take place if the defendant who operated the chainsaw already admitted to being negligent.

Table 3 shows[16] 5 incorrect versions of the origin of the $300,000 'upper cap' placed on the value of PI case 12LA178 given by Dulberg's own attorneys. None of the 5 versions are what Dulberg told his attorneys. In addition, the true origin of the 'upper cap' is clearly documented in 17LA377 Reports of Proceedings from June 13, 2016 to August 10, 2016. The 'upper cap' was placed on the value of 17LA377 by the Baudins and Defendants Allstate acting alone and over 7 weeks before the Baudins were authorized by the Bankruptcy Court to act on behalf of the bankruptcy estate. The Baudins and Defendants Allstate acted alone to set a $300,000 'upper cap'

14 ARDC Complaint Against Kelly N. Baudin and William Randall Baudin II, page 22
15 ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk, page 3
16 ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk, page 36

on the value of PI case 12LA178 about 3 weeks before bankruptcy trustee Olsen was appointed as bankruptcy trustee.

Table 4A shows[17] 3 incorrect versions of when Dulberg "first knew" of an "injury" given by Dulberg's counsel. Table 4B shows Table 4A in a simpler form.[18] Evidence shows that Gooch was already setting Dulberg up to lose on a 2 year statute of limitations argument during their first meeting together.[19]

Tables 3, 4A and 4B taken together show the methods used by Dulberg's own legal malpractice attorneys to attempt to discredit Dulberg and sabotage his case against Popovich and Mast. They simply made multiple contradictory and untrue statements in the 17LA377 Common Law Record and in the Records of Proceedings on behalf of Dulberg without his permission or knowledge. Tables 3, 4A and 4B show the base logic Gooch-Walczyk and Clinton-Williams used to set Dulberg up to fail.

The logic used in Tables 3, 4A and 4B led to the claims of statute of limitations toll dates shown in Tables 5A and 5B. Table 5A shows[20] toll dates given by opposing counsel Flynn. Table 5B shows[21] toll dates given by Dulberg's own attorneys Gooch-Walczyk and Clinton-Williams.

Table 6 shows[22] how key elements of opposing counsel Flynn's Summary Judgment arguments in 2022 were set up with the help of Dulberg's own legal malpractice attorneys since 2016. Flynn's Summary Judgment argument is broken down into 29 key elements. Elements are shown to be directly related to something Dulberg's own legal malpractice attorneys did to Dulberg. Table 6 shows how Dulberg was set up to fail by his own legal malpractice attorneys from the first day Dulberg met Gooch.

In reply to 'ARDC Complaint Against Thomas J. Popovich and Hans Mast' Flynn attached his Summary Judgment Motion. Table 6 shows how key elements of Flynn's Motion were set up years before by Dulberg's own legal malpractice attorneys. Table 6 shows Dulberg was being set up to be accused of Flynn's key claims from the first day Dulberg met Gooch.

Table 7 shows[23] how current Illinois law was applied by Officers of the Court in 17LA377 to Dulberg's case. The key statements made in defense of granting Summary Judgment to Defendants Popovich and Mast are gathered and compared.

Table 8 shows[24] patterns of collaboration between Gooch-Walczyk and Clinton-Williams on numerous issues. Dulberg retained Clinton-Williams almost 2 years after first retaining Gooch. It was not possible for Clinton-Williams to successfully suppress key documents unless Gooch-Walczyk suppressed the same key documents before them. They both did so to benefit Popovich and Mast among others.

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17 ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk, page 41
18 ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk, page 42
19 ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk from the first paragraph
20 ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk, page 65
21 ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk, page 67
22 ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk, page 69
23 ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk, page 84
24 ARDC Complaint against Edward X. Clinton and Julia C. Williams, page 139

Table 9 shows[25] 3 different cases of fraud on the court committed at Dulberg's expense. The first was during personal injury case 12LA178. When Dulberg was pressured to settle the remainder of the case for a low amount Dulberg reacted by declaring bankruptcy which opened a federal bankruptcy case in addition to PI case 12LA178. When Dulberg was later forced to accept an 'upper cap' of $300,000 on the value of the PI case Dulberg reacted by initiating legal malpractice claim 17LA377 against Popovich and Mast.

In addition to committing fraud against Dulberg, the named attorneys participated in a series of frauds on the judicial mechanism of the court.[26]

> "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."[27]

The 7th Circuit further stated:

> "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."[28]

Fraud on the court is a fraud:

> "directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents . . . . It is thus fraud where . . . the impartial functions of the court have been directly corrupted."[29]

Interestingly, the term "fraud on the court" is only mentioned in Rule 60(d)(3) of the Federal Rules of Civil Procedure, yet courts have also used this doctrine to order dismissal or default under other rules where a litigant has stooped to the level of fraud on the court.[30]

It is inappropriate for Flynn to represent Mast in the current ARDC complaint for the following reasons:

- Flynn was the opposing counsel in 17LA377 and directly participated in the large majority of acts of 'collaboration' or 'team-work' described in this letter and in 'ARDC Complaint

25 ARDC Complaint against Edward X. Clinton and Julia C. Williams, page 144

26 Fraud on the Court quotes from "Fraud on the Court and Abusive Discovery" (2016) David R. Hague, St. Mary's University School of Law

27 Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, Â¶ 60.23.

28 Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, Â¶ 60.23

29 (Robinson v. Audi Aktiengesellschaft, 56 F.3d 1259, 1266 (10th Cir. 1995) (emphasis added) (citation omitted))

30 See, e.g., Combs v. Rockwell Int'l Corp., 927 F.2d 486, 488 (9th Cir. 1991) (relying on Rule 11 where counsel made thirty-six changes on a deposition errata sheet after the client advised that the transcript was accurate and the testimony was correct); Brockton Sav. Bank v. Peat, Marwick, Mitchell & Co., 771 F.2d 5, 11–12 (1st Cir. 1985) (affirming district court's entry of default judgment under court's inherent powers in response to defendant's abusive litigation practices); Wyle v. R.J. Reynolds Indus., Inc., 709 F.2d 585, 589 (9th Cir. 1983) ("[C]ourts have inherent power to dismiss an action when a party has willfully de- ceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice."); Eppes v. Snowden, 656 F. Supp. 1267, 1279 (E.D. Ky. 1986) (finding that where fraud is committed upon the court, the court's power to dismiss is inherent "to protect the integrity of its proceedings").

Against Thomas W. Gooch and Sabina Walczyk' and in 'ARDC Complaint against Edward X. Clinton and Julia C. Williams'.

- Evidence was given that Attorney Flynn collaborated with Dulberg's legal malpractice attorneys Gooch-Walczyk and Clinton-Williams from December, 2016 to July, 2020. Dulberg's legal malpractice attorneys worked against Dulberg to destroy his case.
- To our knowledge Mr Flynn is listed as a person of interest in at least 2 and possibly 3 investigations being conducted by the Illinois Judicial Inquiry Board concerning the close personal relationship that exists between Judge Thomas Meyer and Thomas Popovich (Mr Flynn's other co-client to Mast) and the contrasting selective Judicial Recusal's and non-recusal's found in multiple cases including (but not limited to) 12LA178, 12LA326, 17LA377 and 18LA370 in the 22nd Judicial Circuit Law Division.

In addition to the acts of collaboration with opposing counsel cited in this reply letter, Mr Urbanski (a certified short hand reporter and owner of Urbanski Reporting) forwarded Dulberg's contact information to a "Carrie Vahl". Dulberg was contacted by someone named "Carrie Vahl" of Vahl Reporting Services and offered 5 deposition certification pages which appear to be forgeries. We do not believe that the person who claimed to be 'Carrie Vahl' was actually her (if Carrie Vahl even exists).[31] It is more likely than not that "Carrie Vahl" is actually an agent working on behalf of Mr Popovich and Mr Urbanski or is Mr Popovich or Mr Urbanski themselves. Flynn was and is opposing counsel and an agent of Popovich. The events suggest the opposing party most probably (1) offered documents to us which are most probably forgeries (as detailed by Omni Document Experts)[32] and (2) impersonated a court reporter named 'Carrie Vahl' conducting business with a client.

Mr Flynn (in case 18LA370) filed with the Circuit Clerk "DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND THOMAS J. POPOVICH'S MOTION/ MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT". Attached to the memorandum as Exhibit 6, Mr Flynn included Mr Popovich's deposition recorded personally by Michael Urbanski. In his deposition on page 69 lines 10-11 Mr Popovich stated "I trust Mr. Urbanski implicitly, explicitly, in all ways". Since it was Michael Urbanski that connected us to "Carrie Vahl", this strongly suggests that Michael Urbanski has a close personal relationship with Mr Popovich and in no way can be considered a neutral party in any court proceeding involving Popovich.

17LA377 is currently under appeal. Flynn continues to use the same arguments in the appeal and use the same techniques described in this letter. The fraud continues to move through the appeal process as if the fraud does not exist. In this sense the appeal process continues to effectively justify and reward the fraud.

Classical definition of "gaslight" (Cambridge Dictionary):

> "to trick or control someone by making them believe that their memories or beliefs about something are wrong, especially by suggesting that they may be mentally ill"

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31 Group Exhibit 10-2022-03-30_Carrie Vahl communication/

32 Group Exhibit 6-Margaret Orton signatures analyzed/

It is difficult to find a better word to describe how Popovich, Mast, Balke, the Baudins, Gooch, Walczyk, Clinton and Williams treated their permanently disabled client Dulberg and continue to treat Dulberg to this day.

/s/ Paul Dulberg
Paul Dulberg

/s/ Thomas Kost
Thomas Kost
Full Trustee of the Paul R. Dulberg Revocable Trust

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION
of the
SUPREME COURT OF ILLINOIS

One Prudential Plaza
130 East Randolph Drive, Suite 1500
Chicago, Illinois 60601-6219
(312) 565-2600 (800) 826-8625
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(217) 546-3523 (800) 252-8048
Fax (217) 546-3785

Paul Dulberg
By email: paul_dulberg@comcast.net

Chicago
November 28, 2023

Re: Thomas J. Popovich
in relation to
Paul Dulberg
No. 2023IN03136

Dear Mr. Dulberg:

Enclosed is a copy of correspondence submitted to the Commission by Thomas Popovich's counsel, Adrian Vuckovich.

If you believe the response is inaccurate or if you wish to comment or provide additional information, please write to me within fourteen days. You may submit comments or additional information by email to amundt@iardc.org. If you send more information by regular mail, please do not staple or bind your correspondence and do not use exhibit tabs.

We will evaluate the matter and advise you of our decision. Again, thank you for your cooperation.

Very truly yours,

/s/ Scott Renfroe

Scott Renfroe
Deputy Administrator, Appeals

SR:vja
Attachment

COLLINS BARGIONE & VUCKOVICH
COUNSELLORS AT LAW
ONE NORTH LA SALLE STREET, SUITE 300
CHICAGO, ILLINOIS 60602

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November 28, 2023

By Email
Scott Renfroe, Senior Counsel
Attorney Registration & Disciplinary Counsel
One Prudential Plaza
130 East Randolph Drive, Suite 1500
Chicago, Illinois 60601

Re: Thomas Popovich
i/r/t Paul Dulberg,
No. 2023IN03136

Dear Mr. Renfroe,

This responds to the Request for Investigation submitted by Paul Dulberg.

As you know, the Request for Investigation and accompanying materials consists of hundreds of pages. It appears Mr. Dulberg has complained about numerous lawyers with whom he had contact about injuries which he sustained in an accident involving a chainsaw. The accident occurred in 2011.

To the best of Mr. Popovich's recollection, Hans Mast from Mr. Popovich's law firm took in the Dulberg case. The representation agreement is attached. **Exhibit 1.** The fees were based on a contingency fee arrangement. Mr. Dulberg did not pay money to Mr. Popovich, Mr. Mast or the Popovich law firm. A lawsuit was filed on behalf of Mr. Dulberg in May 2012. Mr. Mast signed the complaint. **Exhibit 2.**

The case was difficult. The facts, as reported by Mr. Dulberg, were that Mr. and Mrs. McGuire lived in a neighborhood near Mr. Dulberg's house. The McGuire's son/stepson, David Gagnon, was cutting down a tree at the McGuire's home, using a chainsaw owned by the McGuires. Mr. Dulberg was assisting in the cutting down of the tree and offered some of the wood, to be used as fire wood. While the tree was being cut down, Mr. Dulberg's arm was injured when the chainsaw came into contact with his arm.

Mr. Gagnon was not a minor. There was some effort to connect Gagnon's actions to the McGuires, as their agent, acting under their supervision. There was also an issue of Mr. Dulberg's contributory negligence.

At some point after the case was filed, it was determined that claims against Mr. and Mrs. McGuire were not likely to succeed. Mr. Dulberg's claims against the McGuires

Defendants settled for $5,000.00. Mr. Dulberg executed a release, confirming his agreement to the settlement. **Exhibit 3.** There was a remaining defendant, Gagnon, who remained a defendant in the lawsuit. However, Mr. Dulberg was a difficult client. The Popovich law firm withdrew from representation in 2015 and Mr. Dulberg went on to be represented by other lawyers. Eventually, Mr. Dulberg obtained an arbitration award of $561,000.00 against Mr. Gagnon, which, apparently, exceeded insurance coverage of $300,000.00.

Despite the arbitration award, in 2017, Mr. Dulberg filed a legal malpractice case against Mr. Mast and the Popovich firm. In the lawsuit, Mr. Dulberg was initially represented by Thomas Gooch, III. The basis of the claim was that Mr. Dulberg was "coerced" into settling with Mr. and Mrs. McGuire. **Exhibit 4.** There were several complaints filed, and at some point, Mr. Dulberg changed lawyers (from Gooch to Edward X. Clinton). Mr. Popovich and his firm have legal malpractice insurance and they defended against the claims. Eventually, their attorney filed a motion for summary judgment, which was granted. **Exhibit 3.**

It appears that the Request for Investigation is based on the same allegations as the legal malpractice lawsuit. The allegations are strange and false.

The settlement with the McGuire Defendants was completely voluntary. Mr. Dulberg made the decision to settle with those Defendants, and settlement was recommended, because the claim against them was very weak. They did not employ Mr. Gagnon and could not be said to have supervised him because Mr. Dulberg was the person assisting Gagnon. In a multi-defendant case, it is not unusual to eliminate defendants who will eventually be dismissed and prosecute the best claims. That is what occurred with Mr. Dulberg's matter. The best claims were against Gagnon, as demonstrated and confirmed by the arbitration award. **Exhibit 5**. Counsel who represented Mr. Dulberg after the withdrawal of the Popovich firm did not question the decision.

In any event, even if the advice given was somehow not correct, there was no violation of any Rule of Professional Conduct. Mr. Dulberg had separate legal counsel who represented him after the Popovich firm withdrew. If there had been legal malpractice, then Dulberg had counsel who could have advised him of his rights, with the applicable statute of limitations. 735 ILCS 5/2-214.1.

Overall, it appears that Mr. Dulberg is dissatisfied with the limitations which existed on his claim (insurance coverage limitations, contributory negligence and weak claims against McGuires). None of those limitations were caused by Mr. Popovich or Mr. Mast. The decision to settle with Mr. and Mrs. McGuire was correct. Even if not correct, neither Mr. Popovich nor Mr. Mast violated the Rules of Professional Conduct.

I assure you of Mr. Popovich's cooperation.

Respectfully,

/s/ Adrian Vuckovich

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

STATE LEGAL®
PLAINTIFF'S EXHIBIT
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EXHIBIT
1

COPY
MAY 15 2012
KATHERINE M. KELLER
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT B
ALL-STATE LEGAL®

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 20 ON 7/18/2012 AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 20 ON ____ AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT 2
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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

EXHIBIT
tabbies
3

c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 171111174
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT
tabbies
4

4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

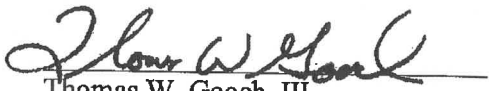
WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.



Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P.S	75,000.
L N L	75,000.

The Honorable James P. Etchingham, (Ret.)

EXHIBIT 5

From: Paul Dulberg
4606 Hayden Ct.
McHenry, IL. 60051

To: Scott Renfroe, Senior Counsel (srenfroe@iardc.org)
Vicki J. Andrzejewski (vandrzejewski@iardc.org)
Unknown (amundt@iardc.org)
One Prudential Plaza
130 E. Randolph Dr., Ste. 1500
Chicago, IL 60601-6219

Date: December 12, 2023

Dear Scott Renfroe, Vicki J. Andrzejewski, and Unknown (amundt@iardc.org),

This reply is in response to the letter of Thomas Popovich dated November 28, 2023.

We have submitted 9 ARDC Complaints to date:

Edward X. Clinton No. 2023IN02517 (submitted on July 27, 2023)

Julia C. Williams No. 2023IN02518 (submitted on July 27, 2023)

Thomas J. Popovich No. 2023IN03135 (submitted on September 15, 2023)

Hans Mast No. 2023IN03136 (submitted on September 15, 2023)

Brad J. Balke No. 2023IN03894-R (submitted on November 8, 2023)

Kelly J. Baudin No. 2023IN03898-R (submitted on November 8, 2023)

William Randall Baudin II No. 2023IN03897-R (submitted on November 8, 2023)

Thomas W. Gooch No. 2023IN03895-R (submitted on November 8, 2023)

Sabina Walczyk No. 2023IN03896-R (submitted on November 8, 2023)

The Complaints submitted November 8, 2023 have footnotes with hyperlinks to exhibits. The Complaints submitted on July 27, 2023 and September 15, 2023 do not have hyperlinks to exhibits in the footnotes.

Since all these complaints are interrelated and since hyperlinks to exhibits help the reader considerably, we've also produced the following 5 documents that are regularly updated and have full hyperlink features:

Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation

Evidence of Fraud on the Court in 12LA178 During Balke Representation

Evidence of Fraud on the Court in 12LA178 During Baudins Representation

Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation

Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation

All 5 documents linked above have exhibits placed in a shared single folder.

We also use hyperlinks to exhibits in this letter so evidence is easy to view.

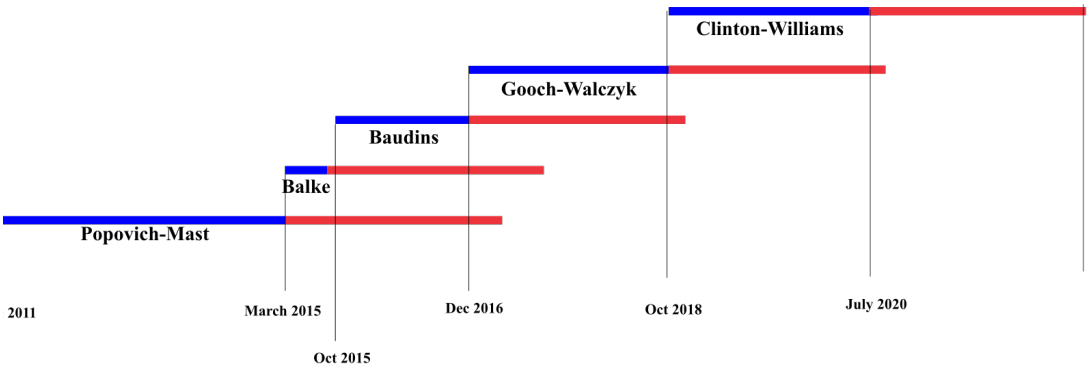
Dulberg is providing evidence that the accused attorneys act as a network. Dulberg's legal malpractice attorneys protected Dulberg's personal injury attorneys from being discovered committing fraud against Dulberg. They used a sophisticated system of document and information suppression against their own permanently disabled client. The legal malpractice attorneys shielded Popovich, Mast and other PI attorneys from liability after the PI attorneys committed fraud against their client (and against the Court).

If sued, the PI attorneys use the protection of the legal malpractice attorneys to defend themselves from Dulberg. The PI attorneys claim the 2 year statute of limitations has already passed. But during this same 2 years the PI attorneys were being protected by Dulberg's legal malpractice attorneys (who were actively suppressing documents and information while working against their own client Dulberg).

This is in fact what happened when Dulberg initiated a legal malpractice claim against Popovich and Mast (17LA377). It also happened when Dulberg initiated a legal malpractice claim against the Baudins (22L010905). In both cases defendants Popovich and Mast and the Baudin defendants moved to be dismissed since they claimed more than 2 years had passed since Dulberg "first knew" of any "injury". During those same 2 years they were being protected by Dulberg's own legal malpractice attorneys Gooch-Walczyk and Clinton-Williams who used a sophisticated system of document and information suppression against their permanently disabled client.

How the 2 year escape hatch works in a network of attorneys

2 YEAR ESCAPE HATCH



Each Attorney claims:

a) "Dulberg had separate legal counsel who represented him after we withdrew."

b) "If there had been legal malpractice, then Dulberg had counsel who could have advised him of his rights, with the applicable statue of limitations."

This is how fraud remains hidden. Each attorney hides the fraud of the previous attorneys by keeping the information from the client. The client is later blamed for not acting within the 2 year SoL deadline.

This is also how each attorney helps prepare an 'escape hatch' for the attorneys before by allowing 2 years (red) to pass as they 'raise no issue' with the work of the previous attorneys.

If sued, each will claim that 2 years has already passed while Dulberg's subsequent attorneys "raised no issue". This is exactly what Popovich now claims:

> *"Mr. Dulberg had separate legal counsel who represented him after the Popovich firm withdrew. If there had been legal malpractice, then Dulberg had counsel who could have advised him of his rights, with the applicable statute of limitations. 735 ILCS 5/2-214.1."*

Popovich and Mast, then Balke, then the Baudins, then Gooch and Walczyk, then Clinton and Williams will or already have made the same core claims (while hiding in the network):

(a) "Dulberg had separate legal counsel who represented him after we withdrew".

(b) "If there had been legal malpractice, then Dulberg had counsel who could have advised him of his rights, with the applicable statue of limitations".

For example, if the client sues the Baudins the Baudins claim:

(a) "Dulberg had separate legal counsel Gooch who represented him after we withdrew".

(b) "If there had been legal malpractice, then Dulberg had Gooch as counsel who could have advised him of his rights, with the applicable statue of limitations".

Gooch, by committing fraud and by hiding the fraud of the Baudins (and of Popovich, Mast and Balke), created conditions to allow the Baudins to make the claims above.

If the client sues Gooch-Walczyk then Gooch-Walczyk will claim:

(a) "Dulberg had separate legal counsel Clinton and Williams who represented him after we withdrew".

(b) "If there had been legal malpractice, then Dulberg had Clinton-Williams as counsel who could have advised him of his rights, with the applicable statue of limitations".

Clinton and Williams then commit more fraud and hide the the fraud of Gooch, Walczyk, the Baudins, Balke , Popovich and Mast. This is their '**run for cover story**' in a nutshell. This is how the 2 year SoL escape hatch works (how the game is played).

Chapter 1 of 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams'[1] describes how Clinton-Williams suppressed large numbers of documents and then, just before resigning as counsel, produced over 6000 documents to opposing counsel.

Popovich and Mast took full advantage[2] of the documents and information suppressed by Clinton-Williams (and by Gooch-Walczyk) after Clinton-Williams resigned as counsel to:

1) Demand for detailed supplimental production responses (from the 2020-07-09 flood of over 6000 documents)

2) Demand to be given Dulberg's privileged attorney-client communications with Gooch

3) Pressure Dulberg to admit receiving in the mail a partially forged declination letter from attorney Saul Ferris. (The letter was actually addressed to Flynn's own client Popovich)

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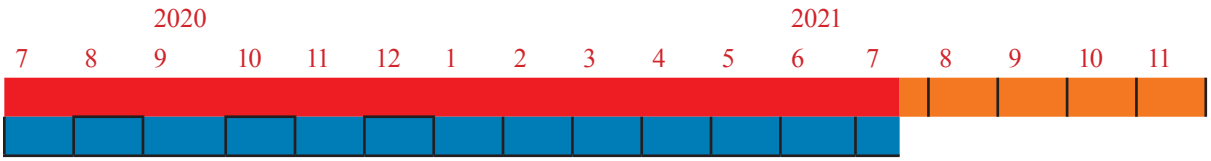
1 Also Chapter 1 of Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation

2 How opposing counsel maintained pressure on Dulberg is described in 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', paragraphs 155 to 171 and
Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation paragraphs 155 to 171 and 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams', Chapter 1 and Chapter 2, Section 2B THE EXAMPLE OF SAUL FERRIS and
Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation Chapter 1 and Chapter 2, Section 2B

The following graphic shows over how many months these 3 forms of pressure were applied to Dulberg by opposing counsel from when Clinton and Williams withdrew as Dulberg's counsel (on July 27, 2020).



The **demand for detailed supplemental discovery answers** (shown in red above) lasted until July 19, 2021 (about 12 months). The **demand for access to Dulberg's attorney-client privileged communication** (shown in blue above) also lasted until July, 2021 (about 12 months). This is when **pressure for Dulberg to admit untrue statements about an alleged letter from Saul Ferris**[3] (which was actually addressed to Popovich, shown in orange above) began and lasted for 4 more months.

Pressure was applied to Dulberg as pro-se and to Dulberg's new attorney (since Clinton and Williams had already made secret plans to withdraw as Dulberg's counsel by late June, 2020).[4] The 3 ways Dulberg was pressured are directly related to documents and information suppressed by Clinton-Williams. They set Dulberg up to be subject to all 3 forms of pressure to benefit Popovich and Mast.

Clinton-Williams helped prepare their own 2 year escape hatch by keeping Dulberg and his new attorney busy on the 3 made-up issues listed above for over 16 months in addition to setting Dulberg up to be accused.

THE CHAIN OF FRAUD (Each attorney covering the fraud of all previous attorneys)

As one reads this list, please remember that the fraudulant acts being committed by each attorney against their permamently disabled client become 'cleansed' through the 2 year escape hatch system. This system allows successive attorneys to act as is described in the follwing list and face no consequences for their actions,

The 'ARDC Complaint Against Thomas J. Popovich and Hans Mast' describes how Popovich and Mast:[5]

- Redirected medical lien liability from the Defendants to Plaintiff

3 'ARDC Complaint Against Julia C. Williams and Edward X. Clinton' Chapter 2, Section 2B and Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation Chapter 2, Section 2B

4 'ARDC Complaint Against Julia C. Williams and Edward X. Clinton', Chapter 1, starting paragraph 31 and Chapter 2, Section 2E and Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation starting paragraph 31 and Chapter 2, Section 2E

5 All listed items are linked to supporting evidence on page 1 of 'ARDC Complaint Against Thomas J. Popovich and Hans Mast' and page 1 of Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation

- Forged documents and destroyed evidence (at least 15 examples)
- Corrupted the interrogatory and document production process to sabotage client's case and to benefit defendants (in collaboration with opposing attorneys)
- Suppressed information on mental health issues related to Dulberg's injury
- Corrupted the deposition process to sabotage client's case and to benefit defendants in collaboration with opposing attorneys (9 out of 10 depositions have no valid certification pages)
- Knew Defendant Gagnon effectively admitted to negligence for Dulberg's injury
- Knew Defendant Gagnon committed perjury
- Knew Defendant Carolyn McGuire committed perjury
- Committed settlement fraud
- Violated federal bankruptcy laws

The 'ARDC Complaint Against Brad Balke' describes how Balke:[6]

- Contracted with Dulberg and not with the Bankruptcy Trustee (who had standing as plaintiff)
- Told Dulberg (about 11 weeks later) he would withdraw counsel if Dulberg does not settle with Allstate for $50,000
- Violated federal bankruptcy laws

Balke basically continued doing what Popovich and Mast already did. The Baudins were retained by Dulberg after Dulberg fired Balke. The 'ARDC Complaint against Wm Randal Baudin II and Kelly N. Baudin' describes how the Baudins:[7]

- Contracted with Dulberg instead of with the Bankruptcy Trustee
- Knew or should have known Defendant Gagnon effectively admitted to negligence for Dulberg's injury as early as March, 2013
- Moved to cap the value of PI case 12LA178 (with defendants Allstate alone)
- Closed the deal with an upper cap of $300,000 (in violation of the automatic stay)
- Coerced Dulberg to agree and misinformed him of where the 'upper cap' came from
- Moved to contract with Bankruptcy Trustee only after capping value of 12LA178
- Misled Bankruptcy Judge that Dulberg wanted Binding Mediation (about 11 weeks after the deal was closed)

Additionally:

- Dulberg's signature was forged onto the ADR Binding Mediation Agreement

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6 All listed items are linked to supporting evidence on page 1 of 'ARDC Complaint Against Brad J. Balke' and page 1 of Evidence of Fraud on the Court in 12LA178 During Balke Representation

7 All listed items are linked to supporting evidence on page 1 of 'ARDC Complaint Against Kelly N. Baudin and William Randall Baudin II' and page 1 of Evidence of Fraud on the Court in 12LA178 During Baudins Representation

- Dulberg was coerced into signing Allstate Release

'ARDC Complaint Against Edward X. Clinton and Julia C. Williams'[8] describes how Clinton and Williams collaborated with opposing counsel to benefit the defendants and sabotage Dulberg's case by suppressing large numbers of documents and playing 'hoaxes' on Dulberg and:

- Concealed Dulberg's bankruptcy (from the 17LA377 Common Law Record and Reports of Proceedings)
- Suppressed emails from Saul Ferris
- Suppressed key evidence (Tilschner v Spangler certified slip ruling)
- Suppressed large numbers of emails from Brad Balke
- Collaborated with opposing attorney to flood Dulberg with over 6,000 documents just before Clinton-Williams withdrew as Dulberg's counsel
- Suppressed all information on what the Baudins did to Dulberg
- Suppressed evidence that Defendant Gagnon effectively admitted negligence for Dulberg's injury as early as March, 2013.
- Collaborated with opposing counsel to suppress Barch documents before Dulberg's deposition
- Collaborated with opposing counsel to weaken verification pages of discovery production
- Collaborated with opposing counsel during the deposition of Hans Mast and after

They did these things to protect Popovich and Mast (and other PI attorneys) from Dulberg's claims. In addition, the ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk describes how Gooch-Walczyk and Clinton-Williams 'teamed-up' to:[9]

- Conceal key evidence in collaboration with each other (Tilschner v Spangler certified slip ruling)
- Conceal admission of negligence of Defendant Gagnon for Dulberg's injury in underlying case 12LA178 in collaboration with each other
- Conceal Bankruptcy and Violations of Federal Bankruptcy Laws (automatic stay, loss of standing to pursue claim, capping value of assets in BK estate, etc) in collaboration with each other
- Conceal true sources of $300,000 upper cap on the value of the PI claim in collaboration with each other
- Intentionally confuse Statute of Limitations toll date, date of "injury", and place Dulberg's privileged attorney-client communications at issue in collaboration with each other

The lower on the list each attorney appears, the more fraud they need to cover up. Each attorney

8 Also described in Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation

9 All listed items are linked to supporting evidence on page 1 of 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', and page 1 of Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation. (They are "TEAM-WORK" Examples 1 through 5)

escapes (are 'cleansed') from their own fraud and the concealment of fraud by all attorneys higher on the list by claiming:

(a) "Dulberg had separate legal counsel who represented him after we withdrew".

(b) "If there had been legal malpractice, then Dulberg had counsel who could have advised him of his rights, with the applicable statue of limitations".

This is how the permanently disabled client is stripped of constitutional rights while the chain of attorneys are not held accountable for anything they do and are given freedom to go after their next client (victim). Dulberg's own legal malpractice attorneys were protecting Popovich and Mast (and others) against Dulberg.

It is a snowball of fraudulent concealment that keeps growing. For this reason it is not possible to fully understand what Popovich and Mast did (and how they got away with it) without understanding that Dulberg's retained legal malpractice attorneys Clinton-Williams and Gooch-Walczyk were covering for Popovich and Mast, Balke and the Baudins (Dulberg's former personal injury attorneys) and how they did it.

What Clinton-Williams and Gooch-Walczyk did to Dulberg has to be looked at to fully understand what Popovich and Mast did to Dulberg. The malpractice attorneys were intentionally deceiving Dulberg to hide from Dulberg what the PI attorneys did to him. The legal malpractice attorneys also set up conditions which allowed the defendants to claim Dulberg did not file a complaint within 2 years of when he "knew" or "should have known" of any "injury" done to him by the PI attorneys. They even shared the same inside jokes, both referring to their permanently disabled client as 'Duhlberg'. The PI attorneys then claimed it was 'too late' for Dulberg to file a lawsuit since he "first knew" or "should have known" of a possible "injury" more than 2 years earlier (while the legal malpractice attorneys hid from Dulberg all the acts of fraud). This is how the network is intentionally designed to work: The legal malpractice attorneys help set up a 2 year statute of limitations Summary Judgment 'escape hatch' for the Defendants so that any cases against them will be dismissed.

A 13 Step Approach to Sabotage Your Permanently Disabled Client's Case

After having been the targets of these attacks for over 1 decade, we've found the process the legal malpractice attorneys Gooch-Walczyk and Clinton-Williams used to sabotage and undermine Dulberg's claims of legal malpractice and fraud are not that difficult to understand. What follows is a 13 step approach a legal malpractice attorney can take to sabotage their own client's case that is simple enough for an average person to understand. (This approach matches point for point what Dulberg experienced with Gooch-Walczyk and Clinton-Williams.)

1) **bury key evidence**:
   This is the legal equivalent of 'crippling' ones own client.

2) **bury fraud**:
   Bury all evidence of defendant committing fraud on your client.

3) **prepare escape hatch**:

A 2 year SoL dismissal is pre-planned into the system. Dulberg was being intentionally set up for it during his first meeting with Gooch.

4) **choke client**:
The documents sent directly from the client to the legal malpractice attorney are primary targets of suppression.

5) **give some, keep some, ghost some:**
This is a sophisticated system of document and information suppression described in Chapter `1 of 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams'.[10]

6) **mince emails:**
Methods used against Dulberg are described from Chapter 1, paragraph 42 of 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams'.[11]

7) **bury troublesome issues**:
How to do it: Make multiple contradictory and untrue statements on the issues on behalf of ones client in the Common Law Record and in Reports of Proceedings. These statements are intended as gifts for the defendants. They were created by the legal malpractice attorneys but they are credited to Dulberg (as if the attorney received the information from Dulberg). The defense will use the multiple statements later to claim your client is 'being evasive' and 'changing his story' by 'fiddling' with his answers.

8) **target depositions:**
From our experience depositions are a prime target of an attorney that wants to destroy your case.

9) **strip case law**:
when dealing with client misinterpret and misrepresent case law. An example is when Mast used Tilschner v Spangler as the reason the McGuires were not liable for Gagnon's injury during a meeting with Dulberg and Thomas Kost on November 20, 2023. Another example: The relevant case law in 17LA377 which applies to Dulberg's case (***Suburban*** and related cases) was never brought up to Dulberg by Gooch-Walczyk or Clinton-Williams.

10) **starve and flood**:
Just before quitting as counsel, dump a waterfall of documents on your permanently disabled client. Hide most of the documents you have been suppressing until then near the bottom of the pile. Continue to suppress certain key documents and never give them a bates-stamp or turn them over to opposing counsel. Overload your client and resign. Described in 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams', Chapter 1, beginning on paragraph 35.[12]

11) **set up accused**:

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10 Also in Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation Chapter 1

11 Also paragraph 42 in Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation

12 Also in Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation Chapter 1, beginning on paragraph 35

Described in detail in Table 6 [13]

12) **throw privilege under a bus**:
Give the defense grounds to demand your client's privileged attorney-client communications. This is done by setting the client up to make the claim that they "first knew" of an "injury" through communications with their legal malpractice attorney. (This is what Gooch did to Dulberg at their first meeting together.) This is demonstrated step by step in 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk' from paragraph 1.[14]

13) **run for cover stories**:
Stellar examples of this are claims made by Popovich in the letter of November 28, 2023 and examined in this reply.

This is a basic 13 step outline which matches (step by step) what Gooch and Walczyk and later Clinton and Williams actually did to Dulberg to benefit Popovich and Mast (and others).

Complications in Dulberg's case:

What if the targeted client declares bankruptcy during his PI case as a natural reaction to loosing all financial hope? Federal bankruptcy laws add a number of complications to finishing off your client. This is what happened to Dulberg during PI case 12LA178.

A way to solve it:

a) Ignore bankruptcy court and bankruptcy court trustee.

b) Make repeated efforts to place an 'upper cap' on the value of PI case 12LA178.

c) Do not inform the bankruptcy trustee until an 'upper cap' is already in place and treated as a 'done deal'.

d) Hide the origins of the 'upper cap' from your client and from bankruptcy court.

This is what happened to Dulberg point by point. In short, ***ram it through anyway***.

1) 'Bury Key Evidence' To Help Popovich and Mast

TABLE 10 below shows the number of times Dulberg informed his legal malpractice attorneys about the importance of the key evidence Tilschner v Spangler with hyperlinks to evidence:

When Informed		How Informed
2016-12-16	first meeting with Gooch	document handed Gooch
2018-10-01	letter to Gooch (that led to Gooch firing)	email linked (on page 30) attached document: second_amended_complaint_comments.txt

13 ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 69 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 69

14 Also in Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation from paragraph 1

When Informed		How Informed
2018-10-10	preparing for first meeting with Clinton-Williams	email linked attached folder: Duberg Complaint document: second_amended_complaint_comments.txt
2018-10-12	first meeting with Clinton-Williams	Text document and problems with Gooch were explained at meeting[15]
2018-12-04	preparing Second Amended Complaint	email linked attached documents: Working.pdf comment on complaint.txt
2018-12-05	preparing Second Amended Complaint	email linked attached document: comments on Dulberg Second Amended Complaint REDLINED 2018 Dec .txt
2019-03-18	preparing discovery documents	email linked document: IndependantContractor-CaseLaw1_Mast.pdf
2019-07-08	inspecting defendants documents	email linked attached folder: To Julia documents: questions_for_mast.txt timeline_of_mcguire_settlement.txt
2019-07-22	inspecting defendants documents	email linked attached folder: To Julia documents: questions_for_mast.txt timeline_of_mcguire_settlement.txt
2019-11-19	updating information	email linked attached document: 2109-11-19_updated_timeline_of_mcguire_settlement.txt
2020-02-06	preparing for Mast deposition	email linked attached documents: questions_for_mast.txt timeline_of_mcguire_settlement.txt
2020-02-08	preparing for Mast deposition	email linked attached documents: 2109-11-19_updated_timeline_of_mcguire_settlement.txt questions_for_mast.txt
2020-06-18	preparing for Mast deposition	email linked attached document: evidence_list.txt questions_for_mast.txt
2020-06-24	preparing for Mast deposition	email sent at 1:56AM linked attached documents: 2020-06-23_updated_timeline_of_mcguire_settlement.txt email sent at 10:05AM linked attached documents: 2020-06-23_updated_timeline_of_mcguire_settlement.txt
2020-06-24	meeting before Mast deposition	Clinton and Williams were told by Thomas Kost of the importance of Tilschner v Spangler in proving 'intentional tort' and 'fraud' during the meeting

Section 2C of 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams'[16] shows how Clinton and Williams suppressed Dulberg's key evidence Tilschner v Spangler.

Section 2K of 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams'[17] shows

15 On October 19, 2018 PDF files were created by Clinton or Williams in "Dulberg Master File" concerning the Tilschner case: Shown in Visual Aid 4 - Tilschner hoax.png

16 Also in Section 2C of Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation

17 Also in Section 2K of Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation

how the document Tilschner v Spangler inexplicably went missing during the deposition of Hans Mast.

Section 2C, paragraph 2C26 of 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams'[18] describes how Williams inexplicably could not recall anything about Tilschner v Spangler or the contents of 'Exhibit 12' weeks after preparing multiple subpoenas on 'Exhibit 12' and while appearing in court to address the subpoenas because she claimed the events happened 'so long ago'.

After about 6 years of '**burying key evidence**' Dulberg mentioned Tilschner v Spangler in a court document in November 23, 2022.[19]

On November 30, 2022 Flynn filed DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2nd AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST which contains the following point ¶12:[20]

> "12) Of concern is a statement on page 19 of Dulberg's motion in which he argues that Mast had insisted that the decision in the Tilschner v. Spangler case was the reason Dulberg would not prevail in the underlying case against the McGuire's. The statement is inexplicably made "on information and belief." This is unacceptable. Dulberg has made no such disclosure in fact discovery (now closed) about this very specific discussion between Mast and himself regarding the Tilschner case. If Dulberg believes he has disclosed it, he should be required to identify where in his answers and amended answers to discovery or his deposition he has identified such discussion with this amount of specificity. Defendants submit that no such disclosure exists."

Opposing counsel Flynn and Popovich knew Tilschner v Spangler were never mentioned in the record because they collaborated with Dulberg's legal malpractice attorneys Gooch-Walczyk and Clinton-Williams to successfully '**bury key evidence**' for around 6 years.

Table 10 demonstrates that Clinton and Williams actively blocked what Dulberg told them and suppressed documents and information related to Tilschner v Spangler. They did this to benefit Popovich and Mast.

Popovich and Mast also '**buried key evidence**' in 12LA178 when Popovich and Mast cut up Dulberg's original Walgreens RX receipt as described in 'ARDC Complaint Against Thomas J. Popovich and Hans Mast' beginning paragraph 1-95.[21]

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18 Also in Section 2C, paragraph 2C26 of Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation

19 Group Exhibit 41_Appeal Package for 17LA377/CLR_Vol_2_of_2_230421_1627_22D90D40.pdf page 1770

20 Exhibit C21-2022-11-30_Flynn Answer to Motion to Strike Mast Deposition.pdf (¶12 on page 4)

21 Also in Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation beginning on paragraph 1-95

2) 'Bury Fraud' To Help Popovich and Mast

On June 8, 2019 Dulberg sent the following folder to Williams after reviewing the opposing party's May 29, 2019 document disclosure for the first time: To Julia

The folder contains a file called _READ_ME.txt which states:

> "The opposing counsel has released one "smoking gun" document that we've never seen before. It is (pop 192). Paul never gave Mast authorization to make this offer. We have ample evidence that Paul never authorized the offer made in (pop 192) and he knew nothing about it until seeing it last week. Note that it is not in the box of files we gave to you. It is not in the box of files that Mast gave to Paul when Mast withdrew from counsel. Also, the Baudin law firm and the Gooch law firm never saw this document."
>
> "Since we were never able to see (pop 192) until now, we never understood the details of how Mast tricked Paul into such a small settlement. The fact that Mast initiated the settlement process through (pop 192) without Paul's knowledge or permission is proof that this case is about more than Mast's negligence. It is about willful intent or malicious intent to deceive his client.
>
> Of course you will need convincing proof that (pop 192) was initiated without Paul's knowledge. We have that proof. As I fill in the timeline more and more, the evidence will be stronger and stronger."

Dulberg called for a meeting on July 8, 2019 (in the same email) to discuss this new development. Dulberg was ignored for almost 1 year. Clinton and Williams finally met with Dulberg and Thomas Kost by phone on June 24, 2020 (one day before the deposition of Mast).

TABLE 11 below shows the number of times Dulberg informed his legal malpractice attorneys about "overwhelming evidence" of intentional tort or fraud since first discovering evidence in the first week of July, 2019:

When Informed		**How Informed**
2019-07-08	after first receiving defendants document disclosure	email linked attached folder: To Julia documents: _READ_ME.txt timeline_of_mcguire_settlement.txt questions_for_mast.txt
2019-07-22	reminding Williams	email linked attached folder: To Julia documents: _READ_ME.txt timeline_of_mcguire_settlement.txt questions_for_mast.txt
2019-11-19	reminding Williams again	email linked attached document: 2109-11-19_updated_timeline_of_mcguire_settlement.txt
2020-02-06	preparing for Mast deposition	email linked attached documents: questions_for_mast.txt timeline_of_mcguire_settlement.txt
2020-02-08	preparing for Mast deposition	email linked attached documents: 2109-11-19_updated_timeline_of_mcguire_settlement.txt questions_for_mast.txt

2020-06-18	preparing for Mast deposition	email linked attached document: evidence_list.txt questions_for_mast.txt
2020-06-24	preparing for Mast deposition	email sent at 1:56AM linked attached documents: 2020-06-23_updated_timeline_of_mcguire_settlement.txt email sent at 10:05AM linked attached documents: 2020-06-23_updated_timeline_of_mcguire_settlement.txt
2020-06-24	meeting before Mast deposition	At meeting Thomas Kost (after waiting about 1 year for meeting) explained to Clinton and Williams that there is "overwhelming evidence" that Popovich and Mast committed fraud and intentional tort.

From July 8, 2019 onward Dulberg told Clinton and Williams that he had "overwhelming evidence" that Popovich and Mast intentionally committed fraud. Dulberg claimed to have a 'smoking gun' document he found that proved intentional tort. Dulberg tried to set up a meeting with Clinton and Williams for about 1 year to discuss the consequences of the new discovery of fraud on the case.

At the June 24, 2020 meeting Thomas Kost (after waiting about 1 year to do so) explained to Clinton and Williams that there is "overwhelming evidence" that Mast and Popovich committed intentional tort and fraud. Thomas Kost explained that the 6 points listed in the document evidence_list.txt provides "overwhelming evidence" that Mast and Popovich committed intentional tort and fraud. Clinton made no comment after Thomas Kost explained this.

This information was suppressed and ignored by Clinton and Williams since July 8, 2019. They "choked the client" to "bury fraud" or they would have lost the 2 year SoL 'escape hatch' for defendants Popovich and Mast. What they did can be understood as: **choke client** to **bury key evidence**, **bury fraud**, and **set up escape hatch**. They did this to benefit Popovich and Mast.

Popovich and Mast also '**buried fraud**' many times in 12LA178 which is what Clinton and Williams were trying to hide. Clinton and Williams '**buried fraud**' to conceal how Popovich and Mast '**buried fraud**'.

5) **'Give some, keep some, ghost some'**

This is a sophisticated system of document and information suppression described in Chapter `1 of 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams'[22]. 'Ghosted' documents include 'Rosecrance Treatment Plan' and the certified slip copy of Tilschner v Spangler.

6) 'Mince emails'

As described in 'ARDC Complaint Against Thomas J. Popovich and Hans Mast'[23] paragraph 1-294 to 1-296:

22 Also in Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation Chapter 1

23 Also in Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation paragraph 1-294 to 1-296

On December 16, 2016 Dulberg retained legal malpractice attorney Thomas Gooch to initiate a claim against Mast and Popovich for legal malpractice. When Dulberg moved to collect his emails with Mast from Dulberg's Comcast account to give to Gooch, Dulberg found that 3 years of emails had been deleted from his Comcast email account.[24] [25]

Dulberg called Comcast to get his emails restored. Dulberg was told by phone that an incident report was created and an internal investigation happened concluding that the missing emails were deleted at by a senior level administrator with Comcast and unfortunately the emails were not retrievable. No other information was provided to Dulberg.

In a state of panic, Dulberg realized that his apple device was set up to utilize a different protocol for sending out emails than the protocol used to receive emails. His outgoing emails were stored on a separate Apple server, different from the incoming emails that are saved on the Comcast servers. On December 27, 2016 Dulberg forwarded all the sent emails from his Apple device to a second Comcast email account and immediately printed out 2 hard copies of all email exchanges on paper so they could not be deleted again.

After Dulberg recovered his emails (with Popovich and Mast) in this way, Dulberg provided the emails to his legal malpractice attorneys Gooch-Walczyk and Clinton-Williams. How Clinton-Williams received Dulberg's emails with Popovich and Mast, bates-stamped them and turned them over to opposing counsel is described in 'ARDC Complaint Against Edward X. Clinton and Julia C. Williams' beginning paragraph 13.[26]

Visual Aid 5 - Email hoax shows how Clinton-Williams bates-stamped the emails as 4 large 'blocks' (shown in green) and 3 of the 4 email blocks were inexplicably 'minced' or 'butchered' before being bates-stamped and turned over to opposing counsel.

Visual Aid 6 - Lawyer Emails by date hoax shows what happened when Dulberg rearranged the same emails according to month and year and offered them to Williams for reference purposes. They were stripped out of context, 'minced' or 'butchered' before being bates-stamped and turned over to opposing counsel as if they were new documents being 'produced' by Dulberg for the first time.

7) BURY TROUBLESOME ISSUES

How to do it (method #1): Make multiple contradictory and untrue statements on the issues on behalf of ones client in the Common Law Record and in Reports of Proceedings. These statements are intended as gifts for the defendants. They were created by the legal malpractice attorneys but they are credited to Dulberg (as if the attorney received the information from Dulberg). The defense will use the multiple statements later to claim your client is 'being evasive' and 'changing his story' by 'fiddling' with his answers. An example below:

24 Exhibit 97_Missingemails.jpg
25 Exhibit 98_Missing emails-Marked up.pdf
26 Also in Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation beginning paragraph 13

TABLE 3: SOURCE OF THE $300,000 'UPPER CAP' PLACED ON 12LA178 ACCORDING TO DULBERG'S ATTORNEYS	
Version 1 2017-11-28 Gooch	"**Unfortunately, a "high-low agreement" had been executed by DULBERG**, reducing the maximum amount he could recover to $300.000.00 based upon the insurance policy available."
Version 2 2018-05-10 Gooch	WALCZYK: ...And then **it looks like there was a high-low agreement signed**. THE COURT: Was it signed by Mr. Mast? MS. WALCZYK: Oh, **I believe it was signed by Mr. Dulberg. I haven't seen it.**
Version 3 2018-06-07 Gooch	"**DULBERG was only able to collect $300,000.00 based upon the insurance policy available."**
Version 4 2018-12-06 Williams-Clinton	"**Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally."**
Version 5 2019-09-04 Williams-Clinton	"**And the trustee did resolve -- there was an arbitration based on the trustee's recommendation in the bankruptcy for the individual"**

The multiple contradictory statements are made to conceal what actually happened: An 'upper cap' on the value of PI case 12LA178 was placed by the Baudins and Defendants Allstate, acting alone on or before August 10, 2016. Joseph Olsen, who first received permission to retain the Baudins about 11 weeks later, wasn't even appointed the bankruptcy trustee until August 31, 2016. Reports of Proceedings from June 13, 2016 to August 10, 2016 prove what actually happened but Dulberg was never informed of any of this. Instead, Dulberg's legal malpractice attorneys made 5 incorrect and contradictory statements on the record on Dulberg's behalf as Table 5 shows.

BURY TROUBLESOME ISSUES (method #2): Both opposing parties completely ignore troublesome issue in collaboration with each other. For example, in Dulberg's case the defendant who struck Dulberg with a chainsaw effectively admitted negligence for Dulberg's injury as early as March, 2013. It was unmistakably recorded in the 12LA178 Common Law Record. But Dulberg's attorneys Popovich and Mast, then Balke, then the Baudins, then Dulberg's legal malpractice attorneys Gooch and Walczyk, and then Clinton and Williams never informed Dulberg that Gagnon admitted negligence.

Another excellent example is bankruptcy. Dulberg has experienced an environment of attorneys

in circuit court that will collectively ignore federal bankruptcy protections and proceed for months or years as if they don't exist. The client may never know about the federal bankruptcy protections to which they are entitled because the attorneys collectively ignore them as if it is normal.

8) 'Target depositions'

In the underlying PI case 12LA178 there are no valid certification page for 9 out of 10 depositions. Evidence of forgery exists in many of the alleged certification pages.

The strange deposition of Mast is described in 'ARDC Complaint Against Edward X Clinton and Julia C. Williams', Chapter 2, Section 2-K[27], in which key evidence disappears and a number of inexplicable technical glitches take place. The history of the key evidence which disappeared is described in Chapter 2, Section 2-C[28] of the same complaint and Table 10 (pages 9-10).

9) 'Strip case law'

Dulberg's current attorney Mr Talerico is on the record since February 10, 2021 (Mr Talerico was retained on October 23, 2020) explaining the application of ***Suburban Real Estate v Carlson*** to Dulberg's case in order to claim that the statute is counted from December 12, 2016. Mr Talerico explained that Suburban Real Estate v Carlson makes clear that if Dulberg filed a legal malpractice suit against Popovich and Mast at any time before December 12, 2016 his filing would have been ruled premature. Mr Talerico explained Illinois law is clear that the first day that Dulberg had standing to file a legal malpractice suit against Popovich and Mast was December 12, 2016 and not one day sooner.

The arguments in ***Suburban Real Estate Servs. v. Carlson, 2020 Ill. App. 191953 (Ill. App. Ct. 2020)*** reference 5 other key cases:

Successful Appellant ***Suburban Real Estate*** relied on ***Lucey***[29] and ***Warnock***[30] (and ***Northern Illinois Emergency Physicians***[31])

Unsuccessful Appellee ***Carlson*** relied on ***FagelHaber***[32] and ***Nelson***[33] (and ***Goran***[34])

The notion of a "financial injury" on December 12, 2016 consistent with Illinois law in Suburban Real Estate v Carlson was never explained to Dulberg by Gooch, Clinton, or Williams, not even

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27 Also in Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation Chapter 2, Section 2K

28 Also in Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation Chapter 2, Section 2C

29 Lucey v. Law Offices of Pretzel & Stouffer, Chartered, 301 Ill. App. 3d 349 (1998)

30 Warnock v. Karm Winand & Patterson, 376 Ill. App. 3d 364 (2007)

31 Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd., 216 Ill. 2d 294, 306 (2005)

32 Construction Systems, Inc. v. FagelHaber, LLC, 2019 IL App (1st) 172430

33 Nelson v. Padgitt, 2016 IL App (1st) 160571

34 Goran v. Glieberman, 276 Ill. App. 3d 590, 595-96 (1995)

as a suggestion or possibility. Opposing counsel Flynn found no relevance in Suburban Real Estate v Carlson. Neither Judge Meyer or Judge Berg saw any relevance in Suburban Real Estate v Carlson and did not recognize any notion of a 'financial injury' occurring on December 12, 2016 consistent with Suburban Real Estate v Carlson in Dulberg's case.

Table 7 lists[35] statements of each of these 17LA377 Officers of the Court when applying Illinois case law to 17LA377. None of the statements in Table 7 made by Judge Meyer, Judge Berg, Defendants Popovich and Mast, Dulberg's former attorneys Gooch, Clinton and Williams reference or are based on any of the case law cited in in Suburban (which is current Illinois law applicable to Dulberg's case).

Case law was also 'stripped' and intentionally distorted in 12LA178 when on November 20, 2013 Mast used the case law Talschner v Spangler as evidence of why the McGuires were not responsible for Dulberg's injury. Mast has denied ever since that he cited Tilschner v Spangler. Dulberg's own legal malpractice attorneys successfully suppressed the document for around 6 years as described earlier.

10) 'Starve and flood'

The 'flood' is the more than 6000 pages of described in 'ARDC Complaint Against Edward X. Clinton and Julia .Williams', Chapter 1 beginning on paragraph 35.[36]

The 'starve' is the suppression of large numbers of documents described in 'ARDC Complaint Against Edward X. Clinton and Julia .Williams', Chapter 1 beginning on paragraph 5. [37]

11) 'Set up accused' to **'use escape hatch'**

In Table 6 Flynn's key accusations[38] against Dulberg in his 2022 Summary Judgment are listed in Column 1. Column 2 shows how most every accusation made by Flynn against Dulberg in 2022 were set up and reinforced years earlier by Dulberg's own counsel (acting in collaboration with opposing counsel) to sabotage Dulberg's claims.

Popovich and Mast successfully hid behind Dulberg's own legal malpractice attorneys. This was the plan from the first time Dulberg met Gooch on December 16, 2016. Comments made by Gooch to Dulberg and Thomas Kost (full trustee of the Paul R. Dulberg Revocable Trust) at Dulberg's first meeting with Gooch on December 16, 2016 directly set up Flynn's Summary

35 'ARDC Complant Against Thomas W. Gooch and Sabina Walczyk' page 84 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 84

36 Also in Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation beginning paragraph 35

37 Also in Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation beginning paragraph 5

38 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk'. page 69 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 69

Judgment arguments in 2022. Gooch-Walczyk set Dulberg up and Clinton-Williams helped finish the job.

Popovich and Mast also '**set up the accused**' in 12LA178 when they tried to make their permanently disabled client Dulberg appear as if he was lying about how he obtained medication from Walgreens on the day of his injury. Popovich and Mast needed to '**bury key evidence**' and lead defendants Gagnon and Carolyn McGuire to commit perjury during their respective depositions. How they did this step by step is described in 'ARDC Complaint against Thomas J. Popovich and Hans Mast'[39] beginning on paragraph 1-114.

Popovich and Mast then made an offer to the McGuire defendants to settle the case for $7,500 on Dulberg's behalf without informing Dulberg and ultimately forced a settlement of $5,000. How they did this step by step is described in 'ARDC Complaint against Thomas J. Popovich and Hans Mast'[40] beginning on paragraph 1-148.

12) 'Throw privilege under a bus'

This is demonstrated step by step in 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk' from paragraph 1.[41] Give the defense grounds to demand your client's privileged attorney-client communications. This is done by setting the client up to make the claim that they "first knew" of an "injury" through communications with their legal malpractice attorney. (This is what Gooch did to Dulberg at their first meeting together.)

13) 'Run for cover stories'

The following quotes in italics are statements made by Thomas J. Popovich in his November 28, 2023 letter, followed by our response.

> *"It appears Mr. Dulberg has complained about numerous lawyers with whom he had contact about injuries which he sustained in an accident involving a chainsaw."*

They are listed on page 1.

> *"The case was difficult."*

Key evidence supporting Dulbergs claims was cut up by Popovich and Mast. Mast then led both Gagnon and Carolyn McGuire to commit perjury around the '**buried key evidence**'. This was done to make Dulberg appear as if he was lying about the events involving the '**buried key evidence**'. How they did this step by step is described in 'ARDC Complaint against Thomas J.

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39 Also in Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation beginning on paragraph 1-114

40 Also in Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation beginning on paragraph 1-148

41 Also in Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation from paragraph 1

Popovich and Hans Mast'[42] beginning on paragraph 1-114.

Gagnon effectively admitted negligence for Dulberg's injury as of March, 2013.[43] Dulberg was not informed of this by Popovich and Mast, then Balke, then the Baudins, then Gooch and Walczyk, and then by Clinton and Williams.

Once Popovich and Mast 'buried key evidence", 'buried fraud', led Gagnon and Carolyn McGuire to commit perjury and hid Gagnon's effective admission of negligence from Dulberg, Popovich and Mast claim the case is 'difficult'. They claim that the case is Dulberg's word against Gagnon's word with no other witnesses. Mast wrote to Dulberg shortly after leading Gagnon to commit perjury during his deposition:

> "Obviously this case is your word against Gagnon's word."[44]

Popovich now claims "the case was difficult". This is a cover story. It may appear plausible if buried key evidence, buried fraud, perjury by Gagnon and Carolyn McGuire, and Gagnon's effective admission of negligence for Dulberg's injury are all suppressed.

> *"At some point after the case was filed, it was determined that claims against Mr. and Mrs. McGuire were not likely to succeed."*

On October 22, 2013, Popovich and Mast made an offer to the McGuires to settle the case against them for $7,500 without Dulberg's knowledge or permission.[45] On November 20, 2013 Mast told Dulberg and Thomas Kost on that the McGuires were not liable for Dulberg's injury because Tilschner v Spangler confirms that Restatement of Torts 318 was not applicable in Illinois.[46]

Table 10 shows how many times Dulberg informed His legal malpractice attorneys about the importance of Tilschner v Spangler.

'ARDC Complaint Against Edward X. Clinton and Julia C. Williams' Chapter 2, Section C and Section K shows the extensive efforts Clinton and Williams made to suppress Tilschner v Spangler.[47]

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42 Also in Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation beginning on paragraph 1-114

43 'ARDC Complaint Against Thomas J. Popovich and Hans Mast' paragraph 1-110 and Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation beginning on paragraph 1-110

44 'ARDC Complaint Against Thomas J. Popovich and Hans Mast' paragraph 1-133 and Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation paragraph 1-133

45 'ARDC Complaint Against Thomas J. Popovich and Hans Mast' paragraph 1-148 and Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation paragraph 1-148

46 'ARDC Complaint Against Thomas J. Popovich and Hans Mast' paragraph 1-166 and Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation paragraph 1-166

47 Also in Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation Chapter 2, Section C and Section K

"The settlement with the McGuire Defendants was completely voluntary. Mr. Dulberg made the decision to settle with those Defendants, and settlement was recommended, because the claim against them was very weak."

This is the cover story. They explained to Dulberg that he had no case against the McGuires because Tilschner v Spangler confirms the Restatement of Torts 318 is not applicable in Illinois. Popovich and Mast, with the collaboration of Dulberg's legal malpractice attorneys Gooch-Walczyk and Clinton-Williams 'buried key evidence' while denying ever since that they did this.

"Mr. Dulberg's claims against the McGuires Defendants settled for $5,000.00. Mr. Dulberg executed a release, confirming his agreement to the settlement."

This quote is the cover story that Mast, Popovich, opposing counsel Flynn, Gooch-Walczyk and Clinton-Williams all collaborated together to '**bury key evidence**' and '**bury fraud**'.

"There was a remaining defendant, Gagnon, who remained a defendant in the lawsuit. However, Mr. Dulberg was a difficult client. The Popovich law firm withdrew from representation in 2015 and Mr. Dulberg went on to be represented by other lawyers."

Personal injury defendant (who was operating the chainsaw that injured Dulberg) Gagnon effectively admitted negligence for Dulberg's injury as early as March, 2013. Popovich and Mast never informed Dulberg of that Gagnon admitted to being negligent:

About 10 months before Dulberg was coerced into settling with the owners of the property (the McGuire's) on which the accident occurred and for whom Gagnon was working.

About 21 months before Dulberg declared bankruptcy.

About 39 months before any binding mediation agreement with Gagnon was mentioned.

About 40 months before any cap was placed on any binding mediation award from Gagnon.

There was no reason for any of these activities to take place if the defendant who operated the chainsaw already admitted to being negligent.

"Mr. Gagnon was not a minor. There was some effort to connect Gagnon's actions to the McGuires, as their agent, acting under their supervision. There was also an issue of Mr. Dulberg's contributory negligence."

Gagnon effectively admitted negligence for Dulberg's injury as early as March, 2013.[48] Mast knew that Gagnon committed perjury in his deposition because Mast intentionally led Gagnon to commit perjury.[49] Using the '**buried key evidence**' against Dulberg, Mast made his client Dulberg appear to be lying about how Dulberg purchased medications the day of his injury and how he paid for the medication. Mast did this by leading both Gagnon and Carolyn McGuire to commit perjury during their depositions to contradict Dulberg's story.

Clinton and Williams used the same basic techniques and cover story. They first buried key

48 'ARDC Complaint Against Thomas J. Popovich and Hans Mast' paragraph 1-110 and Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation paragraph 1-110

49 'ARDC Complaint Against Thomas J. Popovich and Hans Mast' beginning paragraph 1-114 and Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation beginning paragraph 1-114

evidence (Table 10) and buried fraud (Table 11). They then claimed that the case is 'difficult' or 'unwinnable'. They even claimed that Dulberg misled them about the evidence.

> *"Eventually, Mr. Dulberg obtained an arbitration award of $561,000.00 against Mr. Gagnon, which, pparently, exceeded insurance coverage of $300,000.00."*

This is a cover story which Popovich, Mast, opposing counsel Flynn, Gooch-Walczyk and Clinton-Williams all collaborated on and used to benefit Popovich and Mast and sabotage Dulberg's case. What actually happened is recorded in 12LA178 ROPs from June 13, 2016 to August 10, 2016.

> *"Despite the arbitration award, in 2017, Mr. Dulberg filed a legal malpractice case against Mr. Mast and the Popovich firm. In the lawsuit, Mr. Dulberg was initially represented by Thomas Gooch, III. The basis of the claim was that Mr. Dulberg was "coerced" into settling with Mr. and Mrs. McGuire."*

Gooch was informed of the importance of Tilschner v Spangler at his first meeting with Dulberg. Dulberg handed Gooch the original certified slip copy of Tilschner v Spangler which Mast gave to Dulberg on November 20, 2013.

ARDC Complaint against Thomas W. Gooch and Sabina Walczyk documents how Gooch set Dulberg up to lose his case from their first meeting together.

As the above quote shows, Popovich then claims that the statements Gooch-Walczyk and Clinton-Williams forced into Dulberg's complaints were originally made by Dulberg. The statements are attributed to Dulberg. This is how the game is played.

> *"Counsel who represented Mr. Dulberg after the withdrawal of the Popovich firm did not question the decision."*

If sued, each will claim that 2 years has already passed while Dulberg's subsequent attorneys "raised no issue". This is exactly what Popovich now claims:

> *"Mr. Dulberg had separate legal counsel who represented him after the Popovich firm withdrew. If there had been legal malpractice, then Dulberg had counsel who could have advised him of his rights, with the applicable statute of limitations. 735 ILCS 5/2-214.1."*

Popovich and Mast, then Balke, then the Baudins, then Gooch and Walczyk, then Clinton and Williams will or already have made the same core claims (while hiding in the network):

(a) "Dulberg had separate legal counsel who represented him after we withdrew".

(b) "If there had been legal malpractice, then Dulberg had counsel who could have advised him of his rights, with the applicable statue of limitations".

This is their '**run for cover story**' in a nutshell. This is how the 2 year SoL escape hatch works.

> *"It appears that the Request for Investigation is based on the same allegations as the legal malpractice lawsuit.*

They are completely different. The Complaint. Amended Complaint and Second Amended Complaint were prepared by Gooch-Walczyk and Clinton-Williams to set Dulberg up and prepare a 2 year SoL escape hatch to benefit Popovich and Mast and to sabotage the case of their own permanently disabled client.

Duhlberg hoax[50] shows a common 'inside joke' of mocking Dulberg by referring to him as 'Duh'-lberg. The 'inside joke' began with Popovich-Mast and was continued by legal malpractice attorneys Gooch-Walczyk and Clinton-Williams. A court reporter also shared the inside joke[51] by mocking Dulberg when naming a court document.

"ARDC Complaint Against Thomas J. Popovich and Hans Mast" is completely different. It is based on clear, unambiguous claims Dulberg is making against Popovich which are listed on page 1 of the ARDC Complaint and linkable to all supporting evidence.

> *"Overall, it appears that Mr. Dulberg is dissatisfied with the limitations which existed on his claim (insurance coverage limitations, contributory negligence and weak claims against McGuires). None of those limitations were caused by Mr. Popovich or Mr. Mast."*

This is a cover story. The Request for Investigation is based on clear, unambiguous claims Dulberg made against Popovich which are listed on page 1 of the ARDC Complaint and linkable to all supporting evidence. Not a single specific accusation has been answered or acknowleged by Popovich. Extensive evidence of forgery and destruction of evidence was provided in 'ARDC Complaint Against Thomas J. Popovich and Hans Mast'. While ignoring at least 15 acts of evidence manipulation and forgery, Popovich instead inexplicably tries to guess at what 'overall dissatisfied' Dulberg.

Clinton and Williams and Mast also replied to the ARDC complaint against them in a similar way. They follow the same 2 step approach as Popovich:

step 1: Ignore each and every specific accusation listed on page 1 and linked to supporting evidence.

step 2: Substitute for these specific claims by 'speculating' in general terms as to why Dulberg is 'dissatisfied' or how he 'feels'.

According to this pattern, the Baudins, Balke and Gooch-Walczyk will most probably reply to the ARDC complaints against them using a similar generic 2 step approach:

(a) Ignore all specific accusations on page 1. They will not answer any specific claims against them or acknowledge the claims on page 1 to exist.

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50 Visual Aid 11 - Mocking client.png Gooch once again referred to his permanently disabled client as 'Duhlberg' in an angry letter Gooch sent to Dulberg shown in 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', paragraph 93 and in Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation paragraph 93

51 Group Exhibit 42_17LA377 purchased by Dulberg/Reports of Proceedings_Folders-Year-Month-Day-Case_Original file names/2018-11-13_17LA377_Duhlberg/

(b) Instead they will speculate in general terms why Dulberg is probably 'dissatisfied'.

This appears to be the 'cover story' that each named attorney will most probably use to avoid and ignore the accusations listed on page 1 of each respective ARDC complaint. It can also be predicted that each responding attorney will used the same pre-planned reason as to why they are not respnsible for anything related to Dulberg:

(a) "Dulberg had separate legal counsel who represented him after we withdrew".

(b) "If there had been legal malpractice, then Dulberg had counsel who could have advised him of his rights, with the applicable statue of limitations".

Each reply to each ARDC complaint by each attorney listed on page 1 will most probably have this same generic "cookie-cutter" pattern.

Popovich is a Friend of the Presiding Judge of both 17LA377and underlying case 12LA178

The Trial Court Judge Thomas A Meyer has retired as of September 2023.[52]

The Trial Court Judge Thomas A. Meyer had at least on one occasion recused himself as a friend of Defendant Thomas J. Popovich in 12LA326, who has also appeared in the matter for Plaintiff-Appellant Paul Dulberg in the underlying case (12LA178). Thomas J. Popovich is the owner and sole stockholder of The Law Offices of Thomas J. Popovich, P.C. and supervisor of Mr. Mast, the named defendants and current Appellees in 17LA377. [53]

The Trial Court Judge Thomas A. Meyer did not recuse himself in the current matter (17LA377) although his stated friend Thomas J. Popovich's Law Firm is a named Defendant in this matter. Also, we offer as additional proof of Judge Thomas A. Meyers refusing to self recuse when his friend is a defendant. [54]

The Honorable Judge Joel D. Berg, who replaced Judge Thomas A. Meyer in this matter and at least one other matter, Christine M. Interrante v. Law Offices of Thomas J. Popovich, P.C. and Thomas J. Popovich, individually 18LA370, when the Honorable Thomas A. Meyer was transferred to traffic court at the end of 2022, refused to hear a Motion to Reconsider and sent it back to the Honorable Thomas A. Meyer for hearing.[55]

The Honorable Joel D. Berg only heard one motion in 17LA377, that being a motion for summary judgment that ended the matter in the trial court.

The Honorable Thomas A. Meyers was the trial court judge from inception in 2017 up to the time before the hearing of the Motion for Summary Judgment which ended the matter in the trial court.

52 17LA377 appeal/2023-11-21_Motion to Reconsider Exhibits/EX 3-10.pdf Exhibit 6 on page 9

53 EXHIBIT A within EXHIBIT 1 page 10, EXHIBIT 8 page 12 and ROP Vol 1 of_1_230421_1628_8FF9DDF1.pdf pages R292 Line 14through R300 Line 13

54 17LA377 appeal/2023-11-21_Motion to Reconsider Exhibits/EX 3-10.pdf Exhibit 9 on page 18

55 17LA377 appeal/2023-11-21_Motion to Reconsider Exhibits/EX 3-10.pdf Exhibit 7 on page 11.

The Honorable Judge Joel D. Berg clearly indicated in 18LA370 that he will not entertain a Motion to Reconsider regarding a matter that he was not presented and argued before himself. [56]

The Honorable Judge Joel D. Berg has also self recused in cases where Thomas Popovich was a defendant, the only difference between Judge Berg and Judge Meyer is Judge Berg does not give any reason for recusal. [57]

How the Chain of Fraud Works Mapped in 11 Tables

The overall methods of how Dulberg's legal malpractice attorneys worked together to sabotage Dulberg's legal malpractice case 17LA377 against Popovich and Mast can also be seen in a series of 11 tables (called 'Table 1' through 'Table 11)'. a general outline of the 11 Tables is also given at this link:

SUMMARY OF METHODS USED TO SYSTEMATICALLY DEPRIVE AN INJURED PERSON (DULBERG) OF CONSTITUTIONAL RIGHTS

Table 1 shows[58] 4 different efforts that Popovich, Mast, Balke and the Baudins made to place an 'upper cap' on the value of Dulberg's PI case 12LA178. Dulberg reacted to the first effort by filing for bankruptcy. The next 3 attempts were made after Dulberg declared bankruptcy and in violation of the automatic stay and without informing the bankruptcy trustee. The 4th and final attempt to place an 'upper cap' on the value of PI case 12LA178 was done successfully by the Baudins and Defendants Allstate, acting alone on or before August 10, 2016. Joseph Olsen, who first received permission to retain the Baudins about 11 weeks later, wasn't even appointed the bankruptcy trustee until August 31, 2016.

Table 2 shows[59] strategies and methods of 5 law firms retained by Dulberg. All successive attorneys to the same (fully disabled) client used the same overall strategy: To intentionally weaken or sabotage their own client's case.

All three personal injury attorneys retained by Dulberg acted in violation of the automatic stay. They continued to appear in the 22nd Judicial Circuit Court (which operated for approximately 25 months in violation of the automatic stay) claiming to represent Dulberg (who had no standing as plaintiff). All 3 PI attorneys made efforts to place a cap on the remaining case without having any authority from the Bankruptcy Court to do so. Both legal malpractice attorneys suppressed all information of how all 3 PI law firms violated federal bankruptcy laws from Dulberg and from the complaints.

All five law firms (3 personal injury law firms and 2 legal malpractice law firms) knew or could easily have discovered that personal injury defendant (who was operating the chainsaw that injured Dulberg) Gagnon effectively admitted negligence for Dulberg's injury as early as March,

56 17LA377 appeal/2023-11-21_Motion to Reconsider Exhibits/EX 3-10.pdf Exhibit 9 on page 18
57 17LA377 appeal/2023-11-21_Motion to Reconsider Exhibits/GROUP EXHIBIT 10 on page 19
58 'ARDC Complaint Against Kelly N. Baudin and William Randall Baudin II', page 22 and Evidence of Fraud on the Court in 12LA178 During Baudins Representation page 22
59 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 3 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation, page 3

2013. None of the 5 law firms ever informed Dulberg of this. The original defendant and operator of the chainsaw, Gagnon, admitted to being negligent:

About 10 months before Dulberg was coerced into settling with the owners of the property (the McGuire's) on which the accident occurred and for whom Gagnon was working.

About 21 months before Dulberg declared bankruptcy.

About 39 months before any binding mediation agreement with Gagnon was mentioned.

About 40 months before any cap was placed on any binding mediation award from Gagnon.

There was no reason for any of these activities to take place if the defendant who operated the chainsaw already admitted to being negligent.

Table 3 shows[60] 5 incorrect versions of the origin of the $300,000 'upper cap' placed on the value of PI case 12LA178 given by Dulberg's own attorneys. None of the 5 versions are what Dulberg told his attorneys. In addition, the true origin of the 'upper cap' is clearly documented in 12LA178 Reports of Proceedings from June 13, 2016 to August 10, 2016. The 'upper cap' was placed on the value of 12LA178 by the Baudins and Defendants Allstate acting alone and over 7 weeks before the Baudins were authorized by the Bankruptcy Court to act on behalf of the bankruptcy estate. The Baudins and Defendants Allstate acted alone to set a $300,000 'upper cap' on the value of PI case 12LA178 about 3 weeks before bankruptcy trustee Olsen was appointed as bankruptcy trustee.[61]

Table 4A shows[62] 3 incorrect versions of when Dulberg "first knew" of an "injury" given by Dulberg's counsel. Table 4B shows Table 4A in a simpler form.[63] Evidence shows that Gooch was already setting Dulberg up to lose on a 2 year statute of limitations argument during their first meeting together.[64]

Tables 4A and 4B show Gooch-Walczyk and Clinton-Williams attributed the statement Gooch made to Dulberg on December 16, 2016 to Dulberg himself. The statement was first made by Gooch the legal malpractice attorney with authority and an air of certainty to the client during their first meeting together. The statement was later transferred to the client and blamed on the client himself .

Gooch asserted the statement, not Dulberg. Gooch informed Dulberg that Gooch is considered an expert on such matters and their first meeting together is when the statute of limitations is tolled. This was later changed to 'Dulberg's claim'.

Gooch is a legal malpractice attorney with over 20 years experience. Clinton is a legal

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60 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 36 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 36

61 Described in 'ARDC Complaint Against Wm Ramdall Baudin II and Kelly N. Baudin' beginning paragraph 27 and Evidence of Fraud on the Court in 12LA178 During Baudins Representation beginning paragraph 27

62 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 41 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 41

63 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 42 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 42

64 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', from first paragraph and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation from first paragraph

malpractice attorney with over 20 years experience. Yet both imply that it was Dulberg that unilaterally decided that the toll starts at his first meeting with Gooch. Some reality checks:

- Did Gooch have ***any theory*** of when the statute of limitations begins to toll? What was it?
- How did Dulberg come up with the idea that the statute of limitations begins to toll from his first meeting with Gooch? How and when did the idea first enter his head?
- After more than 20 years of experience as a legal malpractice attorney in Illinois, where did Gooch get the idea that the statute of limitations begins to toll when a client has their first meeting with a legal malpractice attorney?
- Does Gooch have a history using the same theory with other clients?
- Wouldn't Gooch already know that this claim puts Dulberg's attorney-client privileged communication with him at issue?
- Has Gooch put the attorney-client privileged communication of other clients at issue using the same theory?
- If so, why did he do it again?
- If not, why is this the first time in his career he encountered this situation?

Clinton-Williams were aware that Gooch set up Dulberg with the claim of "first knowing" of an "injury" during Dulberg's first meeting with Gooch on December 16, 2016. Clinton-Williams attributed the claim to Dulberg personally. This is how the game is played.

Gooch set Dulberg up on December 16, 2016. Years later both Clinton and opposing counsel Flynn use the original set-up as an alibi for their own respective claims and as a way to imply that 'Duh'-lberg is to blame. This is true teamwork in action: Both of Dulberg's legal malpractice attorneys working seamlessly with opposing counsel Flynn (all effectively in agreement) to benefit Popovich and Mast at Dulberg's expense. 'Duh'-lberg is blamed for everything.

Tables 3, 4A and 4B taken together show the methods used by Dulberg's own legal malpractice attorneys to attempt to discredit Dulberg and sabotage his case against Popovich and Mast. They simply made multiple contradictory and untrue statements in the 17LA377 Common Law Record and in the Records of Proceedings on behalf of Dulberg without his permission or knowledge. Tables 3, 4A and 4B show the base logic Gooch-Walczyk and Clinton-Williams used to set Dulberg up to fail.

The emails[65] and attachments[66] sent to Clinton and Williams and Gooch can be compared to Tables 3, 4A and 4B, Table 10 and Table 11. They demonstrate that:

- Dulberg's legal malpractice attorneys ignored what Dulberg actually told them.
- Dulberg's legal malpractice attorneys wrote whatever they wanted to write.
- Dulberg's legal malpractice attorneys then attributed all these claims to Dulberg.

They did this to set Dulberg up to lose his case and to benefit Popovich and Mast.

65 Key Clinton Folder 16-Emails_Clinton Firm-Dulberg/
66 Key Clinton Folder 16-Emails_Clinton Firm-Dulberg/ATTACHMENTS/

Table 5A shows[67] toll dates given by opposing counsel Flynn. Table 5B shows[68] toll dates given by Dulberg's own attorneys Gooch-Walczyk and Clinton-Williams. The logic used in Tables 3, 4A and 4B led to the claims of statute of limitations toll dates shown in Tables 5A and 5B.

Table 6 shows[69] how key elements of opposing counsel Flynn's Summary Judgment arguments in 2022 were set up with the help of Dulberg's own legal malpractice attorneys since 2016. Flynn's Summary Judgment argument is broken down into 29 key elements. Elements are shown to be directly related to something Dulberg's own legal malpractice attorneys did to Dulberg. Table 6 shows how Dulberg was set up to fail by his own legal malpractice attorneys from the first day Dulberg met Gooch.

Table 7 shows[70] how current Illinois law was applied by Officers of the Court in 17LA377 to Dulberg's case. The key statements made in defense of granting Summary Judgment to Defendants Popovich and Mast are gathered and compared.

The notion of a "financial injury" on December 12, 2016 consistent with Illinois law in Suburban Real Estate v Carlson was never explained to Dulberg by Gooch, Clinton, or Williams, not even as a suggestion or possibility. Opposing counsel Flynn found no relevance in Suburban Real Estate v Carlson. It was not used or referenced in any of the 14 items in Table 5A and 5B. There is no notion of financial injury or application of Illinois law Suburban Real Estate v Carlson in any of the versions in Table 4A nd 4B. Neither Judge Meyer or Judge Berg saw any relevance in Suburban Real Estate v Carlson and did not recognize any notion of a 'financial injury' occurring on December 12, 2016 consistent with Suburban Real Estate v Carlson in Dulberg's case.

Table 8 shows[71] patterns of collaboration between Gooch-Walczyk and Clinton-Williams on numerous issues. Dulberg retained Clinton-Williams almost 2 years after first retaining Gooch. It was not possible for Clinton-Williams to successfully suppress key documents unless Gooch-Walczyk suppressed the same key documents before them. They both did so to benefit Popovich and Mast among others.

Table 9 shows[72] 3 different cases of fraud on the court committed at Dulberg's expense. The first was during personal injury case 12LA178. When Dulberg was pressured to settle the remainder of the case for a low amount Dulberg reacted by declaring bankruptcy which opened a federal bankruptcy case in addition to PI case 12LA178. When Dulberg was later forced to accept an 'upper cap' of $300,000 on the value of the PI case Dulberg reacted by initiating legal malpractice claim 17LA377 against Popovich and Mast.

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67 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 65 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 65

68 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 67 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 67

69 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 69 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 69

70 'ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk', page 84 and Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation page 84

71 'ARDC Complaint against Edward X. Clinton and Julia C. Williams', page 139 and Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation page 139

72 'ARDC Complaint against Edward X. Clinton and Julia C. Williams', page 144 and Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation page 144

Tables 10 and 11 were described earlier in this response.

Fraud on the Court

In addition to committing fraud against Dulberg, the named attorneys participated in a series of frauds on the judicial mechanism of the court.[73]

> "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."[74]

The 7th Circuit further stated:

> "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."[75]

Fraud on the court is a fraud:

> "directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents . . . . It is thus fraud where . . . the impartial functions of the court have been directly corrupted."[76]

Interestingly, the term "fraud on the court" is only mentioned in Rule 60(d)(3) of the Federal Rules of Civil Procedure, yet courts have also used this doctrine to order dismissal or default under other rules where a litigant has stooped to the level of fraud on the court.[77]

As explained in 'Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation' Chapter 4 [78] there is evidence of 3 different cases of Fraud on the Court related to the actions of Popovich and Mast.

Fraud on the Court took place in 12LA178. But when Popovich and Mast put pressure on Dulberg to settle with Gagnon in October, 2014, Dulberg declared bankruptcy which initiatied BK case 14-83578. In order to conceal the fraud committed in 12LA178, those participating in Fraud on the Court in 12LA178 were forced to commit Fraud on the Court in BK 14-83578 for 2

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73 Fraud on the Court quotes from "Fraud on the Court and Abusive Discovery" (2016) David R. Hague, St. Mary's University School of Law

74 Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, Â¶ 60.23.

75 Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, Â¶ 60.23

76 (Robinson v. Audi Aktiengesellschaft, 56 F.3d 1259, 1266 (10th Cir. 1995) (emphasis added) (citation omitted))

77 See, e.g., Combs v. Rockwell Int'l Corp., 927 F.2d 486, 488 (9th Cir. 1991) (relying on Rule 11 where counsel made thirty-six changes on a deposition errata sheet after the client advised that the transcript was accurate and the testimony was correct); Brockton Sav. Bank v. Peat, Marwick, Mitchell & Co., 771 F.2d 5, 11–12 (1st Cir. 1985) (affirming district court's entry of default judgment under court's inherent powers in response to defendant's abusive litigation practices); Wyle v. R.J. Reynolds Indus., Inc., 709 F.2d 585, 589 (9th Cir. 1983) ("[C]ourts have inherent power to dismiss an action when a party has willfully de- ceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice."); Eppes v. Snowden, 656 F. Supp. 1267, 1279 (E.D. Ky. 1986) (finding that where fraud is committed upon the court, the court's power to dismiss is inherent "to protect the integrity of its proceedings").

78 Page 140 of Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation

reasons: (1) to conceal previous fraud and (2) to force Dulberg to settle with Gagnon.

When Dulberg filed a lawsuit for legal malpractice against Popovich and Mast (17LA377), a third case of 'Fraud on the Court' took place in 17LA377. The purpose of the 'Fraud on the Court' in 17LA377 was to conceal all the acts of fraud that took place in 12LA178 and BK 14-83578.

TABLE 9: 3 DIFFERENT CASES OF FRAUD ON THE COURT COMMITTED AT DULBERG'S EXPENSE

3 DIFFERENT CASES OF 'FRAUD ON THE COURT'			TYPE
1	12LA178	Popovich, Mast, Balke, the Baudins, Allstate, Auto Owners, bankruptcy trustee Olsen, Judge Meyer	Original Fraud
2	BK 14-83578	Popovich, Mast, Balke, the Baudins, Allstate, Auto Owners, bankruptcy trustee Olsen, Judge Meyer	Deflection (Secondary) Fraud
3	17LA377	Gooch, Clinton, Williams, Flynn, Popovich, Mast, Judge Meyer, Judge Berg	To Conceal All Previous Frauds

Case #1: PI fraud or settlement fraud was the original intent

Case #2: But when Dulberg declared bankruptcy, fraud in the bankruptcy court was necessary to 'close the deal'.

Case #3: Fraud in the legal malpratice case was necessary to conceal both the PI fraud and the bankruptcy fraud

New acts of fraud became neccesary to keep everything concealed that came before. The fraud started in one court but eventually spread to at least 5 courts (and counting).

The Continued Living Impacts of Fraud on the Court on Dulberg's Legal Malpractice and Fraud Claims

The 17LA377 dismissal and appeal[79] serves as a demonstration of how centrally important the document and information suppression systems used by Gooch-Walczyk and Clinton-Williams against Dulberg were to the outcome of Dulberg's cases.

The key evidence Tilschner v Spangler (Table 10, pages 9-10) and Dulberg's claims of Popovich and Mast committing Intentional Tort and Fraud (Table 11, page 12) would have blocked the 2

79 17LA377 appeal documents in chronological order

year SoL ‘escape hatch’ that Popovich and Mast used to have 17LA377 dismissed.

“Team-work” between Gooch-Walczyk and Clinton-Williams was essential in order to completely ‘**bury key evidence**’ for over 6 years. Without the careful and consistent efforts of Clinton-Williams to ‘**bury fraud**’ (as shown in Table 11), the case against Popovich and Mast could not have been dismissed through a 2 year SoL ‘escape hatch’.

In fact, Gooch-Walczyk and Clinton-Williams deserve more credit for having the case dismissed than opposing counse Flynn. Their coordinated suppression of key evidence and evidence of fraud over 6 years proved to be most decisive in swinging the case in the favor of defendants Popovich and Mast.

Corruption Is A Choice

We claim that the PI case 12LA178 is a documented, mapped example of systematic and widespread fraud on the court and we have provided substantial evidence to support our claims. The fraud on the court was so systematic and pervasive that we challenge anyone who disagrees with us to ***locate portions of case record of 12LA178 which are NOT either fraud on the court or affected by fraud on the court.***

We claim that the legal malpractice case 17LA377 is also a documented, mapped example of systematic fraud on the court and we have provided substantial evidence to support our claims. We challenge anyone who disagrees to ***locate portions of case record of 17LA377 which are NOT either fraud on the court or affected by fraud on the court.***

We cannot allow handicapped, disabled and injured people to be mere food sources for attorneys with no sense of ethics. The attorneys have all the advantages, the injured people have none. Especially dangerous are networks of attorneys as the Dulberg case shows. If they are defended and allowed to continue to work in the legal system, handicapped and disabled people do not have a ***‘snowball’s chance in hell’*** to make claims to seek justice in Illinois courts.

The named attorney used their memberships in the Illinois Bar as a vehicle to prey on their own permanently disabled client. They collectively treated the Himmel Rule as if it is a joke. The concealment of fraud was so systematic that Dulberg was most probably not their first target. To allow this to continue or to look the other way while it happens is to allow pure predation on injured, disabled and handicapped people to take place while using the Illinois court system and membership in the Illinois Bar as the vehicles to accomplish these ends.

Thank you for your help with this matter and feel free to contact us if you need any additional information or have any specific questions.

/s/ Paul Dulberg
Paul Dulberg

/s/ Thomas Kost
Thomas Kost
Full Trustee of the Paul R. Dulberg Revocable Trust

From:
Paul Dulberg
4606 Hayden Ct.
McHenry, IL. 60051

Dated: October 31, 2023

To:

ARDC
130 E. Randolph Dr., Ste. 1500
Chicago, IL 60601-6219
Fax: (312) 565-2320
Email: information@iardc.org

ARDC
3161 W. White Oaks Dr., Ste. 301
Springfield, IL 62704
Fax: (217) 546-3785
Email: information@iardc.org

Members of the ARDC Committee,

We are submitting an ARDC Complaint against Brad J Balke.

We previously submitted the following ARDC Complaints:

Edward X. Clinton No. 2023IN02517 (submitted on July 27, 2023)

Julia C. Williams No. 2023IN02518 (submitted on July 27, 2023)

Thomas J. Popovich No. 2023IN03135 (submitted on September 15, 2023)

Hans Mast No. 2023IN03136 (submitted on September 15, 2023)

Before Dulberg retained Balke he was represented by Popovich and Mast. In order to understand what Balke did to Dulberg it is important to understand what Popovich and Mast did to Dulberg. The ARDC Complaints against Popovich and Mast describe how Popovich and Mast:[1]

- Redirected medical lien liability from the Defendants to Plaintiff
- Forged documents and destroyed evidence
- Corrupted the interrogatory and document production process to sabotage client's case and to benefit defendants (in collaboration with opposing attorneys)
- Suppressed information on mental health issues related to Dulberg's injury
- Corrupted the deposition process to sabotage client's case and to benefit defendants (in collaboration with opposing attorneys)
- Knew Defendant Gagnon effectively admitted to negligence for Dulberg's injury
- Knew Defendant Gagnon committed perjury
- Knew Defendant Carolyn McGuire committed perjury
- Committed settlement fraud
- Violated federal bankruptcy laws

1 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Thomas J. Popovich and Hans Mast"

Balke received the case file from Popovich and Mast. The ARDC Complaint against Balke describes how:[2]

- Balke contracted with Dulberg and not with the Bankruptcy Trustee
- Balke told Dulberg (about 11 weeks later) he would withdraw counsel if Dulberg does not settle with Allstate for $50,000
- Balke violated federal bankruptcy laws

Dulberg later hired a legal malpractice attorney Gooch-Walczyk and after firing them, Dulberg retained Clinton-Williams. It is not possible to explain what Balke did without also explaining how Balke was covering for Popovich and Mast and being covered by Gooch-Walczyk and Clinton-Williams.

The legal malpractice attorneys collaborated with opposing counsel to conceal what the PI attorneys did to Dulberg. Balke covered for Popovich and Mast. The Baudins then covered for Popovich, Mast and Balke. Gooch then covered for Popovich, Mast, Balke, the Baudins and later Clinton and Williams then covered for Popovich Mast, Balke, the Baudins, and Gooch-Walczyk.

The ARDC Complaint against Clinton and Williams describe how Clinton and Williams:[3]

- Suppressed large numbers of documents

and how they collaborated with opposing counsel to benefit the defendants and sabotage Dulberg's case by:

- Concealing Dulberg's bankruptcy
- Suppressing emails from Saul Ferris
- Suppressing key evidence (Tilschner v Spangler certified slip ruling)
- Suppressing large numbers of emails from Brad Balke
- Collaborating with opposing attorney to flood Dulberg with over 6,000 documents just before withdrawing as Dulberg's counsel
- Suppressing all information on what the Baudins did to Dulberg
- Suppressing evidence that Defendant Gagnon effectively admitted negligence for Dulberg's injury as early as March, 2013
- Collaborating with opposing counsel to suppress Barch documents before Dulberg's deposition
- Collaborating with opposing counsel to weaken verification pages of discovery production
- Collaborating with opposing counsel during the deposition of Hans Mast and after

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2 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Brad J. Balke"

3 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint against Edward X. Clinton and Julia C. Williams"

In addition, the ARDC Complaint against Gooch and Walczyk (submitted at the same time as the Balke ARDC Complaint is being submitted) describe Gooch-Walczyk and Clinton-Williams:[4]

- Concealing key evidence in collaboration with each other (Tilschner v Spangler certified slip ruling)
- Concealing admission of negligence of Defendant Gagnon for Dulberg's injury in underlying case 12LA178 in collaboration with each other
- Concealing Bankruptcy and Violations of Federal Bankruptcy Laws (automatic stay, loss of standing to pursue claim, capping value of assets in BK estate, ect) in collaboration with each other
- Concealing true sources of $300,000 upper cap on the value of the PI claim in collaboration with each other
- Intentionally confusing Statute of Limitations toll date, date of "injury", and placing Dulberg's privileged attorney-client communications at issue in collaboration with each other CASE

They did these things to protect Balke (and Dulberg's other PI attorneys). One cannot fully understand what Balke did to Dulberg without understanding how Balke was protected by Dulberg's legal malpractice attorneys Gooch-Walczyk and Clinton-Williams.

All supporting exhibits are placed on 6 (64 GB) flash-drives that will be mailed to 130 E. Randolph Dr., Ste. 1500 Chicago, IL 60601-6219. Please advise to whom it should be addressed. One flash drive is intended for the ARDC and the other five are for the 5 attorneys mentioned in the complaints filed with this cover letter (should the ARDC find it necessary to provide them to the attorneys).

There are two sets of supporting exhibits. A second set is online (password protected) for ease of access. Each footnote within the ARDC Complaints hyperlinks online directly to the exhibit(s) cited. Please use any of the following:

User name: ardc1
Password: OQtHPqz3PqxO

User name: ardc2
Password: FrX-%Z#-Ddd^

User name: ardc3
Password: jR[}nA1(#Co4

If you need more user names and passwords please let us know.

/s/ Paul Dulberg
Paul Dulberg

/s/ Thomas Kost
Thomas Kost
Full Trustee of the Paul R. Dulberg Revocable Trust

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4 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk" (submitted at the same time as the Balke ARDC Complaint)

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION
of the
SUPREME COURT OF ILLINOIS

COMPLAINT FORM

Use this form to file a complaint about:
1) an Illinois lawyer;
2) a non-Illinois lawyer who has provided legal services in Illinois; or
3) a non-lawyer who you are claiming has engaged in the unauthorized practice of law in Illinois.

Return the completed form by e-mail, mail or facsimile to:

ARDC
130 E. Randolph Dr., Ste. 1500
Chicago, IL 60601-6219
Phone: (312) 565-2600 or (800) 826-8625
Fax: (312) 565-2320
Email: information@iardc.org

or

ARDC
3161 W. White Oaks Dr., Ste. 301
Springfield, IL 62704
Phone: (217) 546-3523 or (800) 252-8048
Fax: (217) 546-3785
Email: information@iardc.org

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1. Your name: Paul Dulberg

Street address: 4606 Hayden Ct.

City: McHenry State: Illinois Zip: 60051

Home phone: (847) 497-4250 Work phone: _____ Cell phone: Same as Home phone

Email address: Paul_Dulberg@Comcast.net

2. Name of lawyer/person you want to be investigated: BRAD J. BALKE, ESQ.

Name of law firm or business: Brad J. Balke, P.C., (and) Balke & Williams

Street address: 542 S. Dearborn, Suite 310 (and) 215 N Main St.

City: Chicago (and) Algonquin State: Illinois Zip: 60605 (and) 60102

Phone: (312) 986-8063, (847) 856-9605, (815) 545-4080, (815) 219-8342, (815) 495-5598

Email address: brad@balkelaw.com

3. Have you previously contacted the ARDC regarding this matter? Yes _____ No X

If yes, when and how did you contact us? _____

4. Did you employ the lawyer/person you are complaining about: Yes _____ No X

4a. If you answered yes to question 4:

When did the employment start? MARCH 14, 2015

What was the fee agreement? one-third of any recovery

How much have you paid the lawyer/person to date? $1539.32 for 1/2 of expenses Balke paid to the Law Offices of Thomas J. Popovich P.C. (and) an overpayment of $1539.32 paid by my Bankruptcy Trustee for an attorney lien that was already satisfied.

over

4b. If you answered no to question 4 what is your connection to the lawyer/person?

I retained Brad J. Balke Esq. in March 2015 to represent me in a personal injury matter (12LA178).

5. If your request relates to a court case or other proceeding, please provide the following:

Name of court or agency: TWENTY-SECOND JUDICIAL CIRCUIT MCHENRY COUNTY, ILLINOIS

Name of case: PAUL DULBERG vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL) MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually

Case number: No. 12 LA 178

6. Please explain your complaint(s). Include important dates and names of witnesses and others involved. Use additional pages if necessary. Attach copies of documents that support your complaint, such as fee agreements, receipts, checks, letters and court papers.

Please see the accompanying ARDC COMPLAINT AGAINST BRAD J BALKE contained a file called "ARDC BRAD J BALKE.pdf" which is a a detailed 14 page complaint and has a separate cover letter contained in a file called "ARDC Cover Letter_Balke-Gooch-Walczyk-Baudins.pdf":

There are two sets of supporting exhibits:

1. On a (64 GB) flash-drive that will be mailed to 130 E. Randolph Dr., Ste. 1500 Chicago, IL 60601-6219. Let me know to whom it should be addressed.
2. Online (password protected) for ease of access. Each footnote within the ARDC Complaint hyperlinks online directly to the exhibit(s) cited. The user name and password are contained in the cover letter.

Signature: /s/ Paul Dulberg Date: October 31, 2023

ARDC COMPLAINT AGAINST BRAD J BALKE

BRAD BALKE CONTROL OF DULBERG'S PERSONAL INJURY CASE 12LA178

Balke contracted with Dulberg and not with the Bankrupty Trustee.

Balke told Dulberg (about 11 weeks later) he would withdraw counsel if Dulberg does not settle with Allstate for $50,000. Dulberg fired Balke.

Relevant Facts:

1. Dulberg filed for bankruptcy in November, 2014.[1]

2. Hans Mast and Thomas Popovich repeatedly tried to get Dulberg to settle with Gagnon for $50,000 or less.[2]

3. Dulberg eventually fired Popovich and Mast in March, 2015, just after canceling a preconference settlement hearing that Mast scheduled in which Mast was proposing on Dulberg's behalf to drop the case against Gagnon for $50,000, telling Dulberg in an email, "There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that." [3]

4. On March 19, 2015 Dulberg retained Attorney Brad Bulke, who claimed he was willing to take the case against Gagnon to trial.

5. After withdrawl, in exchange for release of his attorney lien[4] Balke received $1539.32[5] for exactly what Balke paid to the Law Offices of Thomas J. Popovich P.C.. Balke then received an overpayment of $1539.32[6] from Dulberg's Bankruptcy estate for an attorney lien that was already satisfied. Balke profited an extra $1539.32 from Dulberg.

6. As stated In re Enyedi, 371 B.R. 327, 334 (N.D. Ill. 2007):

> It is well established in case law that acts taken in violation of the automatic stay imposed under section 362(a) of the Bankruptcy Code are deemed void ab initio and lack effect. See Middle Tenn. News Co., Inc. v. Charnel of Cincinnati, Inc., 250 F.3d 1077, 1082 (7th Cir. 2001) ("Actions taken in violation of an automatic stay ordinarily are void."); York Ctr. Park Dist. v. Krilich, 40 F.3d 205, 207 (7th Cir. 1994) (judgment issued against debtors without a modification of the automatic stay must be vacated); Matthews v. Rosene, 739 F.2d 249, 251 (7th Cir. 1984) (orders issued in violation of automatic

1 Exhibit 82_Bankruptcy doc 1-0_OCR.pdf
2 Exhibit 1_"Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation"
3 Exhibit 13_DUL001389, 1392, 2732, 2735, 5025, 5028, 6892, 6895, 7285, 7288 and POP000113
4 Exhibit 245_2015-07-10_Balke Releaases all Attorneys liens.pdf
5 Exhibit 244_2015-07-10_Scan of bank statement showing 1539.32 check Dulberg paid to Balke for costs paid to Popovich.pdf
6 Group Exhibit 37-bankruptcy_docket_Petition # 14-83578/

stay provisions of Bankruptcy Code ordinarily are void); In re Benalcazar, 283 B.R. 514, (Bankr.N.D.Ill. 2002) (same); Garcia v. Phoenix Bond Indem. Co. (In re Garcia), 109 B.R. 335, 340 (N.D.Ill. 1989) ("[T]he fundamental importance of the automatic stay to the purposes sought to be accomplished by the Bankruptcy Code requires that acts in violation of the automatic stay be void, rather than voidable. Concluding that acts in violation of the automatic stay were merely voidable would have the effect of encouraging disrespect for the stay by increasing the possibility that violators of the automatic stay may profit from their disregard of the law, provided it goes undiscovered for a sufficient period of time."). See also Hood v. Hall, 321 Ill.App.3d 452, 254 Ill. Dec. 470, 747 N.E.2d 510, 512 (2001) ("There is no question that judgments entered in violation of the automatic stay in bankruptcy are void ab initio . . . and that void judgments may be attacked at any time."); Concrete Prod, Inc. v. Centex Homes, 308 Ill. App.3d 957, 242 Ill.Dec. 523, 721 N.E.2d 802, 804 (1999) ("[A]cts in violation of the section 362(a) automatic stay are void ab initio.")

7. On April 3, 2015 11:38 AM Dulberg sent an email to Balke stating:[1] "Are we on for the April 9th pretrial in the McHenry County Courthouse?"

8. On April 3, 2015 at 11:59 AM Brad J Balke responded:[2] "Unbeknowst to me, the Judge cancelled the settlement conference. I am going in front of the Judge on 4/10 to get the settlement conference re-scheduled."

9. On April 3, 2015 at 3:22:58 PM CDT Dulberg sent an email to Balke with Subject: Re: April 9 th, stating:[3] "Should I be there?"

10. On April 10, 2015 the following exchange took place in 22nd Judicial Ciruit Court:[4]

THE COURT: Dulberg vs. Gagnon. Mr. Balke. Is this one yours?

MR. BALKE: Which one is this?

THE COURT: Dulberg vs. Gagnon.

MR. BALKE: Yeah. We're waiting for Acardo on that one, too.

THE COURT: All right.

(Whereupon, other matters were heard and the afore-captioned cause was recalled.)

THE COURT: You're the only ones here, so...

MR. BALKE: Yeah. We're waiting for Mr. Acardo, both of us. On my case, which is Dulberg, I think we had a pretrial conference set for today.

THE COURT: On Dulberg?

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1 Exhibit 13 DUL002829, 2830, 2831, 4955, 4956, 4957, 6822, 6823, 6824, 7215, 7216, 7217
2 Exhibit 13 DUL006822, 6823, 7215, 7216
3 Exhibit 13 DUL002829, 2830, 4955, 4956, 6822, 6823, 7215, 7216
4 Exhibit 231_2015-04-10_ROP 12LA178.pdf

MR. BALKE: Yeah.

THE COURT: I don't have it on my schedule.

MR. BALKE: Well, I don't think you did anymore because irreconcilable differences between the plaintiff who was being difficult is now more in line.

THE COURT: Okay.

MR. BALKE: And so I want to get it re-set. I think that's what Acardo wants, too, but I haven't had a chance to talk to him.

THE COURT: I could do --

MR. BALKE: Can you do, like, May 13th? Would that work?

THE COURT: Yes.

MR. BALKE: Yes?

THE COURT: We can do it at 11:00 o'clock on May 13th. If I get a -- if I have a trial going, which seems very doubtful at this point, you guys would end up getting kicked; but I would let you know the day before.

MR. BALKE: Sure. So 5-13 at 11:00 a.m. And I'll just set that, and --

THE COURT: Yeah. And if for some reason you can't do the pretrial, show up on that day at 9:00 a.m. for status.

MR. BALKE: Well, like I said, I think they may have some authority, and I want to get the plaintiff in here to --

A VOICE: Judge, I have written down on that day on my order, too (indiscernible) also put on for the same -

THE COURT: Okay. Which one? What number was yours?

A VOICE: Page 4, No. 12 on Judge Caldwell's call. (Indiscernible).

MR. BALKE: That's fortuitous, isn't it?

A VOICE: Yeah. Sometimes it just works that way.

THE COURT: All right.

11. On Apr 29, 2015, at 9:52 AM Brad Balke sent an email to Dulberg stating:[1] "As discussed, Mast gave me a check for $3,333.33 along with the file. See PDF attached. I need to deposit this in my IOLTA before the check expires. To that end, Send me a one-□line e-□mail stating that I have Power of Attorney to endorse the draft on your behalf. The funds will just sit there until we resolve the rest of the case. I'm going to call Perry Accardo again on the settlement conference. He has to call me back." Attached: <check $5k from McGuire DULBERG.pdf>

1 Exhibit 13 DUL006821, 7214

12. On April 29, 2015 at 10:12:44 AM CDT Dulberg sent an email to Balke stating:[1] "You have power of attorney to endorse the draft on my behalf.Paul
Ps. Wish I could make Hans choke on this check for his lies/incompetence that lead to such a small amount!"

13. On May 8, 2015 at 12:34:25 PM CDT Dulberg sent an email to Balke stating:[2] "Yesterday Saul Ferris office called and said they just received back the packet they mistakenly sent to Hans Mast at Popovich law firm. In it is the pretrial settlement memo you wanted to see. There is also the printed depositions of both the homeowners, the defendant and myself. I picked these up this morning. Let me know how to get these to you."

14. On May 13, 2015 the following exchange took place in 22nd Judicial Circuit Court:[3]

NO APPEARANCES GIVEN

THE COURT: Counsel, your turn.

UNIDENTIFIED VOICE: I'm going to bring back Mr. Dulberg, too.

THE COURT: Okay. That's fine.

UNIDENTIFIED VOICE: Thanks, Judge. Or you wanted to me see me first and then --

THE COURT: No, you both can come back.

UNIDENTIFIED VOICE: All right.

(Whereupon, a break in the in-courtroom proceedings was had.)

THE COURT: Counsel.

UNIDENTIFIED VOICE: Just me, Judge?

THE COURT: Yeah, just you.

UNIDENTIFIED VOICE: All right. I'll be right back. It probably won't be long.

UNIDENTIFIED VOICE: Okay.

(Whereupon, a break in the in-courtroom proceedings was had.)

UNIDENTIFIED VOICE: Sorry. The judge wants to bring me and the plaintiff back one more time. This should go quick.

(Whereupon, a break in the in-courtroom proceedings was had.)

THE COURT: (Indiscernible). We need a new date. What do you want to do?

UNIDENTIFIED VOICE: Give me at least 30 days probably.

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1 Exhibit 13 DUL002846, 4954, 6821, 7214
2 Exhibit 13 DUL002639, 2651, 2675, 2847, 2849, 2850, 2851, 4950, 4951, 4952, 4953, 6817, 6818, 6819, 6820, 7210, 7211, 7212, 7213
3 Exhibit 232_2015-06-12_ROP 12LA178.pdf

THE COURT: Okay. If we come back for status on June 12th, I can do that. That's exactly 30 days.

UNIDENTIFIED VOICE: Let me check my calendar, Judge. I'm sorry.

THE COURT: Otherwise we're talking the end of the month.

UNIDENTIFIED VOICE: I actually have pretrials in Lake County that morning.

THE COURT: All right. You might not have to be here.

UNIDENTIFIED VOICE: Okay.

THE COURT: So I'm --

UNIDENTIFIED VOICE: Okay. Yeah. If we don't necessarily have to be here, then --

THE COURT: Yeah. It doesn't make any difference to me.

UNIDENTIFIED VOICE: Okay.

THE COURT: Because I'm -- My understanding is that they have got to go talk to some people.

UNIDENTIFIED VOICE: Okay.

THE COURT: Is that a fair statement, counsel?

UNIDENTIFIED VOICE: Yes.

UNIDENTIFIED VOICE: Okay. Understood.

UNIDENTIFIED VOICE: June 12th, you want to do this, Judge?

THE COURT: Yes. But Mr. Accardo can't be here, so.

UNIDENTIFIED VOICE: Oh, okay.

THE COURT: I mean if you were expecting him to show. That just is the one date I'm here.

UNIDENTIFIED VOICE: Yeah. Let's -- Let's get it set for that day --

UNIDENTIFIED VOICE: Okay.

UNIDENTIFIED VOICE: -- and I'll just cover it and --

THE COURT: All right.

UNIDENTIFIED VOICE: (Indiscernible).

THE COURT: If in the interim you guys just talk further and end up settling the matter, just send a dismissal order and I'll enter it at that time.

UNIDENTIFIED VOICE: All right.

UNIDENTIFIED VOICE: Okay.

UNIDENTIFIED VOICE: Should I get the case number, Your Honor, or --

UNIDENTIFIED VOICE: Just (indiscernible)

UNIDENTIFIED VOICE: Is that going to work?

UNIDENTIFIED VOICE: Yeah.

UNIDENTIFIED VOICE: Do you need the case info?

(Whereupon, a discussion took place off the record.)

UNIDENTIFIED VOICE: Thanks for working through lunch, Judge.

UNIDENTIFIED VOICE: Thank you, Judge.

THE COURT: Have a good day.

UNIDENTIFIED VOICE: Don't starve.

15. On May 14, 2015 at 7:16:30 AM CDT Dulberg sent an email to Bulke stating:[1] "Thank you for yesterday. Please find Below is Atty. David Stretch's contact information. He is the Attorney I have to represent myself in the Bankruptcy. If you are not able to read the attachment I can send it in text form.
Also, Today I am going to dig out the paperwork I received from the Bankruptcy trustee relieving me from all debtors other than the medical bills and get it over to Donahue's office as soon as I can." David Stretch.vcf (0.4 KB)

16. On May 15, 2015 2:17 PM Dulberg sent an email to Balke stating:[2] [3] "I sent you a photo of the discharge order from the bankruptcy yesterday. Is the photo sufficient or do I still need to go to Donahue's office and get you a copy? Also, reading the discharge order it seems to me that the bankruptcy is over and I've been discharged from all debt. If that is so, doesn't that mean there is no 15k limit anymore? Below I have attached another photo of the discharge order."

17. On May 15, 2015 at 3:58 PM Brad J Balke sent an email to Dulberg stating:[4] "The photo is sufficient. Awaiting a call from the trustee. No, the 15k limit is still in force since the case is a recognized asset of yours. Think of it like having real estate, but not selling until after the BK. The asset would still be yours, albeit in a different form."

18. On May 15, 2015 at 6:48:07 PM CDT Dulberg sent an email to Bulke stating:[5] "I don't understand because I do still have real estate after the bankruptcy and I was told I'm now free to refinance it, sell it or keep it so I'm not sure I get the point but ok I guess"

19. On May 18, 2015 at 8:28 AM Brad J Balke sent an email to Dulberg stating:[6] "To use a

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1 Exhibit 13 DUL002857, 4948, 6815, 7208
2 Exhibit 13 DUL002858, 2860, 4944, 4946, 6811, 6813, 7204, 7206
3 Exhibit 167_Dulberg BK Files Bates 2599 .pdf (page 1)
4 Exhibit 13 DUL006811, 7204, 7206
5 Exhibit 13 DUL002858, 7204, 7206
6 Exhibit 13 DUL006811, 7204

different example, let's say you had a non-liquid asset like a rare piece of art. When you file your BK, the trustee doesn't just let you walk away with it, but rather retains an interest in it, until you can take it to an auction. (The case is the same, you still have to pay back the trustee to the extent you can once proceeds from the "sale" are realized.)"

20. On May 18, 2015 at 8:41:02 AM CDT Dulberg sent an email to Balke with Subject: Re: Bankruptcy notice, stating:[1] "Have you talked with the trustee? My understanding was its over and that if I felt strongly about paying those I owed I still could but wasn't required to anymore. If it turns out the suit is still in play for the bankruptcy I wonder why the order from the court I sent you doesn't list the suit as an exemption from the order. On the back of the order it details what the exemptions listed on the front mean and my order didn't have any exemptions listed. Either way it doesn't matter. My thoughts are, if we get enough to pay the debts all the better. Perhaps we can get enough to undo the bankruptcy altogether. Would be nice not having a bankruptcy on the record. Thanks again, Paul"

21. On May 27, 2015 at 11:23:10 AM CDT Dulberg sent an email to Balke with Subject: Settlement vs. trial, stating:[2] "Talked with my mom and it seems to us that if all I'm going to get is 15k even if we max out the defendants policy limit then I should seriously look at taking this to trial and leaving it up to a jury to decide an appropriate amount. 15k might as well be 0 because it doesn't even begin to pay for the damages I've suffered. I know the risks and that it would cost me almost 20k more in expenses and that the defendant can run off and pay nothing beyond his insurance limits. Assuming that Allstate may claim the act was criminal and that their not responsible has to be overcome. I'm not a mind reader and can't make any claim as to their clients intentions and their client isn't going to self incriminate himself so I don't see how their claim of something criminal can hold water. Especially since their client hasn't been charged with any crimes associated with his actions on that day. At the last court date, The judge asked if I was doing this for principles. I answered no. However, after thinking it through... Seeing as how I'm getting virtually nothing out of this and will eventually lose my home, that I was working most of my life to keep, because SSDI can't cover living here or almost anywhere that I can consider worthy, my principles are evolving and I'm not opposed to going the distance and taking this to trial. I'm willing to make a principled point that people should not get off 'scot free' other than having to find a new insurance company after using a chainsaw on another person causing real life threatening harm with permanent damages. I'm more than positive that a jury will award more than the insurance limits and that we will not recover anything more than those limits, but one thing is almost for sure, the defendant will most likely have to file bankruptcy to protect his assets and the next person he hurts over the next 7-10 years will have full access to his assets because he won't be able to file bankruptcy again for that period. Either way, I get virtually nothing so principles are all I have. On the positive side, If the jury does award an amount more than the insurance limits we get to see if the defendant has any assets that can't be protected and if he does I stand to get the costs of a trial covered a perhaps a smidgen more than 15k, if not, well then I'm in the same boat I am already and nothing changes."

1 Exhibit 13 DUL002858, 4944, 6811, 7204
2 Exhibit 13 DUL002868, 4943, 6810, 7203

22. On May 27, 2015 at 1:40 PM Brad J Balke sent an email to Dulberg stating:[1] "Paul, these kind of thoughts are going to get you a $0 for sure. Call me at my downtown office 3129868063."

23. On May 27, 2015 at 7:19:56 PM CDT Dulberg sent an email to Balke stating:[2] "Hi Brad, Just got this message and its late. Not sure what kind of thoughts are the right kind of thoughts in this type of situation. Will call tomorrow Paul"

24. Bulke told Dulberg that if he does not agree with a settlement of $50,000, Bulke could not continue to be his attorney.

25. On Jun 9, 2015 at 12:24 PM Brad Balke sent an email to Dulberg stating:[3] "Paul, Please sign on the line near the red "X". If you need a notary, you can go to Donahue's office and sign there."

26. On June 9, 2015 1:39 PM Dulberg sent an email to Balke stating:[4] "Who wrote this, you or Allstate?"

27. On Jun 9, 2015 at 1:40 PM Brad J Balke sent an email to Dulberg stating:[5] "Allstate. It isn't written particularly for your case. They use the same release for everyone."

28. On June 9, 2015 at 4:52:13 PM CDT Dulberg sent an email to Balke stating:[6] "You could have just stopped with this is the best deal you could get but you didn't. You pulled a Hans and assaulted me when you threatened to remove yourself from this case if I didn't sign this release before you see the judge. That's an ultimatum and it's not something I'm going to react to positively. The way I see it, there is more than just the 2 options in your ultimatum… A.) I can take this deal, shut up, go away and keep suffering and praying for SSDI B.) I can refuse to take this deal, lose you as an attorney and have to find new council or simply represent myself and start over with the same 15k on the table and possibly an extra 15k in bankruptcy surplus while still suffering and preying for SSDI. C.) I can stop this suit all together and lose 15k, in which no one gets anything while I suffer and prey for SSDI Any which way I go, I'm the one who's getting thrown under the buss and I'm tired of being a victim of others threats.
As of now I'm leaning towards option "C". As you said, the medical providers have already written off my accounts as loses and that leaves Option "C", me losing 15k, well, it is kind of a cheap way of saying how I feel about the state of my legal representation and their efforts because their afraid they can't prove the defendant put a chainsaw into my arm and that the defendants mother is an elderly woman with whom the jury may sympathize yet didn't see the actual incident, refused to call 911 for help, but did call her insurance followed by a call to the hospital and lied to the staff claiming to be my mother only to disrupt the emergency room treatment not to ask how I was doing but to tell me she was insured. Good for granny, she is

1 Exhibit 13 DUL006808, 7201
2 Exhibit 13 DUL002866, 4941, 6808, 7201
3 Exhibit 13 DUL006803, 6804, 6806, 6807, 7197, 7198, 7199, 7200
4 Exhibit 13 DUL002879, 4936, 4937, 4938, 4939, 6803, 6804, 6805, 6806, 7198, 7197, 7198, 7199
5 Exhibit 13 DUL006803, 6804, 6805, 7196, 7197, 7198
6 Exhibit 13 DUL002878, 4935, 6802, 7195

insured. Where was her slick phone skills when I needed an ambulance and for god sakes why lie to the hospital staff and call me in the emergency room to tell me the most important thing on her mind... The fact that she was insured. Big deal what did it do to help me?
These people had no concern for anyone's well being other than their own. They are the type that deserve to get sued. Granny or not. This may all make a great documentary one day about the state of legal representation and their ethical commitment to following through once they commit themselves to a client. A series false dichotomies of sorts. It is just a leaning towards option "C" not an actual commitment yet. I need to sleep on the options for a couple nights I'll get back to you with my answer just before court starts later this week. Please remind me, what is the time and date the judge set?Thanks for everything, Paul"

29. On June 11, 2015 10:08 AM Dulberg sent an email to Balke with Subject: Release v trial, stating:[1] "Before I decide to sign this release I'd like to know exactly why it is you don't think this case is easily winnable? And please don't spout that it's his word vs mine. That is obvious and is the situation in most cases. And don't give me the old your only getting 15k no matter what excuse because that's not about this case being winnable or not. I want some honesty
I deserve that much
Please feel free to call me with the answer"

30. On Jun 11, 2015 at 12:24 PM Brad Balke sent an email to Dulberg stating:[2] "It isn't that it's not winnable....A trial would be very unlikely to improve your bottom line. After all, you'd have to win more than the offer, plus expenses, plus the claims on bankruptcy case. In other words, even if you "win" your trial, you might end up with less in your pocket."

31. On June 11, 2015 at 1:19:58 PM CDT Dulberg sent an email to Balke stating:[3] "at this point, the very least of a judgement on the defendants record is priceless And that increases my bottom line in more than just a monetary way"

32. On June 12, 2015 the following exchange took place in 22nd Judicial Circuit Court:[4]

> THE COURT : Yes .
>
> A VOICE: Hey, Judge, stepping up on Number 9 .
>
> THE COURT : I already gave a - - no , I don't. Okay. Dulberg vs. Gagnon.
>
> A VOICE : That's Number 8, yeah, we are going to get resolved, Judge.
>
> THE COURT: Okay.
>
> A VOICE : That's the Tony Rogers' case. This is Paul Dulberg. That's Mr. Dulberg.
>
> THE COURT: Morning.
>
> A VOICE: As you might recall, we had a pretrial conference in front of you about a

1 Exhibit 13 DUL004931, 4932, 4933, 6798, 6799, 6800, 7191, 7192, 7193
2 Exhibit 13_ DUL004931, 4932, 6798, 6799, 7191, 7192
3 Exhibit 13 DUL004931, 4932, 6798, 6799, 7191, 7192
4 Exhibit 232_2015-06-12_ROP 12LA178.pdf

month ago, exactly a month ago, and Paul and I have a difference on how we see the settlement offer, My perspective, it's a max- -

THE COURT: We are on the record.

A VOICE: Yeah, I know.

THE COURT: What - - so what are you asking me for and then we'll work backwards?

A VOICE: Well, we've had an irretrievable break down of the attorney - client relationship .

THE COURT: Okay.

A VOICE: I'd like to withdraw. I'd like to get an order that says that I can withdraw.

THE COURT: Do you understand what he's saying?

A VOICE: I understand what he's asking. I'm asking you not to give it to him.

THE COURT: Okay. I can't make someone be your attorney if - -

A VOICE: I know, but he did take it on knowing that it could go further than this.

THE COURT: And, I mean, there are certain circumstances under which I can deny the motion and that involves situations, for instance, when it's on the eve of trial, but we don't have a trial date. I recognize it's a hardship.

A VOICE: We are at the precipice, though.

THE COURT: I'm sorry?

A VOICE: We are at the precipice if the agreement breaks down.

THE COURT: Well, we haven't - - I haven't set it for trial, so I don't have any critical matters coming upon this case that I think would justify denying his motion. I recognize it's not something you want, but I wouldn't - - I wouldn't force you to stay his client. I wouldn't force h i m to stay your attorney. That's a harm on all of you.

A VOICE: I don't know how it all works, but I do understand he has a lien. He's only been on this for a little bit. And I am asking - - maybe you have the power. I have asked him and he refuses to give up his part of the lien so I can go get somebody else. That would be - - it's a better incentive for the - -

THE COURT: Certainly. But I don't know, and I' m not asking you tell me, I don't know the extent of his lien. I don't know to what extent you feel that his services are justified by that lien. And that's a different kind of a hearing. And I wouldn't ask you to say anything, again, on the record because that's -

A VOICE: Do we need to have that hearing?

THE COURT: If there were a motion filed, yes, we would - - I would entertain that argument, but to be honest, the only time I would really entertain that argument is if you had achieved settlement with the other side because you can't determine - - it's all

speculative for me to determine the value of his work if I don't know what the value of the settlement is I mean, if you settle for ten - - and I don't - - I'm picking numbers out of thin air - - if you settle for $10,000, that's one thing. But if you end up settling for a hundred thousand dollars, then there is something else altogether involved, so - -
A VOICE: Well, I think obviously at this point any improvement isn't going to be his doing.

THE COURT: And I would generally agree, but I don't know the basis under which - - I mean, you could present a valid argument that the improvement is based on work he's already performed. I don't know. Everything I'm saying right now is entirely speculative. The end result is that even though you are objecting, I'm going to allow him to withdraw. I will give you time to file your own appearance and/or get an attorney, but I can't in good conscience force him to stay in the case given the status of this matter, and so I would let him withdraw. Do you have any questions about that procedure? I'm assuming you have no other objections other than you don't want him to withdraw.

A VOICE: How long do I've got to find a lawyer?

T H E COURT: You'll have 21 days, and I'm - - if you file your own appearance, he's already paid the fee or you've already paid the fee technically. All you've got to do is file an additional appearance, but you have to file an appearance. If you file your own appearance, then the case will remain pending. In fact, Counsel, I'm going to - - I'll let you withdraw. I'm going to explain this, but I'll let you start on the order. I'm going to continue this until July 10th, and I will grant you leave until July 10th in which to file an appearance or have an attorney file an appearance. If you file an appearance, that's all you've got to do, and it shouldn't cost you any money because the fee has already been paid by somebody else. If you do nothing, though, I have no alternative but to dismiss the case for want of prosecution.

A VOICE: Right

THE COURT: If - - if you are still talking to another attorney, you can file your appearance and that will kind of serve as a place holder and nothing bad will happen. And a new attorney can appear at any point later on in the litigation so that you don't prejudice yourself by filing your own appearance, but you've got to file an appearance and you've got to send a copy to the other side so they know you did. Do you have any questions?

A VOICE: Actually I do, Judge, there is another issue. Mr. Dulberg settled out the claim with a prior defendant, and I'm holding a small amount of funds for him from that defendant. And what I'd like to do is disburse those funds to him subject to all the liens, and that way - - and put that in the order so that we have a very clear understanding of what I'm going to do.

THE COURT: Okay. Do you have any questions about this proposal because I don't know the details and I'm not asking?

A VOICE: The way that it happened last time is the new, whoever I get, would take that from him and put it towards whatever because this is - - this is all tied up to be settled somewhere else

THE COURT: But he's already settled, as I understand, with one of the parties so that you have a finite amount of money.
A VOICE: He didn't actually settle. Somebody else did. He's just holding the funds.

THE COURT: Allright. So do you have any problem with him disbursing the funds under those circumstances? Do you know the exact numbers?

A VOICE: Yes.

A VOICE: I believe that they have to be turned over to a bankruptcy court. That's about it.

THE COURT: Okay

A VOICE: I don't - -

THE COURT: Allright.

A VOICE: Well, he has an exemption up to $15,000 at least, so this is well below that.

THE COURT: Allright. So what's the language you are proposing for that order?

A VOICE: Just that I disburse the funds to him and that's it, subject to whatever liens might exist.

THE COURT: Okay.

A VOICE: I mean, I could hold them - - I could hold them for him if he wants me to, but I'd rather not.

A VOICE: I don't want to (indiscernible) the money, so - -

THE COURT: I'm sorry?

A VOICE: I don't want to lose the money, so wherever it's got to go, it's got to go.

THE COURT: Allright. Well, and he's got to pay the liens anyway, so I have no problem with the entry of that order unless there is something I'm not anticipating that you can advise me of.

A VOICE: I don't know of anything else.

THE COURT: So I will grant that request. He'll put it in the order. I' m putting the case over to July 10. By July 10 th, you've got to file an appearance.

A VOICE: Yes.

THE COURT: If you file an appearance and don't show up, I have to dismiss the case

A VOICE: Yes, sir

THE COURT: So once you file the appearance , you're acting as the attorney and you've got to be here, so - - and if you intend to litigate the case on your own, I can give you a little bit of leeway because you are not an attorney, but I can't ignore the rules. So it is very difficult for somebody who doesn't know the rules to practice law, so I - -

A VOICE: I will be seeking an attorney.

THE COURT: I don't want you to box yourself in to a position by - -

A VOICE: I think that's exactly what we are doing here is I'm trying to unbox that position.

T H E C O U R T : And you are entitled to your opinion. I don't remember the details. I remember the pretrial, but I will put it over to July 10 th. He'll draft the order. If there is - - take a look at the order. If there is a problem, step back up and I'll address it. Okay. Do you have any other questions?

A VOICE: No.

THE COURT: Allright. We'll see you shortly.

A VOICE: Thanks, Judge.

THE COURT: Thank you.

33. On June 12, 2015 1:02 PM Dulberg sent an email to Balke stating:[1] "Please expect a call from Randall Baudin's office. Please share whatever it is they need concerning this case. I'm not sure yet what to do with the sum from Hans. I hope to know more about what has to be done with it early next week."

34. On Jun 17, 2015 at 1:35 PM Brad Balke sent an email to Dulberg stating:[2] "FYI, I haven't heard from Baudin or anyone else."

35. On June 17, 2015 2:45 PM Dulberg sent an email to Balke stating:[3] "You probably won't until next week"

36. On Jun 25, 2015 at 8:56 AM Brad Balke sent an email to Dulberg stating:[4] "Paul, I have yet to hear from anyone. Allstate is hoping this gets dismissed and they don't have to pay anything to anyone. That is their plan."

37. On July 6, 2015 at 9:34:47 AM CDT Dulberg sent an email to Balke stating:[5] "What's it going to cost to get the file?"

38. On July 6, 2015 at 11:30 AM Brad Balke sent an email to Dulberg stating:[6] "$0."

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1 Exhibit 13 DUL004918, 4922, 4924, 4926, 4927, 4928, 4929, 4930, 6785, 6789, 6791, 6793, 6794, 6795, 6796, 6797, 7178, 7182, 7184, 7186, 7187, 7188, 7189, 7190

2 Exhibit 13 DUL006789, 6791, 6793, 6794, 6795, 6796, 7178, 7182, 7184, 7187, 7188, 7189

3 Exhibit 13 DUL004918, 4922, 4924, 4926, 4927, 4928, 4929, 6785, 6789, 6791, 6793, 6794, 6795, 6796, 7178, 7182, 7184, 7186, 7187, 7188, 7189

4 Exhibit 13 DUL006785, 6789, 6790, 6792, 6794, 6795, 7178, 7182, 7183, 7185, 7188

5 Exhibit 13 DUL004917, 4921, 4923, 4925, 4927, 6784, 6788, 6790, 6792, 6794, 7177, 7181, 7183, 7185, 7187

6 Exhibit 13 DUL004917, 4921, 4923, 4925, 4927, 6784, 6788, 6790, 6792, 7181, 7183, 7185

39. On July 7, 2015 at 11:02 AM Paul Dulberg sent an email to Balke stating:[1] "When and where can I get the entire file?"

40. On July 7, 2015 at 11:17 AM Paul Dulberg sent an email to Balke stating:[2] "I also need to know about a release of lean, what it will cost me if you are willing to release it.'

41. On July 7, 2015 at 11:32:42 AM CDT Dulberg sent an email to Balke stating:[3] "How much do you and Hans want to release the lean? I'm offering you both cash"

42. This is an example of a permanently disabled person who is under bankruptcy protection being manipulated by members of the Illinois bar into settling an asset on their own as pro se. Dulberg was to accept a $50,000 settlement in the 22nd Judicial Circuit Court for a chainsaw injury to his dominent right arm which left him permanently and fully disabled while the case was under automatic stay and both the plaintiff and defense attorneys and Judge knew the 22nd Judicial Circuit Court had no jurisdiction over assets of the Bankruptcy estate. He was to either settle or go without counsel and face a possible dismissal in a court that had no jurisdiction over his case.

1 Exhibit 13 DUL004917, 4921, 4923, 4925, 6784, 6788, 6790, 6792, 7177, 7181, 7183, 7185
2 Exhibit 13 DUL004917, 4921, 4923, 6784, 6788, 6790, 7177, 7181, 7183
3 Exhibit 13 DUL004917, 4921, 6784, 6788, 7177, 7181

From:
Paul Dulberg
4606 Hayden Ct.
McHenry, IL. 60051

Dated: October 31, 2023

To:

ARDC
130 E. Randolph Dr., Ste. 1500
Chicago, IL 60601-6219
Fax: (312) 565-2320
Email: information@iardc.org

ARDC
3161 W. White Oaks Dr., Ste. 301
Springfield, IL 62704
Fax: (217) 546-3785
Email: information@iardc.org

Members of the ARDC Committee,

We are submitting an ARDC Complaint against W. Randal Baudin II and Kelly N. Baudin.

We previously submitted the following ARDC Complaints:

Edward X. Clinton No. 2023IN02517 (submitted on July 27, 2023)

Julia C. Williams No. 2023IN02518 (submitted on July 27, 2023)

Thomas J. Popovich No. 2023IN03135 (submitted on September 15, 2023)

Hans Mast No. 2023IN03136 (submitted on September 15, 2023)

It is not possible to fully understand what the Baudins did to their client Dulberg without understanding how the Baudins were covering for Popovich and Mast and being covered by Gooch-Walczyk and Clinton-Williams. The legal malpractice attorneys Gooch-Walczyk and Clinton-Williams collaborated with opposing counsel to conceal from Dulberg wrongdoing the personal injury attorneys did to Dulberg. The Baudins covered for Popovich, Mast and Balke. Gooch then covered for Popovich, Mast, Balke, the Baudins. Clinton and Williams then covered for Popovich Mast, Balke, the Baudins, and Gooch-Walczyk.

The ARDC Complaints against Popovich and Mast describe how Popovich and Mast:[1]

- Redirected medical lien liability from the Defendants to Plaintiff
- Forged documents and destroyed evidence
- Corrupted the interrogatory and document production process to sabotage client's case and to benefit defendants (in collaboration with opposing attorneys)
- Suppressed information on mental health issues related to Dulberg's injury
- Corrupted the deposition process to sabotage client's case and to benefit defendants (in collaboration with opposing attorneys)
- Knew Defendant Gagnon effectively admitted to negligence for Dulberg's injury

1 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Thomas J. Popovich and Hans Mast"

- Knew Defendant Gagnon committed perjury
- Knew Defendant Carolyn McGuire committed perjury
- Committed settlement fraud
- Violated federal bankruptcy laws

The ARDC Complaint against Balke describes how:[2]

- Balke contracted with Dulberg and not with the Bankruptcy Trustee
- Balke told Dulberg (about 11 weeks later) he would withdraw counsel if Dulberg does not settle with Allstate for $50,000
- Balke violated federal bankruptcy laws

The Baudins were retained by Dulberg after Dulberg fired Balke. The Baudins:[3]

- Contracted with Dulberg instead of with the Bankruptcy Trustee
- Moved to cap the value of PI case 12LA178
- Closed the deal with an upper cap of $300,000
- Coerced Dulberg to agree and misinformed him of where the 'upper cap' came from
- Moved to contract with Bankruptcy Trustee only after capping value of 12LA178
- Misled Bankruptcy Judge that Dulberg wants Binding Mediation (about 11 weeks after the deal was closed)

Additionally:

- Dulberg's signature was forged onto the ADR Binding Mediation Agreement
- Dulberg was coerced into signing Allstate Release

Dulberg retained legal malpractice attorney Gooch-Walczyk. After firing Gooch Dulberg retained legal malpractice attorneys Clinton-Williams. It is not possible to fully understand what the Baudins did and how they got away with it without understanding that Baudins were covering for Popovich and Mast and being covered by legal malpractice attorneys Gooch-Walczyk and Clinton-Williams.

The ARDC Complaint against Clinton and Williams describe how Clinton and Williams:[4]

- Suppressed large numbers of documents

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2 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Brad J. Balke"

3 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Kelly N. Baudin and William Randall Baudin II"

4 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint against Edward X. Clinton and Julia C. Williams"

and how they collaborated with opposing counsel to benefit the defendants and sabotage Dulberg's case by:

- Concealing Dulberg's bankruptcy
- Suppressing emails from Saul Ferris
- Suppressing key evidence (Tilschner v Spangler certified slip ruling)
- Suppressing large numbers of emails from Brad Balke
- Collaborating with opposing attorney to flood Dulberg with over 6,000 documents just before withdrawing as Dulberg's counsel
- Suppressing all information on what the Baudins did to Dulberg
- Suppressing evidence that Defendant Gagnon effectively admitted negligence for Dulberg's injury as early as March, 2013
- Collaborating with opposing counsel to suppress Barch documents before Dulberg's deposition
- Collaborating with opposing counsel to weaken verification pages of discovery production
- Collaborating with opposing counsel during the deposition of Hans Mast and after

In addition, the ARDC Complaint against Gooch and Walczyk describe Gooch-Walczyk and Clinton-Williams:[5]

- Concealing key evidence in collaboration with each other (Tilschner v Spangler certified slip ruling)
- Concealing admission of negligence of Defendant Gagnon for Dulberg's injury in underlying case 12LA178 in collaboration with each other
- Concealing Bankruptcy and Violations of Federal Bankruptcy Laws (automatic stay, loss of standing to pursue claim, capping value of assets in BK estate, ect) in collaboration with each other
- Concealing true sources of $300,000 upper cap on the value of the PI claim in collaboration with each other
- Intentionally confusing Statute of Limitations toll date, date of "injury", and placing Dulberg's privileged attorney-client communications at issue in collaboration with each other

They did these things to protect the Baudins and other attorneys. One cannot fully understand what the Baudins did to Dulberg without understanding how the Baudins were protected by Dulberg's legal malpractice attorneys Gooch-Walczyk and Clinton-Williams.

All supporting exhibits are placed on 6 (64 GB) flash-drives that will be mailed to 130 E. Randolph Dr., Ste. 1500 Chicago, IL 60601-6219. Please advise to whom it should be addressed. One flash drive is intended for the ARDC and the other five are for the 5 attorneys mentioned in

5 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk""

the complaints filed with this cover letter (should the ARDC find it necessary to provide them to the attorneys).

There are two sets of supporting exhibits. A second set is online (password protected) for ease of access. Each footnote within the ARDC Complaints hyperlinks online directly to the exhibit(s) cited. Please use any of the following:

User name: ardc1
Password: OQtHPqz3PqxO

User name: ardc2
Password: FrX-%Z#-Ddd^

User name: ardc3
Password: jR[}nA1(#Co4

If you need more user names and passwords please let us know.

/s/ Paul Dulberg
Paul Dulberg

/s/ Thomas Kost
Thomas Kost
Full Trustee of the Paul R. Dulberg Revocable Trust

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION
of the
SUPREME COURT OF ILLINOIS

COMPLAINT FORM

Use this form to file a complaint about:
1) an Illinois lawyer;
2) a non-Illinois lawyer who has provided legal services in Illinois; or
3) a non-lawyer who you are claiming has engaged in the unauthorized practice of law in Illinois.

Return the completed form by e-mail, mail or facsimile to:

ARDC
130 E. Randolph Dr., Ste. 1500
Chicago, IL 60601-6219
Phone: (312) 565-2600 or (800) 826-8625
Fax: (312) 565-2320
Email: information@iardc.org

or

ARDC
3161 W. White Oaks Dr., Ste. 301
Springfield, IL 62704
Phone: (217) 546-3523 or (800) 252-8048
Fax: (217) 546-3785
Email: information@iardc.org

---

1. Your name: Paul Dulberg

Street address: 4606 Hayden Ct.

City: McHenry State: Illinois Zip: 60051

Home phone: (847) 497-4250 Work phone: _____ Cell phone: Same as Home phone

Email address: Paul_Dulberg@Comcast.net

2. Name of lawyer/person you want to be investigated: Kelly N. Baudin (and) William Randall Baudin II

Name of law firm or business: KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd., BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES

Street address: 2100 Huntington Drive N, Suite C (and) 280 Memorial Ct., Unit C (and) 304 S MCHENRY AVE. (and) 820 E Terra Cotta Ave., #138 (and) P.O. Box 1678

City: Algonquin (and) Crystal Lake State: Illinois Zip: 60102 (and) 60014

Phone: (815) 307-6197, (815) 814-2193, (847) 658-5295, (815) 893-9668, 815.526.3202

Email address: kelly@lawbaudin.com (and) randybaudin2@gmail.com

3. Have you previously contacted the ARDC regarding this matter? Yes _____ No X

If yes, when and how did you contact us? _____

4. Did you employ the lawyer/person you are complaining about: Yes _____ No X

4a. If you answered yes to question 4:

When did the employment start? SEPTEMBER 22, 2015

What was the fee agreement? (1) a non-refundable retainer fee of $3,331.33; AND (2) a sum of money equal to one-third(1/3) of the gross amount realized from this claim by settlement prior to trial of this matter, OR, if this proceeds to trial which is defined as any time after the final pre-trial conference with the Court has concluded, I agree to pay BAUDIN & BAUDIN as compensation for its services a sum of money equal to forty percent (40%) of the gross amount realized from such action.

How much have you paid the lawyer/person to date? $117,084.63 from my bankruptcy estate + a non-refundable retainer fee of $3,331.33 paid directly by me totaling $120,415.96 which includes an overpayment of $21,085.96 according to provisions found in the fee agreement.

over

4b. If you answered no to question 4 what is your connection to the lawyer/person?

According to the fee agreement I retained and employed BAUDIN & BAUDIN, an association of attorneys

5. If your request relates to a court case or other proceeding, please provide the following:

Name of court or agency: TWENTY-SECOND JUDICIAL CIRCUIT MCHENRY COUNTY, ILLINOIS

Name of case: PAUL DULBERG vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL) MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually

Case number: No. 12 LA 178

6. Please explain your complaint(s). Include important dates and names of witnesses and others involved. Use additional pages if necessary. Attach copies of documents that support your complaint, such as fee agreements, receipts, checks, letters and court papers.

Please see the accompanying ARDC COMPLAINT AGAINST KELLY N BAUDIN AND WILLIAM RANDALL BAUDIN II contained a file called "ARDC KELLY N BAUDIN-WILLIAM RANDAL BAUDIN II.pdf" which is a a detailed 43 page complaint and has a separate cover letter contained in a file called "ARDC Cover Letter_Balke-Gooch-Walczyk-Baudins.pdf":

There are two sets of supporting exhibits:

1. On a (64 GB) flash-drive that will be mailed to 130 E. Randolph Dr., Ste. 1500 Chicago, IL 60601-6219. Let me know to whom it should be addressed.
2. Online (password protected) for ease of access. Each footnote within the ARDC Complaint hyperlinks online directly to the exhibit(s) cited. The user name and password are contained in the cover letter.

Signature: /s/ Paul Dulberg Date: October 31, 2023

ARDC COMPLAINT AGAINST KELLY N BAUDIN AND WILLIAM RANDALL BAUDIN II

BAUDIN CONTROL OF DULBERG'S PERSONAL INJURY CASE 12LA178

- **Baudins contracted with Dulberg instead of with the Bankruptcy Trustee**
- **Baudins moved to cap the value of PI case 12LA178**
- **Baudins closed the deal with an upper cap**
- **Baudins coerced Dulberg to agree and misinformed him of where the 'upper cap' came from**
- **Baudins moved to contract with Bankruptcy Trustee only after capping value of 12LA178**
- **Olsen misled Bankruptcy Judge that Dulberg wants Binding Mediation (about 11 weeks after the deal was closed)**
- **Dulberg's signature was forged onto the Agreement**
- **Dulberg was coerced into signing Release**

Table 1: 4 DIFFERENT EFFORTS TO PLACE AN UPPER CAP ON THE VALUE OF PI CASE 12LA178

Appendix A: Phone call to Dulberg from Randall Baudin Sr.

Relevant Facts:

1. Dulberg's injury and experiences with Popovich are described in detail in Exhibit 1.

2. Dulberg's experiences with Balke are described in Exhibit 2.

3. In summary, the Baudins continued in the same pattern (with some slight variations) as Popovich and Mast did and as Balke did:

a) Contracted with Dulberg even though they knew Dulberg had no standing as plaintiff in the case (the third consecutive law firm to do so).

b) Agreed to take case to trial when contracting (the third consecutive law firm to do so).

c) Represented Dulberg in 22nd Judicial Circuit Court even though the automatic stay is in place (the third consecutive law firm to do so).

d) Did not sign any agreement with Bankrupty trustee who they knew had standing as plaintiff in the case from September 22, 2015 to October 31, 2016 (the third consecutive law firm to do so).

e) Knew or should have known that Gagnon already effectively admitted to negligence (the third consecutive law firm to do so).

f) Only discernible work done in 22nd Judicial Circuit Court was to get Dulberg to agree to Allstate settlement for $300,000 or less

4. Dulberg's mother knew that Randall Baudin Sr had represented Scott Dulberg a few years back and she recommended Randall Baudin Sr to Dulberg.

5. Dulberg called the office of Baudin & Baudin a few times, but nobody called back.[1]

6. Dulberg along with his mother (Barbara Dulberg) and brother Tom Kost went to meet with Randy Baudin Sr at Baudin & Baudin to discuss possible representation.

7. Upon entering the office of Baudin & Baudin, Dulberg met with a receptionist who called herself Myrna who introduced Dulberg to Randy Jr and Kelly Baudin attorneys of the firm.

8. When Barbara Dulberg inquired about Randy Baudin Sr, she was told that he was not available, not real active these days but doing okay.

9. A meeting took place.

10. Dulberg's fee agreement is with Baudin & Baudin which at the time was located at 2100 Huntington Dr., Suite C Algonquin IL. 60102.[2]

11. W. Randall Baudin II and Kelly Baudin belong to Baudin Law Group, Ltd. which at the time was located at 304 McHenry Ave, Crystal Lake, IL 60014.

12. Many Emails with Myrna Thompson aka Myrna Boyce their secretary are from myrna@blgltd.com and myrna@lawbaudin.com with the logo of Baudin Law Group Ltd.

13. Emails with Randy Baudin Jr are from randybaudin2@gmail.com

14. Emails with Kelly Baudin are addressed kelly@lawbaudin.com

15. Other emails used copier@blgltd.com

16. Dulberg expressed his intentions to take the case to trial clearly and unambiguously to W. Randall Baudin Jr and Kelly Baudin at their opening meeting. After what happened with Popovich, Mast and Bulke, Dulberg did not want an attorney who was not willing to take the case against Gagnon to a jury trial.

17. W. Randal Baudin II and Kelly Baudin agreed to take the case to trial if necessary.

18. At their first meeting Dulberg gave W. Randal Baudin II and Kelly Baudin 2 different packets of case files, one in a box from Bulke and the other from the Popovich Law Firm in a brown jacket folder. W. Randal Baudin II and Kelly Baudin did not want the box of files from Bulke and took only the organized brown jacket folder.

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1 Exhibit 13 DUL004931, 4932, 6798, 6799, 7191, 7192

2 Exhibit F1-2015-Baudin_FeeAgreement.pdf

19. On September, 22, 2015 Dulberg hired Baudin & Baudin, W. Randal (Randy) Baudin II and Kelly Baudin to represent him in prosecuting his claims against Gagnon.[1]

20. Popovich hid key documents[2] that supported the version of events of the day of the chainsaw accident told by Dulberg and contradicted the version of events told by Gagnon, Carolyn McGuire, and Bill McGuire from Dulberg, the opposing counsel, and Dulberg's future attorneys, including the Baudins.

21. A $7,500 offer[3] made by Popovich and Mast on October 22, 2013 in Dulberg's name to settle the case with the McGuires was not included in the brown jacket folder (or the box of files) because Popovich and Mast did not include it.

22. A pharmacy receipt[4] with the time of presciption pick up given to Mast by Dulberg at their first meeting on December 1, 2011, which was a key piece of evidence corroborating Dulbergs version of events on the day of the chainsaw accident and directly contradicting the version of events told by Gagnon, Carolyn McGuire and Bill McGuire, was also not included in the brown jacket folder (or the box of files) because Popovich and Mast did not include it.

23. The purpose of the Baudin Defendants representing Dulberg in court (even though they knew or should have known that Dulberg lacked standing and any furtherance of the personal injury case in violation of the automatic stay) appears to have been to place an upper limit on the value of the case.

24. As stated In re Enyedi, 371 B.R. 327, 334 (N.D. Ill. 2007)

> It is well established in case law that acts taken in violation of the automatic stay imposed under section 362(a) of the Bankruptcy Code are deemed void ab initio and lack effect. See Middle Tenn. News Co., Inc. v. Charnel of Cincinnati, Inc., 250 F.3d 1077, 1082 (7th Cir. 2001) ("Actions taken in violation of an automatic stay ordinarily are void."); York Ctr. Park Dist. v. Krilich, 40 F.3d 205, 207 (7th Cir. 1994) (judgment issued against debtors without a modification of the automatic stay must be vacated); Matthews v. Rosene, 739 F.2d 249, 251 (7th Cir. 1984) (orders issued in violation of automatic stay provisions of Bankruptcy Code ordinarily are void); In re Benalcazar, 283 B.R. 514, (Bankr.N.D.Ill. 2002) (same); Garcia v. Phoenix Bond Indem. Co. (In re Garcia), 109 B.R. 335, 340 (N.D.Ill. 1989) ("[T]he fundamental importance of the automatic stay to the purposes sought to be accomplished by the Bankruptcy Code requires that acts in violation of the automatic stay be void, rather than voidable. Concluding that acts in violation of the automatic stay were merely voidable would have the effect of encouraging disrespect for the stay by increasing the possibility that violators of the automatic stay may profit from their disregard of the law, provided it goes undiscovered for a sufficient period of time."). See also Hood v. Hall, 321 Ill.App.3d 452, 254 Ill. Dec. 470, 747 N.E.2d 510, 512 (2001) ("There is no question that judgments entered

1 Exhibit F1-2015-Baudin_FeeAgreement.pdf
2 Fabrication 1 Walgreens RX receipts
3 Exhibit 65_2013-10-22_offer from Mast to Barch_POP000192.pdf
4 Fabrication 1 Walgreens RX receipts

in violation of the automatic stay in bankruptcy are void ab initio . . . and that void judgments may be attacked at any time."); Concrete Prod, Inc. v. Centex Homes, 308 Ill. App.3d 957, 242 Ill.Dec. 523, 721 N.E.2d 802, 804 (1999) ("[A]cts in violation of the section 362(a) automatic stay are void ab initio.")

25. Upon reviewing Dulberg's case against Gagnon, W. Randal Baudin II and Kelly Baudin knew or should have known that on February 1, 2013 a counterclaim[1] was filed against Gagnon by the McGuires on February 1, 2013. W. Randal Baudin II and Kelly Baudin knew or should have known:

a) that Gagnon has never filed an answer to the McGuires's counterclaim.

b) that because Gagnon did not answer the counterclaim filed on February 1, 2013, Gagnon was effectively admitting the facts stated in the counterclaim were true. The Baudins never told this to Dulberg.

c) that documents such as "Gagnon deposition exhibit 1" were highly questionable and showed evidence of being manipulated.[2] The Baudins never told this to Dulberg.

d) that Gagnon never filed answers to the interrogatories sent by Popovich and Mast.[3] The Baudins never told this to Dulberg.

26. W. Randal Baudin II and Kelly Baudin never asked Gagnon's counsel for the answers to interrogatories. The Baudins never informed the judge that they never received Gagnons answers to interrogatories.

FIRST MOVEMENTS TOWARD BINDING MEDIATION ARE TAKEN BY ALLSTATE AND BAUDINS TOGETHER WITHOUT ANY KNOWLEDGE OR CONSENT OF THE BANKRUPTCY TRUSTEE OR BANKRUPTCY JUDGE AND WITHOUT ANY KNOWLEDGE OR CONSENT OF DULBERG

27. On June 13, 2016, in violation of the automatic stay, in the Circuit Court Allstate attorney Reddington stated that she and the Baudins are considering this case as a possible ADR candidate without Dulberg's knowledge or permission. The Baudins were representing Dulberg in the 22nd Judicial Circuit Court without Dulberg having standing as plaintiff, the case under automatic stay and without being hired as special counsel or receiving leave from the 7th Circuit United States Bankruptcy Court for the Northern District of Illinois, Western Division. Allstate attorney Reddington stated in the 22nd Judicial Circuit Court, "I have four motions up this morning. Plaintiff's attorney and I are working on the case to see if it's a possible ADR candidate. He asked that we get our motions entered and continued. They're for an IME." Allstate attorney Reddington also said, "And honestly, if I get a decision sooner, that -- well, I don't know if this is a case we -- we probably wouldn't be able to enter a dismissal order if we went to ADR until

1 Exhibit 54_2013-02-01_CROSS CLAIM FOR CONTRIBUTION AGAINST CODEFENDANT DAVID GAGNON_CERTIFICATE OF SERVICE_Barch-McGuires copy-OCR.pdf
2 Fabrication 2 Gagnon deposition exhibit 1
3 Exhibit 1: Chapter 2, Count 1, Section F

after the ADR was done."[1]

28. On June 13, 2016 the following exchange took place in the 22nd Judicial Circuit Court:[2]

> THE COURT: Dulberg versus Gagnon?
>
> (Whereupon the afore-captioned cause was recalled.)
>
> SPEAKER: Judge, I'm here on Dulberg versus Gagnon.
>
> THE COURT: Yeah.
>
> SPEAKER: I have four motions up this morning. Plaintiff's attorney and I are working on the case to see if it's a possible ADR candidate. He asked that we get our motions entered and continued. They're for an IME.
>
> THE COURT: Okay.
>
> SPEAKER: They're to continue the trial, they're to bar one of his witnesses, and they're to compelhis expert.
>
> THE COURT: Okay.
>
> SPEAKER: For a dep. Randy Baudin and I have been talking all last week. And I said, What do you want to do about today? He's working with a client who's on his third attorney, so.
>
> THE COURT: I had an extensive pretrial, so.
>
> SPEAKER: Yes. And I'm new to it, but I'm like, Okay, we're going to, you know, get it ready for trial if that's what we're going to do.
>
> THE COURT: When did Mr. Baudin want to come back?
>
> SPEAKER: He didn't say. But I know, like myself, he's going to a volleyball tournament with his daughters in Florida.
>
> THE COURT: Okay.
>
> SPEAKER: At the end of the month.
>
> THE COURT: So --
>
> SPEAKER: I don't want to --
>
> THE COURT: We'll get into July. Why don't we go 30 days. What's a day that works for you?
>
> SPEAKER: And honestly, if I get a decision sooner, that -- well, I don't know if this is a case we -- we probably wouldn't be able to enter a dismissal order if we went to ADR until after the ADR was done.

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1 Exhibit F2-2016-06-13_CC-Civil - 12LA000178 - 2_24_2022 - - - REOP - -.pdf (page 2 lines 7-11 & page 3 lines 12-16)

2 Exhibit F2-2016-06-13_CC-Civil - 12LA000178 - 2_24_2022 - - - REOP - -.pdf

THE COURT: Yeah.

SPEAKER: Based on the history. I am gone the first week of July. So after that, I am here July 11th.

THE COURT: Let's come back July 11th.

SPEAKER: Are you comfortable with leaving the trial date until that time?

THE COURT: Yeah.

SPEAKER: Because the trial date's out in September.

THE COURT: Yeah.

SPEAKER: Okay. All right.

THE COURT: It's not like it's extra work for me.

SPEAKER: Well, I just -- you know, for purposes of your calendar.

THE COURT: You're -- you're the number one case, so everybody else will be happy if you go away.

SPEAKER: I'm sure they will. Okay. Thank you, Judge.

THE COURT: All right. Thank you.

29. On July 11, 2016 the following exchange took place in the 22nd Judicial Circuit Court:[1]

THE COURT: Dulberg. Do we have -- When do you want to come back?

UNIDENTIFIED SPEAKER: We're entering continuing the motions, is that what we're doing?

THE COURT: Yes.

UNIDENTIFIED SPEAKER: Okay. When's your next available date, Judge?

THE COURT: For a hearing?

UNIDENTIFIED SPEAKER: Yes.

UNIDENTIFIED SPEAKER: Or a brief.

THE COURT: Are we briefed? Has it been briefed?

UNIDENTIFIED SPEAKER: No. They're just motions that I presented as emergencies and then we continued them pending discussions.

THE COURT: Well, when -- if it goes into mediation, the motions become moot. Or do we have

to address them regardless? I don't know what they are.

1 Exhibit 129_2016-07-11_CC-Civil - 12LA000178 - 3_2_2022 - - - REOP - - (1).pdf

UNIDENTIFIED SPEAKER: I think the type of mediation we would do, it would be moot because --

UNIDENTIFIED SPEAKER: Yeah, other than, possibly, an IME. But, you know, we can certainly work -- we've worked well together so far, so we could certainly see if we can work things out.

THE COURT: Speaking generally, I'd probably grant an IME. I haven't seen your motion, though, so I don't know. I mean, I could put this over to July 21st, and that should give you enough time to decide what you want to do with mediation.

UNIDENTIFIED SPEAKER: I can be here.

THE COURT: Okay. All right. And that will be just at 9:00 o'clock for presentation of the motion, and then we'll figure out what we're going to do.

UNIDENTIFIED SPEAKER: Thank you for your time.

UNIDENTIFIED SPEAKER: Thank you. Appreciate it.

30. On July 15, 2016 at 2:22 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[1] "Kelly and I would like speak with you and your mom Monday night at 630"

31. On July 15, 2016 at 2:27 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "Okay, Monday the 18th at 6:30 pm. Do we need to bring anything?"

32. On July 15, 2016 at 2:29 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[3] "Maybe the social security report if you have it? We will Jameson's Charhouse crystal lake at 630 in meeting room there."

33. On July 18, 2016 at 4:26 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[4] "Still on for tonight?"

34. On July 18, 2016 at 4:26 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[5] "Yes sir."

35. On July 18, 2016 W. Randal Baudin II and Kelly Baudin invited Dulberg and his mother, Barbara Dulberg, to dinner at Jamison Charhouse

36. At the dinner...

37. On July 18, 2016 at 8:54 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[6] "Would we be in a better position if the SSDI decision was already in and

1 Exhibit 230_Baudin Text messages.pdf (page 41)
2 Exhibit 230_Baudin Text messages.pdf (page 41)
3 Exhibit 230_Baudin Text messages.pdf (page 41)
4 Exhibit 230_Baudin Text messages.pdf (page 42)
5 Exhibit 230_Baudin Text messages.pdf (page 42)
6 Exhibit 230_Baudin Text messages.pdf (page 43)

would that make a difference in the amount the arbitration judge would award?"

38. On July 18, 2016 at 8:56 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[1] "No we have the dr reports. You can tell the judge about it in mediation as well. More informal and you can get more info in without being restricted by rules of evidence. And I can't promise in a trial they won't bring the felony drug charges up. Believe me the binding mediation is the best route. We are in the best spot now with the momentum on our side and being able to present your case in mediation without any new testimony from defendant"

39. On July 18, 2016 at 9:00 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[2] "We are in the best spot now with the momentum on our side and being able to present your case in mediation without any new testimony from defendant"

40. On July 18, 2016 at 10:09 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[3] "If we went to trial I'm not worried about those drug charges. I've had to explain myself about that for decades. It's pretty simple, I screwed up at a young age, was honest about it, admitted my wrong and took my punishment. Then I moved on with life, worked hard for 17 years for many employers in this county who all have nothing but good things to say about my time with them while at the same time I created a legitimate business that lasted 12 years till this incident. I believe my past felony will be a non issue because it actually shows a lot about my character, being honest when I'm in the wrong is something most people won't do even if being honest cost me a few years. If Allstate does bring it up, their own client did the same thing only worse, he and his whole family was caught dealing drugs only to underage kids and he was the ringleader. They were just lucky that when they got caught it was before mandatory sentences for those offenses were in place. but it doesn't change what they did, exploiting underage children with drugs for money is far worse than my simple possession charge. I have the actual police reports if we need them. If this does go to trial, Allstate lawyers had better read the depositions of their client and his family. if they do I don't believe their going to put their client or anyone from his family on the stand just to purger themselves over and over again in front of a jury unless the want to lose. All they have is possibly some dr who isn't impartial questioning the results of the dr's I was sent to see. In the end after the Dr's have it out on the stand all that remains is me who nearly died, had 40% of my arm severed and the edges turned to hamburger by a chainsaw then just stitched back together with a few threads with hope that I might get some use yet. Well I do have limited use but it's not enough to do the daily functions we all need to do in order to take care of ourselves and it doesn't take a Ph.D. to see or understand that a chainsaw does that. Ok, I realize I just ranted a lot but its all good. I'll let you know in the morning"

41. On July 18, 2016 at 10:12 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[4] "So sorry came in garbled. Are you taking our recommendation as to the binding mediation?"

42. On July 18, 2016 10:13 PM Plaintiff Dulberg sent a text message to Defendant W. Randall

1 Exhibit 230_Baudin Text messages.pdf (page 43)
2 Exhibit 230_Baudin Text messages.pdf (page 44)
3 Exhibit 230_Baudin Text messages.pdf (page 44)
4 Exhibit 230_Baudin Text messages.pdf (page 45)

Baudin II stating:[1] "You will have an answer tomorrow"

43. On July 19, 2016 at 12:23 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "Sorry but I want to get this to you while its fresh Please answer this in the morning How are costs and attorney fees handled in binding arbitration? Do they come out of the award or are they in addition to the award like a trial?"

44. On July 19, 2016 at 3:57 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[3] "Both Handled the same as trail."

45. On July 19, 2016 at 7:02 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[4] "Does that mean your fees and costs are awarded separate from the award or do they still come out of the 300k cap?"

46. On July 19, 2016 at 7:06 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[5] "If at trial and win 300 max Costs not above that. Same as mediation. We can ask for judge to award costs in both. Up to judge to award. Also costs mean filing fee service fee. Not the costs like experts bills"

47. On July 19, 2016 at 7:54 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[6] "We are thinking that if we can get Allstate to agree in advance and in writing to cover your % (fee) and all the costs including deposition fees, expert witness fees and medical above and beyond any award the arbiter sees fit then we would be willing to go forward. Let's just see if they are open to it"

48. On July 19, 2016 at 7:56 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[7] "They won't. The judge will decide what the award is and that is the award. We again urge you to do the binding mediation."

49. On July 19, 2016 at 8:10 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[8] "I just read the statute on arbitration and it seems to me that your fees and all the costs can be agreed to in advance with the exception of fees for the arbitration itself. I need to feel that there is something covered. Particularly the monies we already laid out otherwise just the momentum in our favor isn't enough because the momentum has always been in our favor. It doesn't hurt to ask Allstate if they would agree to pay these separate from the award"

50. On July 19, 2016 at 8:18 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[9] "In essence Allstate is already setting terms on us not to go after their clients

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1 Exhibit 230_Baudin Text messages.pdf (page 45)
2 Exhibit 230_Baudin Text messages.pdf (page 45)
3 Exhibit 230_Baudin Text messages.pdf (page 46)
4 Exhibit 230_Baudin Text messages.pdf (page 46)
5 Exhibit 230_Baudin Text messages.pdf (page 46)
6 Exhibit 230_Baudin Text messages.pdf (page 46)
7 Exhibit 230_Baudin Text messages.pdf (page 46-47)
8 Exhibit 230_Baudin Text messages.pdf (page 47)
9 Exhibit 230_Baudin Text messages.pdf (page 47)

personal assets. Irregardless if their are any assets. So I think it's only fair that they cover fees and costs in advance"

51. On July 19, 2016 at 8:40 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[1] "They are the ones pushing for arbitration correct? Why?"

52. On July 19, 2016 at 8:47 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "I have to run to the dr's appointment. I'd tell Kelly to ask that Allstate wait till possibly Thursday for their answer. It's not like it cost them anything"

53. On July 19, 2016 at 10:07 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[3] "I told you they don't care if we arbitrate. We as your lawyers say that it is the best that you do the binding mediation. We are deciding this based on facts and odds as to give you the best outcome. It appears to me that you are still looking for some justification or rationalization to carry on as if it will make it better. It won't. This will give you the best possible outcome."

54. On July 19, 2016 at 1:46 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[4] "Randy, Yes arbitration is appealing because it saves a few thousand dollars and maybe a few years but I don't like the idea of being blindly boxed in on their terms alone without any assurances as to your fees, medical expenses or even what we spent out of pocket in costs to get here. I want some assurances/concessions on their part prior to walking in or it's no deal. Going in blind with no assurances, I can't help but to feel like a cow being herded thinking its dinner time but it's really slaughter time. They need to give somewhere prior to arbitration or it's a good indication as to how they will negotiate once we start. In other wards, if they won't concede anything prior to arbitration then they won't negotiate or concede anything once the arbitration starts and if that's the case, what's the point. We need something to show they are sincere in trying to resolve this. Up the lower limits from 50k to 150k, concede on the medical portion, out of pocket expenses, attorneys fees or how about just resolving their portion and leave their chainsaw wielding idiot open to defend himself in this lawsuit. Perhaps they can give on something I haven't thought of yet, Anything will do but giving on nothing prior to walking in there spells out what I'm going to get and if that's the case then I'll spend money and roll the dice. Convince me I'm not going being lead to slaughter and I'll agree To do it"

55. On July 19, 2016 at 4:28 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[5] "So sorry your texts come in out of order. Binding mediation or no."

56. On July 20, 2016 at 8:43 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[6] "Ok, I have to ask about rules of evidence in a trial vs. arbitration I know that you said it gives me the personal ability to talk with the arbiter about things that would not be

1 Exhibit 230_Baudin Text messages.pdf (page 47)
2 Exhibit 230_Baudin Text messages.pdf (page 47)
3 Exhibit 230_Baudin Text messages.pdf (page 47-48)
4 Exhibit 230_Baudin Text messages.pdf (page 48-49)
5 Exhibit 230_Baudin Text messages.pdf (page 49)
6 Exhibit 230_Baudin Text messages.pdf (page 49)

allowed at a trial. My question is, is that a two way street, can the defense pull crap that would never be allowed at trial?"

57. On July 20, 2016 at 10:00 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[1] "They have no ammo. We have dr opinion unscathed and tree expert unscathed bad guy won't be there you will. So we have advantage"

58. On July 20, 2016 at 10:21 AM Plaintiff Dulberg sent a text message to W. Defendant Randall Baudin II stating:[2] "Will there be some sort of gag order on me? In other wards does this stop me from talking about it in the future?"

59. On July 20, 2016 at 10:56 AM Plaintiff Dulberg sent a text message to W. Defendant Randall Baudin II stating:[3] "Yes, no?"

60. On July 20, 2016 at 11:03 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[4] "I doubt there will be any type of confidentiality clause as a part of the settlement"

61. On July 20, 2016 at 11:05 AM Plaintiff Dulberg sent a text message to W. Defendant Randall Baudin II stating:[5] "Can depositions be used?"

62. On July 20, 2016 at 11:06 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[6] "Yes"

63. On July 20, 2016 at 11:07 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[7] "Can phone, text, emails,videos or audio recordings be used?"

64. On July 20, 2016 at 11:09 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[8] "There aren't any restrictions on what we say or do with the judge when we are with him in private. He will give it as much weight or credibility as he sees fit, but we can do or say whatever we want to him when we meet. Unlike a trial"

65. On July 20, 2016 at 11:11 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[9] "Can video or phone calls be used by us or the defense to reach outside the proceeding to clarify or substantiate any claims made by us or them"

66. On July 20, 2016 at 11:20 AM Plaintiff Dulberg sent a text message to Defendant W. Randall

1 Exhibit 230_Baudin Text messages.pdf (page 50)
2 Exhibit 230_Baudin Text messages.pdf (page 50)
3 Exhibit 230_Baudin Text messages.pdf (page 50)
4 Exhibit 230_Baudin Text messages.pdf (page 50)
5 Exhibit 230_Baudin Text messages.pdf (page 50)
6 Exhibit 230_Baudin Text messages.pdf (page 50)
7 Exhibit 230_Baudin Text messages.pdf (page 51)
8 Exhibit 230_Baudin Text messages.pdf (page 51)
9 Exhibit 230_Baudin Text messages.pdf (page 51)

Baudin II stating:[1] "Correction; can video or phone calls be made during the proceedings that can Clarify, substantiate or rebuke any claims made? You know what I mean Like you want to call somebody during the preceding"

67. On July 20, 2016 at 11:22 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[2] "will be of greatest importance is the nature extent and permanence of your injury"

68. On July 20, 2016 at 11:23 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[3] "And just so you understand, as far as the judges concerned I feel that he is going to attribute very little if any negligence to you the matter that he"

69. On July 20, 2016 at 11:25 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[4] "From my understanding, they can have an army of professional witnesses ready at the touch of a button ready to tell the judge anything they wish? Is this a possibility?"

70. On July 20, 2016 at 11:31 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[5] "If we go to trial they sure will. They have no IME they have no rebut to tree expert. Again we are in the best position now to get the maximum recovery"

71. On July 20, 2016 at 11:34 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[6] "Yes but they can call anyone or produce in writing anything they wish with no restrictions at the arbitration correct"

72. On July 20, 2016 at 11:41 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[7] "They could. But we will be there to refute anything. Again, the actual person, you. Not a document."

73. On July 20, 2016 at 11:44 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[8] "All right, Kelly called and we have Cole show Sean in the next hour or so. Kelly had promised her we were calling yesterday, they have to know what's going on and make arrangements regarding additional counsel. Again, as your attorneys we are strongly urging you to participate in the binding mediation. It is your best opportunity for the greatest possible recovery and the guarantee that you would at least walk away with something if you got 0. Again, this gives us the most control of the situation."

74. On July 20, 2016 at 11:45 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[9] "So they can bring the defendants in via phone, video, text etc... Even if they

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1 Exhibit 230_Baudin Text messages.pdf (page 51)
2 Exhibit 230_Baudin Text messages.pdf (page 52)
3 Exhibit 230_Baudin Text messages.pdf (page 52)
4 Exhibit 230_Baudin Text messages.pdf (page 52)
5 Exhibit 230_Baudin Text messages.pdf (page 52)
6 Exhibit 230_Baudin Text messages.pdf (page 52-53)
7 Exhibit 230_Baudin Text messages.pdf (page 53)
8 Exhibit 230_Baudin Text messages.pdf (page 53)
9 Exhibit 230_Baudin Text messages.pdf (page 54)

are not in the physical location nor listed as anyone attending?"

75. On July 20, 2016 at 11:47 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[1] "Show Sean will be there in an adjuster will be there either by telephone or in person. She will present a submission to the judge laying out there view of the case. Then she will speak their behalf and argue from the depositions that have already been presented. There's not going to be any testimony given"

76. On July 20, 2016 at 11:47 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "Also, if they're in a separate room and we are not privy to anyon their conversation how can we refute what's going on?"

77. On July 20, 2016 at 11:47 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[3] "during this proceeding. We can talk to him in private but there's no questioning no answers no cross-exam. You're really overthinking this. Just stop and listen to your lawyers' advice that's why you hire us."

78. On July 20, 2016 at 11:48 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[4] "The judge will tell us what their arguments are and he will tell them what our arguments are. Did we tell the judge why we think that's not true, and conversely they do the same"

79. On July 20, 2016 at 11:51 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[5] "I'm going into a meeting. I will have about five minutes coming up in an hour, during that time I have to have an answer. I ask that you believe in us and what we've done for you so far, we haven't misled or put you down the wrong path, just have faith."

80. On July 20, 2016 at 1:04 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[6] "Yes binding mediation?"

81. On July 20, 2016 at 1:24 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[7] "Randy, I truly appreciate yours and Kelly's honest advice and I hope I continue to receive it in the future. Please don't take this personal because it's not. I value everything you have to offer more than you know. **I will be moving forward with litigation at this time.** However, should Allstate consider a full settlement with no strings attached in the future so they can save the cost of litigation or a humiliating defeat I'm not opposed to entertaining it and most likely will accept it. This is too important to me and my family. I just cannot give up the protections of a public trial with the possibility of review should something be handled wrongly in the hopes of saving a few thousand dollars and time. Thank you both

1 Exhibit 230_Baudin Text messages.pdf (page 54)
2 Exhibit 230_Baudin Text messages.pdf (page 54)
3 Exhibit 230_Baudin Text messages.pdf (page 54)
4 Exhibit 230_Baudin Text messages.pdf (page 55)
5 Exhibit 230_Baudin Text messages.pdf (page 55)
6 Exhibit 230_Baudin Text messages.pdf (page 56)
7 Exhibit 230_Baudin Text messages.pdf (page 56)

for your honest advice now let's move forward together and enjoy winning this case together." [Emphasis added]

82. On July 20, 2016 at 1:49 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[1] "Was that response garbled broken up text or did it go through ok?"

83. On July 20, 2016 at 3:59 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[2] "You available to talk with your mother as well on the phone in a half hour or so"

84. On July 20, 2016 at 3:59 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[3] "Tomorrow morning, 9am, judge Meyers?"

85. On July 20, 2016 at 4:00 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[4] "Yes but on the phone in a half hour"

86. On July 20, 2016 at 4:02 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[5] "Yes on the phone in a half hour is ok but mom is off with grandkids"

87. On July 21, 2016 the following exchange took place in 22nd Judicial Circuit Court:[6]

APPEARANCES:

THE BAUDIN LAW GROUP LTD., by: MS. KELLY N. BAUDIN, on behalf of the Plaintiff;

LAW OFFICE OF STEVEN A. LIHOSIT, by: MS. SHOSHAN E. REDDINGTON, on behalf of the Defendant David Gagnon.

> MS. BAUDIN: Kelly Baudin on behalf of the plaintiff. Mr. Dulberg is present and approaching.
>
> MS. REDDINGTON: Good morning, Judge. Shoshan Reddington for the defendant.
>
> THE COURT: Good morning.
>
> MS. REDDINGTON: We talked last night. We've got some things agreed to, so I would like to just give us a moment to discuss that and step back up.
>
> THE COURT: Okay. I will pass.
>
> MS. BAUDIN: Thank you.
>
> MS. REDDINGTON: Thank you.

1 Exhibit 230_Baudin Text messages.pdf (page 56)
2 Exhibit 230_Baudin Text messages.pdf (page 56)
3 Exhibit 230_Baudin Text messages.pdf (page 56-57)
4 Exhibit 230_Baudin Text messages.pdf (page 57)
5 Exhibit 230_Baudin Text messages.pdf (page 57)
6 Exhibit 130_2016-07-21_CC-Civil - 12LA000178 - 3_2_2022 - - - REOP - - (2).pdf

THE COURT: All right. Thank you.

(Whereupon, the above-entitled cause was passed and subsequently recalled.)

MS. BAUDIN: Okay, Judge. As you know, we had previously been discussing binding mediation. We came to a semi-agreement, --

THE COURT: Okay.

MS. BAUDIN: -- but we would like probably two weeks to just see if we can figure out the details and see if we can reach an agreement on how that is going to proceed. So I think we're looking at an August 4th date for that.

THE COURT: Can't do August 4th --

MS. BAUDIN: Oh, okay. I just was looking at two weeks, Your Honor.

THE COURT: -- because that's when I'm not here.

MS. BAUDIN: Oh, I see on the calendar. I apologize.

THE COURT: Any day after that.

MS. REDDINGTON: The following week, anything?

MS. BAUDIN: Grab my -- Let's say either the 8th or the 10th are probably the best.

THE COURT: Either's fine?

MS. REDDINGTON: My calendar's currently crashed on my -- so I can't answer that, but --

MS. BAUDIN: Why don't we do the 10th, just so it's --

THE COURT: Is there a date you know you're going to be here?

MS. REDDINGTON: No.

THE COURT: Okay.

MS. REDDINGTON: Judge, and I have several motions, and what I'd like to do is get the trial stricken which is on 9/- --

MS. BAUDIN: 27th I believe or 22nd?

MS. REDDINGTON: -- the 26th, and then to set it for the status instead on the 8/10, and then I also had a motion on an IME. I'm a little stymied right now because my claim rep is out this week and there's a couple of issues that I can't answer for counsel, but if we do get the agreement in place, what we'd like to do is do the mediation and then come back for a status to dismiss it once the mediation is done, if that's agreeable.

THE COURT: First off, with respect to the motion to strike the trial date, any objection?

MS. BAUDIN: No.

THE COURT: All right. I will -- I will strike the trial date for September 26, as well as

the pretrial date of the 23rd.

MS. REDDINGTON: Okay.

THE COURT: I will enter and continue your other motions until we're certain what's going to happen.

MS. REDDINGTON: Okay.

THE COURT: The removal of the trial date pretty much means we can do anything.

MS. REDDINGTON: Takes care of that. Okay. And hopefully we'll come back with everything in place and then we'll just even set a date and then get a status for after that date to be able to come back and say it's done; we're willing to dismiss with prejudice because mediation's binding and it's done.

THE COURT: All right. However you want to do it, it is fine.

MS. REDDINGTON: Thank you.

THE COURT: All right. Take care.

MS. BAUDIN: Thank you

88. On July 21, 2016 at 12:41 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[1] "Think you two can get me that copy of the policy soon?"

89. On July 21, 2016 at 6:28 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "Randy, please read page 1 coverage cushion of the gagnon policy. It extends coverage to 120% That's 60k more"

90. On July 21, 2016 at 6:37 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[3] "Page 2 guest medical may be an extra 1k"

91. On July 21, 2016 at 7:00 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[4] "Please let Kelly know that I want the high end of the Adr policy limit increased by 20% along with adding 20% to and judgement below the high end limit"

92. On July 21, 2016 at 7:09 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[5] "Oh yeah, your thoughts of him being dropped is a joke. His Gold coverage says he cannot be dropped no matter how many claims are made. Just thought you'd like to know that. You really should read the policy"

93. On July 27, 2016 at 11:14 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[6] "Just so you know, just received a letter from the Social Security

1 Exhibit 230_Baudin Text messages.pdf (page 57)
2 Exhibit 230_Baudin Text messages.pdf (page 57)
3 Exhibit 230_Baudin Text messages.pdf (page 57-58)
4 Exhibit 230_Baudin Text messages.pdf (page 58)
5 Exhibit 230_Baudin Text messages.pdf (page 58)
6 Exhibit 230_Baudin Text messages.pdf (page 59)

Administration and its a Notice of Affirmation and order of Appeals Council Remanding Case back to the Administrative Law Judge"

94. On July 27, 2016 at 11:14 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[1] "Great"

95. On July 27, 2016 at 11:21 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "Thank goodness that I kept the right to review by an appeal"

96. On July 28, 2016 at 6:17 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[3] "Morning Randy, If there was some sort of business contract between Gagnon and his Parents why couldn't any of them even come close as to what the terms were? Secondly, where are the cashed checks or contract? I was there the day this happened. I didn't hear anything that sounded like it was more than a son doing work for his parents as a favor. Nothing more. This seems to me to be yet anything that sounded like it was more than a son doing work for his parents as a favor. Nothing more. This seems to me to be yet another ploy to negate their financial responsibility and was conceived of after the fact."

97. On July 28, 2016 at 6:24 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[4] "If I remember correctly, David said in his dep that he was elected to do the work. Why say elected if he was contracted?"

98. On July 28, 2016 at 6:47 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[5] "Sorry, I'm driving and it looks garbled again. But it says if there's an agreement or contract so I'm guessing, if he knows what is not going to give you coverage, he will testify that way. But he has already testified that he was receiving $15 an hour, and that you were going to get the same. What you get is a relevant or what you got, and I know you didn't get paid. It's also irrelevant whether or not he actually got paid, especially in light of how it turned out, I guess it's just whether or not there was an agreement and it didn't have to be in writing. If at trial, they all say that there was some agreement or in an action to exclude coverage before trial, i'm guessing they're all going to be on the same page. The issue as to whether or not there is coverage, is different from the trial. That's a trial before the trial and that is something that we would have to win."

99. On July 28, 2016 at 6:53 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[6] "Since they didn't think enough ahead of the dep to get their storylines straight as to the payment/terms for this supposed agreement I believe that is enough to show there was no agreement and this is just another fabrication. Not unlike the other fabrications created throughout their deps. It is an obvious pattern. Expose it and their done even in front of a conservative jury or a trained judge acting as an bait or or mediator"

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1 Exhibit 230_Baudin Text messages.pdf (page 59)
2 Exhibit 230_Baudin Text messages.pdf (page 59)
3 Exhibit 230_Baudin Text messages.pdf (page 59-60)
4 Exhibit 230_Baudin Text messages.pdf (page 60)
5 Exhibit 230_Baudin Text messages.pdf (page 60)
6 Exhibit 230_Baudin Text messages.pdf (page 61)

100. On July 28, 2016 at 6:54 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[1] "Bait means arbiter"

101. On July 28, 2016 at 6:56 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "This issue will not come to fruition and biding mediation. The Allstate in-house lawyers have not put two and two together"

102. On July 28, 2016 at 6:57 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[3] "They have to prove this claim and they can't."

103. On July 28, 2016 at 7:00 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[4] "Am I allowed to make erroneous claims without proof? If not, why would their erroneous claims without proof be allowed?"

104. On July 28, 2016 at 7:02 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[5] "It would be something called dec action which would be brought by ALLSTATE. Yes evidence would be presented but there aren't any guarantees regarding what the judge would decide"

105. On July 28, 2016 at 7:06 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[6] "I'm sure any experienced judge would see this for what it is. A fraudulent attempt to negate any and all financial responsibility for the wreck less actions committed that day. They have no proof other than the words of those who already lied under oath"

106. On July 28, 2016 at 7:06 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[7] "Dozens of times"

107. On July 28, 2016 at 7:11 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[8] "I'm sure a rational experience judge would think so, but those are few and far between. That's why the law books are full of appeals. The legal system is not fair, and not rational. Otherwise things could just be input into a computer and the answer would spit out."

108. On July 28, 2016 at 7:13 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[9] "If someone hits you with their car does it matter if they were being paid to drive that car? If not how is this any different?"

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1 Exhibit 230_Baudin Text messages.pdf (page 61)
2 Exhibit 230_Baudin Text messages.pdf (page 62)
3 Exhibit 230_Baudin Text messages.pdf (page 62)
4 Exhibit 230_Baudin Text messages.pdf (page 62)
5 Exhibit 230_Baudin Text messages.pdf (page 62)
6 Exhibit 230_Baudin Text messages.pdf (page 62-63)
7 Exhibit 230_Baudin Text messages.pdf (page 63)
8 Exhibit 230_Baudin Text messages.pdf (page 63)
9 Exhibit 230_Baudin Text messages.pdf (page 63)

109. On July 28, 2016 at 7:14 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[1] "Actually that does, a lot of car policies exclude paid for hire. Also, every type of policy affords different types of coverage and has different exclusions so homeowners policies are different than car policies"

110. On July 28, 2016 at 7:18 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "I have a question that's related but different. Why were the defendants privy to my deposition prior to giving their own? Carol slipped in her dep and said things she couldn't have known unless someone coached her and gave her inside information about my deposition. If this happened, and clearly it is, what's to say they weren't coached to claim this was a contract just so he insurance company had an out?"

111. On July 28, 2016 at 7:20 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[3] "I'm not sure who would've coached them because if this was an issue that ALLSTATE realized it would've been dealt with a long time ago"

112. On July 28, 2016 at 7:21 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[4] "When it smells foul, it's foul"

113. On July 28, 2016 at 7:23 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[5] "Defendants certainly are foul."

114. On July 28, 2016 at 7:23 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[6] "Look, they claim it's a contract but when asked the details non of the parties supposedly involved with the contract can get any of the details even remotely the same. Like I said this is a ploy and nothing more"

115. On July 28, 2016 at 7:25 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[7] "Yeah I'm not sure I don't know. Could be dabbing if they have a canceled check or something from previous work to say hey look we've paid him for doing stuff around the house before. But even if not you would have testimony that they had an agreement. Whether or not it's true is another story"

116. On July 28, 2016 at 7:26 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[8] "Ploy means rouse"

117. On July 28, 2016 at 7:28 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[9] "If they had a check it should have been entered into evidence by

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1 Exhibit 230_Baudin Text messages.pdf (page 63-64)
2 Exhibit 230_Baudin Text messages.pdf (page 64)
3 Exhibit 230_Baudin Text messages.pdf (page 64)
4 Exhibit 230_Baudin Text messages.pdf (page 64)
5 Exhibit 230_Baudin Text messages.pdf (page 64)
6 Exhibit 230_Baudin Text messages.pdf (page 65)
7 Exhibit 230_Baudin Text messages.pdf (page 65)
8 Exhibit 230_Baudin Text messages.pdf (page 65)
9 Exhibit 230_Baudin Text messages.pdf (page 65)

now. Since they don't too bad for them."

118. On July 28, 2016 at 7:29 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[1] "That would be a separate action. Nobody has even raised the issue of payment whether he's liable or not is"

119. On July 28, 2016 at 7:29 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[2] "One issue. Whether or not there is coverage is a separate completely separate action that would be between ALLSTATE and him"

120. On July 28, 2016 at 7:30 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[3] "Since when is it ok to entertain unsubstantiated claims this far along with no evidence any of it it remotely true"

121. On July 28, 2016 at 7:42 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[4] "I just had to go back to carols dep. she claimed she gave money to David so he had something to claim on his taxes, not for the work being performed. David claims an hourly wage and the father, Bill claimed Carol gave him a pair ago pants. Probably a gift as a thank you. None of these things are even close to being the same but all are suggestive and not proof of anything because their so vastly different"

122. On July 28, 2016 at 7:53 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[5] "I am more curious who Carol hired to remove the tree and would be more interested questioning that company they were hired prior to the day of the incident. This would go a long way to putting David's claim of a contract to rest"

123. On July 28, 2016 at 7:57 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[6] "It's not even a contract it was just an agreement that doesn't have to be something formal written it's like hey I'll pay you some money to take the tree down. Headed into a meeting. I'll keep you up-to-date on any new information"

124. On July 28, 2016 at 8:25 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[7] "If Carol, as she claimed, had previously entered into a contract with a real professional tree removal company why would she also agree to pay her son to remove the same tree? Unless, this is some sort of afterthought in an attempt to find ways of not paying for the damage they caused. They cannot play both sides of the street at the same time. They lied about this just as they lied about other things that happened that day all attempts to lessen the amount of damage done to me and lessen their responsibilities and misdirect blame and responsibility"

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1 Exhibit 230_Baudin Text messages.pdf (page 65-66)
2 Exhibit 230_Baudin Text messages.pdf (page 66)
3 Exhibit 230_Baudin Text messages.pdf (page 66)
4 Exhibit 230_Baudin Text messages.pdf (page 66)
5 Exhibit 230_Baudin Text messages.pdf (page 66)
6 Exhibit 230_Baudin Text messages.pdf (page 66-67)
7 Exhibit 230_Baudin Text messages.pdf (page 67)

125. On July 28, 2016 at 8:26 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[1] "The patterns are obvious and easily proven to be lies"

126. On July 28, 2016 at 9:37 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "From Carol knowing what I said in my Deposition, claiming the hospital and doctors gave her my personal medical information to the claims that she entered into some sort of verbal agreement with her son for business purposes sounds more like insurance company lawyers entering into an verbal agreement with their clients to skew the truth so they have some sort of out in exchange for representation in court."

127. On July 28, 2016 at 9:40 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[3] "If that's the case almost any claim made against an insurance policy can be thrown out based on verbal agreements with no proof to back up the story or lies being told"

128. On July 28, 2016 at 9:42 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[4] "I see this a a malicious attempt to get away with little or or no consequences and just makes me want to expose all of this to a jury even more"

129. On July 29, 2016 at 9:17 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[5] "Any chance Myrna can send me that asset report today? Also, there may be another asset that won't show up on his report. Rumor has it that David Gagnon had an auto accident and had to undergo some sort of surgery on his back and is in the process of suing for his injury."

130. On August 2, 2016 at 3:47 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[6] "What is a bad faith letter?"

131. On August 2, 2016 at 5:30 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[7] "Has one been sent to the Allstate adjusters?"

132. On August 8, 2016 at 8:29 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[8] "What is happening this Wednesday in court now that Allstate is getting their independent medical exam in September or October?"

133. On August 10, 2016, in violation of the automatic stay, the Baudins and Reddington moved to enter into binding mediation on August 10, 2016, The date of the Binding Mediation hearing was already set for December 8, 2016 by the time the following exchange took place on

1 Exhibit 230_Baudin Text messages.pdf (page 67)
2 Exhibit 230_Baudin Text messages.pdf (page 67-68)
3 Exhibit 230_Baudin Text messages.pdf (page 68)
4 Exhibit 230_Baudin Text messages.pdf (page 68)
5 Exhibit 230_Baudin Text messages.pdf (page 68)
6 Exhibit 230_Baudin Text messages.pdf (page 68)
7 Exhibit 230_Baudin Text messages.pdf (page 68-69)
8 Exhibit 230_Baudin Text messages.pdf (page 69)

August 10, 2016 in the Circuit Court:[1]

> MS. REDDINGTON: Number one, Dulberg vs. Gagnon. Shoshan Reddington for the defendant. We have (indiscernible) scheduled for 12-8.
>
> THE COURT: Okay.
>
> MS. REDDINGTON: We'd like to have a status date after that date.
>
> THE COURT: What date works for you? You said December 8?
>
> MS. REDDINGTON: December 8.
>
> THE COURT: Okay. How about the following Monday, the 12th? Or do you want to go out further? The 16th, Friday?

134. On August 10, 2016, in violation of the automatic stay, Judge Meyer of the 22nd Circuit Court entered an 'Agreed Order' that stated "This case is continued on Motion of 'by agreement' to 12/12, 2016 at 9:00am for Status on binding Mediation.". The order also stated "Defendants appear by attorney Reddington". Reddington represented Allstate. The Baudins were not present.[2]

135. Allstate and the Baudins misrepresented Dulberg's wishes to the 22nd Judicial Circuit Court and claimed they had an agreement to enter into binding mediation on August 10, 2016. Judge Meyer entered the order and pushed the next status date to December 12, 2016, which is 4 days after the scheduled binding mediation date of December 8, 2016. All this was done in violation of the automatic stay.

136. Table 1 shows what happened on August 10th, 2016 is the 4th time Allstate teamed up with with Dulberg's own attorneys to place an upper cap on the value of case 12LA178

TABLE 1:

4 DIFFERENT EFFORTS TO PLACE AN UPPER CAP ON THE VALUE OF PI CASE 12LA178			
1st attempt	2014-10-03	Popovich-Mast	Apply pressure through "expiring lien"[3] (low 'upper cap')
2nd attempt	2015-02-14	Popovich-Mast	Pre-trial settlement conference[4] ($50,000 'upper cap')
3rd attempt	2015-06-10	Balke	Pre-trial settlement conference[5] ($50,000 'upper cap')
4th attempt	2016-08-10	Baudins	Binding Mediation ($300,000 'upper cap')

1 Exhibit 131_2016-08-10_CC-Civil - 12LA000178 - 3_3_2022 - - - REOP - - (4).pdf (lines 2-10)
2 Exhibit F5-2016-08-10_CC-Civil - 12LA000178 - 3_3_2022 - - - REOP - - (4).pdf
3 Exhibit 1
4 Exhibit 1
5 Exhibit 2

137. On August 12, 2016 at 9:22 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[1] "Morning Randy, Ok, it's driving me bananas over here, I'd like to know exactly what it is about the medical that's the issue in my case? Please call me with the details soon and let's discuss what's best. Thanks, Paul"

138. On August 16, 2016 at 7:42 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "Randy, I have to ask again, why is it wise to agree to mediate before permanent disability is determined by social security since the permanent disability rating would (be a large factor in determining what the insurance adjuster is willing to give? Both mom and myself need a real answer to this question"

139. On August 31, 2016 Trustee Megan Heeg resigned.[3]

140. On August 31, 2016 U.S. Trustee Patrick S. Layng appointed Joseph Olsen as Trustee of the Bankruptcy Estate of Paul Dulberg.[4]

141. On September 6, 2016, Megan G. Heeg filed a "MOTION TO APPROVE ATTORNEYS FEES AND COSTS AS AN ADMINISTRATIVE CLAIM"[5]

> "2. Previously, Megan G. Heed, had been the Chapter 7 case Trustee of the above-referenced case, but this case was recently assigned to a new trustee."
>
> "3. The employment of the law firm Ehrmann Gehlbach Badger Lee & Considine, LLC was approved by the Court on May 27, 2015."
>
> "8. The time period covered by this application is from November 26, 2014 through September 28, 2016."

142. On September 27, 2016, W. Randall Baudin II signed an affidavit "AFFIDAVIT OF W.RANDALL BAUDIN, II PURSUANT TO RULES 2014(a), 2016(b) and 5002 TO EMPLOYEE BAUDIN LAW GROUP, LTD. AS SPECIAL COUNSEL FOR THE TRUSTEE".[6]

143. The affidavit is an agreement between the bankruptcy trustee and the Baudin Law Group, Ltd. signed by W. Randall Baudin on behalf of the Baudin Law Group.

144. Section 1 states: "I am a member of the law firm of Boudin Law Group, Ltd. located at 304 South McHenry Avenue, Crystal Lake, IL 60014 and in that capacity I have personal knowledge of, and authority to speak on behalf of the firm of Baudin Law Group, Ltd. with respect to the matters set forth herein. This Affidavit is offered in support of the Applicationb of the Trustee for Authorization to Employ Baudin Law Group, Ldt. as special counsel for the Trustee. The matters set forth herein are true and correct to the best of my knowledge,

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1 Exhibit 230_Baudin Text messages.pdf (page 69)
2 Exhibit 230_Baudin Text messages.pdf (page 69)
3 Exhibit 234_2016-08-31_bkcy Heeg Notice of Resignation_DUL 002668.pdf
4 Group Exhibit 37-bankruptcy_docket_Petition 14-83578/25-0_OCR.pdf
5 Group Exhibit 39-Olsen subpoena and response
6 Group Exhibit 39-Olsen subpoena and response

information and belief.

145. Section 5 of the affidavit states: "To the best of my knowledge, information and belief, Baudin Law Group, Ltd. does not hold or represent a party that holds an nterest adverse to the Trustee nor does it have any connection with the Debtor's creditors, or any party in interest or their respective attorneys and accountants with respect to the matters for which Baudin Law Group, Ltd. is to be employed, is disinterested as that term is used in 11 U.S.C. & 101(14), and has no connections with the United States Trustee or any person employed in the Trustee's office. except that said firm has represented the Debtor's pre-petition with respect to the subject personal injury claim."

146. Section 6, part A states: "My firm and I are obligated to keep the Trustee fully informed as to all aspects of this matter, as the Bankruptcy estate is my client until such time as the claim in question is abandoned by the Trustee, as shown by a written notice of such abandonment."

147. Section 6, part D states: "No settlements may be entered into or become binding without the approval of the Bankruptcy Court and the Trustee, after notice to the Trustee, creditors and parties of interest."

148. Setion 6, part E states: "All issues as to attorneys fees, Debtor's exemptions, the distribution of any recovery between the Debtor and the Trustee or creditors, or any other issue which may come to be in dispute between the Debtor and the Trustee or creditors are subject to the jurisdiction of the Bankruptcy Court. Neither I nor any other attorney or associate of the Firm will undertake to advise or represent the Debtor as to any such matters or issues. Instead, the Firm will undertake to obtain the best possible result on the claim, and will leave to others any advice or representation as to such issues."

149. Section 6, part F states: "The Firm is not authorized to grant any "physician's lien" upon, offer to protect payment of any claim for medical or other services out of, or otherwise pledge or encumber in any way any part of any recovery without separate Order of this Court, which may or may not be granted."

150. On October 4, 2016 bankruptcy trustee Olsen filed 2 motions with the bankruptcy court.[1] [2]

151. On October 4, 2016 Dr Craig Phillips issues report. He wrote:[3] "He states he is not sure of the exact date, but on the date in question he was holding a tree branch at his neighbor's house to help David, his neighbor's son, cut the tree branch with a chainsaw. He stated he was holding a pine tree branch, which was a few inches thick, s!ill_attachedto the tree.and while David was cutting the branch", be inadvertently cut Mr. Dulberg's right forearm."

152. On page 6 Dr Craig Phillips wrote:[4]

1 Group Exhibit 37-bankruptcy_docket_Petition # 14-83578
2 Group Exhibit 37-bankruptcy_docket_Petition # 14-83578
3 Exhibit 13_DUL 001617-1632, 4148-4163, 4164-4179, 6480, 6487-6501
4 Exhibit 13_DUL 001617-1632, 4148-4163, 4164-4179, 6480, 6487-6501

"Dr. Talerico:
According to the medical records from MidAmerica Hand to Shoulder, Mr. Dulberg was seen by Dr. Talerico on December 2, 2011. His history is a 41-year-old male, right hand dominant, referred by Dr. Levin, MD, neurologist, for evaluation of an injury sustained to the right medial forearm in June 2011. He was using a chainsaw chainsaw when he accidentally struck the volar medial aspect of his right forearm in roughly the mid forearm range with a chain saw. He had a large open wound down to muscle."

153. Sometime in the first half of October W. Randal Baudin II and Kelly Baudin informed Dulberg that the binding mediation process will take place even though Dulberg does not approve of the process and refused to sign the arbitration agreement. W. Randal Baudin II and Kelly Baudin informed Dulberg that the bankruptcy judge had the authority to order the process into a mediation agreement without Dulberg's consent, and the judge had already ordered the case into mediation.

154. On October 18, 2016 at 10:50 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[1] "Hi Randy, since we haven't received the IME report in 10 days as the Dr stated we would, I'd like to move back the date of the mediation thingy I'm being forced into so we have more than only a few weeks to deal with whatever the report may show. At least 2-3 months should do it considering the defense has already had the treating Dr's reports and depositions for months and years already. Let me know"

155. On October 21, 2016 at 1:47 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "Hi Randy, looks like that board certified dr is quite the fabricator. He Should have a degree in creative writing rather than Dr.ing. Wish we had videotaped that because I'd post the video on the web right along side his report and let his patients see what he really is"

156. On October 21, 2016 at 1:54 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[3] "Myrna said your forwarding the report to dr Kujawa. That's good but I don't think we need it to prove Phillips an outright liar who can't pay attention to details. Hmmm... Makes me wonder who the hell passed him in med school"

157. On October 21, 2016 at 1:58 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[4] "Where did he come up with that line that the branch was still attached to the tree?"

158. On October 21, 2016 2:02 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[5] "That's not from anyone's deposition and you were there so you know I gave absolutely no details other than to say that basically a man walked over and used a chainsaw on me."

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1 Exhibit 230_Baudin Text messages.pdf (page 69-70)
2 Exhibit 230_Baudin Text messages.pdf (page 70)
3 Exhibit 230_Baudin Text messages.pdf (page 70)
4 Exhibit 230_Baudin Text messages.pdf (page 70)
5 Exhibit 230_Baudin Text messages.pdf (page 71)

159. On October 21, 2016 at 2:03 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[1] "He has quite the imagination claiming I said any of the crap in his report"

160. On October 21, 2016 at 2:05 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "I have to look up what board certified Phillips because they deserve to know what a liar this guy is."

161. On October 21, 2016 at 2:06 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[3] "Ok enough ranting for now. Let's get together and go over this report"

162. On October 21, 2016 at 2:08 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[4] "While the memories are still fresh"

163. On October 21, 2016 at 2:15 PM Plaintiff Dulberg sent a text message to W. Defendant Randall Baudin II stating:[5] "Why write a history at all if it's all fabricated? Why say I told him stuff when I did not? Why Lie? This is about as unprofessional as it gets. Phillips should be made an example of. Sure you don't want the chance to cross examine this guy? I sure do"

164. On October 31, 2016 Trustee Olsen appeared before the Honorable Thomas M. Lynch and the following exchange took place:[6]

> MR. OLSEN: Good morning, Your Honor. Joseph Olsen, trustee. This comes before the Court on two motions. One is to authorize the engagement of special counsel to pursue a personal injury litigation, I think it's in Lake County, involving a chainsaw accident of some sort. And then, presumably, if the Court grants that, the second one is to authorize the estate to enter into -- I'm not sure what you call it, but binding mediation. But there's a floor of $50,000, and there's a ceiling of $300,000.
> And I guess I've talked with his attorney. He seems very enthusiastic about it. There may be some issues about the debtor being a good witness or not, I guess. It had to do with a neighbor who asked him to help him out with a chainsaw, and then I guess the neighbor kind of cut off his arm, or almost cut off his arm right after that. There's some bitterness involved, understandably, I guess. But I don't do personal injury work at all, so I'm not sure how that all flows through to a jury, but he didn't seem to want to go through a jury process. He liked this process, so...
>
> THE COURT: Very well. Mr. Olsen, first of all, with regard to the application to employ the Baudin law firm, it certainly appears to be in order and supported by affidavit. Their proposed fees are more consistent with at least what generally is the market than some of the fees you and I have seen in some other matters. One question for you: Have you seen

1 Exhibit 230_Baudin Text messages.pdf (page 71)
2 Exhibit 230_Baudin Text messages.pdf (page 71)
3 Exhibit 230_Baudin Text messages.pdf (page 71)
4 Exhibit 230_Baudin Text messages.pdf (page 71)
5 Exhibit 230_Baudin Text messages.pdf (page 71-72)
6 Exhibit A6-DULBERG 10-31-16-1.pdf (Dulberg first obtained this transcript on 09-26-2022)

the actual engagement agreement?

MR. OLSEN: I thought it was attached to my motion.

THE COURT: Okay.

MR. OLSEN: If it's not, it should have been. It's kind of an interesting -- actually, this is kind of a unique one. The debtor actually paid them money in advance, and then he's going to get a credit if they actually win, which I guess enures, now, to my benefit, but that's okay. And there's a proviso for one-third, except if we go to trial, then it's 40 percent. So these are getting more creative by the PI bar as we plod along here, I guess, but...

THE COURT: It's a bar that's generally pretty creative. And my apologies. I saw the affidavit, but you did have the agreement attached, and one was in front of the other. And the agreement is just as you describe it. It appears to be reasonable, and so I'll approve the application. Tell me about this binding mediation. It's almost an oxymoron, isn't it?

MR. OLSEN: Well, I guess the mediators don't know there's a floor and a ceiling. I'm not sure where that comes from, but that's -- yeah. And whatever number they come back at is the number we're able to settle at, except if it's a not guilty or a zero recovery, we get 50,000, but to come back at 3 million, we're capped at 300,000.

THE COURT: Interesting.

MR. OLSEN: A copy of the mediation agreement should also be attached to that motion.

THE COURT: And I do see that. That appears to be in order. It's one of those you wish them luck

MR. OLSEN: I don't want to micromanage his case.

THE COURT: But that, too, sounds reasonable. There's been no objection?

MR. OLSEN: Correct.

THE COURT: Very well. I will approve -- authorize, if you will, for you to enter into the binding mediation agreement, see where it takes you.

MR. OLSEN: Thanks, Your Honor.

165. In the exchange Olsen said:[1] "Well, I guess the mediators don't know there's a floor and a ceiling. I'm not sure where that comes from, but that's -- yeah. " The evidence presented with this complaint demonstrates that the "floor "of $50,000 and the "ceiling" of $300,000 could have come from only one source: from Allstate and the Baudins (without Dulberg's or the bankruptcy trustee's or bankruptcy judge's knowledge or consent in violation of the automatic stay before Olsen was appointed Trustee). There can be no other source for the "low" and "high" limits. When the Baudins made this decision they represented nobody since Dulberg had no standing as plaintiff, there is no evidence that trustee Heeg was ever informed or ever entered into any agreement with the Baudins, and Olsen was not yet appointed trustee.

1 Exhibit A6-DULBERG 10-31-16-1.pdf

166. On October 31, 2016 an order was issued by the Honorable Thomas M. Lynch:[1]

> "ORDER THIS CAUSE coming on to be heard on this 31st day of October, 2016 upon the Trustee's Motion for Authority to Enter into a "Binding Mediation Agreement", the Court after considering the Motion, the statements of counsel, pleadings on file and being fully advised in the premises: IT IS HEREBY ORDERED that Joseph D. Olsen, Trustee herein, is authorized to enter into a "Binding Mediation Agreement" as described in the Trustee's Motion, and the Trustee may execute such documents as are necessary to accomplish the matters set forth herein."

167. Order to employ Special Counsel order here[2]

168. On October 31, 2016 at 10:41AM trustee Olsen sent an email to Randall Baudin II stating:[3] "Randy- The Court authorized your appointment this morning, as well as entry into that "Binding Mediation Agreement"; Do you want the debtor to /s/ the form, or me as trustee? Let me know, thanks."

169. On October 31, 2016 at 10:50AM Randall Baudin II sent an email to Trustee Olsen stating: [4] "You can good ahead sign it."

170. Sometime in November the Baudins told Dulberg (during a telephone conversation) that even though he does not want the binding mediation to take place, he should attend the hearing anyway because the judge will look down on a person that doesn't attend as if they are uninterested in their own case.

171. On December 8, 2016, Dulberg attended the binding mediation with his mother, Barbara Dulberg, even though he did not agree to the process, did not want it to happen, and refused to sign any agreement or consent to the process.

172. Dulberg believed at the time that the Bankruptcy Judge was the person who ordered the case into binding mediation and Dulberg believed the Bankruptcy Judge had the legal authority to make that decision without anyone else's consent. Dulberg beleived this because W. Randall Baudin II told him it was true.

173. When Paul Dulberg and Barbara Dulberg were sitting alone in a room waiting, Dulberg read a document left on the table. The document was written by Lanford.[5]

174. The document contained this comment: "..."[6]

175. The Binding Mediation Judge ordered an award of $560,000.[7]

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1 Group Exhibit 37-bankruptcy_docket_Petition # 14-83578: 37-0_Binding Mediation OrderOCR (2).pdf
2 Group Exhibit 37-bankruptcy_docket_Petition # 14-83578: 37-0_OCR.pdf
3 Group Exhibit 39-Olsen subpoena and response
4 Group Exhibit 39-Olsen subpoena and response
5 Exhibit 13 Lanford letter here
6 Exhibit 13
7 Exhibit 13

176. W. Randall Baudin II informed Dulberg and Barbara Dulberg that the opposing attorney was angry because she was told the case would be settled for $50,000.

177. Dulberg asked W. Randall Baudin II if the document by Lanford was true. W. Randall Baudin II said, "That's what it says".

178. Dulberg mentions Malpractice against Popovich to Baudin (for the first time?)

179. W. Randall Baudin II responded, "...".

180. On December 12, 2016 the following exchange took place in the 22nd Judicial circuit Court:[1]

APPEARANCES:

(NO APPEARANCES GIVEN)

> UNIDENTIFIED VOICE: Number five, Dulberg. I talked to Baudin & Baudin this morning -- or Baudin Law Group, and Randy Baudin indicated to me he's going to be in another county and his wife's out of state, but they're agreeable with me getting a dismissal with prejudice based on the fact that we've had a binding mediation on Thursday and we're expecting an award.
>
> THE COURT: Wonderful. All right.
>
> UNIDENTIFIED VOICE: Thank you.
>
> THE COURT: I'll be curious what the award was. All right. Thank you.

181. Dulberg was informed that the trustee would receive the $300,000 arbitration award, but the money would not be issued unless he signed a document, which he signed in order to have the money issued to the bankruptcy trustee to pay his creditors.[2]

182. On December 21, 2016 at 11:14 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[3] "Myrna says I'm to meet you in McHenry, when and where?"

183. On December 21, 2016 at 11:16 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[4] "I'm just heading to Panera to meet with a client on the route 31. You're welcome to come in anytime and I can tell the gentleman I have to run out to the car and have you sign something I can meet you too at your car so come at your leisure I should be here for at least A half hour"

184. On December 21, 2016 at 11:20 AM Plaintiff Dulberg sent a text message to Defendant

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1 Exhibit 235_2016-12-12_12LA178_Report of Proceeding_UNIDENTIFIED VOICE_ Stacey A Collins.pdf
2 Exhibit 236_ Filed Dulberg's Affidavit v Allstate 09202023 Affi.pdf
3 Exhibit 230_Baudin Text messages.pdf (page 72)
4 Exhibit 230_Baudin Text messages.pdf (page 72)

W. Randall Baudin II stating:[1] "Will be there in approx 15 min"

185. On December 21, 2016 at 11:39 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "You here?"

186. On December 21, 2016 at 11:41 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[3] "Here"

187. On December 21, 2016 at 1:02 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[4] "Why would Allstate need a signed release when they agreed to let the arbitrator decide what is final and not this afterthought of an agreement?"

188. On December 21, 2016 at 1:02 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[5] "Or I mean release?"

189. On December 21, 2016 at 1:04 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[6] "The arbitrator did not set these terms. Why are they modifying our original agreement"

190. On December 21, 2016 at 1:04 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[7] "That's just typically what they do is have the release even though there's an award. I have a call into Gooch he's in depositions"

191. On December 21, 2016 at 1:06 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[8] "Ok, but don't send in that document till we get this worked out. As of now I'm withdrawing my signature till we have something that works."

192. On December 21, 2016 at 1:08 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[9] "If I get the go ahead from Tom, we should be fine, is the one handling that case. I think it has no effect, but he's the one prosecuting the other case while wait to hear what he says"

193. On December 21, 2016 at 1:10 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[10] "Allstate has no business extending letting their client off to letting everyone off. What if I find out one of the surgeons left something inside me? This should just release the policy they represented at the ADR. Nothing more"

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1 Exhibit 230_Baudin Text messages.pdf (page 72)
2 Exhibit 230_Baudin Text messages.pdf (page 73)
3 Exhibit 230_Baudin Text messages.pdf (page 73)
4 Exhibit 230_Baudin Text messages.pdf (page 73)
5 Exhibit 230_Baudin Text messages.pdf (page 73)
6 Exhibit 230_Baudin Text messages.pdf (page 73)
7 Exhibit 230_Baudin Text messages.pdf (page 74)
8 Exhibit 230_Baudin Text messages.pdf (page 74)
9 Exhibit 230_Baudin Text messages.pdf (page 74)
10 Exhibit 230_Baudin Text messages.pdf (page 74)

194. On December 21, 2016 at 1:12 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[1] "It's boiler plate, fill in the blank language. They didn't write this specifically for you it's just what they use in all cases"

195. On December 21, 2016 at 1:14 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "Anyone agreeing to their fill in the blank form after the ADR agreement is nuts. I expect them to fulfill their ADR agreement with or without this release"

196. On December 21, 2016 at 1:15 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[3] "If they wanted this as part of the agreement it should have been done prior to the binding ADR mediation"

197. On December 22, 2016 at 7:17 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[4] "Morning Randy, I'll be at your office to sign the release sometime between 9-10 am. Wish you could just add the changes Thomas gooch suggested and save the trip but I'll show up just to put my initials on it."

198. On December 22, 2016 at 8:57 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[5] "I will be stuck in court MyrnA has a release"

199. According to the U.S. Bankruptcy Code, Section 726 – Distribution of property of the estate

> (a) Except as provided in section 510 of this title, property of the estate shall be distributed—
>
> (1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed on or before the earlier of—
>
> (A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or
>
> (B) the date on which the trustee commences final distribution under this section;
>
> (2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is—
>
> (A) timely filed under section 501(a) of this title;
>
> (B) timely filed under section 501(b) or 501(c) of this title; or
>
> (C) tardily filed under section 501(a) of this title, if—
>
> (i) the creditor that holds such claim did not have notice or actual knowledge of the case

1 Exhibit 230_Baudin Text messages.pdf (page 74-75)
2 Exhibit 230_Baudin Text messages.pdf (page 75)
3 Exhibit 230_Baudin Text messages.pdf (page 75)
4 Exhibit 230_Baudin Text messages.pdf (page 75)
5 Exhibit 230_Baudin Text messages.pdf (page 75)

in time for timely filing of a proof of such claim under section 501(a) of this title; and

(ii) proof of such claim is filed in time to permit payment of such claim;

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection;

(4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim;

(5) fifth, in payment of interest at the legal rate from the date of the filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4) of this subsection; and

(6) sixth, to the debtor.

200. Dulberg, as the debtor, was the Sole Residuary Beneficiary of the bankruptcy estate. If the first 5 types of claimants listed in section 726 are paid in full, Dulberg becomes the sole claimant to any remaining money and therefore the sole Sole Residuary Beneficiary of what remains of the bankruptcy estate.

201. Randall Baudin II and Kelly Baudin and The Baudin Law Group were retained by the trustee to represent the bankruptcy estate and Dulberg was the Sole Residuary Beneficiary of all funds in the estate once the first 5 types of claimants listed in section 726 have been paid in full. Therefore Randall Baudin II, Kelly Baudin and The Baudin Law Group acting as legal counsel for the estate owed a duty of due care to Dulberg when acting in this capacity.

202. On December 16, 2016 Dulberg hired legal malpractice attorney Thomas Gooch.[1]

203. Dulberg told Gooch that he was forced into binding mediation and he refused to sign any binding mediation agreement.[2]

204. On January 3, 2017, Trustee Joseph Olsen filed "NOTICE TO CREDITORS AND OTHER PARTIES OF INTEREST" which contains the of binding mediation award and notice of motion to disburse $117,000 to W. Randal Baudin II and Kelly Baudin and $15,000 to Dulberg and to pay certain attorneys and medical liens.[3]

205. Baudins profited $117,084.63[4] from Dulberg's bankruptcy estate plus a non-refundable retainer fee of $3,331.33 paid directly by Dulberg to the Baudins totaling $120,415.96.

206. The Baudins received an overpayment of $21,085.96 according to provisions found in the

1 Exhibit 4
2 Exhibit 4
3 Group Exhibit 38_Olsen notice to creditors
4 Group Exhibit 37-bankruptcy_docket_Petition # 14-83578/

fee agreement.[1]

HOW DULBERG FIRST DISCOVERED FRAUDULENT ACTS BY BAUDINS

207. On October 25, 2019 the Clinton Law office issued a subpoena to Olsen.[2]

208. On December 2, 2019 Olsen responded "informally" to the Clinton subpoena and emailed documents.[3]

209. On February 10, 2020 Clinton sent Dulberg Olsen's response to the subpoena.[4] Dulberg noticed the following emails between Olsen and Randall Baudin:

> On October 31, 2016 at 10:41 AM Olsen < jolsenlaw@comcast.net> wrote: Randy- The Court authorized your appointment this morning, as well as entry into that "Binding Mediation Agreement"; Do you want the debtor to /s/ the form, or me as trustee? Let me know, thanks.[5]
>
> On October 31, 2016 at 10:50 AM Randy Baudin II <randybaudin2@gmail.com> responded, "You can good ahead sign it. Thank you so much."[6]

210. When Dulberg read Baudin tell Olsen to sign the proposed Binding Mediation Agreement, this seemed reasonable to Dulberg since Dulberg was told by the Baudin Defendants that it was the Bankruptcy Judge, who forced Dulberg's personal injury case into the Binding Mediation Agreement and it was Olsen who had standing and was approved to enter into binding mediation. As anyone would, Dulberg assumed Olsen signed the ADR agreement from the conversation and the resulting Binding Mediation that took place on 12/8/2016 at ADR SYSTEMS OF AMERICA, LLC.

211. However this exchange shows something entirely different:

a. Trustee Olsen is asking Baudin if Baudin wants the asset/claim to revert back to the DEBTOR or remain part of the ESTATE by asking "Do you want the debtor to /s/ the form, or me as trustee?".

b. Baudin's response is, "You can good ahead sign it." meaning the ESTATE.

212. In Fact:

a) The executed Binding Mediation agreement does not have Trustee Olsen's signature.

b) Trustee Olsen did not act and sign on the advice of his special counsel the Baudins.

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1 Exhibit F1-2015-Baudin_FeeAgreement.pdf
2 Group Exhibit 39-Olsen subpoena and response_
3 Key Clinton Folder 1_Dulberg Master File/Dulberg Emails 2020 August 19/Fwd Re Paul Dulberg 1483578 12LA178-2.pdf
4 Group Exhibit 39-Olsen subpoena and response
5 Group Exhibit 39-Olsen subpoena and response
6 Group Exhibit 39-Olsen subpoena and response

c) Trustee Olsen did not "pursue" and "exercise control "over the claim as the Baudin Defendants assert.

d) The personal injury asset appears to be and is abandoned by Trustee Olsen.

e) Abandoned assets reverts back to the DEBTOR.

f) The DEBTOR was represented by attorney David Stretch and not the Baudin Defendants.

g) The Baudin Defendants were approved and hired as Special Counsel for the Estate and in such a capacity had no standing to execute a Binding Mediation Agreement for the DEBTOR.

h) The only party with standing over abandoned assets is now the DEBTOR.

i) The signature page on the Executed Binding Mediation Agreement does not belong to the other pages in the executed Binding Mediation Agreement.

j) ADR SYSTEMS OF AMERICA, LLC. facilitated fraud by failing to take the necessary steps to ensure the signers had standing.

k) Trustee Olsen and the Baudins collected the monies paid out by Allstate after ABANDONING the ASSET that reverted back to the DEBTOR.

213. On September 26, 2022 4:21 PM Dulberg received the 10/31/2016 Bankruptcy Courts Report of Proceeding. Dulberg forwarded the report of proceeding to his attorney Alphonse Talarico stating: "Lets talk after you digest what happened in this one." Dulberg discovered that Trustee Olsen misled the the Honorable Judge Thomas M. Lynch in the transcript.[1]

214. On October 28, 2022 Dulberg received a copy of the executed Binding Mediation Agreement[2] on file with ADR SYSTEMS OF AMERICA, LLC. expecting to see the Trustee Olsens' signature. Instead Dulberg saw his own signature on the executed Binding Mediation Agreement and he knew he never signed the Binding Mediation Agreement. This is when Dulberg first knew:

a) Dulberg's signature is on the executed Binding Mediation Agreement on file with ADR SYSTEMS OF AMERICA, LLC. and Dulberg knew he refused to sign the contract and did not sign the contract. (Discovered on October 28, 2022)

b) Trustee Olsen misled the bankruptcy Judge, "There may be some issues about the debtor being a good witness or not", "he didn't seem to want to go through a jury process", "he liked this process" basically that Dulberg was in agreement with the Binding Mediation Agreement (Discovered on September 26, 2022)

215. On October 28, 2022 Dulberg launched a full scale investigation into the signature's found in the executed Binding Mediation Agreement and quickly found that the signature page does not belong to the rest of the body of the executed Binding Mediation Agreement but is an

1 Group Exhibit 40_Group Exhibit 40-Dulberg's discovery of fraud in BK Court on 9-26-2022/
2 Exhibit 237_2023-12-08_Filed Complaint December 8 2022 DisplayFromAWS_OCR.pdf

exact match to the proposed Binding Mediation Agreement approved by the Bankruptcy court.[1]

216. Dulberg first learned that (a) his signature was fraudulently placed on the ADR contract (Discovered on October 28, 2022) and (b) the Bankruptcy Trustee misrepresented Dulberg's consent to the Bankruptcy Judge (discovered on September 26, 2022) and Dulberg believes the discovery of his signature on the ADR contract is when the statute of limitations should be tolled.

217. In order to understand the context of Dulberg's 12/12/2016 statement "Yeah, you two did good, real good, and I thank both of you sincerely. I just can't help it, what I see here is a gift of $261,000 given to those responsible for my injuries." it is important to know the history behind it.

a. On 1/22/2014 When Dulberg was represented by Hans Mast and the Law Offices of Thomas J. Popovich P.C., the co-defendants (McGuires) in 12LA178 were inexplicably dismissed with prejudice even though the McGuire's employed their son/step-son Gagnon and were vicariously liable for anything Gagnon could not pay.

b. On 12/12/2016 When Dulberg learned of the Binding Mediation Award and how much he could not collect, his mind instantly went back to the dismissed defendants (McGuire's) that would have been vicariously liable for any monies Gagnon could not pay if they were still in the case. Dulberg realized the pecuniary injury the Popovich law firm caused. Dulberg talked with Randall Baudin II about the issue of the McGuire's release and Randall Baudin told Dulberg to call his office in the morning and his secretary Myrna would provide Dulberg with the contact of a Legal Malpractice Attorney the Baudins have used in the past and Dulberg could go see.

c. On 12/16/2016 Dulberg met with Thomas Gooch, the Legal Malpractice Attorney the Baudins recommended Dulberg see.

d. On 11/28/2017 Thomas Gooch filed suit (17LA377) against Hans Mast and the Law Offices of Thomas J. Popovich P.C for Legal Malpractice in 12LA178, specifically for the release of the McGuire defendants, that case is currently on appeal in the 2nd District Case No 2230072.

218. Dulberg was affixing the pecuniary injury of $261,000.00 to the previous firm and the release of the McGuire defendants in his statement when making the 12/12/2016 statement.

219. When on December 12, 2016 Dulberg told the Baudins, "Yeah, you two did good, real good, and I thank both of you sincerely. I just can't help it, what I see here is a gift of $261,000 given to those responsible for my injuries. ", he clearly did not know about the fraudulent acts the Baudins were committing toward him. Dulberg clearly did not know the following:

(a) That Dulberg's signature was fraudulently placed on the Executed Binding Mediation Agreement executed 4 days earlier on December 8, 2016.

(b) That Trustee Olsen misrepresented Dulberg's consent to the Bankruptcy Judge on

1 Exhibit A6-DULBERG 10-31-16-1.pdf

October 31, 2016.

(c) That Allstate, the Baudins and Trustee Olsen knew Dulberg had no standing to pursue the case 12LA178 while the case was under an automatic stay.

(d) That Allstate, the Baudins and Trustee Olsen all knew the case 12LA178 proceeded in the Circuit Court in violation of the automatic stay.

(e) That the Baudins by agreement with Allstate, in violation of the automatic stay, before the Baudins were approved to be hired as special counsel under Trustee Olsen, misrepresented Dulberg as agreeing to Binding Mediation in Circuit Court on August 10, 2016 and asked Associate Judge Meyer to delay the next status hearing to December 12, 2016 after the binding mediation was to take place on December 8, 2016.

(f) That the Baudins' and Allstate's acts in violation of the automatic stay, started laying the groundwork as early as June 16, 2016 and finally set the binding mediation date for December 8, 2016 on August 10, 2016 in the Circuit Court. This happened before Trustee Olsen was even appointed to the position on August 31, 2016 and before Trustee Olsen received permission from the Honorable Judge Thomas M. Lynch, to hire the Baudins' as special counsel and permission to enter into the proposed capped Binding Mediation Agreement on October 31, 2016.

(g) That the Baudins filed their APPEARANCE as REGULAR COUNSEL in 12LA178 on 11/6/2015 in violation of the automatic stay.

(h) That there is no APPEARANCE filed by the Baudin Defendants that is not VOID in case 12LA178.

(i) That the Baudin Defendants' failed to file an APPEARANCE to represent the bankruptcy estate in case 12LA178 after being hired as special counsel by Trustee Olsen.

(j) That Trustee Olsen received permission from the Bankruptcy court to enter into the proposed Binding Mediation Agreement and later made a choice. Trustee Olsen did not act and sign on the advice of his special counsel the Baudins.

(k) That Trustee Olsen did not "pursue" and "exercise control "over the claim/asset and in doing so Abandoned the asset and it reverted back to the DEBTOR.

(l) The Baudin Defendants were approved and hired as Special Counsel for the Estate and in such a capacity had no standing to execute a Binding Mediation Agreement for the DEBTOR.

(m) The only party with standing over abandoned assets is now the DEBTOR.

(n) That there can be no agreement between Allstate and the Baudin Defendants acting as counsel for the bankruptcy estate to have the case dismissed with prejudice in the circuit court on December 12, 2016 since the Baudins failed to file any appearance anywhere that is not VOID and had no standing since they did not represent the DEBTOR.

(o) Trustee Olsen and the Baudins collected the monies paid out by Allstate after ABANDONING the ASSET that then reverted back to the DEBTOR.

220. Dulberg did not know any of this fraud took place when he was awarded $660,000 in the capped Binding Mediation but Allstate, Trustee Olsen and the Baudins must have known. At that time Dulberg believed that the Bankruptcy Judge forced the case into a capped Binding Mediation without Dulberg's consent because that is what the Baudins told Dulberg. Dulberg stating "Yeah, you two did good, real good, and I thank both of you sincerely. I just can't help it, what I see here is a gift of $261,000 given to those responsible for my injuries." just after learning of the capped Binding Mediation Award and that cannot be interpreted as Dulberg knowing about the fraudulent concealment listed as (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) at that time. He was not happy about not being able to collect all that he was awarded, but that does not mean he knew or could have known about the fraudulent concealment listed as (a) through (o).

221. On December 8, 2016 Dulberg filed a complaint against the Baudins, Joseph Olsen, Allstate, ADR Systems, [1]

APPENDIX A

222. On November 7, 2017 at 5:25 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating:[2] "hi Randy, its Paul Dulberg, just recieved a call from Randy Sr. Please call me. Thanks, Paul"

223. On November 7, 2017 at 5:48 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating:[3] "What did he want?"

224. Dulberg later took notes of the conversation from memory. He intended to send the notes to Gooch. He wrote an email to himself to record the notes.

225. On November 9, 2017 at 6:04:03 PM CST Dulberg wrote an email from the address pdulberg@comcast.net to Paul_Dulberg@comcast.net which states:[4]

226. To: "Paul_Dulberg@comcast.net" <paul_dulberg@comcast.net>
Reply-To: Paul Dulberg <pdulberg@comcast.net>

> Hi Tom,
>
> You wanted to know what Randy Baudin Sr was asking when he called and I said I would need a few hours to unpack what he covered in about a 45 minute call So This is my attempt to unpack it. I felt like i was interrogated.
>
> Below are a few of the key points that stick out to me. they are in no particular order and the wording is not exact because his questions were fast and he was jumping from subject to subject, its just some of the things I remember him saying and asking as well as how I replied.

1 Exhibit 237_2023-12-08_Filed Complaint December 8 2022 DisplayFromAWS_OCR.pdf
2 Exhibit 230_Baudin Text messages.pdf (page 75-76)
3 Exhibit 230_Baudin Text messages.pdf (page 76)
4 Exhibit 227_2017-11-09_RBS.pdf

Randy Baudin SR. was all over the board with his questions and this is my best recollection of the call. He did wake me from a dead sleep with the call and caught me completely off guard. In retrospect, I was not prepared for this and some of the questions I probably shouldn't have answered. Particularly the ones about the Defendants Caroline and Bill McGuire and about Tom Popovich and Hans Mast.

RBS. Randy Baudin Sr. Introduced himself as the head of baudin and baudin law firm who handled my case and asked if i see its him on my caller id. He also said his assistant was there with him.

PD. I said if its on the caller id than i got it and would have to look later.

RBS. He than said that Thomas Gooch had contacted him and needed some documents and information and that in order to provide that information it is important for me to help fill in some of the blanks or he is in trouble. I said ok because I trusted the baudin firm and Thomas Gooch.

RBS. asked how it was that I came to his firm?

PD. I told him my Mom suggested him because he represented my brother a few decades earlier and that she swears by him because hes willing to fight for his clients

RBS. he asked what case he represented my brother in

PD. I told him that my brother was a passenger in a car that rolled over and that he had taken it to the appellate level

RBS. He asked how it was that Randy Jr took the case and why I didnt Meet with him

PD. I said im not sure why we didnt meet with you, its been a long time since then, all I remember was going to your office and being introduced to Randy Jr.

RBS He asked if it was at the office down near algonquin and lake in the hills

PD I said yes

RBS. Pressed me a few times as to the details of why I didnt meet with him rather than His son.

PD. I figured you were either busy or not in but for whatever reason Randy Jr met with my Mom and I instead. I just figured your all part of the same firm and my mom trusted you.

RBS thanked me and my mom for the high praise.

RBS asked if i had dealt with Kelly and Myrna as well

PD I said yes

RBS said something about his son, Randy JR, Randy JR's wife and Myrna were stealing cases from him

PD I said what is all this about?

RBS replied, oh now your asking me the questions now

PD I said well yeah is everything ok, whats wrong?

RBS said something about being involved in a 7 digit case and that Randy JR was taking cases that he didnt know about.

PD I said Im sorry about all that, I had no idea, is that what this is all about?

RBS asked did you and your mother come to see me?

PD I said at first yes but we ended up Meeting with his son Randy JR

RBS asked if i had met with Randy in Crystal lake and he gave a location

PD I said well yes they said they wanted to meet me at that office at times, why?

RBS asked if Myrna was at that location

PD I said well yes

RBS asked if my mom was doing well

PD I said yes

RBS asked if i liked village squire

PD I said yes

RBS told me to go there on either monday or tuesday because they have half price burgers

RBS gave me his phone numbers, had me write them down, said he would be in touch with me in the future and said he might take me to the village squire sometime.

RBS asked about the case alot

RBS wanted to know what happened, he started asking questions too fast, he asked if it was my dominate arm

PD I told him a basic version of what I knew. I was asked by David if i could use some wood from a tree he was cutting down at his mothers house. I told Dave i would stop by in the morning and see what he had. the next day I went there. His Mother and I got to talking about the people we used to work with while Dave and Bill worked at the tree. Bill got tired after a while and needed to quit. Dave started saying he needed help because he couldn't do it by himself. His mother looked at me and asked if I could help, Dave said come on man help me your just sitting there and all i need you to do is hold branches so they dont move, its easy. besides I helped clean up at your dads when he redid his roof 20 years ago. I said ok, I guess. I got up and helped. everything was going fine for a while then Dave did something stupid and hit the gas while he swung the chainsaw at me, I couldn't get out of its way and he cut my arm in half. The Dr in the ER said I would Have died if I didnt get medical treatment. That is one emergency room trip you never want to take.

RBS oh, im so sorry.

Was it your dominate arm, is it ok?

PD yes its my dominate arm, they put it back togeter but it doesnt work well

RBS how many surguries

PD 3

RBS who were the doctors?

PD do you mean the emergency room dr's?

RBS uh whas it the... yes the er surgion

PD um i remember the name Dr. Ford

RBS ok Ill have a talk with him. who else?

PD um i remember Dr sagerman and Dr Kujawa, I still see her

RBS was it at northwestern?

PD um i dont remember that name but for some reason i remember northwest community but im...

RBS Dr. Kujawa where

RBS ok. Your ok or are you in pain?

PD I have pains

RBS are you on a drip?

PD no nothing like that

RBS You know i know some great Dr's I could send you to see, and he went on about some indian dr and someone he sent there

PD no, no thats ok, ive seen what feels like an army of Dr's already

RBS you sure, I can get you their names, hold on while i get...

PD no thats ok Im good with who im seeing

RBS well ok then but im just saying if you want it

PD Im good

RBS ok so i understand you had some sort of arbitration downtown (and he gave a description of the place in chicago)

PD yes it was um I think they called it a binding arbitration but im not sure

RBS it says here 600K no um 300K was it and it looks like its capped

PD um I dont remember any caps but...

RBS

RBS I'm part native american

pd huh

RBS im just joking about that, i made it up

RBS started talking about his relationship with Tom Popovich said he and Tom go way back. He asked why I was suing Tom.

PD Because he had Hans Mast lie to me

RBS oh Hans, I know him, Good Guy

PD Thats debatable

RBS what happened with Hans?

PD Hans lied to me about many things. To start he lied about the Mothers homeowners insurance Policy. Hans Said they would file a summary judgement the next morning at 9 AM and I would get absolutely nothing but if I signed this he could get me 5k on some part of the policy that pays that amount irregardless of who gets hurt on their property. We argued but He even showed me case law that he said was the law of the land and if I didnt take it I wouldnt get anything. something about 3rd party persons on the property. He also said if i didnt sign it his firm would drop me in the suit against the son David Gagnon. and later on he said you cant blame me i was just doing what the boss said to do and if I didnt like it i could take it up with big Tom the owner of the firm. well I'd hate to break it to Hans but just doing what the boss told me to do is not a valid excuse and never has been when its unethical.

RBS well now wait a minute Hans is a good guy I know Hans.

PD Im sure you do have a good relation with Hans but Good people do bad things all the time and Hans is no exception.

RBS This Gagnon Guy, um

His secretary said, he knew him

RBS you knew this Gagnon Guy

PD Yes

RBS Ok so your complaint is that Popovich had you sign a release against the Mothers Homeowners policy?

PD Thats one of my complaints yes

RBS what else

PD well I learned they never actually pulled either policy, lied to me about the limits which caused me to go over and file for bankruptcy which I would never would have done had they not lied. I lost everything.

RBS They cant let one party go

PD what is that true

RBS there is case law that says you cant let one party go in a lawsuit and keep suing the other party involved if both are named.

PD i didnt know that but thats what they did. then to further the harm popovich dropped my case after they tried to get me to mediate for only 50k and i wouldnt do it."

227. The original malpractice lawsuit, filed by Thomas Gooch on October, 2017, claimed damages in excess of $50,000[1] against the Law Office of Thomas J. Popovich and against Hans Mast.[2]

a) Gooch did not allow Dulberg to read the complaint before filing it with the Court.

b) Gooch did not include Thomas J. Popovich, individually as a Defendant.

c) Thomas Gooch did not mention anything about the bankruptcy in the complaint

d) Thomas Gooch did not mention that Dulberg never agreed to enter into binding mediation and never signed any agreement in the complaint.

e) Gooch never mentioned to Dulberg that W. Randal Baudin II and Kelly Baudin, the Baudin Law Group or Baudin & Baudin did anything inappropriate or that Dulberg has a malpractice claim against the Baudins.

228. Dulberg's experiences with Thomas Gooch and Sabina Walczyk are described in "Exhibit 4_Evidence of Fraud on the Court in 17LA377 During Gooch-Walczyk Representation".

1 Exhibit 239_Rule 222 (FS) Affidaivt-1.pdf
2 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf

From:
Paul Dulberg
4606 Hayden Ct.
McHenry, IL. 60051

Dated: October 31, 2023

To:

ARDC
130 E. Randolph Dr., Ste. 1500
Chicago, IL 60601-6219
Fax: (312) 565-2320
Email: information@iardc.org

ARDC
3161 W. White Oaks Dr., Ste. 301
Springfield, IL 62704
Fax: (217) 546-3785
Email: information@iardc.org

Members of the ARDC Committee,

ARDC Complaints were previously submitted:

Edward X. Clinton No. 2023IN02517 (submitted on July 27, 2023)

Julia C. Williams No. 2023IN02518 (submitted on July 27, 2023)

Thomas J. Popovich No. 2023IN03135 (submitted on September 15, 2023)

Hans Mast No. 2023IN03136 (submitted on September 15, 2023)

The legal malpractice attorneys Gooch-Walczyk and Clinton-Williams collaborated with opposing counsel to conceal from Dulberg what the personal injury attorneys did to Dulberg. The Baudins covered for Popovich, Mast and Balke. Gooch then covered for Popovich, Mast Balke, the Baudins. Clinton and Williams then covered for Popovich Mast, Balke, the Baudins, and Gooch-Walczyk.

The ARDC Complaints against Popovich and Mast describe how Popovich and Mast:[1]

- Redirected medical lien liability from the Defendants to Plaintiff
- Forged documents and destroyed evidence
- Corrupted the interrogatory and document production process to sabotage client's case and to benefit defendants (in collaboration with opposing attorneys)
- Suppressed information on mental health issues related to Dulberg's injury
- Corrupted the deposition process to sabotage client's case and to benefit defendants (in collaboration with opposing attorneys)
- Knew Defendant Gagnon effectively admitted to negligence for Dulberg's injury
- Knew Defendant Gagnon committed perjury
- Knew Defendant Carolyn McGuire committed perjury
- Committed settlement fraud

1 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Thomas J. Popovich and Hans Mast"

- Violated federal bankruptcy laws

The ARDC Complaint against Balke describes how:[2]

- Balke contracted with Dulberg and not with the Bankruptcy Trustee
- Balke told Dulberg (about 11 weeks later) he would withdraw counsel if Dulberg does not settle with Allstate for $50,000
- Balke violated federal bankruptcy laws

The Baudins were retained by Dulberg after Dulberg fired Balke. The Baudins:[3]

- Contracted with Dulberg instead of with the Bankruptcy Trustee
- Moved to cap the value of PI case 12LA178
- Closed the deal with an upper cap of $300,000
- Coerced Dulberg to agree and misinformed him of where the 'upper cap' came from
- Moved to contract with Bankruptcy Trustee only after capping value of 12LA178
- Misled Bankruptcy Judge that Dulberg wants Binding Mediation (about 11 weeks after the deal was closed)

Additionally:

- Dulberg's signature was forged onto the ADR Binding Mediation Agreement
- Dulberg was coerced into signing Allstate Release

Dulberg retained legal malpractice attorney Gooch-Walczyk. After firing Gooch Dulberg retained legal malpractice attorneys Clinton-Williams.

The legal malpractice attorneys worked as a team to cover for the PI attorneys. For this reason it is not possible to fully understand what Gooch and Walczyk did and how they got away with it without understanding that they were covering for Popovich and Mast, Balke and the Baudins and being covered by legal malpractice attorneys Clinton-Williams.

The ARDC Complaint against Clinton and Williams describe how Clinton and Williams:[4]

- Suppressed large numbers of documents

and how they collaborated with opposing counsel to benefit the defendants and sabotage Dulberg's case by:

2 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Brad J. Balke"

3 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Kelly N. Baudin and William Randall Baudin II"

4 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint against Edward X. Clinton and Julia C. Williams"

- Concealing Dulberg's bankruptcy
- Suppressing emails from Saul Ferris
- Suppressing key evidence (Tilschner v Spangler certified slip ruling)
- Suppressing large numbers of emails from Brad Balke
- Collaborating with opposing attorney to flood Dulberg with over 6,000 documents just before withdrawing as Dulberg's counsel
- Suppressing all information on what the Baudins did to Dulberg
- Suppressing evidence that Defendant Gagnon effectively admitted negligence for Dulberg's injury as early as March, 2013.
- Collaborating with opposing counsel to suppress Barch documents before Dulberg's deposition
- Collaborating with opposing counsel to weaken verification pages of discovery production
- Collaborating with opposing counsel during the deposition of Hans Mast and after

In addition, the ARDC Complaint against Gooch describe Gooch-Walczyk and Clinton-Williams:[5]

- Concealing key evidence in collaboration with each other (Tilschner v Spangler certified slip ruling)
- Concealing admission of negligence of Defendant Gagnon for Dulberg's injury in underlying case 12LA178 in collaboration with each other
- Concealing Bankruptcy and Violations of Federal Bankruptcy Laws (automatic stay, loss of standing to pursue claim, capping value of assets in BK estate, ect) in collaboration with each other
- Concealing true sources of $300,000 upper cap on the value of the PI claim in collaboration with each other
- Intentionally confusing Statute of Limitations toll date, date of "injury", and placing Dulberg's privileged attorney-client communications at issue in collaboration with each other

All supporting exhibits are placed on 6 (64 GB) flash-drives that will be mailed to 130 E. Randolph Dr., Ste. 1500 Chicago, IL 60601-6219. Please advise to whom it should be addressed. One flash drive is intended for the ARDC and the other five are for the 5 attorneys mentioned in the complaints filed with this cover letter (should the ARDC find it necessary to provide them to the attorneys).

There are two sets of supporting exhibits. A second set is online (password protected) for ease of access. Each footnote within the ARDC Complaints hyperlinks online directly to the exhibit(s) cited. Please use any of the following:

5 All listed items are linked to supporting evidence on page 1 of "ARDC Complaint Against Thomas W. Gooch and Sabina Walczyk""

User name: ardc1
Password: OQtHPqz3PqxO

User name: ardc2
Password: FrX-%Z#-Ddd^

User name: ardc3
Password: jR[}nA1(#Co4

If you need more user names and passwords please let us know.

/s/ Paul Dulberg
Paul Dulberg

/s/ Thomas Kost
Thomas Kost
Full Trustee of the Paul R. Dulberg Revocable Trust

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION
of the
SUPREME COURT OF ILLINOIS

COMPLAINT FORM

Use this form to file a complaint about:
1) an Illinois lawyer;
2) a non-Illinois lawyer who has provided legal services in Illinois; or
3) a non-lawyer who you are claiming has engaged in the unauthorized practice of law in Illinois.

Return the completed form by e-mail, mail or facsimile to:

ARDC
130 E. Randolph Dr., Ste. 1500
Chicago, IL 60601-6219
Phone: (312) 565-2600 or (800) 826-8625
Fax: (312) 565-2320
Email: information@iardc.org

or

ARDC
3161 W. White Oaks Dr., Ste. 301
Springfield, IL 62704
Phone: (217) 546-3523 or (800) 252-8048
Fax: (217) 546-3785
Email: information@iardc.org

---

1. Your name: Paul Dulberg

Street address: 4606 Hayden Ct.

City: McHenry State: Illinois Zip: 60051

Home phone: (847) 497-4250 Work phone: _____ Cell phone: Same as Home phone

Email address: Paul_Dulberg@Comcast.net

2. Name of lawyer/person you want to be investigated: THOMAS W GOOCH (and) SABINA WALCZYK

Name of law firm or business: GAUTHIER and GOOCH A/K/A The Gooch Firm

Street address: 209 South Main Street (and) 4003 N. BROADWAY AVENUE, SUITE 206

City: Wauconda, (and) Chicago, State: Illinois Zip: 60084 (and) 60613

Phone: (847) 526-0110 (and) (312)-600-4385

Email address: gooch@goochfirm.com (and) swalczyk@goochfirm.com

3. Have you previously contacted the ARDC regarding this matter? Yes _____ No X

If yes, when and how did you contact us? _____

4. Did you employ the lawyer/person you are complaining about: Yes _____ No X

4a. If you answered yes to question 4:

When did the employment start? December 16, 2016

What was the fee agreement? 25% of the gross amount recovered, less the retainer paid of $10,000.00

How much have you paid the lawyer/person to date? Advance payment retainer of $10,000.00 plus an additional advance of $4520.00 for costs of hiring an expert witness (of which Gooch never hired and never returned the advance for costs) totaling: $14,520.00

over

4b. If you answered no to question 4 what is your connection to the lawyer/person?

I did not retain the Attorneys directly, I retained THE LAW OFFICES OF GAUTHIER and GOOCH. THOMAS W GOOCH, (and) SABINA WALCZYK are the attorneys I delt with at THE LAW OFFICES OF GAUTHIER and GOOCH

5. If your request relates to a court case or other proceeding, please provide the following:

Name of court or agency: TWENTY-SECOND JUDICIAL CIRCUIT MCHENRY COUNTY, ILLINOIS

Name of case: PAUL DULBERG vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST

Case number: No. 17 LA 377

6. Please explain your complaint(s). Include important dates and names of witnesses and others involved. Use additional pages if necessary. Attach copies of documents that support your complaint, such as fee agreements, receipts, checks, letters and court papers.

Please see the accompanying ARDC COMPLAINT AGAINST THOMAS W GOOCH AND SABINA WALCZYK contained a file called "ARDC THOMAS W GOOCH-SABINA WALCZYK.pdf" which is a a detailed 88 page complaint and has a separate cover letter contained in a file called "ARDC Cover Letter_ Balke-Gooch-Walczyk-Baudins.pdf":

There are two sets of supporting exhibits:

1. On a (64 GB) flash-drive that will be mailed to 130 E. Randolph Dr., Ste. 1500 Chicago, IL 60601-6219. Let me know to whom it should be addressed.
2. Online (password protected) for ease of access. Each footnote within the ARDC Complaint hyperlinks online directly to the exhibit(s) cited. The user name and password are contained in the cover letter.

Signature: /s/ Paul Dulberg Date: October 31, 2023

ARDC COMPLAINT AGAINST THOMAS W GOOCH AND SABINA WALCZYK

CHAPTER 1: THOMAS GOOCH CONTROL OF DULBERG'S LEGAL MALPRACTICE CASE 17LA377

"TEAM-WORK" EXAMPLE 1: Concealing key evidence (Tilschner v Spangler)

"TEAM-WORK" EXAMPLE 2: Concealing admission of negligence of Defendant Gagnon for Dulberg's injury in underlying case 12LA178

"TEAM-WORK" EXAMPLE 3: Concealing Bankruptcy and Violations of Federal Bankruptcy Laws (automatic stay, loss of standing to pursue claim, capping value of assets in BK estate, ect)

"TEAM-WORK" EXAMPLE 4: Concealing true sources of $300,000 upper cap on the value of the PI claim

"TEAM-WORK" EXAMPLE 5: Intentionally confusing Statute of Limitations toll date, date of "injury", and placing Dulberg's privileged attorney-client communications at issue

CHAPTER 2: HOW OPPOSING COUNSEL'S STATUTE OF LIMITATIONS MSJ ARGUMENTS IN 2022 WERE SET UP BY DULBERG'S OWN ATTORNEYS SINCE 2016

List of Tables:

TABLE 2: Strategies and Methods of 5 Law Firms Retained by Dulberg

TABLE 3: Five Incorrect Versions of the Origin of a $300,000 'Upper Cap' Placed on the Value of 12LA178 Given by Dulberg's Own Counsel

TABLE 4A: Three Incorrect Versions of When Dulberg "First Knew" of an "Injury" Given by Dulberg's Own Counsel

TABLE 4B: Three Incorrect Versions of When Dulberg "First Knew" of an "Injury" Simplified

TABLE 5A: Toll Dates Given by Opposing Counsel Flynn

TABLE 5B: Toll Dates Given by Dulberg's Own Attorneys Gooch, Clinton and Williams

TABLE 6: How Opposing Counsel's Statute of Limitations MSJ Arguments in 2022 Were Set Up by Dulberg's Own Attorneys Since 2016

TABLE 7: 17LA377 Officers of the Court Applying Current Illinois Law and Dulberg's Case

Chapter 1: THOMAS GOOCH CONTROL OF DULBERG'S LEGAL MALPRACTICE CASE 17LA377

Relevant Facts:

1. "Evidence of Fraud on the Court in 12LA178" details how Popovich and Mast:

a) Represented Dulberg in 22nd Judicial Circuit Court even though an automatic stay was in place.

b) Did not sign any agreement with the Bankrupty trustee (who he knew has standing as plaintiff in the case once Dulberg declared bankruptcy)

c) Knew that Gagnon already effectively admitted to negligence for Dulberg's injury

d) Never insisted that Gagnon answer interrogatories

e) Tried to get Dulberg to agree to Allstate settlement for $50,000 or less (while an automatic stay was in place)

2. After Popovich and Mast resigned Dulberg hired Brad Balke. Balke also:

a) Contracted with Dulberg even though he knew Dulberg had no standing as plaintiff in the case.

b) Agreed to take the case to trial when contracting.

c) Represented Dulberg in 22nd Judicial Circuit Court even though the automatic stay was in place.

d) Did not sign any agreement with Bankrupty trustee. (who he knew had standing as plaintiff in the case)

e) Knew or should have known that Gagnon already effectively admitted to negligence for Dulberg's injury.

f) Tried to get Dulberg to agree to Allstate settlement for $50,000 or less. (while an automatic stay was in place)

3. After firing Balke, Dulberg hired the Baudins. The Baudins also:

a) Contracted with Dulberg even though they knew Dulberg had no standing as plaintiff in the case. (the third consecutive law firm to do so)

b) Agreed to take the case to trial when contracting. (the third consecutive law firm to do so)

c) Represented Dulberg in 22nd Judicial Circuit Court even though the automatic stay was in place (the third consecutive law firm to do so)

d) Did not sign any agreement with Bankrupty trustee who they knew had standing as plaintiff in the case from September 22, 2015 to October 31, 2016. (the third

consecutive law firm to do so)

e) Knew or should have known that Gagnon already effectively admitted to negligence for Dulberg's injury. (the third consecutive law firm to do so)

f) Worked with Allstate to successfully place an 'upper cap' on the value of PI 12LA178. (while an automatic stay was in place)

These actions are summarized in Table 2 below

TABLE 2: STRATEGIES AND METHODS OF 5 LAW FIRMS RETAINED BY DULBERG

ATTORNEY	STRATEGY	METHODS
Popovich & Mast Personal Injury Case 12LA178	**Plaintiff's attorney intentionally weakens or sabotages plaintiff's case**	Destruction and concealment of evidence Forged signatures Staged depositions (depositions with no actual court reporter present) **Knew defendant Gagnon already admitted negligence for Dulberg's injury** Worked in violation of federal bankruptcy court automatic stay to force a settlement against client's wishes Represented a client when they knew client had no standing as plaintiff in court **Tried to put a cap of $50,000 on the remaining case** (Described in detail in "Evidence of Fraud on the Court in 12LA178")
Balke Personal Injury Case 12LA178	**Plaintiff's attorney intentionally weakens or sabotages plaintiff's case**	**Knew defendant Gagnon already admitted negligence for Dulberg's injury** Worked in violation of federal bankruptcy court automatic stay to force a settlement against client's wishes Represented client when they knew client had no standing as plaintiff in court **Tried to put a cap of $50,000 on the remaining case**
The Baudins Personal Injury Case 12LA178	**Plaintiff's attorney intentionally weakens or sabotages plaintiff's case**	Forgery **Knew defendant Gagnon already admitted negligence for Dulberg's injury** Worked in violation of federal bankruptcy court automatic stay to force a capped binding mediation agreememt against client's wishes Represented client when they knew client had no standing as plaintiff in court **Placed a cap of $300,000 on the remaining case**
Gooch Legal Malpractice Case 17LA377	**Plaintiff's attorney intentionally weakens or sabotages plaintiff's case**	Said he would file lawsuit in 7 days but actually filed more than 11 months later Gooch law office did not even scan client's files into digital form for 6 months **Knew defendant Gagnon already admitted negligence for Dulberg's injury** Suppression of information on bankruptcy, Baudin and Popovich negligence Filed 2 complaints which intentionally included a 'trap door' to allow defendants to get out of the case on 2-619 and 2-615 summary judgment (Described in detail in this document)
Clinton & Williams Legal Malpractice Case 17LA377	**Plaintiff's attorney intentionally weakens or sabotages plaintiff's case**	Massive and sophisticated suppression of key evidence and information during pleadings and discovery document disclosure process **Knew defendant Gagnon already admitted negligence for Dulberg's injury** (Described in detailed in "Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation")

4. All successive attorneys to the same (fully disabled) client used the same overall strategy: **To intentionally weaken or sabotage their own client's case**. All three personal injury attorneys retained by Dulberg **acted in violation of the automatic stay**. They continued to appear in the 22nd Judicial Circuit Court (which operated for approximately 25 months in violation of

the automatic stay) claiming to represent Dulberg (who had no standing as plaintiff). All 3 PI attorneys made efforts to **place a cap on the remaining case without having any authority from the Bankruptcy Court to do so**. Both legal malpractice attorneys suppressed all information of how all 3 PI law firms **violated federal bankruptcy laws** from Dulberg and from the complaints.

5. All five law firms (3 personal injury law firms and 2 legal malpractice law firms) knew or could easily discover that the personal injury defendant (who was operating the chainsaw that injured Dulberg) **Gagnon effectively admitted negligence for Dulberg's injury** as of early March, 2013. None of the 5 law firms ever informed Dulberg of this. The original defendant and operator of the chainsaw, Gagnon, admitted to being negligent:

> About 10 months before Dulberg was coerced into settling with the owners of the property (the McGuires) on which the accident occurred and for whom Gagnon was working.
>
> About 21 months before Dulberg declared bankruptcy.
>
> About 39 months before any binding mediation agreement with Gagnon was mentioned.
>
> About 40 months before any cap was placed on any binding mediation award from Gagnon.

6. There was no reason for any of these activities to take place if the defendant who operated the chainsaw already admitted to being negligent.

7. On December 12, 2016 Randall Baudin recommended Dulberg contact his office and ask Myrna for the name of the legal malpractice attorney they use.

8. On or about December 13, 2016 Myrna Boyce provided Dulberg with the contact information for Thomas Gooch and Dulberg first contacted Thomas Gooch the same day.

9. Dulberg first met with Thomas Gooch on December 16, 2016. Dulberg's brother Thomas Kost also attended the meeting.

10. Dulberg told Gooch about his bankruptcy. Dulberg told Gooch that he was forced into a binding mediation process by the bankruptcy Trustee and Judge.

11. At the first meeting Dulberg explained to Thomas Gooch that an arbitration judge awarded $560,000 but Dulberg could only collect $300,000. Dulberg told Gooch that he never agreed to be entered into binding mediation and he refused to sign the agreement so his signature cannot be found on any agreement.

12. Dulberg gave Gooch a copy of the unsigned mediation agreement.[1]

13. Dulberg gave Gooch a certified slip ruling of the Tilschner v Spangler decision[2] dated the

1 Exhibit 106_33391BMAG - Dulberg v. Gagnon Rvsd. - 12-8-16 (00600056xB3A5A).pdf
2 Exhibit 107_2013-11-20_certified slip ruling of Tilschner v Spangler Mast gave Dulberg.pdf

day the ruling was issued, May 6, 2011. Gooch looked up Tilschner v Spangler on his computer, gave the certified slip copy of Tilschner v Spangler back to Dulberg, and told Dulberg he did not need the document because he already has access to the decision through the internet.

14. At the first meeting Dulberg explained to Thomas Gooch that Mast's legal theory of why property owners (the McGuires) were not liable for Dulberg's injury was because the Restatement of Torts 318 is not applicable in Illinois as demonstrated in the case of Tilschner v Spangler.

15. Dulberg explained to Thomas Gooch that Mast explained his legal theory to Dulberg at a meeting with a witness present and with the witness taking notes.

16. Gooch gave Dulberg other documents[1] at their first meeting.

17. On the subject of statute of limitations, Gooch told Dulberg and his brother, Thomas Kost, that the 2 year statute of limitations begins to toll immediately as of Dulberg's first meeting with Gooch. Specializing in legal malpractice, Gooch can be considered an 'expert' on the subject of attorney liability, and therefore Dulberg's first meeting with Gooch establishes the time when Dulberg first "knew" Popovich and Mast breached a duty of care and caused a pecuniary injury. Dulberg and his brother, Thomas Kost, were informed by Gooch that the 2 year statute of limitations begins on December 16, 2016 because this is when Dulberg first learned (from Gooch himself) that he has a valid claim against Popovich and Mast.

18. Gooch did not mention to Dulberg that W. Randal Baudin II and Kelly Baudin, the Baudin Law Group or Baudin & Baudin did anything inappropriate or that Dulberg has a malpractice claim against the Baudins.

19. Gooch did not mention anything about an automatic stay. In fact, Gooch **has never** mentioned anything about any automatic stay applying to the underlying personal injury case.

20. On December 16, 2016 Gooch produced an ATTORNEY-CLIENT RETAINER AGREEMENT ADVANCED FEE WAIVER.[2]

21. The agreement is signed by Paul R. Dulberg and THOMAS W. GOOCH for GAUTHIER and GOOCH.

22. Thomas Gooch entered into an attorney client relationship with Dulberg.

23. Based upon the attorney client relationship, Thomas Gooch and any other attorneys working for his firm owed professional duties to Dulberg, including a duty of care.

24. The agreement stated:

"This is an Agreement you, Paul R. Dulberg of 4606 Haydew Court, McHenry, Illinois,

1 Exhibit 108_2016-12-16_Gooch 1st meeting Documents.pdf
2 Exhibit 109_2016-12-16_Gooch Retainer.pdf

and I, THOMAS W. GOOCH, of THE LAW OFFICES OF GAUTHIER and GOOCH, have made this 16th day of December, 2016."

25. Section 1 of the agreement stated:

"ENGAGEMENT AGREEMENT - You agree to retain and engage me to represent you in relation to a certain matter relating to an excessive fees case against Thomas J. Popovich, the Law Offices of Thomas J. popovich, P.., and his nominees, you authorize me to appear in any lawsuit which may be filed in this matter, to enter into discussions toward settlement or compromise of any such litigation, or to proceed as I deem advisable with your approval."

26. Section 7 of the letter stated:

"SETTLEMENT - I will not make any settlement of your case without your consent, nor will any proceedings be filed in court without your prior knowledge and consent unless necessary to protect you interests on an emergency basis."

27. On December 16, 2016 Thomas Gooch caused a letter[1] to sent to Thomas Popovich and the Law Offices of Thomas J. Popovich, P.C. at 3416 West Elm St, McHenry. The letterhead stated:

"Law Office Gauthier and Gooch 209 South Main St, Wauconda IL."

28. The letter stated:

"RE: Dulberg v Popovich, "Greetings, I have been retained by Paul R. Dulberg to represent him in a cause of action of legal malpractice against you for the mishandling of his case and the settlement of a specific portion of that case for substantially less than could have been obtained."

29. The letter also stated:

"You should aquaint the adjuster you speak with of my identity and if they so wish they may contact me. However, **I intend to file suit against you in the next 7 days**."[Emphasis added]

The letter is concluded:

"Very truly yours, Gauthier & Gooch"

and is signed by Thomas W. Gooch III.

30. On December 21, 2016 Gooch was involved in the preparation of the Allstate Release Agreement signed by Dulberg.

1 Exhibit 108_2016-12-16_Gooch 1st meeting Documents.pdf, (page 4)

31. On December 27, 2016 at 11:39 AM Dulberg sent an email to David Stretch stating:[1]

"Hi Dave,

How do I get a copy of all communication between my bankruptcy Trustee's and the law office of Thomas Popovich, Tom Popovich, Hans Mast, Brad Balke and Kelly & Randy Boudin or any of their assistants sent to the office of Thomas Gooch who currently represents me in another matter?

Thomas Gooch's contact information;
email: tgooch@gauthierandgooch.com
Phone: 847-526-0110
Thanks again, Paul

32. From: David Stretch <stretchlaw@gmail.com>

33. On December 27, 2016 at 4:11 PM Joe Olsen sent an email to David Stretch stating:[2]

"Dave-
You were going to re-check your notes and advise/amend schedules re potential malpractice claim? Can you let me know where you are at w/ the review etc.?"

34. On December 27, 2016 at 4:20 PM David Stretch sent an email to Joseph Olsen stating:[3]

"Joe,
I did check my notes and found nothing. At the time of filing Paul's attorney was the Popovitch firm, Hans Mast was the attorney. That information was disclosed on Schedule B, as you know. Because I couldn't find anything I emailed Paul and asked him to send me a copy of the complaint from any malpractice action he may have filed.
He responded today with a letter from Attorney Tom Gooch, Waukegan, to Mast, announcing that he, Gooch, intended to file a malpractice action within 7 days. The letter was dated December 16. I have received nothing further from Paul. I, minutes ago, forwarded that letter to you. I will let you know if I receive anything further.
Thanks,
Happy New Year
David L. Stretch"

35. The box of 12LA178 paper case files Dulberg left with Gooch just after their first meeting on December 16, 2016 were not scanned[4] into digital files the until June 26, 2017 to June 28, 2017.[5] (more than 6 months after Gooch wrote the letter to Popovich stating he intended to file suit within 7 days).

1 Exhibit 238_2018-12-27_Re Bankruptcy Communication_Stretch.pdf
2 Group Exhibit 39-Olsen subpoena and response: Fwd Re Dulberg.pdf
3 Group Exhibit 39-Olsen subpoena and response: Fwd Re Dulberg.pdf
4 Group Exhibit 36_When Gooch scanned in files (note the creation dates and times on all the files)
5 Exhibit 110_2017-06-29_REMINDER Documents Ready For Pick Up.pdf

36. On November 8th or 9th, 2017 Randall Baudin Sr called Dulberg. After they talked on the phone, sent an email to himself in order to record notes of the conversation. He intended to send the notes to Gooch. Appendix 1 is a record of the exchange.[1]

37. On November 28, 2017 Thomas Gooch filed Dulberg's COMPLAINT AT LAW[2] (which was about 330 days from the time Gooch's letter stating "I intend to file suit within 7 days").

38. The defendants named in the complaint are "The Law Office of Thomas J. Popovich and Hans Mast" Thomas Gooch did not name Thomas J. Popovich individually as a defendant.

39. It is most likely common knowledge among legal malpractice attorneys that a legal malpractice complaint must include both:

1) Claim of how the attorney being sued is legally liable
2) Claim of how the opposing party in the underlying case is legally liable.

This is most likely true for the simple reason that an attorney cannot be held liable for losing a case that was not winnable anyway.

40. COMPLAINT AT LAW consists of 22 paragraphs. There is not a single point in any paragraph related to the duty of care the McGuires owed to Dulberg or any breach of that care (which is considered the"underlying case" or "case within a case" as all legal malpractice attorneys are undoubtably aware).

41. There is no point or paragraph in the complaint which required information to which Gooch did not have access 11 months earlier. There is no evidence that any research had been done from December 16, 2016 to November 28, 2017 that would have caused any delay in filing the COMPLAINT AT LAW.

42. Thomas Gooch did not refer at all to the legal theory (Tilschner v Spangler and the Restatement of Torts 318) which Mast gave to Dulberg to explain why Mast believed the McGuires were not liable for Dulberg's injury in the COMPLAINT AT LAW.

43. Gooch did not include any information about Brad J. Balke, W. Randall Baudin, Kelly Baudin, the Baudin Law Group, Baudin & Baudin or Trustee Olsen or name any of them as defendants. None of their names appeared in the complaint at all.

44. Thomas Gooch did not mention anything about Dulberg's bankruptcy in the complaint or about any attorney violating any automatic stay.

45. Thomas Gooch did not include the fact that Dulberg never agreed to enter into binding mediation and never signed any agreement in the complaint. In fact, in the complaint Gooch wrote that a "high-low agreement" had been "**executed by Dulberg**" in paragraph 16:

1 See Exhibit 3 Appendix A
2 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf

16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, **a "high-low agreement" had been executed by DULBERG**, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than the sum of the money, and could have been recovered from the McGuire's had they not been dismissed from the complaint.[Emphasis added]

46. COMPLAINT AT LAW referred to Brad Balke, W. Randall Baudin, Kelly Baudin, Baudin Law Group, and Baudin & Baudin by the term "other attorneys" but never uses the word "Baudin" in any context.

47. Gooch knew or should have known that the CROSS-CLAIM[1] filed on February 1, 2013 by the McGuires against Gagnon was never answered by Gagnon since early March, 2013.

48. Gooch knew or should have known that Popovich and Mast, and Balke, and the Baudins also knew or should have known the CROSS-CLAIM filed by the McGuires against Gagnon was never answered.

49. On February 7, 2018 Defendants Popovich and Mast filed DEFENDANTS' COMBINED MOTION TO DISMISS[2]

50. Item 4 states:

"Dulberg fails to allege requisite facts in support of each and every element of the "underlying" case or "case within a case" against the McGuires".

The statement is true since Gooch completely ignored this issue in his 22 paragraph complaint.

51. Item 8 states:

"Dulberg has failed to file his legal malpractice complaint against Popovich and Mast within the two year statute of limitations period which shall begin to run at "the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought."

52. Item 9 states:

"Here, the Plaintiff did not file his Legal Malpractice Complaint against Defendents until November 28, 2017, at least seven (7) months too late."

(By this statement the defendants imply that the statute of limitations begins to toll when Dulberg fired Popovich and Mast, in March, 2015.)

1 Exhibit 112_2013-02-01_CROSS CLAIM FOR CONTRIBUTION AGAINST CODEFENDANT DAVID GAGNON_CERTIFICATE OF SERVICE_Barch-McGuires copy-OCR.pdf
2 Exhibit 113_2018-02-07_DEFENDANTS' COMBINED MOTION TO DISMISS.pdf

53. MEMORANDUM IN SUPPORT OF DEFENDANTS' COMBINED MOTION TO DISMISS[1] Flynn page 5 states:

> "Dulberg fails to allege requisite facts in support of each and every element of the "underlying" case or "case within the case" against the McGuires". Simply put, Dulberg fails to plead any facts n support of his conclusions that there was some liability against the McGuires."

54. On March 27, 2018 Gooch filed PLAINTIFF'S RESPONSE TO DEFENDANTS' COMBINED MOTION TO DISMISS. Rather than simply explain how the McGuires (the 'underlying case') were liable for Dulberg's injury as required by law, Gooch answered arguments of the defense motion to dismiss in the following ways:

> 1. A motion to Dismiss pursuant to section 2-615 attacks the legal sufficiency of the Complaint by alleging defects on its face. Weisblatt v. Colky, 265 Ill.App.#d 622, 625, 637 N.E.2d 1198, 1200 (1st Dist. 1994). Section 2-615 motions "raise but a single issue: whether, when taken as true, the facts alleged in the Complaint set forth a good and sufficient cause of action." Visvardis v. Ferleger 375 Ill.App.3d 719, 723, 873 N.E.2d 436, 440 (Ill.App.I Dist. 2007), quoting Scott Wetzel Services v. Regard, 271 Ill.App.3d 478, 480, 208 Ill. De. 98, 648 N.E.2d 1020 (1995).
>
> 2. When the legal sufficiency of a Complaint is challenged by a section 2-615 Motion to Dismiss, all well-pleaded facts in the Complaint are taken as true and a reviewing court must determine whether the allegations of the Complaint, construed in a light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. Vitro v. Mihelcic, 209 Ill.2d 76, 81, 806 N.E.2d 1155, 1161 (2005). A cause of action should not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved that will entitiled the plaintiff to recover. Zedella v. Gibson, 165 Ill.2d 181, 185, 650 N.E.2d 1000 (1995).

55. The only other section that is related to the 2-615 motion is section 7, which states:

> "Specifically, DULBERG properly established that "but for"the acts of the Defendants in urging DULBERG to release the McGuires, DULBERG suffered substantial damages."

56. Paragraph 10 states:

> "Defendants, in their Motion to Dismiss, are requiring of DULBERG to plead his entire case in a single Complaint."

57. Paragraph 11 states:

> "Plaintiff is not required to prove his case at this stage of the pleadings and the damages as alleged are sufficient to show he was damaged by Defendants' actions and cause of

1 Exhibit 114_2018-02-07_MEMORANDUM IN SUPPORT OF DEFENDANTS'.pdf

action for legal malpratice. Fox v. Seiden, supra, at 294; Platson v. NSM America, Inc., 322 Ill.App. 3d 138, 143 (2nd Dist., 2001)('Cases are not to be tried in the pleading stage, so a claimant need only show the possibility of recovery, not an absolute right to recover, to survive a 2-615 Motion.'). Here, DULBERG has shown at least a possibility of recovery based on the malpractice of POPOVICH, thus should survive Defendants' 2-615 Motion.

58. Paragraph 12 states:

> "The allegations set forth by DULBERG are not conclusions and are sufficient to sithstand a Section 2-615 dismissal. By looking at the Complaint, DULBERG has clearly set forth each of the elements of legal malpractice."

59. The above statements from PLAINTIFF'S RESPONSE TO DEFENDANTS' COMBINED MOTION TO DISMISS[1] are the entire argument Gooch gives toward defeating the 2-615 motion.

60. Rather than simply listing the ways in which McGuires were liable for Dulberg's injury (as required by Illinois law) Gooch attempted to argue that such a simple list is not necessary. (It was a complaint with a "trap door" written into it. It was a complaint set up to fail.)

61. On April 12, 2018 Dulberg sent an email to Gooch and Margaret G. Buckley that stated:

> "I noticed part of the defense argument was centered around our response to "defendants combined motion to dismiss" #4. In there it states that; "DULBERG's gross award of $660,000 was cut to only $300,000 due to a high-low agreement that was executed as part of the McGuire settlement."
> " was executed as part of the McGuire settlement." must be a typo. "was accepted because of the McGuire settlement" is much closer to the truth.
> Im not exactly sure who or where the hi-low idea originated but I suspect it was Allstate Insurance for GAGNON. Randy Jr & Kelly Baudin would know the details.
> Should I contact them?"

Gooch never replied.

62. On May 10, 2018 defendents' 2-615 motion to dismiss Dulberg's complaint was granted. The reasons given were[2]...

> "Dulberg fails to allege requisite facts in support of each and every element of the "underlying" case or "case within a case" against the McGuires"[3]

Dulberg was given leave to file a first amended complaint.

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1 Exhibit 115_2018-03-27_PLAINTIFF'S RESPONSE.pdf
2 Exhibit 116_2018-05-10_ROP.pdf
3 Opposing counsel simply used the "trap door" written into the complaint by Gooch to be granted a Motion to Dismiss

63. Around May 20, 2018 Dulberg and Thomas Kost met with Sabina Walczyk just before the first amended complaint was to be filed by Gooch to discuss the complaint before filing it with the court.

Walczyk claimed that legally the discovery of the injury mentioned in 735 ILCS 5/13-214.3(b) was when Dulberg's previous attorneys (The Baudins) in the underlying case received the report from the chainsaw expert Dr Lanford created on Febuary 17, 2016 which stated in part "it is my opinion that Mr. Gagnon was fully responsible for this accident and his parents - the McGuires - were also somewhat responsible by letting their son, Mr. Gagnon, use their chainsaw - a potentially dangerous tool - without enforcing the warnings and instructions available in the owner's manual."

Walczyk insisted that legally Dulberg knew of the injury from the chainsaw expert's report and not the award amount because of the phrase "knew or reasonably should have known" found in 735 ILCS 5/13-214.3(b), an argument later used by Flynn.

Walczyk knew or should have known that:

a. A chansaw expert is not a legal expert when it comes to breaches in the standard of care, tolling a staute of limitation or when a 2 year statute of limitations begins for legal malpractice.

b. The injury had to be a quantifiable financial or pecuniary injury before Dulberg 'knew or reasonably should have known'.

c. That the discovery of the injury is not the discovery of the attorneys 'wrong doing' but rather the discovery of the 'pecuniary loss' that resulted from the attorneys 'wrong doing'.

d. That any cause of action filed for legal malpractice prior to the pecuniary injury on 12/12/2012 would be thown out because the financial loss for the attorney 'wrong doing' could not be quantified and the underlying case had not come to rest.

e. Dulberg and his bothers Thomas Kost were not attorneys and could not define the 'injury' mentioned in 735 ILCS 5/13-214.3(b) on their own and were completely reliant on their legal counsel to do such.

64. On June 7, 2018 FIRST AMENDED COMPLAINT AT LAW[1] was filed with the Court. The FIRST AMENDED COMPLAINT AT LAW consists of 32 paragraphs. The first 13 paragraphs are identical to the original complaint. There were (once again) no paragraphs related to the duty of care the McGuires owed to Dulberg or a breach of that care in the FIRST AMENDED COMPLAINT.

65. In the FIRST AMENDED COMPLAINT AT LAW there is no mention of a minimum or maximum award limit at all.

1 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf

66. In the FIRST AMENDED COMPLAINT AT LAW, Gooch refers to Brad Balke, W. Randall Baudin II, Kelly Baudin, Baudin Law Group, and Baudin & Baudin as "other attorneys" but never uses the name "Baudin" in any context.

67. Paragraph 24 of FIRST AMENDED COMPLAINT AT LAW states:

> "Thereafter, DULBERG retained other attorneys and proceeded to a court ordered binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. However, due to the settlement with the McGuires, DULBERG was only able to collect $300,000 **based upon the insurance policy available**."[Emphasis added]

68. There is no mention of any automatic stay. Thomas Popovich individually is not named as a defendant.

Rather than simply listing the ways in which McGuires were liable for Dulberg's injury (as required by Illinois law), Gooch attempted to argue that such a simple list is not necessary. (The same "trap door" was written into the AMENDED COMPLAINT. It was another complaint set up to fail.)

69. On July 5, 2018 Popovich and Mast filed DEFENDANTS' MOTION TO DISMISS[1]

70. Item 5 states:

> "Dulberg fails to allege requisite facts in support of a legal malpractice claim, including each and every element of the "underlying" case or "case within a case" against the McGuires."

This statement is identical to the statement in paragraph 49 on their first MTD. Opposing counsel could give an identical reply because Gooch made an identical mistake. (The AMENDED COMPLAINT was set up to fail a second time.)

71. Item 6 states:

> "Dulberg's complaint must be dismissed pursuant to 735 ILCS 5/2-615."

72. MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT AT LAW[2] Page 6 states:

> "He also fails to plead any facts concerning the McGuires' liablility in the unlerlying case." This is the same reason the original complaint was rejected."

The statement is true. (This is the "trap door" that was written into both complaints.)

73. Page 3 states:

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1 Exhibit 118_2018-07-05_DEFENDANTS' MOTION TO DISMISS.pdf
2 Exhibit 119_2018-07-05_MEMORANDUM IN SUPPORT OF DEFENDANTS'.pdf

"Dulberg retained successor counsel and proceeded to a binding mediation and received a mediation award".

74. On August 17, 2018 Gooch filed PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT AT LAW[1]. Rather than simply explain how the McGuires (the 'underlying case') owed a duty of care to Dulberg (as an invitee on their property with hazardous work being performed) and were vicariously liable as Gagnon's direct employers for Dulberg's injury as required by law, Gooch answered arguments of the defense motion to dismiss in the following ways:

75. Gooch produced "Argument (under 2-615)"[2] titled "Dulberg sufficiently states a cause of action for legal malpractice against the Defendants" in which in paragraph 1 (line 1) Gooch states:

"In his First Amended Complaint, DULBERG sufficiently set forth the necessary elements of legal malpractice."

76. In "Argument (under 2-615)" Gooch gives a 34 paragraph argument for why the Defendants' 2-615 Motion for Dismissal should not be granted. Not one of the 34 paragraphs addressed why the McGuires owed Dulberg a duty of care the day of the accident. Not one of these items addressed how the McGuires breached that duty to Dulberg.

77. On September 7, 2018 at 10:06 AM Dulberg sent an email to Gooch stating:[3]

"Please find the attached comments_on_Letter_to_Judge_Meyer.txt file

Will see you on Monday to discuss"

In the attached file it stated:

"Comments on "Letter to Judge Meyer" by MAST defendents....

Defendents wrote: "What did they (the McGuires) do wrong?"

a) MCGUIRES purchased and provided GAGNON a chainsaw without following the directions and heeding the warnings clearly printed in the operator's manual's that accompanied the chainsaw. Chainsaw was purchased on 5-22-2011 and was first used on 6-28-2011, the day DULBERG was injured.

b) The operator's manual clearly states in large, bold font: "WARNING - To ensure safe and correct operation of the chainsaw, ths operator's manual should always be kept with or near the machine. Do not lend or rent your chainsaw without the operator's instruction manual."

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1 Exhibit 120_2018-08-17_PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS FIRST.pdf

2 Exhibit 120_2018-08-17_PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS FIRST.pdf, page 2

3 Exhibit 225_2018-09-07-a_Dulberg-Gooch 100481-100483_Sent_Dulberg vs Law Offices of Thomas J Popovich PC et a_Pages-3.pdf

c) Just under this warning on the same page the operator's manual clearly states in large, bold font: "WARNING - Allow only persons who understand this manual to operate your chainsaw."

d) The manual has a list clearly labeled as "SAFETY RULES". The first listed rule is: "Read this manual carefully until you completely understand and can follow all safety rules, precautions, and operatng instructions before attempting to use the unit."

e) The second listed safety rule is: "Restrict the use of your saw to adult users who understand and can follow safety rules, precautions, and operating instructions found in this manual."

f) The fourth listed safety rule is: "Keep children, bystanders, and animals a minimum of 35 feet (10 meters) away from the work area. Do not allow other people or animals to be near the chainsaw when starting or operating the chainsaw (Fig.2)." There is a large picture next to this rule of people standing at least 35 feet away from a person operating a chainsaw.

g) The MCGUIRES asked DULBERG to help GAGNON. DULBERG did not go to the MCGUIRES property to help cut down a tree. He went to see if he wanted the wood. Only after he was on the property for more than two hour was he asked by the MCGUIRES if he could help GAGNON.

i) Had the MCGUIRES read and followed the warnings and safety rules in the operators manual, the injury to DULBERG could not have occurred.

j) The MCGUIRES were in possession of the owners manual and looked at it while DULBERG was present, however they asked DULBERG to help GAGNON anyway. They had the manual and DULBERG did not. They had access to knowledge about the warnings clearly stated in the manual that DULBERG did not have. "A duty to warn exists where there is unequal knowledge, actual or constructive, and the defendant, possessed of such knowledge, knows or should know that harm might or could occur if no warning is given." (many citations available)

Defendents wrote: "There is no factual allegation as to why such an expert mattered."

The expert on chainsaw use later retained by DULBERG stated that the owners of the chainsaw are liable for not heeding the clear warnings written in bold font on the operator's manual.

Defendents wrote: "DULBERG fails to specify how he was misled. Even if MAST made a mistake about the MCGUIRES' insurance coverage, it made no difference, and there was no damage. DULBERG cannot explain why $300,000 versus $100,000 in coverage made any difference, when he settled for $5,000. Had he settled for $99,999.99, his argument for damages may be colorable. In any event, he alleges no facts in support of the allegation that facts were "concealed.""

MAST never claimed the McGuires insurance policy limit was $100,000. He claimed the GAGNON insurance policy limit was $100,000 when it was actually $300,000. DULBERG never knew what GAGNONs actual coverage was until he retained new

counsel.

DULBERG still does not know what the MCGUIRES' policy limit was because MAST never informed him despite repeated requests to MAST by DULBERG for that information. In fact, there is no evidence at all within the case documents later given by MAST to DULBERG that MAST was ever in possession of the MCGUIRES' policy terms or limits.

DULBERG explicitly asked for documents related to the MCGUIRES' insurance policy and was refused by MAST."

The information in the attached file was never included in any of the pleadings or the Gooch case file turned over after Gooch was fired by Dulberg suggesting that Gooch intentionally ignored the contents of this email.

78. On September 7, 2018 Gooch sent an email with the Subject: "Automatic reply: Dulberg vs. Law Offices of Thomas J. Popovich, P.C., et a" stating:[1]

"I will be on a well deserved vaction thru the morning of September 12. I will however be taking cell phone calls as needed and will be checking email at least twice a day. I will have access to client files. My colleague, Sabina Walczk will be available and may be contacted at our office."

79. On September 10, 2018 Dulberg delivered copies of chainsaw manuals to the office of Gooch. They were scanned and named:

Duhlberg Manual Received on 9.10.18 fr. Client- 3.pdf
Duhlberg Manual Recieved on 9.10.18 fr. Client- 2.pdf

The files were placed in the Gooch digital case file in this folder:

Gooch Thumbdrive/UNDERLYING CASE DOCS[2]

80. As described in "Evidence of Fraud on the Court in 17LA377 During Clinton -Williams Representation" Clinton and Williams appear to mock their own fully disabled client by repeatedly mis-typing his name as "Duhlburg" (as can be seen in "Visual Aid 11 - Mocking client")[3]. Gooch mocked Dulberg the same way.[4]

81. On September 12, 2018 the hearing on the Motion to Dismiss took place. Neither Gooch nor Sabina appeared in court. They did not anounce they wouldn't attend beforehand. They simply didn't show up. Dulberg was alone in court.

82. On September 12, 2018, over 500 days after Gooch wrote the letter to opposing counsel

1 Exhibit 121_2018-09-07_Automatic reply Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf
2 Key Clinton Folder 1: UNDERLYING CASE DOCS (contains the files)
3 Visual Aid 11 - Mocking client.png
4 See paragraph 93

stating his intention to file a complaint within 7 days, the defense 2-615 motion to dismiss Dulberg's first amended complaint was granted for the same reason the earlier 2-615 motion to dismiss Dulberg's original complaint was granted on May 10, 2018. It is because Gooch did not list a single item in the original COMPLAINT AT LAW[1] or in the FIRST AMENDED COMPLAINT[2] that addressed why the McGuires owed a duty of care to Dulberg or how they breached that duty. Dulberg was given leave to submit a second amended complaint.

83. On September 12, 2018 at 12:33 PM Dulberg sent an email to Gooch and Sabina stating:[3]

> "I missed either of you in court this morning. I did not bring my phone into the courthouse so i couldn't call you. Hope nothing bad happened to delay you and that everything is okay. From what i understood, Judge Meyer moved forward without you and struck down the vast majority of our amended pleading as conclusions or redundant."

84. Dulberg explained to Gooch that Judge Meyer gave a number of specific rulings in court which describe why he granted the Motion to Dismiss. Dulberg suggested Gooch should order the Report of Proceedings.

85. On September 19, 2018 Gooch sent an email to Dulberg stating:[4]

> "Court order is not as problem, get it to you today. The transcript is expensive and needs to be ordered frpom the court whih we can do but I believe is a waste of money pls advise oif you wish me to order it. We are preparing the amended complaint."

86. On September 19, 2018 Dulberg sent an email to Gooch stating:[5]

> "I'm willing to pay for the transcript. It details which parts of the order were struck down for redundancy and which were considered conclusions. it should help you in writing the amended complaint."

87. Dulberg then asked his brother, Thomas Kost, to try to figure out why the Gooch complaints were not being accepted by the court and what needed to be done to fix the problem.

88. On October 1, 2018 Thomas Kost wrote a plain text document for Paul Dulberg called "second_amended_complaint_comments.txt"[6] and emailed the document to Dulberg. Dulberg then sent[7] the text document as an email attachment to Thomas Gooch.

89. The end of the text document includes the following statement:

> "Within these notes I tried to explain 3 points:

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1 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf
2 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf
3 Exhibit 122_2018-08-31_Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf
4 Exhibit 122_2018-08-31_Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf
5 Exhibit 122_2018-08-31_Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf
6 Exhibit 123_2018-10-02_second_amended_complaint_comments.txt
7 Exhibit 122_2018-08-31_Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf, (page 40)

1) That the first amended complaint failed to adequately address the underlying case that DULBERG had against the MCGUIRES. In other words, we have to show that DULBERG would have prevailed against the MCGUIRES if it wasn't for the actions of MAST. The first amended complaint did not sufficiently address the "case within a case" or the "underlying case", which is against the MCGUIRES.

2) The case against the McGuires could be made by using the restatement of torts 343 or by using general negligence or in any other way that a premises liability or negligence expert would recommend.

3) Arguments which support the liability of MAST have already been made in the first amended complaint. But there are a few additional arguments that that may prove helpful to include. They are the reasons Mast gave to Dulberg why he will get $5,000 or nothing. The only case Mast cited to Dulberg was Tilscher v Spangler, and because the case confirmed that restatement of torts 318 is not applicable in Illinios, Mast told Dulberg he has no case against the McGuires. Mast also told Dulberg the judge would grant a summary judgement if Dulberg refused the offer."

90. The text document has a section titled "HOW TO PRESENT THE LIABILITY OF THE MCGUIRES:" which lists 10 specific items labelled "a" through "i'. The contents are:

"Facts:

a) MCGUIRES purchased and provided GAGNON with a chainsaw without following the directions and heeding the warnings clearly printed in the operator's manual that accompanied the chainsaw. Chainsaw was purchased on 5-22-2011 and was first used on 6-28-2011, the day DULBERG was injured.

b) The operator's manual clearly states in large, bold font: "WARNING - To ensure safe and correct operation of the chainsaw, ths operator's manual should always be kept with or near the machine. Do not lend or rent your chainsaw without the operator's instruction manual."

c) Just under this warning on the same page the operator's manual clearly states in large, bold font: "WARNING - Allow only persons who understand this manual to operate your chainsaw."

d) The manual has a list clearly labeled as "SAFETY RULES". The first listed rule is: "Read this manual carefully until you completely understand and can follow all safety rules, precautions, and operating instructions before attempting to use the unit."

e) The second listed safety rule is: "Restrict the use of your saw to adult users who understand and can follow safety rules, precautions, and operating instructions found in this manual."

f) The fourth listed safety rule is: "Keep children, bystanders, and animals a minimum of 35 feet (10 meters) away from the work area. Do not allow other people or animals to be near the chainsaw when starting or operating the chainsaw (Fig.2)." There is a large picture next to this rule of people standing at least 35 feet away from a person operating a

chainsaw.

g) The MCGUIRES asked DULBERG to help GAGNON. DULBERG did not go to the MCGUIRES property to help cut down a tree. He went to see if he wanted the wood. Only after he was on the property for more than two hours was he asked by the MCGUIRES if he could help GAGNON.

h) The MCGUIRES were in possession of the owners manual and looked at it while DULBERG was present, however they asked DULBERG to help GAGNON anyway. They had the manual and DULBERG did not. They had access to knowledge about the warnings clearly stated in the manual that DULBERG did not have. "A duty to warn exists where there is unequal knowledge, actual or constructive, and the defendant, possessed of such knowledge, knows or should know that harm might or could occur if no warning is given." (Pitler, 92 Ill.App.3d at 745, 47 Ill.Dec. 942, 415 N.E.2d 1255, quoting Kirby v. General Paving Co. (1967), 86 Ill.App.2d 453, 457, 229 N.E.2d 777.)

i) Had the MCGUIRES read and followed the warnings and safety rules in the operators manual, the injury to DULBERG could not have occurred.

As stated in part (g), DULBERG came to the property in order to see if he wanted the wood from the tree and not to help with cutting. Only after being on the property for more than two hours in the MCGUIRES' presence did the MCGUIRES ask DULBERG to help GAGNON. Therefore DULBERG was clearly an invitee and was owed a duty of 'reasonable care' by the MCGUIRES.

The MCGUIRE'S were in possession of the operator's manual of the chainsaw. They were also the owners of the chainsaw. Multiple warnings were clearly printed in bold font in the operator's manual, so the MCGUIRES should have realized that asking DULBERG to help GAGNON while not following any of the warnings described in parts (b), (c), (d), (e), and (f) involved an unreasonable risk of harm to DULBERG.

The MCGUIRES should have expected that since DULBERG did not have access to the operator's manual he was not aware of the explicit warnings described in parts (b), (c), (d), (e), and (f).

Therefore the MCGUIRES failed to exercise reasonable care toward DULBERG. They had access to knowledge about the warnings clearly stated in the manual that DULBERG did not have. "A duty to warn exists where there is unequal knowledge, actual or constructive, and the defendant, possessed of such knowledge, knows or should know that harm might or could occur if no warning is given." (Pitler, 92 Ill.App.3d at 745, 47 Ill.Dec. 942, 415 N.E.2d 1255, quoting Kirby v. General Paving Co. (1967), 86 Ill. App.2d 453, 457, 229 N.E.2d 777.)

The chainsaw accident was or should have been reasonably foreseeable to a person who read the warnings described in parts (b), (c), (d), (e), and (f) and failed to heed those warnings. Had the MCGUIRES read and followed the warnings and safety rules in the operators manual, the injury to DULBERG could not have occurred.

91. The text document includes a section titled "CONCERNING MAST'S LIABILITY" which

states:

> " MAST told DULBERG at a meeting in which DULBERG was trying to decide whether to accept the MCGUIRE's offer of $5,000 that because the restatement of torts 318 is not applicable in Illinois, DULBERG had no case against the MCGUIRES and that the MCGUIRES did not have to offer any settlement at all. DULBERG asked MAST to cite case law that shows why the MCGUIRES were not at least partially liable for DULBERG'S injury, and MAST cited Tilscher v Spangler, a case which confirms that restatement of torts 318 is not applicable in Illinois. But note the claim of MCGUIRE'S liability given above relies on restatement of torts 343 or a general neglegence claim. It is completely independent of restatement of torts 318.
>
> At the same meeting MAST also informed DULBERG that the MCGUIRES made an offer of $5,000 to be nice (they did not have to offer anything) and if DULBERG did not accept the offer it would be withdrawn and the MCGUIRES will ask for summary judgement. MAST informed DULBERG that the presiding judge would grant the MCGUIRES a summary judgement dismissing the case against them, leaving DULBERG with no settlement at all from the MCGUIRES."

92. This text document sent from Dulberg to Gooch included instructions to list the liabilities of McGuires and the liabilities of Mast in a clear and explicit way in the complaint.

93. On 10/2/2018 1:06 PM Thomas Gooch replied to Dulberg by email stating:[1]

> ">
>
> > Mr. Duhlberg;
> >
> > I have your attachment and am deeply offended by it.
> >
> > I more upset over being ordered to call you today. I am preparing for trial and frankly don't have time to read or comment on your attempts to educate me on what legal malpractice is all about, I particularly don't have time top read outdated cases on the elements of a legal malpractice case, nor do I have any intention of quoting the law you sent to me.
> >
> > You understand full well I'm sure that I have been doing this for a very long time, if I need help on understanding the law I will get from someone who knows how to do legal research, you and your brother don't.
> >
> > If I have anymore of this authoritative comments or instructions I will have to give

1 Exhibit 122_2018-08-31_Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf

particular thought to withdrawing my appearance and letting you represent your self or find someone else, understand this is not an empty threat, I will tolerate any more of this. If I need a factual question answered and I'm sure I will in the course of this litigation then I will ask you but kindly stop with rudimentary research. The Google searches of you and your brother are not replacements for my law license.

>

> I generally don't have a proble3m with relatives helping out and being involved just so long as the client understands that the relatives involvement may waive the attorney client privilege. However at this point your brother has become more the problem then helpful. While I can not prevent him from injecting himself into your case through you, I am no longer willing to have him present at conferences or communicate directly with me.

>

> At this point with everything I have going and the attitude you are displaying I have serious doubts as continuing to represent you. Kindly do not communicate with my staff on the telephone in the manner you chose today

>

> Sincerely

>

> Thomas W Gooch"

94. It is described in "Evidence of Fraud on the Court in 17LA377 During Clinton -Williams representation" Clinton and Williams appear to mock their own fully disabled client by repeatedly mis-typing his name as "Duhlburg" (as can be seen in "Visual Aid 11 - Mocking client")[1]. Note that Gooch begins the letter by writing "Mr. Duhlberg". This appears to be a shared inside joke between Popovich, Mast, Gooch and Clinton and Williams. They all mis-spelled his name the same way.

95. Dulberg responded by email stating[2],

"Hello Tom and Sabina, I didn't understand the last email I received so I need some clarification. I was never rude or not courteous to you staff and your staff was always courteous to me. Yesterday I talked with Nikki breifly just to confirm that the office received the email. She was friendly and courteous. I said nothing rude or offensive.

I never ordered you or anyone to call me yesterday. I honestly don't know why you believe I did. I was not aware there was anything offensive in the attachment I sent. As I read it again I still can't see anything offensive in it.

As you know I have a permanent disability. You may not know I am on medication to control pain and spasms and this medication does not allow me to focus on complex

1 Exhibit 124_Visual Aid 11 - Mocking client.png
2 Exhibit 122_2018-08-31_Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf

subjects to a prolonged time. Since I do not understand your last email and I don't have much time before appearing in court I need to know where I stand.

Are you thinking of not continuing to represent me in this case?

Are you going to submit a second amended complaint on October 10 and appear in court?

Will I be given enough time to review the complaint before it is submitted?

May I comment on it or request changes to it or ask questions about it?

I do not want to offend anyone, so I need to know what I can comment on or ask questions about.

I have no memory of any inappropriate behavior when talking to Nikki yesterday. Please let me know how I can communicate with your staff or what I can include in an email in the future so you are not offended again.

Sorry if I did anything wrong. Sincerely, Paul Dulberg "

96. On October 3, 2018 Gooch replied to Dulberg's email point by point. Gooch responses are in red font. The email[1] is reproduced:

"From: Thomas W. Gooch III gooch@goochfirm.com

Subject: RE: from tom

Date: October 3, 2018 at 12:56 PM

To: Paul Dulberg pdulberg@comcast.net

As you know I have a permanent disability. You may not know I am on medica:on to control pain and spasms and this medica:on does not allow me to focus on complex subjects for a prolonged :me. Since I do not understand your last email and I don't have much :me before appearing in court I need to know where I stand.

You seem to have been very focused when you delivered to me your research notes on the elements of legal malprac8ce, not that I need the wri;en lecture on what legal malprac8ce consists of

Are you thinking of not con:nuing to represent me in this case?

Yes I am considering withdrawing on your behalf. I need no research from you on legal malprac8ce answering my ques8ons on facts is helpful when I ask. I want no more involvement from your brother, Obviously he can talk to you all you want, I can't prevent that but if I perceive further interference from him then I will have to re-evaluate my con8nued ability to competently represent you. I will not allow him to be here in my office for any purpose. "

Are you going to submit a second amended complaint on October 10 and appear in court?

We may seek an extension, we appear on court dates as a general rule always. You

1 Exhibit 122_2018-08-31_Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf

do not and have not had any court dates that require your appearance.

Will I be given enough :me to review the complaint before it is submiFed?

When I determine the complaint is in my opinion legally sufficient it gets filed, naturally you will get a copy of it for your records.

May I comment on it or request changes to it or ask ques:ons about it?

You, not your brother, can ask all the ques8ons you wish. I generally do not ask a client if a complaint is legally sufficient, nor do I want a client draFing a complaint that I have to sign. Most clients do not know the difference between pleading conclusions of law or fact, pleading evidence or the correct pleading of ul8mate material factual allega8ons. In as much as you have advised you are on pain medicine unable to "focus on complex subjects I ques8on how much you could help in any event. I can get a lot done when I don't have to answer emails like this one.

I do not want to offend anyone, so I need to know what I can comment on or ask ques:ons about.

Making demands and lecturing me on the law are greats way to be offensive, likewise demanding to know when you will be called and comments about caring about anyone else we represent or other cases is not conducive to not offending us.

gooch"

97. On October 3, 2018 Dulberg called the Clinton Law Firm. At 10:43 AM on October 3, 2018 Julia Williams of the Clinton Law Firm sent an email to Dulberg which stated[1],

> "Dear Paul, It was nice to talk to you today. We would be able to meet next Friday, let me know if that works for you and a good time."

98. On October 9, 2018 Dulberg could not accept the conditions that Gooch was demanding and fired Gooch.[2]

99. On October 8, 2018 the Gooch firm sent an email to Dulberg stating:[3]

> "Dear Mr.ulberg: Attached please find the plaintiff's discovery requests tio the Defendants in regards to the above-referenced matter. Please note their responses are due by November 5, 2018. Whenever I receive them, I will forward to you. Melissa J. Podgorski Paralegal The Gooch Firm"

100. On October 8, 2018 Thomas Gooch sent out a discovery packet[4] to opposing counsel. Gooch sent out discovery documents "before 5:00PM on October 8, 2018".

1 Exhibit 125_2018-10-03_1043 AM_RECV_Legal Malpractice Case (2).pdf
2 Group Exhibit 33_Gooch Termination
3 Exhibit 126_2018-10-08_email.pdf
4 Group Exhibit 32 Gooch Discovery package

101. On October 9, 2018 Gooch filed a motion to withdraw[1]. The order was granted on October 15, 2018.

102. On October 10, 2018 Dulberg sent a zipped folder[2] as an email attachment to Williams of the Clinton Law Firm which contained the letter which angered Gooch, and on October 12, 2018 Dulberg and his brother, Thomas Kost, met Ed Clinton and Julia Williams. (zipped folder "Duberg Complaint.zip" as exhibit)

103. Dulberg gave Gooch an Advance payment retainer of $10,000.00[3] plus an additional advance of $5000.00[4] for costs. $480.00 went to copy costs and filing fees. The remaining $4520.00 was for hiring an expert witness. Gooch never hired the expert witness and never returned the advance. Gooch profited $14,520.00 from Dulberg, $4520.00 of which should have been returned to Dulberg upon Gooch's withdrawl but never was.

104. On August 20, 2020 at 5:10 AM Dulberg sent an email to Clinton and Williams stating:[5]

> "... I emailed Mary about the case files but I have one other concern. At our first meeting Ed made copies of the checks I wrote to Gooch. I would like a copy of these included in the case file. The retainer check was $10,000 and another $5,000 check was written to cover the initial costs for filing fee's and an expert witness. Ed said he would get the $5,000 back from Gooch. Was anything done with this or does Gooch still have the extra $5,000 for the expert witness that was never hired? ..."

105. Dulberg's experiences with Clinton and Williams are described in "Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation".

106. The Gooch case file was received by the Clinton Law firm on or about November 21, 2018.

107. Thumbdrive with the Gooch case file[6] contains switched file names for Saul Ferris letter and Kupets and DeCaro letter

108. There are no "Tilschner v Spangler" references anywhere on the Thumbdrive.

"TEAM-WORK" BETWEEN GOOCH, CLINTON AND WILLIAMS (AND OPPOSING COUNSEL) AND THE KEY INFORMATION THEY TARGET

'TEAM-WORK' EXAMPLE 1: Concealing key evidence (Tilschner v Spangler):

109. The chronology of the suppression of Tilschner v Spangler given below demonstrates intricate "team-work" between Gooch and Clinton and Williams:

---

1 Exhibit 127_2018-10-09_MOTION TO WITHDRAW.pdf
2 Key Clinton Folder 2_Duberg Complaint
3 Exhibit 109_2016-12-16_Gooch Retainer.pdf
4 Exhibit 246_2017-11-22_Scan of bank statement shown 5000.00 check Dulberg paid to Gooch for 480.00 costs and 4520.00 advance for expert witness.pdf
5 Exhibit 203_2020-08-20_0510 AM_SENT_Dulberg v Mast Motion to Withdraw.pdf
6 Key Clinton Folder 1: Dulberg Paul Dulberg Files From Client\Misc (contains switched file names)

1) Gooch was told that Tilschner v Spangler and the Restatement of Torts 318 were the reasons Mast gave Dulberg for why the McGuires are not responsible for Dulberg's injury at his first meeting with Dulberg (on 2016-12-16).

2) Gooch was handed a certified slip copy of Tilschner v Spangler[1] that Mast provided to him and looked at it.

3) Gooch refused it and told Dulberg he can download the information from the internet.

4) Tilschner v Spangler was explicitly cited in the emailed letter[2] that led to the firing of Gooch (in detailed descriptions in 2 different paragraphs on 2018-10-02).

5) There is no mention of Tilschner v Spangler in the Gooch Thumbdrive[3], which is the entire case file from Gooch's office.

6) The same letter (with detailed descriptions of Tilschner v Spangler's importance in 2 different paragraphs) was given to Clinton and Williams during their first meeting.[4]

7) Dulberg and his brother, Thomas Kost, discussed Tilschner v Spangler with Clinton and Williams at the first meeting.

8) Clinton and Williams were informed of the importance of Tilschner v Spangler in detail and in writing at least 6 different times [5]

9) Williams removed Dulberg's references to Tilschner from the second amended complaint.[6]

10) Dulberg sent emails with the certified slip copy of Tilschner v Spangler which Dulberg received from Mast on 2013-10-20.[7]

11) Williams separated it.[8]

12) Williams never Bates-stamped the certified slip copy of Tilschner v Spangler and never handed it over to opposing counsel.[9]

13) There was an inexplicable technical problem with exhibit 12 during the Mast deposition.[10]

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1 Exhibit 107_2013-11-20_certified slip copy of Tilschner v Spangler Mast gave Dulberg.pdf
2 Exhibit 123_2018-10-02_second_amended_complaint_comments.txt
3 Key Clinton Folder 1-Gooch Thumbdrive
4 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1, paragraph 3
5 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2C
6 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2C
7 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2C, paragraph 2C5
8 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2C, paragraph 2C6
9 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2C, starting paragraph 2C6.
10 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2,

14) In October, 2022 Williams could not recall any details about the contents of exhibit 12 when asked only weeks after preparing answers and documents on exhibit 12 in answer to a subpoena.[1]

15) The 6 year suppression was so thorough that when Dulberg mentioned Tilschner v Spangler in a court document in November, 2022 opposing counsel Flynn replied:[2]

"12) Of concern is a statement on page 19 of Dulberg's motion in which he argues that Mast had insisted that the decision in the Tilschner v. Spangler case was the reason Dulberg would not prevail in the underlying case against the McGuire's. The statement is inexplicably made "on information and belief." This is unacceptable. **Dulberg has made no such disclosure in fact discovery (now closed) about this very specific discussion between Mast and himself regarding the Tilschner case. If Dulberg believes he has disclosed it, he should be required to identify where in his answers and amended answers to discovery or his deposition he has identified such discussion with this amount of specificity. Defendants submit that no such disclosure exists.**"

The suppression of Tilschner v Spangler demonstrates an **intricate team-work between Gooch, Clinton, Williams and opposing counsel Flynn**. It involves an interconnected chain of events from December, 2016 to December, 2022.

"TEAM-WORK" EXAMPLE 2: Concealing Admission of Negligence of Defendant Gagnon in Underlying Case 12LA178

110. On February 1, 2013 Ron Barch filed CROSS-CLAIM FOR CONTRIBUTION AGAINTS CO-DEFENDANT DAVID GAGNON[3]. In the cross-claim the McGuires state as follows:

7. At the time and place alleged, notwithstanding his aforementioned duty, Defendant David Gagnon was then and there guilty of one or more of the following negligent acts and/or omissions:

a. Caused or permitted a chainsaw to make contact with Plaintiffs right arm;

b. Failed to operate said chainsaw in a safe and reasonable manner so as to avoid injuring Plaintiff's right arm;

c. Failed to maintain a reasonable and safe distance between the chainsaw he was operating and Plaintiff's right arm;

d. Failed to properly instruct Plaintiff prior to approaching him with an operating chainsaw;

Section 2K

1 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2K, paragraph 2K-66

2 Exhibit 128_2022-11-30_Flynn Answer to Motion to Strike Mast Deposition.pdf , (¶ 12 on page 4)

3 Exhibit 112_2013-02-01_CROSS CLAIM FOR CONTRIBUTION AGAINST CODEFENDANT DAVID GAGNON_CERTIFICATE OF SERVICE_Barch-McGuires copy-OCR.pdf

c. Failed to properly warn Plaintiff prior to approaching him with an operating chainsaw;

f. Failed to maintain the chainsaw in the idle or off position when he knew or should have known that Plaintiff was close enough to sustain injury from direct contact with the subject chainsaw;

g. Failed to maintain a proper lookout for Plaintiff while operating the subject chainsaw;

h. Failed to maintain proper control over an operating chainsaw;

1. Was otherwise negligent in the operation and control of the subject chainsaw.

8. That the injuries alleged by Plaintiff PAUL DULBERG, if any, were the direct and proximate result of negligence on the part of Defendant David Gagnon.

111. David Gagnon or his attorney has never filed an answer to these allegations in the CROSS-CLAIM for contribution. By not filing an answer to CROSS-CLAIM for contribution Gagnon effectively admitted to each of charges (a), (b), (c), (d), (e), (f), (g), (h) and (I) of….

112. As Dulberg's attorneys at that time Popovich and Mast knew Gagnon never filed an answer to the CROSS-CLAIM. As Dulberg's subsequent attorneys in his personal injury case, both Brad Balke and the Baudins also knew Gagnon never filed an answer to the CROSS-CLAIM. Dulberg's first legal malpractice attorney, Gooch, also knew Gagnon never filed an answer to the CROSS-CLAIM. Clinton and Williams also knew Gagnon never filed an answer to the CROSS-CLAIM.

113. Gooch and Clinton and Williams all knew (or should have known that) Mast and Popovich must have known about the CROSS-CLAIM filed by the McGuires against Gagnon and unanswered by Gagnon since early March, 2013. This was not mentioned in COMPLAINT[1] AT LAW or AMENDED COMPLAINT[2] or SECOND AMENDED COMPLAINT[3].

114. The original defendant and operator of the chainsaw, Gagnon, admitted to being negligent:

About 10 months before Dulberg was coerced into settling with the owners of the property (the McGuires) on which the accident occurred and for whom Gagnon was working.

About 21 months before Dulberg declared bankruptcy.

About 39 months before any binding mediation agreement with Gagnon was mentioned.

About 40 months before any cap was placed on any binding mediation award from Gagnon.

1 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf
2 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf
3 Exhibit 132_2018-12-06_Second Amended Complaint.pdf

115. There was no reason for any of these activities to take place if the defendant who operated the chainsaw already admitted to being negligent.

"TEAM-WORK" EXAMPLE 3: Concealing Bankruptcy and Violations of Federal Bankruptcy Laws (automatic stay, loss of standing to pursue claim, capping value of assets in BK estate, ect)

116. The following sequence of events demonstrates "team-work" related to bankruptcy:

1) Gooch was told Dulberg declared bankruptcy on November 26, 2014.

2) Gooch did not include any information about Dulberg declaring bankruptcy in the COMPLAINT AT LAW[1].

4) Gooch did not include any information about Dulberg declaring bankruptcy in the AMENDED COMPLAINT AT LAW[2].

5) Clinton and Williams were told that Dulberg declared bankruptcy on November 26, 2014.

6) Clinton and Williams were told[3] by Dulberg to include paragraphs on bankruptcy in the SECOND AMENDED COMPLAINT. CLINTON AND WILLIAMS removed all mention of bankruptcy from the SECOND AMENDED COMPLAINT

7) Concerning Dulberg's comments about bankruptcy he wanted included in the SECOND AMENDED COMPLAINT Williams told Dulberg:[4]

"Attached please find the revised version of the second amended complaint. We will plan to file it tomorrow by morning. If you can, I request that you send further thoughts and edits by 5pm today. I have a deposition in the afternoon and cannot file it later in the day. I reviewed your comments and edits. Overall, many were accepted. **There were some, particularly the language about the bankruptcy, that I thought were unnecessary and would simply muddy the waters for the judge.**

In this case, we need to show that Mast/Popovich had a duty to advise you properly and protect your interest, they failed to do that by urging you to settle with the McGuires when you could have continued with the case against them and obtained a much better result, instead you settled and were not able to recover at least $300,000. **The bankruptcy proceedings are necessary to this case. They will add color to the case and the information will definitely come out in the discovery process. That being said, I don't want to confuse the issues and the recovery by making allegations about the bankruptcy in the complaint. Further, I don't want to increase any burden of proof we may have by making allegations that are necessary to prove our case. ...**"

1 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf
2 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf
3 Exhibit 134_2018-12-04_1420 PM_SENT_2nd amended complaint draft_ATTACHMENTS.pdf
4 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2A

8) Williams played "hoaxes"[1] with bankruptcy documents

9) Williams told the judge "I think we produced a number of the bankruptcy issues, but we can talk about it today and definitely try to work out -- there's definitely -- there was a bankruptcy. We're not trying to hide that bankruptcy, so. And the trustee did resolve -- there was an arbitration based on the trustee's recommendation in the bankruptcy for the individual."[2]

10) On February 19, 2020 at 6:09 AM (which was the morning of Dulberg's deposition) Dulberg sent an email with the subject "Capped ADR agreement issue" to Julia C. Williams and Ed Clinton which stated:[3]

"Hi Julia and Ed,

Yesterday we talked about the bankruptcy court ordering the case into ADR with a cap on the amount that could be recovered.

This was an agreement between Allstate, the Baudins and the trustee that put the motion before the bankruptcy court.

I did some talking with at least 12 bankruptcy attorneys on those free legal advise forums last night

All said basically the same thing. This should not have been allowed without the owner of the case/asset, me, agreeing to it.

I was given this example which I believe best explains it.

In chapter 7 bankruptcy
You go into Bankruptcy and the court orders your assets (like your home) to be auctioned off to pay your creditors which is legal
But they took it one step too far when they capped the amount
Since it's already going to auction its not fair to you, the actual owner of the asset or even the creditors, to cap the amount that can be recovered at auction
They are supposed to let the auction play out to recover what the highest bidder pays, not cap it.
Capping the highest bid at an auction makes no sense
The same goes for any recovery from any asset including a personal injury suit
I'm sorry this happen to you

Now that I know this, I'm not 100% here, but I think I understand why the trustee Joe Olsen hired the Baudins to represent him Any advise on this would be helpful ..."

Clinton and Williams did not answer the email.

117. Gooch, Clinton and Williams together have kept all issues related to 'bankruptcy' out

1 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1, Chapter 2, Section 2A

2 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2A, paragraph 2A15

3 Exhibit 135_A10-Capped ADR agreement issue.pdf

of the 17LA377 Common Law Record and Reports of Proceedings for 6 years (except for one minor mention in the 2018-09-05 RoP which was pointed out in EXAMPLE 2).

"TEAM-WORK" EXAMPLE 4: Concealing true sources of $300,000 upper cap on the value of the PI claim.

118. Records of Proceedings of 12LA178 from June 13, 2016 to August 10, 2016 provide clear evidence of:

a) **Who** placed a $300,000 upper cap on the value of the personal injury case

b) **When** the agreement was made

c) **Where** the agreement was made

The evidence was easily available to both Gooch and Clinton and Williams the entire time (in the Reports of Proceedings of the 'underlying' case 12LA178).

a) **Who** placed a $300,000 upper cap on the value of the personal injury case (***The Baudins and Allstate alone***)

b) **When** the agreement was made (***On or before August 10, 2016 in violation of the automatic stay***)

c) **Where** the agreement was made (***In the 22nd Judicial Circuit Court***)

119. On July 11, 2016 the following exchange took place in the 22nd Judicial Circuit Court:[1]

THE COURT: Dulberg. Do we have -- When do you want to come back?

UNIDENTIFIED SPEAKER: We're entering continuing the motions, is that what we're doing?

THE COURT: Yes.

UNIDENTIFIED SPEAKER: Okay. When's your next available date, Judge?

THE COURT: For a hearing?

UNIDENTIFIED SPEAKER: Yes.

UNIDENTIFIED SPEAKER: Or a brief.

THE COURT: Are we briefed? Has it been briefed?

UNIDENTIFIED SPEAKER: No. They're just motions that I presented as emergencies and then we continued them pending discussions.

THE COURT: Well, when -- **if it goes into mediation, the motions become moot. Or do we have to address them regardless? I don't know what they are**.

1 Exhibit 129_2016-07-11_CC-Civil - 12LA000178 - 3_2_2022 - - - REOP - - (1).pdf

UNIDENTIFIED SPEAKER: I think the type of **mediation** we would do, it would be moot because --

UNIDENTIFIED SPEAKER: Yeah, other than, possibly, an IME. But, you know, we can certainly work -- we've worked well together so far, so we could certainly see if we can work things out.

THE COURT: Speaking generally, I'd probably grant an IME. I haven't seen your motion, though,so I don't know. I mean, I could put this over to July 21st, and that should give you enough time to decide what you want to do with mediation.

UNIDENTIFIED SPEAKER: I can be here.

THE COURT: Okay. All right. And that will be just at 9:00 o'clock for presentation of the motion, and then we'll figure out what we're going to do.

UNIDENTIFIED SPEAKER: Thank you for your time.

UNIDENTIFIED SPEAKER: Thank you. Appreciate it.

120. On July 21, 2016 the following exchange took place in 22nd Judicial Circuit Court:[1]

APPEARANCES: THE BAUDIN LAW GROUP LTD., by: MS. KELLY N. BAUDIN, on behalf of the Plaintiff;

LAW OFFICE OF STEVEN A. LIHOSIT, by: MS. SHOSHAN E. REDDINGTON, on behalf of the Defendant David Gagnon.

MS. BAUDIN: Kelly Baudin on behalf of the plaintiff. Mr. Dulberg is present and approaching.

MS. REDDINGTON: Good morning, Judge. Shoshan Reddington for the defendant.

THE COURT: Good morning.

MS. REDDINGTON: We talked last night. We've got some things agreed to, so I would like to just give us a moment to discuss that and step back up.

THE COURT: Okay. I will pass.

MS. BAUDIN: Thank you.

MS. REDDINGTON: Thank you.

THE COURT: All right. Thank you.

(Whereupon, the above-entitled cause was passed and subsequently recalled.)

MS. BAUDIN: Okay, Judge. **As you know, we had previously been discussing binding mediation. We came to a semi-agreement, --**

THE COURT: Okay.

1 Exhibit 130_2016-07-21_CC-Civil - 12LA000178 - 3_2_2022 - - - REOP - - (2).pdf

MS. BAUDIN: -- but we would like probably two weeks to just see if we can figure out the details and see if we can reach an agreement on how that is going to proceed. So I think we're looking at an August 4th date for that.

THE COURT: Can't do August 4th --

MS. BAUDIN: Oh, okay. I just was looking at two weeks, Your Honor.

THE COURT: -- because that's when I'm not here.

MS. BAUDIN: Oh, I see on the calendar. I apologize.

THE COURT: Any day after that.

MS. REDDINGTON: The following week, anything?

MS. BAUDIN: Grab my -- Let's say either the 8th or the 10th are probably the best.

THE COURT: Either's fine?

MS. REDDINGTON: My calendar's currently crashed on my -- so I can't answer that, but --

MS. BAUDIN: Why don't we do the 10th, just so it's --

THE COURT: Is there a date you know you're going to be here?

MS. REDDINGTON: No.

THE COURT: Okay.

MS. REDDINGTON: Judge, and I have several motions, and what I'd like to do is get the trial stricken which is on 9/- --

MS. BAUDIN: 27th I believe or 22nd?

MS. REDDINGTON: -- the 26th, and then to set it for the status instead on the 8/10, and then I also had a motion on an IME. I'm a little stymied right now because my claim rep is out this week and there's a couple of issues that I can't answer for counsel, but **if we do get the agreement in place, what we'd like to do is do the mediation and then come back for a status to dismiss it once the mediation is done, if that's agreeable.**

THE COURT: First off, with respect to the motion to strike the trial date, any objection?

MS. BAUDIN: No.

THE COURT: All right. I will -- I will strike the trial date for September 26, as well as the pretrial

date of the 23rd.

MS. REDDINGTON: Okay.

THE COURT: I will enter and continue your other motions until we're certain what's going to happen.

MS. REDDINGTON: Okay.

THE COURT: The removal of the trial date pretty much means we can do anything.

MS. REDDINGTON: Takes care of that. Okay. And **hopefully we'll come back with everything in place and then we'll just even set a date and then get a status for after that date to be able to come back and say it's done; we're willing to dismiss with prejudice because mediation's binding and it's done.**

THE COURT: All right. However you want to do it, it is fine.

MS. REDDINGTON: Thank you.

THE COURT: All right. Take care.

MS. BAUDIN: Thank you

121. On August 10, 2016, in violation of the automatic stay, the Baudins and Reddington moved to enter into binding mediation on August 10, 2016, The date of the Binding Mediation hearing was already set for December 8, 2016 by the time the following exchange took place on August 10, 2016 in the Circuit Court:[1]

MS. REDDINGTON: Number one, Dulberg vs. Gagnon. Shoshan Reddington for the defendant. **We have (indiscernible) scheduled for 12-8.**

THE COURT: Okay.

MS. REDDINGTON: We'd like to have a status date after that date.

THE COURT: What date works for you? You said December 8?

MS. REDDINGTON: December 8.

THE COURT: Okay. How about the following Monday, the 12th? Or do you want to go out further? The 16th, Friday?

Even though the information is available in court records of Dulberg's underlying case against Gagnon, neither Gooch's firm nor Clinton's firm ever pointed it out to Dulberg or mentioned it in any court record. Instead, the following comments were made in court records.

On November 28, 2017 the following statement appeared in COMPLAINT AT LAW:[2]

16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. **Unfortunately, a "high-low agreement" had been executed by DULBERG**, reducing the maximum amount he could recover to #300.000.00 based upon the insurance policy available. The award was substantially more than the sum of the money, and could have been recovered from the

1 Exhibit 131_12LA000178--2016-08-10--ORD_0097.pdf, CC-Civil - 12LA000178 - 3_3_2022 - - - REOP - - (4).pdf, (Lines 2-10)

2 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf

McGuire's had they not been dismissed from the complaint.

In this first version (of 2017-11-28) by Gooch an upper cap was "executed by Dulberg".

122. On May 10, 2018 the following exchange took place between Gooch counsel Sabina Walczyk and opposing counsel Flynn:[1]

> page 5, line 19"
>
> Mr Flynn: "The high-low agreement, which is very confusing to me and to my client, frankly, because he's never seen it, and as I understand it, that's outside of the four corners --
>
> THE COURT: It is outside, but it did lead to an area where I was also a little bit confused. And I -- and I think you touched on -- I'll ask you: Is the complaint having to do with the settlement with the McGuires, or does it somehow relate to the suit that continued with respect to Gagnon and the high-low agreement?
>
> MS. WALCZYK: Well, I think it's a little bit of both, because it started with the suit against McGuires, which settled. And then **it looks like there was a high-low agreement signed.**
>
> THE COURT: Okay.
>
> MS. WALCZYK: And --
>
> THE COURT: Was it signed by Mr. Mast?
>
> MS. WALCZYK: Oh, **I believe it was signed by Mr. Dulberg. I haven't seen it.**
>
> THE COURT: Okay.
>
> MS. WALCZYK: However, we can attach it if -- if you want --
>
> THE COURT: If -- if you are going to allege malpractice as a result of entering into the high-low agreement, yes, I would require you, then, to attach it and to make that a little more explicit.
>
> MS. WALCZYK: Yes.
>
> THE COURT: Because I -- I came away thinking that was not part of your complaint, but I wasn't a 100 percent sure."

In this second version (of 2018-05-10) his own attorney states they have never seen the agreement and they think "Dulberg signed it".

123. In the FIRST AMENDED COMPLAINT Gooch stated:[2]

> "24. Thereafter, DULBERG retained other attorneys and proceeded to a Court ordered

1 Exhibit 226_2018-05-10_ROP 17LA377.pdf
2 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf

binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. However, due to the settlement with the McGuires, **DULBERG was only able to collect $300,000.00 based upon the insurance policy available.** A copy of the aforsaid Mediation Award is attached hereto as Exhibit G."

In this third version (of 2018-06-13) by Gooch the $300,000 cap just seemed to ***show up***. The Judge ordered Gagnon to pay much more but Gagnon apparently didn't because of the "insurance policy available" (and apparently Dulberg pursued the matter no further).'

124. In the SECOND AMENDED COMPLAINT Williams stated:[1]

"52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. **Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.**"

In this fourth version (of 2018-12-06) by Clinton and Williams also the $300,000 cap just seemed to ***show up***. The Judge awarded an amount that Gagnon ***just decided not to pay*** (and Dulberg apparently pursued the matter no further).'

125. On September 5, 2019 Williams stated in court:[2]

MS. WILLIAMS: I think we produced a number of the bankruptcy issues, but we can talk about it today and definitely try to work out -- there's definitely -- there was a bankruptcy. We're not trying to hide that bankruptcy, so. **And the trustee did resolve -- there was an arbitration based on the trustee's recommendation in the bankruptcy for the individual.**"

In this fifth version (of 2019-09-05) by Williams it is stated for the first time that a *bankruptcy trustee* was involved in placing an upper cap of $300,000 on the value of the PI case 12LA178. Note that Dulberg retained Gooch on 2016-12-12 and this is the first time either the term "bankruptcy' or "trustee" were ever mentioned in relation to the 'upper cap' (and the last time, too).

126. A summary of 5 different versions of how the $300,000 'upper cap' was placed on the value of PI case 12LA178 which Gooch, Williams and Clinton stated in 17LA377 Common Law Records and Reports of Proceedings are given in Table 3 below.

TABLE 3: FIVE INCORRECT VERSIONS OF THE ORIGIN OF A $300,000 'UPPER CAP' PLACED ON THE VALUE OF 12LA178 GIVEN BY DULBERG'S

1 Exhibit 132_Second Amended Complaint
2 Exhibit 133_2018-09-12_Record of Proceedings.pdf

COUNSEL

TABLE 3: SOURCE OF THE $300,000 'UPPER CAP' PLACED ON 12LA178 ACCORDING TO DULBERG'S ATTORNEYS	
Version 1 2017-11-28 Gooch	"**Unfortunately, a "high-low agreement" had been executed by DULBERG**, reducing the maximum amount he could recover to $300.000.00 based upon the insurance policy available."
Version 2 2018-05-10 Gooch	WALCZYK: ...And then **it looks like there was a high-low agreement signed**. THE COURT: Was it signed by Mr. Mast? MS. WALCZYK: Oh, **I believe it was signed by Mr. Dulberg. I haven't seen it.**
Version 3 2018-06-07 Gooch	"**DULBERG was only able to collect $300,000.00 based upon the insurance policy available."**
Version 4 2018-12-06 Williams-Clinton	"**Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally."**
Version 5 2019-09-04 Williams-Clinton	"**And the trustee did resolve -- there was an arbitration based on the trustee's recommendation in the bankruptcy for the individual"**

127. Gooch crafted the first 3 versions. The first 3 versions are incompatible with each other.

128. Clinton and Williams crafted Versions 4 and 5. Version 5 contradicts Version 4. They are incompatible.

129. 'Bankruptcy' is never mentioned in any of the 5 versions as having anything to do with an 'upper cap'.

130. Version 1 and Version 2 blame Dulberg for executing an 'upper cap'. Version 3 blames the existence of an insurance limit as the source of an 'upper cap'. Version 4 blames 'insurance available' as the source of an 'upper cap'. Only in Version 5 'bankruptcy' is mentioned (for the first time on 2019-09-04, almost 3 years after Dulberg first met Gooch) and only in passing in a single Report of Proceedings.

131. All 5 Versions in Table 3 are inventions created by Dulberg's own attorneys to conceal the true origin of the 'upper cap'. Even though all 5 different versions are created by Dulberg's attorneys, Dulberg was described as the source of all 5 untrue and incompatible versions.

"TEAM-WORK" EXAMPLE 5: Intentionally confusing Statute of Limitations toll date and placing Dulberg's privileged attorney-client communications at issue

Legal malpractice attorney Thomas Gooch: (1) **set an artificial Statute of Limitations toll date**[1] to confuse Dulberg and (2) **placed Dulberg's privileged attorney client communications at issue**[2] at his first meeting with Dulberg**.** Gooch told Dulberg that their first meeting together is the time when the 2 year statute of limitations to file a complaint against Popovich and Mast begins to accrue.

In doing this Gooch gave Dulberg a false impression of how to determine a statute of limitations accural date. Gooch also created a situation where privileged attorney-client communications may now need to be produced to opposing counsel to "prove" the claim that some event occurred at the first attorney client meeting which "accrues" the statute of limitations.

132. About 18 months after Gooch told Dulberg that the statute of Limitations accrues from their first meeting together and about 6 months after stating the same in COMPLAINT AT LAW, Gooch changed his opinion of when Dulberg's statute of limitations began to accrue.

133. On December 16, 2016 Thomas Gooch caused a letter[3] to sent to Thomas Popovich and the Law Offices of Thomas J. Popovich, P.C. at 3416 West Elm St, McHenry. The letterhead stated: "Law Office Gauthier and Gooch 209 South Main St, Wauconda IL..

134. The letter stated: "RE: Dulberg v Popovich, "Greetings, I have been retained by Paul R. Dulberg to represent him in a cause of action of legal malpractice against you for the mishandling of his case and the settlement of a specific portion of that case for substantially less than could have been obtained."

135. The letter also stated: "You should aquaint the adjuster you speak with of my identity and if they so wish they may contact me. However, **I intend to file suit against you in the next 7 days.**" The letter is concluded "Very truly yours, Gauthier & Gooch" and signed by Thomas W. Gooch III.

136. On December 27, 2016 at 11:39 AM Dulberg sent an email to David Stretch stating:[4]

> "Hi Dave,
>
> How do I get a copy of all communication between my bankruptcy Trustee's and the law office of Thomas Popovich, Tom Popovich, Hans Mast, Brad Balke and Kelly & Randy Boudin or any of their assistants sent to the office of Thomas Gooch who currently represents me in another matter?

1 In "TEAM-WORK" Example 5 red font is used to highlight quotes and statements that are related to 'setting an artificial Statute of Limitations toll date'.
2 In "TEAM-WORK" Example 5 blue font is used to highlight quotes and statements that are related to 'placing Dulberg's privileged attorney-client communications at issue'.
3 Exhibit 108_2016-12-16_Gooch 1st meeting Documents.pdf, (page 4)
4 Exhibit 238_2018-12-27_Re Bankruptcy Communication_Stretch.pdf

Thomas Gooch's contact information;
email: tgooch@gauthierandgooch.com
Phone: 847-526-0110
Thanks again, Paul

137. On December 27, 2016 at 4:11 PM Joe Olsen sent an email to David Stretch stating:[1]

"Dave-
You were going to re-check your notes and advise/amend schedules re potential malpractice claim? Can you let me know where you are at w/ the review etc.?"

138. On December 27, 2016 at 4:20 PM David Stretch sent an email to Joseph Olsen stating:[2]

"Joe,
I did check my notes and found nothing. At the time of filing Paul's attorney was the Popovitch firm, Hans Mast was the attorney. That information was disclosed on Schedule B, as you know. Because I couldn't find anything I emailed Paul and asked him to send me a copy of the complaint from any malpractice action he may have filed.
He responded today with a letter from Attorney Tom Gooch, Waukegan, to Mast, announcing that he, Gooch, intended to file a malpractice action within 7 days. The letter was dated December 16. I have received nothing further from Paul. I, minutes ago, forwarded that letter to you. I will let you know if I receive anything further.
Thanks,
Happy New Year
David L. Stretch"

139. The box of paper files Dulberg left with Gooch just after their first meeting on December 16, 2016 were not scanned into digital files the until June 26, 2017[3] [4] (more than 6 months after Gooch wrote the letter to Popovich stating he intended to file suit within 7 days).

140. On November 28, 2017 Thomas Gooch filed Dulberg's COMPLAINT AT LAW[5] (which was about 330 days from the time Gooch's letter stating "I intend to file suit within 7 days").

141. The Defendants Popovich and Mast will later claim that the Statute of Limitations should be tolled from any of the following dates:

1) March 15, 2015 (when Dulberg fired Popovich and Mast)
2) February 26, 2015 (when Dulberg met Saul Ferris)
3) June, 2015 (after Dulberg retained and fired Balke)
4) December 31, 2014 (when Popovich and Mast will try to claim that Dulberg met

1 Group Exhibit 39-Olsen subpoena and response: Fwd Re Dulberg.pdf
2 Group Exhibit 39-Olsen subpoena and response: Fwd Re Dulberg.pdf
3 Exhibit 110_2017-06-29_REMINDER Documents Ready For Pick Up.pdf
4 Group Exhibit 36_When Gooch scanned in files/Gooch files created June 26, 27, 28, 2017/
5 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf

with Ferris to discuss an "accident" that occurred on January 24, 2013 (the day of Dulberg's deposition, this claim is based on a partially forged letter))

5) September 22, 2015 (when Dulberg's retained the Baudins)

Every one of these claims (1) through (5) would place the toll date **more than 2 years** earlier than November 28, 2017 when Gooch filed the COMPLAINT AT LAW.

142. But if Gooch filed in 7 days (like he claimed in the letter to the Defendant) the filing date would have been around December 23, 2016, avoiding any problem with any of the toll dates (1) through (5). Instead, Gooch waited about an additional 323 days to file COMPLAINT AT LAW, placing the filing date more than 2 years after dates (1) through (5).

143. During the approximately 323 days it took Gooch to file the complaint Dulberg periodally called or stopped in at Gooch's office and was told the following:

a. Gooch has been away from work for a few months due to his wife's dire health issues.

b. Gooch can't file the complaint because Gooch is still scanning documents.

c. Gooch has a trial in another case this month and can't be disturbed.

d. Gooch is away on vacation for a month.

e. Gooch hasn't been into work for a couple months because he is disabled and has debilitating health issues.

f. Gooch has to wait until he finds the right expert witness to file the complaint.

144. In November of 2017 Dulberg went to Gooch's office and voiced his concerns about the delays and was assured by Gooch the delays are not a problem because we have 2 years to file suit and if we have an issue he knows the Judge. Dulberg told Gooch to get the complaint filed ASAP. After the Judge dismissed the AMENDED COMPLAINT Gooch told Dulberg that Dulberg pressured Gooch to get the complaint filed ASAP caused the mistakes made in the complaint because he was rushed and wasn't finished with his investigation.

145. On November 28, 2017 COMPLAINT AT LAW paragraph 20 stated:

"20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG **realized for the first time** that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. **Following the mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016."**

146. On June 7, 2018 AMENDED COMPLAINT AT LAW paragraphs 28 to 30 stated a different version of the same event:[1]

1 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf

"28. Following the execution of the mediation agreement and the final mediation award, DULBERG **realized for the first time in December of 2016** that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, **based on the expert's opinions that DULBERG retained for the mediation**, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and **received that opinion on or about December 16, 2016**."

147. On December 6, 2018 SECOND AMENDED COMPLAINT AT LAW (prepared by Clinton and Williams) paragraphs 54 to 57 stated a third version of the same event:[1]

"54. Dulberg was only able to recovery approximately $300,000 of the award fromGagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, **Dulberg realized for the first time in December of 2016** that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. **It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware** that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis."

These 3 versions of the same event are summarized in TABLE 4A and TABLE 4B below.

1 Exhibit 123_2018-12-06_Second Amended Complaint.pdf

TABLE 4A: THREE INCORRECT VERSIONS OF WHEN DULBERG "FIRST KNEW" OF AN "INJURY" GIVEN BY DULBERG'S COUNSEL

TABLE 4A:	3 INCORRECT VERSIONS OFWHEN AND HOW DULBERG "FIRST KNEW" OF AN "INJURY" ACCORDING TO DULBERG'S ATTORNEYS
VERSION 1 Gooch COMPLAINT 2017-11-28	"20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG **realized for the first time** that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. **Following the mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016."**
VERSION 2 Gooch AMENDED COMPLAINT 2018-06-07	"28. Following the execution of the mediation agreement and the final mediation award, DULBERG **realized for the first time in December of 2016** that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake. 29. It was not until the mediation in December 2016, **based on the expert's opinions that DULBERG retained for the mediation**, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis. 30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and **received that opinion on or about December 16, 2016**."
VERSION 3 Clinton and Williams SECOND AMENDED COMPLAINT 2018-12-06	"55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable. 56. Following the execution of the mediation agreement and the final mediation award, **Dulberg realized for the first time in December of 2016** that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake. 57. **It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware** that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis."

TABLE 4B: THREE INCORRECT VERSIONS OF WHEN DULBERG "FIRST KNEW OF AN "INJURY" SIMPLIFIED

<table>
<tr><th colspan="2">TABLE 4B: 3 INCORRECT VERSIONS
OF HOW DULBERG "FIRST KNEW" OF AN "INJURY"
SIMPLIFIED</th><th>WHEN IT HAPPENED</th></tr>
<tr><td rowspan="2">VERSION 1
Gooch

COMPLAINT
2017-11-28</td><td rowspan="2">DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake</td><td>Following the execution of the mediation agreement with the"high-low agreement" contained therein, and the final mediation award</td></tr>
<tr><td>independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016</td></tr>
<tr><td rowspan="3">VERSION 2
Gooch

AMENDED
COMPLAINT
2018-06-07</td><td rowspan="3">, realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

"became reasonably aware pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis</td><td>Following the execution of the mediation agreement and the final mediation award... in December of 2016</td></tr>
<tr><td>based on the expert's opinions that DULBERG retained for the mediation</td></tr>
<tr><td>independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.</td></tr>
</table>

TABLE 4B: 3 INCORRECT VERSIONS OF HOW DULBERG "FIRST KNEW" OF AN "INJURY" SIMPLIFIED		WHEN IT HAPPENED
VERSION 3 Clinton-Williams SECOND AMENDED COMPLAINT 2018-12-06	Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable. realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake. became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.	Only after Dulberg obtained an award against Gagnon... Following the execution of the mediation agreement and the final mediation award...in December of 2016 based on the expert's opinions that Dulberg retained for the mediation.

148. In Version 1, Version 2 and Version 3 Dulberg's attorneys Gooch, Clinton and Williams all identify Dulberg's "injury" as ***the settlement with the McGuires for $5,000***. Dulberg's attorneys Gooch, Clinton and Williams all identify Dulberg's "injury" as taking place in January, 2014.

149. Illinois law on this issue toll cannot begin until pecuniary injury is received as explained in: ***Suburban Real Estate Servs. v. Carlson, 2020 Ill. App. 191953 (Ill. App. Ct. 2020)***

The logic that versions 1, 2 and 3 take is very simple: Gooch, Clinton and Williams:

a) Form a basic concept of Dulberg's "injury" (as the settlement with the McGuires in January, 2014).

b) Describe when Dulberg "first discovered" or "knew or should have known" of Dulberg's "injury"

c) Ignore when a pecuniary injury is received (ignore (1) ***Suburban Real Estate v Carlson*** and cited cases[1])

d) Omit and ignore that a principal is required to answer for an agent's negligent or wrongful actions.

150. Omission of the vicarious liability aspect of the McGuire liability for their agents neglent

1 For a list of key cases cited in ***Suburban*** see parapraph 207

actions later leads to Judge Berg's confusion and disconnect about when a pecuniary injury can be realized and when a statute of limitations begins in 735 ILCS 5/13-214.3 (b).

151. The column "WHEN IT HAPPENED" in Table 4B contains at least 2 entries for each Version 1, 2 and 3.[1] Opposing counsel Flynn later used the multiple claims to accuse Dulberg of "fiddling" with when he "first knew" of his "injury".

152. On July 2, 2020 Flynn filed a Supplemental Request for Production of Documents.[2]

153. On July 2, 2020, at 12:10 PM Williams sent a forwarded email to Dulberg stating:[3]

> "Opposing Counsel has tendered a supplemental request for production. Please review. A response is due by July 30, 2020. You can begin gathering responsive documents. Some of the document may be subject to attorney-client privilege. Best Regards,"

154. Most of the documents Dulberg would need to gather to answer the supplemental production request were still being suppressed by Williams and were released by Williams for the first time one week later on July 9, 2020 (hidden behind thousands of pages of previously released documents). The more than 6000 pages of documents contained all the previously suppressed emails of Balke, Saul Ferris, the letter from Saul Ferris to Dulberg among other suppressed documents.[4]

155. On July 27, 2020 at 2:24 PM Ed Clinton sent an email to Dulberg stating:

> "... Please see the attached letter. Best Regards ..."[5]

In the attached letter Clinton and Williams resigned as Dulberg's attorneys.

156. From July, 2020 (just after Clinton and Williams resigned) until November, 2021 Flynn maintained the following 3 forms of pressure on Dulberg and his new attorney:

1) Demand for detailed supplimental production responses (from the 2020-07-09 flood of over 6000 documents)

2) Demand to be given Dulberg's privileged attorney-client communications with Gooch

3) Pressure Dulberg to admit receiving in the mail a partially forged declination letter from attorney Saul Ferris. (The letter was actually addressed to Flynn's own client Popovich.

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1 This results in multiple incorrect claims of when Dulberg 'first knew" of an "injury" as listed in Table 5B.

2 Exhibit 136_2020-07-02_1211 PM_RECV_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377_ATTACHMENTS.pdf, (page 6-8)

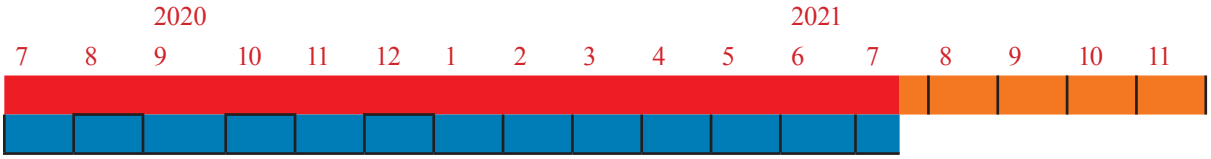
3 Exhibit 136, (page 1)

4 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1, starting paragraph 35 and Chapter 2, Section 2B

5 Exhibit 137_2020-07-27_1424 PM_RECV_Dulberg v Popovich 2017 L 377_ATTACHMENTS.pdf

How opposing counsel maintained pressure is described in "Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1 and Chapter 2, Section 2B THE EXAMPLE OF SAUL FERRIS. The following paragraphs 155 to 171 further supplement the record of how the opposing counsel maintained pressure on Dulberg.

157. The following graphic shows over how many months these 3 forms of pressure were applied to Dulberg by Flynn.



The **demand for detailed supplemental discovery answers** (shown in red above) lasted until July 19, 2021 (about 12 months). The **demand for access to Dulberg's attorney-client privileged communication** (shown in blue above) lasted until July, 2021 also (about 12 months). This is when **pressure for Dulberg to admit untrue statements about an alleged letter from Saul Ferris** (which was actually addressed to Popovich, shown in orange above) began and lasted for 4 more months.

158. Pressure was applied to Dulberg as pro-se and to Dulberg's new attorney (since Clinton and Williams had already made secret plans to withdraw as Dulberg's counsel by late June, 2020).[1]

159. On July 29, 2020 at 1:56 PM Dulberg sent an email to Ed Clinton and Julia Williams with the subject "Need clarification on outstanding issues before your departure" stating:[2]

> "... Outstanding questions on open issues for Clinton firm before departure:
> ...
> 2. What happened with the objections raised during Dulberg's deposition when Dulberg was questioned about conversations with Dulberg's former counsel Gooch? Did you get a ruling or does that still need to be argued before judge Meyer? ..."

Williams answered:

> "... There has been no motion practice on the issue and thus, there is no ruling. Your future counsel will need to bring that before the Judge at some point. ..."[3]

Dulberg also asked:

> "... 3. Similar to the last question, Have the objections in the Mast deposition been worked out or ruled on by judge Meyer? ..."

1 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1, starting paragraph 31 and Chapter 2, Section 2E
2 Exhibit 138_Need clarification on outstanding issues before your departure.pdf (page 1)
3 Exhibit 138_Need clarification on outstanding issues before your departure.pdf (page 2)

Williams answered:

> "... There has been no motion practice on the issue and thus, there is no ruling. Your future counsel will need to bring that before the Judge at some point. ..."

160. On July 30, 2020 at 10:21 AM Williams sent an email to Dulberg stating:[1]

> "These document requests are due today. We have obtained a 28 day extension so the responses are now due August 27, 2020. We anticipate filing our motion to withdraw. Thus, you will need your new counsel to respond or prepare your own response. Best Regards"

161. On July 30, 2020 at 1:50 PM Dulberg sent an email to Williams stating:[2]

> "Thank you for getting this extended. I'm pulling from memory here because I had a Dr's appointment today and am away from my desk I just took your July 2 email and reviewed it. I didn't collect the documents because I thought I had already turned over all the gooch files and emails to you and I thought we waived privilege for Boudin and you have all of that as well. I suppose other than the last request asking for "documents" relating to a conversation between Baudin and myself when we were leaving the ADR the rest of this would be contingent on Judge Meyers decision of the objections over Gooch questioning that were raised during my deposition. I'm still not sure how I'm supposed to have documents from a verbal conversation with Baudin. I will look at all this again when I get home."

162. Clinton and Williams filed a Motion to Withdraw[3] on August 18, 2020. This left Dulberg without an attorney and with the series of incorrect and contradictory statements listed in TABLE 4A and TABLE 4B which is assumed to represent Dulberg's own statements on when he "first discovered" his "injury".

163. On August 18, 2020 at 2:13 PM Flynn sent an email to Williams stating:[4]

> "This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k). I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated. I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved). The supplemental discovery we served

1 Exhibit 139_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf, Page 11
2 Exhibit 139_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf, (page 13)
3 Exhibit 140_2020-08-18_Motion to Withdraw.pdf
4 Exhibit 139_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf, (page 31)

merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020. Please feel free to contact me if you would like to discuss this matter."

164. On August 18, 2020 at 2:42 PM Williams sent an email to Dulberg stating:[1]

"We previously obtained an extension info time to respond to document discovery in your case—see below—to August 27. Opposing counsel is insisting on the August 27 response date. As we are withdrawing, it is likely more appropriate for your new counsel to respond to the discovery. lternatively, you could seek more time when the matter is before the Judge on Sept 10. Best Regards,"

165. On August 18, 2020 at 2:49 PM Dulberg sent an email to Williams stating:[2]

"Please remind me,

Was this the emails and communications with Gooch that they are after or something else?"

166. On August 18, 2020 at 2:56 PM Williams sent an email to Dulberg stating:[3]

"The requests are attached again here so you can see what they are seeking. Again, they were issued on July 2, 2020. We sent them to you that same day. They were originally due on July 30, 2020. We obtained an extension to August 27, 2020. Best regards,"

167. On August 18, 2020 at 3:11 PM Dulberg sent an email to Williams stating:[4]

"Thanks again for resending those requests from George Flynn. At this point I will not be meeting their deadline of August 27th until I have new council and/or the Judge rules that I must divulge communications with my attorney Gooch from the current case. I'm not an attorney but I believe its common knowledge that what George Flynn is asking for is wrong and strikes at the heart of attorney/client privilege. Kindly let Mr Flynn know he will not be receiving those answers or files until I have new counsel or the Judge rules on our objection at my deposition and orders me to turn over privileged communications."

168. On September 10, 2020 Clinton and Williams withdrew as Dulberg's counsel.[5] [6]

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1 Exhibit 139_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf, (page 34)
2 Exhibit 139_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf, (page 37)
3 Exhibit 139_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf, (page 41)
4 Exhibit 139_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf, (page 45)
5 Exhibit 223_2020-09-10_Order Clinton withdrawl.pdf
6 Exhibit 224_2020-09-10 ROP 17LA377.pdf

169. On Oct 16, 2020, at 10:38 AM, Paul Dulberg sent an email to Williams stating:[1]

> "... It looks like everything in the "Dulberg Documents to Be Produced 2020 June 25" is in the "Dulberg Docs Produced by Dulberg to OC" with the exception of "Dulberg JCW Notes re Discovery 2020 June 26.docx", which is your notes, and the "Dulberg Paul's Notes on Deposition and handwritten notes 2020 July 1" which is nothing more than a color duplicate of the black and white PDFs produced in the "Dulberg 7893-8551 .pdf"
>
> **Is it safe for me to assume that opposing counsel has been given all documents with the exception of the privileged gooch emails?** [Emphasis Added]
>
> Also, I see in the "Dulberg JCW Notes re Discovery 2020 June 26.docx" that you were worried about the waiver issue for Gooch. I don't agree, I answered those questions in the deposition under an objection and certainly didn't waive privilege.
>
> It appears the defense counsel is confused over when I should have known of an injury vs when I learned from an attorney that I had a case in an attempt to pry into privileged communications that cannot change the outcome for their stated goal of reopening the statute of limitations and deposing Gooch and myself for a second time.
>
> It seems to me to be simple math when calculating the statute of limitations
>
> 1. The malpractice happened between October 2013 and February 2014 in the underlying case
> 2. The earliest I could or should have known of the injury was December 12th, 2016 from the award in the underlying case
> 3. This case was filed on November 28, 2017
> 4. There is no conversation that could take place between myself and Gooch that could change the first two dates even in the slightest and the third date, the date we filed suit was the culmination of our work product in the current case, not the underlying case.
>
> One more question, Where do I find all the final answers we sent to opposing counsel for the interrogatories and supplemental interrogatories? ..."

170. On February 10, 2021 in court the following exchange took place. Note that opposing counsel Flynn uses the logic of focusing entirely on (a) while ignoring (b) throughout. Mr Talerico (Dulberg's new attorney) and and Dulberg tell both Flynn and Judge Meyer that they are ignoring (b), yet Judge Meyer doesn't recognize (b) as relevant:[2]

> MR. FLYNN: Sure. Thank you, Your Honor. **Mr. Dulberg has placed his communications with his prior lawyer, Thomas Gooch, at issue in this case.** Plaintiff has admitted that it filed its complaint -- I'm sorry, plaintiff has filed its complaint more than two years after my clients, his former lawyers, the Popovich firm, withdrew or were terminated from his representation. That's not at issue.

1 Exhibit 141_2020-10-16_1038 AM_SENT_PLEASE HELP WITH CASE FILE.pdf, (page 1)
2 Exhibit 142_2021-02-10 ROP.pdf

He has placed the discovery rule at issue in his complaint and his amended complaints. However, he has failed to answer initial discovery, he has failed to respond -- or answer properly questions at his deposition regarding discovery of his malpractice and his understanding of damages related to the Popovich's alleged malpractice. We served supplemental discovery, which is somewhat duplicative of what was previously served, and that was on July 2nd after his deposition. He hasn't even answered it.

The response does nothing to address those issues or object to the discovery that's been propounded, so I would request that he be forced at a minimum to answer this discovery, that any objection be overruled, and essentially **that the communications between Dulberg and Mr. Gooch be produced in whatever form.** And to the extent that a subpoena to The Gooch Firm would be necessary at a later date, I would rather take it one step at a time and analyze whatever it is that Mr. Dulberg produce. So, in a nutshell, that's the motion.

I didn't know that we'd have to have a hearing. I thought that these would be responded to or at least objected to, but here we are.

THE COURT: Okay. Plaintiff's counsel?

MR. TALARICO: Let's see, Your Honor, (indiscernible) to start with, I think this is a two-step analysis. I hope the court sees it the same way. **I think it should be looked upon as a 2-619 motion** and at the same time a -- the **question of whether there was a waiver of the attorney-client privilege under Rule of Evidence 502**. I believe that **if the 2-619 is decided -- I'm sorry. Yeah, the 2-619 motion is dismissed and decided against the defendants**, then the matter -- **the second step would be the waiver of attorney-client privilege which I think my client did not do under either 502(a) or 502(b)**.

THE COURT: When you -- are you saying that their statute of limitations motion, if I deny that, only in that instance do we get to the issue of the -- of the letter?

MR. TALARICO: No. I think what we're -- what I'm saying is that that clarifies part of the 502(a) section of the argument, what I perceive as 502(a).

THE COURT: Okay. Defense counsel?

MR. TALARICO: If I might --

THE COURT: Go ahead, plaintiff.

MR. TALARICO: -- expound a little bit. I wasn't aware that a 2-619 motion had been up. It was denied by this court, but denied with the ability to get -- to bring it again. All I've seen when I came into the case was a decision saying, you know, denied, so at that point in time I did not, let's say, approach the issues of the statute of limitations or the statute of repose. I think those two issues help clarify the 502 argument. The 502 argument is what -- what information can be gathered, and I think my responses to that would simply be 502(b) and 502(a) have been complied with.

THE COURT: Defense counsel?

MR. FLYNN: I'm a little confused, Judge. There is no pending 619 motion. That was ruled upon years ago. This is simply a motion to compel and, you know, again, looking back, I didn't attach every discovery answer that Mr. Dulberg provided because there were many and there were issues with signature pages throughout written discovery. But here, the overarching supplemental request, Exhibit E, I believe it is, that was served on July 2 has not been answered. It's not been objected to. It's untimely at this point, and, again, it's clear that the discovery of the malpractice and damages has been placed at issue. So we're entitled to explore that discovery. **The testimony of Mr. Dulberg at his deposition makes it clear that the only basis to toll any statute of limitations was the December 2016 communications with Tom Gooch and if he's not going to produce those, he has no other basis to toll the statute and, as such, the case should be dismissed.** We'll bring the appropriate motion. But you can't have it both ways using the privilege as a sword and a shield.

THE COURT: Plaintiff's counsel, with respect to the latter, your comment?

MR. TALARICO: I guess I'm not clear on what counsel was saying. I respectfully say that we have complied with the -- the 502(b) was inadvertent within the deposition and the attorney at the time, who was -- I think her name was Williams, Julia Williams, objected and objected on a continuing basis for any of the questions regarding that information. Counsel has not brought a motion to have this court decide whether or not that was appropriate, but he had answered under the continuing objection by Miss Williams that this was a protected attorney-client discussion. As to the 502(a), the intentional disclosure, that was, in my estimation -- and I hope the court agrees -- that was done in the pleadings, in the complaint, but it was done in the -- I wouldn't say in the alternative. **I would say it's additional information**.

THE COURT: What specifically are you referring to when you say it's additional nformation? What was additional information?

MR. TALARICO: The continued comments about when -- when he was aware of -- and when the statute would begin to run, the two-year statute of limitations, as to the filing of a complaint for malpractice. Within that section, I have each one numbered, but at first the comments -- **the situation was when the arbitration, the binding arbitration, matter was decided, and it was decided in such a way that my client lost close to over $200,000 because the only other person that was in the lawsuit had a maximum insurance policy of $300,000. At that point in time -- And he alleged that in the complaint, in the first amended complaint, and the second amended complaint, all of which I wasn't party to, but the words are in there, the allegations are in there. I believe that's when the statute of limitations begins to run.** Further --

THE COURT: He references -- he references in his complaint -- I assume we're talking about the allegations in the complaint.

MR. TALARICO: Yes.

THE COURT: And **he references in the complaint learning information from the expert**, if I've read this correctly. Is that a fair statement?

MR. TALARICO: That is one of the allegations, yes.

THE COURT: So why can't -- why isn't that report or communication going to be turned over?

MR. DULBERG: **It is. It already is.**

MR. TALARICO: **Judge, it's my position that that is not relevant to the question. The question is, when did -- when did he become aware, when does the statute start running. And the answer I believe under Illinois law is it begins running when he knows of his injury, and the injury took place with the binding arbitration award; not before, not after.** So I'm saying --

THE COURT: **And I guess I -- you're losing me because I -- I don't understand how a binding arbitration award is going to disclose to anybody whether or not malpractice had been -- had taken place.** The -- your client -- I don't know if you can see him. He keeps raising his hand. I'm ignoring him because he has an attorney. I'm going to -- I'm going to focus on you.

But whether or not there was an award for X dollars or no dollars, that doesn't tell me anything about whether -- whether he knew or should have known at that point. That just told him what those people --

MR. DULBERG: May I clarify on the record.

THE COURT: Mr. Dulberg, you have an attorney. You've elected to have your attorney speak for you.

MR. DULBERG: He's not not lead attorney (indiscernible).

THE COURT: I'm going to limit it to it. I recommend that you limit your conversation or comments to him out of fear that you may say something that could be harmful to your case.

MR. DULBERG: I understand.

THE COURT: In any event, the complaint identified something the expert said as establishing knowledge on behalf of Mr. Dulberg for the first time of the alleged malpractice. So the complaint by its very language tells me that that communication is relevant to the issue of the discovery rule. I don't have a problem with doing an in camera inspection of that particular communication, but I don't see how we avoid it being relevant.

MR. TALARICO: Judge, **I think in all three -- the original complaint, the first amended complaint and the second amended complaint, all three plead the injury happening with the -- I can't think of the word -- but with the binding arbitration statement. It thereafter talks about other matters and each time the drafter of that complaint, the first -- I'm sorry, the original, the first and the second, adds in different aspects which I believe are really irrelevant. I think the focus is on when the injury occurred. The injury I believe occurred when the binding arbitration award was granted and I think that's when the statute of limitations should run.**

THE COURT: **But he's entitled to discovery on that. If you're claiming a particular communication established knowledge for the first time, he gets to -- defense gets to see that, because you've linked it to a unique event and he gets to challenge whether that's plausible, so you don't get -- you don't get to make that decision for him.**

MR. DULBERG: If I may, I'm going -- I'm going to clarify here.

THE COURT: Mr. Dulberg, you have an attorney.

MR. DULBERG: Yes, I do. And I'm going to clarify.

THE COURT: I'm not asking you to clarify.

MR. DULBERG: The event -- the event, okay, was a series of events --

THE COURT: Counsel, --

MR. FLYNN: Judge, I'm going to object to this as well.

MR. DULBERG: -- (continuing) prior to meeting Mr. Gooch.

THE COURT: I'm ignoring what's being said. Mr. Talarico, do you have a comment?

MR. TALARICO: Yes, we -- Mr. Dulberg, I believe, and **our position is, the statute of limitations begins to run on the date of the arbitration -- the binding arbitration, award.**

THE COURT: And you could be right, but the discovery rule involves facts and the issue becomes whether you knew or should have known. You, by the complaint you've inherited, established that knowledge came as a result of a particular event and I think it -- by virtue of that allegation, you've made the facts surrounding that event relevant to the investigation of your claim of the discovery rule, its application, that I can't separate that out. **If you say that communication gave you knowledge for the first time, then the defendant gets to explore that**.

MR. DULBERG: That's not what it said.

THE COURT: Your subjective interpretations aren't going to be controlling.

MR. TALARICO: Judge, I'm not relying on that. All I'm saying is that, with all due respect, **that is when he had the knowledge, that is when the statute of limitations begins to run, and that information has been part of the court file long before it became part of this matter.**

THE COURT: My reading of the complaint referenced something regarding an expert report and perhaps a letter from former counsel.

MR. FLYNN: Judge, may I clarify that.

THE COURT: Go ahead. Yeah.

MR. FLYNN: Thank you. You know, **the plaintiff has attempted I think to use both, a report that he received from a chainsaw -- so-called chainsaw expert, so a liability expert, relative to the underlying case. There's been some confusion with respect to**

his pleading and reliance on that report. However, what I clarified at his deposition is that he relied on a legal opinion to toll the statute of limitations in this case. It's that legal opinion in December of 2016 which informed him of the malpractice. Again, he wasn't very specific. I tried to question him about each and every violation of the standard of care, breach of the standard of care, and when he found out about it; and you can read the whole deposition, but his answers are evasive. They've been evasive in his original interrogatory answers. We've covered the waterfront with every possible question and interrogatory and production request we could, but it's clear that he is relying on a legal opinion. Now, he's not very specific about what that legal opinion is, and maybe there isn't anything in Gooch's records or in the emails and whatnot to and from Gooch and Dulberg, but, in any event, that's what he testified to, and so it's our position we should be entitled to those legal opinions, whatever they are.

THE COURT: I thought -- and obviously I didn't read the entire deposition. **I thought there was one letter that really covered it**, based on what I read. Is that a fair statement?

MR. FLYNN: I'm not sure if that's accurate, Judge. I think that -- **I think he's pinpointed the time period to December of 2016**, but I think he also testified that there was regular email communication between Dulberg and Gooch, you know, --

THE COURT: In any event, **I am going to direct production of all those communications on which the plaintiff is basing his claim of the applicability of the discovery rule**; and that's a little broader than I first intended, but given the nature of this discussion, **it sounds like it's more than just a couple of documents**. It might be several of them. **I will also have those items produced to me for an in camera inspection** so that I can determine to what extent that they are disclosing information relevant to our investigation into the discovery rule, because while I agree the defendant should be allowed to investigate that issue, that doesn't mean he gets the benefit of prior counsel's work product outside of the discovery rule issue. Does that make sense?

MR. FLYNN: So I do understand your ruling. I would just ask that it be specified also, though, to the communications with Mr. Gooch because in anticipation of how this may be produced to Your Honor, if all they produce is this chainsaw expert report, then we haven't made any progress.

THE COURT: **There is definitely something from Mr. Gooch, and if I'm not given something from Mr. Gooch, that will be a red flag**.

MR. TALARICO: Judge, if I might.

THE COURT: I'm sorry?

MR. TALARICO: If I might speak.

THE COURT: Yeah.

MR. TALARICO: **Judge, my position is that the binding arbitration award document which has been part of the court file, we believe long before I was in this case, is the day that my client knew that he had an action and, before that, it was premature by Illinois law. At the time when the award was given**, and the --

THE COURT: **I'm not buying that.** The arbitrator's award gave you insight as to the value. Where you lose me is -- Well, let me rephrase that. It gave you their insight as to what they perceived the value of the case to be. It did not tell you whether or not you could have known that there was a viable cause of action against another defendant --

MR. DULBERG: (Indiscernible) that.

THE COURT: -- because, again, it's you knew or should have known whether --

MR. TALARICO: Of the injury, --

THE COURT: -- there was another cause of action against that --

MR. TALARICO: -- a financial injury.

THE COURT: And **I fail to understand how an arbitrator's award would explain that because I can't imagine -- I certainly don't -- I'm not an arbitrator, I don't know what they put in their decisions, but I would be surprised if they spend a lot of time telling you about people you could have sued but for malpractice, so the issue for me is knew or should have known, and I am going to direct production of those documents.**

MR. TALARICO: Judge, my one comment?

THE COURT: Yeah.

MR. TALARICO: **So it's Illinois law on that matter and a very recent case talked about specifically when the statute begins to run, but I will -- It's called Suburban Real Estate Services, Inc., versus Barus -- I'm sorry, and Barus versus William Carlson. The cite --**

THE COURT: **But that's a different argument. That's a rule -- that's an argument related to the applicability of -- or, in my analysis, of how the rule applies to the circumstances that we have. It doesn't address the issue of whether you should have known of the existence of the cause of action, and the information I have is that you did not and could not have known about the cause of action until the disclosure from the expert or from Mr. Gooch**, and if we're going to explore that issue, you've got to produce that. You've put those items into evidence or at issue, so defense has a right to see them.

MR. DULBERG: May I.

THE COURT: Anything else?

MR. DULBERG: Yeah, yeah. I'd like to comment. You're not going to let me comment?

THE COURT: Mr. Dulberg is attempting to speak. I'm not -- I'm neither listening nor inviting him to speak

MR. DULBERG: I will speak on the record.

THE COURT: So I will --

MR. DULBERG: It's not about when we knew or should have known of the cause of action.

THE COURT: Sir, --

MR. DULBERG: We certainly knew or should have known --

THE COURT: Sir, --

MR. DULBERG: -- of the injury.

THE COURT: Mr. Dulberg, do not presume to tell me what the law is. All right? You understand your place.

MR. DULBERG: Yes.

THE COURT: Do not tell me what the law is. I will make that decision. I've instructed you numerous times not to talk, and yet you feel the need to express yourself. You have an attorney. Your attorney has ably represented you, but I get to make a decision regardless of what your personal thoughts are. So we will go back to my discussion. Forgive the outburst, but I have invited him not to speak and that wasn't acceptable to him. So, in any event, how long, Mr. Talarico, do you need to produce this information?

MR. TALARICO: Judge, I'm not absolutely sure. Whatever the court says I produce I'll produce within 28 days.

THE COURT: Okay. Twenty-eight days is fine with me. Mr. Flynn?

MR. FLYNN: Twenty-eight days is fine, Your Honor. I would also request that, in addition to the documents being produced, that the actual discovery request be responded to and any interrogatories be amended --

THE COURT: You need a privilege log certainly as to the documents, and so I'm going to direct that you be given a privilege log because they are claiming privilege as to these items. I assume there hasn't previously been one. Is that true?

MR. FLYNN: That is true.

THE COURT: All right. So you're entitled to the privilege log. As far as the other interrogatories are concerned, Mr. Talarico -- How many interrogatories do we have outstanding?

MR. FLYNN: The -- I think what we have is some interrogatories that weren't completely answered in the first place. It's probably a handful, Judge, but then there are seven or eight requests for production that simply weren't responded to. Those are the subject of this motion.

THE COURT: And are they covered by the privilege log, do you think?

MR. FLYNN: Well, I think that first we need to know whether there are responsive documents. They haven't even answered that, and then if they are withholding any and submitting them to the court, then the privilege log comes next, I guess, would be my request.

THE COURT: Okay. Mr. Talarico, can you provide a response in 28 days?

MR. TALARICO: Yes, Your Honor. I will respond.

THE COURT: All right. And if you don't have documents, you don't have documents. Just tell him. If you're claiming a privilege, identify -- provide some sort of an identification of the document and the privilege you're claiming. With respect to the interrogatories, which ones?

MR. FLYNN: These were the interrogatories propounded by Hans Mast, my other client, and that was Exhibit D, I believe, to the motion. I did not attach his answers, but Hans Mast's interrogatories which were propounded back on March 22 of 2019 -- one, two, three -- just four interrogatories. I do believe that we have a response, but it's incomplete. It doesn't -- it doesn't identify these communications with Mr. Gooch or the legal opinion that has been alleged in the complaint and placed at issue.

THE COURT: Yeah, and I -- my concern is -- and the answer, direct answer, to those is going to require my review of the documents, so I'm going to enter and continue that part of the motion until I make a decision with respect to the documents. Is there anything else?

MR. FLYNN: I think that covers it, Your Honor.

THE COURT: Okay. All right. So, Mr. Flynn, I'm

going to direct you to send me an order -- Do you have

our email address? You can take a picture if you like.

MR. FLYNN: I believe so. Okay.

THE COURT: Okay? And the order -- we'll pick a new date in a moment. The order will provide that the plaintiff will provide you with a privilege log for those -- provide you answers to the production request as well as a privilege log with respect to any documents that are withheld, and I'm entering and continuing your motion with respect to the interrogatories. Plaintiff will provide me with the documents withheld and identified in the privilege log within 28 days and then we'll come back perhaps two weeks after that. Twenty-eight days is March 10th; two weeks after that would be around March 24th, and I can provide you with my ruling then. So how's March 24th at 1:30?

MR. FLYNN: Judge, I actually have a deposition at 1:00 o'clock that day.

THE COURT: How about the 25th? Thursday.

MR. FLYNN: 25th works. 25th at 1:00 o'clock?

THE COURT: Yeah. Mr. Talarico?

MR. TALARICO: One second, Your Honor.

THE COURT: Okay.

MR. TALARICO: Fine.

THE COURT: Do we have agreement on the date or are we waiting?

MR. TALARICO: I said it was fine, Your Honor.

THE COURT: Oh, okay. I'm sorry, I missed that. So 1:30. Is there anything else we need covered in the order?

MR. FLYNN: Just may I be clear that the motion is granted in part as stated on the record.

THE COURT: Yes.

MR. FLYNN: And I would like to just include Mr. Gooch's name in the written order, that those be included in the production if they exist.

THE COURT: Yeah, I don't -- I don't want -- What I want to -- I guess -- And thank you for bringing that up.

My impression from reading the motion was it boiled down to -- I got the idea that it was a single document or a single communication that conveyed the information at issue. And you're indicating that it was more, it was a number of emails. Are you able to put a timeframe on it?

MR. FLYNN: Well, I think, again, the allegations in the various complaints, complaint and amended complaints, and the testimony, (indiscernible) to December of 2016, so --

THE COURT: Yeah. Say the communications of December of 2016, because I don't want it read as requiring that all communications from Mr. Gooch be produced.

MR. FLYNN: Okay.

THE COURT: Mr. Talarico, any questions or comments about that?

MR. TALARICO: No, Your Honor. I'll follow the court's order.

THE COURT: All right. Anything else then?

MR. FLYNN: No, Your Honor. I will send a draft of that order to Mr. Talarico for his review and then we will send it to your email address, Your Honor.

THE COURT: Okay. I'll wait to see that. I'll sign it as soon as it's in. Thank you.

MR. FLYNN: Thank you.

THE COURT: See you in March.

MR. FLYNN: Thank you, counsel.

THE COURT: All right. Bye.

171. On April 1st, 2021 the following exchange took place in court.[1]

MR. FLYNN: I guess the only thing going forward, we've got the objections in the

1 Exhibit 143_2021-04-01 ROP.pdf

deposition transcript. Does the court typically just rule on those when ruling on a summary judgment motion?

THE COURT: No, I -- let me -- I have not had to deal with ruling on objections in a discovery deposition related to a motion for summary judgment.

MR. FLYNN: Okay.

THE COURT: So I haven't done that before, but I do think that we have to address that and the only way to address it is to just walk through them, so perhaps if we set -- and I know this is putting it out, but I'm wondering -- and you know better -- whether any of the objections are going to become moot once you have responses to the written discovery. Is that going to fix anything?

MR. FLYNN: I think that a lot of them are already moot. I think that some of the rulings over the last month or so on these objections have probably covered those that are contained in the dep transcripts; however, I just want to make the summary judgment process as clean as possible. Maybe I can talk to Mr. Talarico and we can come up with an agreement on whether some of these objections in the dep are withdrawn, but, again, I just -- I don't want the summary judgment motion to bog down on objections in a dep transcript, so --

THE COURT: Okay. And I don't know.

MR. FLYNN: So -- Okay. I wanted to raise that issue in advance so the court's aware that that might be an issue.

THE COURT: Why don't we put the hearing at 1:30 on Monday, June 14th, and if you are unable to work out the issues on the discovery deposition, then we'll walk through the transcript. You'll need to give me a copy. And -- unless there is one in the court file already. You'll need -- and we'll walk through each one and I'll take argument at that time and --

MR. FLYNN: Okay.

THE COURT: -- I'll rule then. And that may get you where you want to go, and if there are none, great. Then we don't have to deal with it. Does that --

MR. FLYNN: Okay.

THE COURT: Does that resolve your concern for today at least?

MR. FLYNN: I think so.

THE COURT: All right. So, Mr. Flynn, if you could draft the order. Mr. Talarico, is there anything you want to add?

MR. TALARICO: Well, I've read -- I wasn't present at the deposition, so I'm just trying to get my brain wrapped around it. The objections were attorney-client privilege, sir, was that --

MR. FLYNN: Many of them, yes.

MR. TALARICO: Okay. That's all.

MR. FLYNN: And, again, **it goes to the discovery of the malpractice. I think that it's been placed at issue by virtue of the pleadings, so -- and, again, I think that there's been a ruling, at least in part, on some of these issues, but, --**

THE COURT: In the alternative --

MR. FLYNN: -- you know, why don't we --

THE COURT: -- if you agree that some of the questions could have been answered, can you do this by way of interrogatory rather than a supplemental deposition?

MR. FLYNN: I think that for the most part Mr. Dulberg answered over the objections.

THE COURT: Okay.

MR. FLYNN: And so the record was set there. The objections were made on the record. I think that it could probably be dealt with fairly swiftly.

172. On July 19, 2021 the following exchange took place in court.[1]

THE COURT: All right. Tell me -- we're moving on to the interrogatory.

MR. FLYNN: And again, this goes to the statute of limitations on a legal malpractice case. The plaintiff is claiming that he didn't discover it until after the 2 years --

THE COURT: Could you keep your voice up a little?

MR. FLYNN: Sure. Plaintiff is arguing for a tolling of the statute of limitations on a legal malpractice case. He was asked in Interrogatory No. 1, Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach. His response -- his amended additional response discusses his pecuniary injury, that only addresses damages. With respect to the breach of the standard of care and how he discovered it, he simply says he knew that the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

THE COURT: Okay.

MR. FLYNN: That describes the date. It doesn't describe how he became aware of it, what Gooch told him. Now, again, I know your Honor is aware of the deposition testimony in this case regarding that December 16 time period. If the answer is that Dulberg doesn't remember what Mr. Gooch told him, if Gooch said simply, You have a case, that's fine. That's what they should say. But I've already taken his deposition. There are no specifics that explain to me why Mr. Gooch crystallized this breach of the standard of care on December 16. But if this is all they have, then that's what he should say, is that I don't remember what Mr. Gooch told me.

THE COURT: I mean, he's -- I think he's complied. I'm not sure --

1 Exhibit 143_2021-07-19_ROP.pdf

MR. FLYNN: What is the breach of the standard of care?

THE COURT: I'm sorry?

MR. FLYNN: And what is the breach of the standard of care? That's what I've asked in the interrogatory. They don't say.

THE COURT: Well, I think that -- all right. I guess that is -- my reading on it, it's implied it's a statute of limitations. But --

MR. FLYNN: No, the statute of limitations is the issue in this case.

THE COURT: All right. What is the --

MR. FLYNN: The underlying personal injury case --

THE COURT: What is the breach? Did Mr. Gooch advise him what the breach was?

MR. TALARICO: Judge, all that Mr. Dulberg recalls was relayed in the responses. There were no recordings that were going on. Nothing was done in writing. I'm not sure how I can possibly respond anymore, to give anymore.

THE COURT: I have a representation that this is all there is.

MR. FLYNN: That's satisfactory to me. As long as when I file my summary judgment motion there's not some new discovery discussion as to --

MR. TALARICO: Judge --

MR. FLYNN: -- what the breach was and what --

MR. TALARICO: I'm sorry. I hate to interrupt. Judge?

THE COURT: Yeah.

MR. TALARICO: We -- again, we were -- our response, I believe is in total compliance with the Court order of June 6th and your instructions on that day from the court record. And I'd like to respond in writing to establish that we did that.

THE COURT: No. No. I mean, you're -- you only need to respond in writing if we're going to have a hearing. If you want to file a brief that -- just in the file, that's fine, but I think we have a resolution today and I don't want to spend more time reading briefs resolving an issue that's moot. So I think this is resolved. What else is outstanding?

MR. FLYNN: I think that does resolve -- the representation resolves both issues, so --

THE COURT: I have -- you have advised -- well, you've advised that's all there is, so I'm finding you in compliance.

MR. TALARICO: Thank you, your Honor.

THE COURT: Okay. Is there anything else we need to do?

173. Also on July 19, 2021, just after the above exchange, opposing counsel Flynn began to

pressure Dulberg about a meeting Dulberg had with Saul Ferris.[1] Issues around Saul Ferris were an invention designed **to further confuse the toll date of the Statute of Limitations**.

Chapter 2: HOW DULBERG'S OWN COUNSEL HELPED FLYNN ACCUSE DULBERG: FLYNN'S MOTION FOR SUMMARY JUDGMENT

174. On September 16, 2022 opposing counsel Flynn filed a Motion for Summary Judgement[2] based on a combination of all the messed up arguments Gooch and Clinton and Williams and opposing counsel Flynn have been placing in the Common Law Record and the Reports of Proceedings for the previous 5+ years about how to toll the Statute of Limitations.

175. The core of Flynns argument is reproduced below. In Table 6 (which follows) individual components of Flynn's arguments are analyzed.

p 3:

> In his First Amended Complaint, Dulberg modified his "discovery" allegations and alleged "it was not until the mediation in December 2016, based on the expert's opinion that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000 on an "all or nothing" basis. Exhibit B, ¶29. In ¶30 he reiterates that "Dulberg was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016." Exhibit B, ¶30.
>
> Dulberg's first substitute counsel in this case filed a Second Amended Complaint, further modifying the allegations. It is alleged that "after accepting a $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating that"I trust your judgment." Exhibit C, ¶48. He further alleges in ¶55 of Ex. C that "only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable." Exhibit C, ¶55. He also alleges that following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information that Mast and opovich had given Dulberg was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. Exhibit C, ¶56. He alleged that it was not until the mediation in December 2016 based on the expert's opinions that Dulberg retained for the mediation that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000 on an "all or nothing" basis. Exhibit C, ¶57. Dulberg's allegations of Popovich' breaches of the standard of care are contained in Exhibit C, ¶58 as follows:
>
> > 58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:
> >
> > a) failed to fully and properly investigate the claims and/or basis for liability against

1 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2B

2 Exhibit 144_2022-09-16_MTD.pdf

the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance company would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the[sic] all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion." Dulberg has hired a personal injury attorney in 2002 and has hired a corporate lawyer in the past. (Dulberg Deposition, Exhibit E, pp.8, 9).

p 5:

Dulberg has hired a personal injury attorney in 2002 and has hired a corporate lawyer in the past. (Dulberg Deposition, Exhibit E, pp.8, 9). He was injured on June 28, 2011 while assisting David Gagnon with a chainsaw cutting up some branches after they were removed from a tree. (Exhibit E, pp.12, 13). He hired Popovich to sue Gagnon and Bill and Carolyn McGuire in connection with his June 28, 2011 injury. (Exhibit E, pp. 9, 30). Hans Mast was the primary handling attorney. (Exhibit E, p. 30). Brad Balke substituted for Dulberg on March 19, 2015 when Popovich withdrew. (Exhibit E, p. 35). Dulberg asked hundreds of lawyers to take over his case when Popovich withdrew, but none accepted. (Exhibit, E, p. 36). Dulberg fired Balke prior to the binding arbitration, and he was then represented by the Baudin Law Firm. While Brad Balke handled the case, Balke never gave him an opinion as to the liability of the McGuires and whether the prior settlement was appropriate. (Exhibit E, p. 42). At some point, Dulberg hired The Daley Disability Law Firm to assist him with a Social Security disability claim. A criminal lawyer represented him in a guilty plea for drug possession in 1990. (Exhibit E, pp.34-35) (Exhibit E, p. 43). At some point during the case, it was Hans Mast's opinion that the McGuires did not have liability because they did not control the work David Gagnon was doing. (Exhibit E, pp. 50, 51). Mr. McGuire was inside the house for 45 minutes before the accident happened. (Exhibit E, pp. 51, 52).

p 6:

The case continued against Gagnon through discovery and some of Dulberg's doctors were deposed. (Exhibit E, pp. 78, 79). Dulberg told Mast "First, I'm sorry that I'm not a better witness to prove David cut me with a chainsaw." Dulberg already started looking for new lawyers in the summer of 2014. Mast thought the case against David Gagnon was difficult. (Exhibit E, p.81). Mast told Dulberg that he did not make a good witness at his deposition. (Exhibit E, p.82). Dulberg and Gagnon were the only people who witnessed the accident. (Exhibit E, p.83). TI1ere were differences between the factual testimony provided by Gagnon and Dulberg in the underlying case. (Exhibit E, p.83). His relationship with Mast was deteriorating over the fall and winter of 2015, even long before that. (Exhibit E, p.86). On February 22, 2015, Dulberg wrote in an email to Mast "Now I'm left wondering ... how hard it is to sue an attorney?" (Exhibit F). When asked what the reference to suing an attorney meant he replied:

A. That was me being angry.

Q. With Hans?

A. Yes. I was seeing red.

Q. You're suggesting that you may sue him?

A. Yeah. I didn't know that I could. I'm wondering about it.

Q. You, basically, made a threat, whether it be a veiled threat or an overt threat

to sue him, correct?

A. Yes.

Q. You, ultimately, sued him for legal malpractice, right?

A. Yes

On February 22, 2015, Mast wrote in an email to Dulberg "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case." (Exhibit E, p.91). Mast speculated that seven out of ten times he would lose the case outright. (Exhibit E, p.92). Dulberg filed for bankruptcy. He was ordered by the bankruptcy trustee to participate in binding mediation on December 8, 2016. (Exhibit E, p.96). Dulberg admitted that the allegation in his complaint regarding Popovich being involved with the high/low agreement in the mediation was a mistake. (Exhibit E, p.103). Dulberg testified that it was Baudin that advised him to seek an independent opinion from an attorney handling legal malpractice matters. (Exhibit E, p.108). The lawyer he received the legal opinion on December 16, 2016 was Thomas Gooch, the drafter of the Complaint in this case. (Exhibit E, p.108). It was confirmed by Gooch on December 16 2016 that Dulberg had a valid case against Popovich. (Exhibit E, p.113). He did not file a lawsuit until nearly a year later because "Thomas Gooch had some health issues and that his wife had some health issues. It took a while." (Exhibit E, p.114). Dulberg agreed that the legal opinion he received on December 16, 2016 was responsive to Interrogatory No. I from Dulberg's answers to Mast's lnterrogatories. (Exhibit E, pp.125, 126). The

legal opinion Dulberg received from Gooch was verbal. (Exhibit E, p.130). Gooch simply stated, "You have a case here. You have a valid case." (Exhibit E, p.130). When asked did he tell you exactly what they did wrong in connection with your - their representation of you, Dulberg replied "He probably did. l 'm not recalling it right now. l 'm pulling a blank." (Exhibit E, p.131).

Dulberg was questioned further: "Other than you have a case, what did Gooch say to you?" Dulberg responded, "He said they definitely committed malpractice." When asked whether Gooch ever put this in writing, Dulberg replied, "I think he backed it up by filing a suit. That's documented." (Exhibit E, p.136). Dulberg was asked, "As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to the McGuires' liability? Answer: They were definitely liable. He tried to say that - like Popovich and Mast were first - or second year lawyers and that they may have made a mistake here." (Ex. E, pp.139-140).

p10:

While Popovich denies breaching any standard of care or proximately causing Dulberg any damages, assuming arguendo there was malpractice, Dulberg knew or should have known of his injury and that it was wrongfully caused when Popovich withdrew. In the alternative, Dulberg should have investigated any potential claims when he questioned the appropriateness of settling with the McGuires.

In his various pleadings, Dulberg alleged that Popovich concealed his malpractice and coerced him to settle with the McGuires, but his own testimony does not bear out any such concealment. He also attempts to plead that he did not discover the malpractice and his injury until December 12, 2016, but his anticipatory pleading is not supported by his own testimony. Under any analysis, Dulberg knew or should have known of the alleged malpractice and his injury by the time Popovich withdrew. Dulberg fails to meet his burden of proving a discovery date that would toll the limitations period.

p 13:

Dulberg has fiddled with his "discovery" allegations, going back and forth as to when and how he became aware of his malpractice claim and damages. First, he plead that he sought a legal opinion. and received that opinion on December 16, 2016. The legal opinion was supplied by the same attorney who filed his first two pleadings in this case. Then he changed his pleading and theory and attempted to rely on discovery by virtue of the report of a "chainsaw expert" he read in connection with the December 2016 mediation. However, he actually received the opinion (Exhibit I) in July 2016 but "you don't catch everything the first time you read it." (Exhibit D, p.141). Notably the report from Dr. Lanford is dated much earlier, February 27, 2016 and was addressed to Dulberg's then attorney, Randy Baudin.

p 14:

> Here defendants painstakingly attempted to seek discovery as to how Popovich allegedly breached the standard of care, and when and how Dulberg became aware of any damages. Dulberg's discovery responses and deposition testimony were repeatedly evasive. See Dulberg testimony, Exhibit D, pages 106 to 141. This behavior continued and caused the need for a motion to compel (See Group Exhibit J, Motion to Compel, Motion to Supplement Motion to Compel, and July 19, 202 l transcript from hearing).
>
> Moreover, Dulberg's dissatisfaction with Popovich's representation surfaced much earlier, and he even threatened in writing to sue Mast as early as February 22, 2015. Dulberg, no "babe in the woods" when it comes to experience with litigation retention, met with "hundreds" of attorneys and had opportunity after opportunity to investigate and inquire as to whether Popovich breached the standard of care and caused him any damage in connection with the case (including prosecution of the case against Gagnon and the McGuires). The many cases cited above establish the Plaintiffs duty to inquire, and here Dulberg had the tools, the information, and opportunity to inquire. His contrived late discovery of his claims and damages should not be countenanced by this court. He was clearly questioning whether he should agree to accept the McGuires' offer, and he deliberated on it extensively. Nothing prevented him from seeking a second opinion. Likewise, nothing prevented him from inquiring of Mr. Balke or the Baudin finn whether his injury was wrongfully caused. Summary Judgment must be entered as his claims are barred by the two-year statute of limitations.

According to the quotes in paragraph 167 Flynn implied that all dates listed in Table 5A below could be used to toll Dulberg's statute of limitations.

TABLE 5A:[1] TOLL DATES GIVEN BY OPPOSING COUNSEL FLYNN

TABLE 5A: FLYNN CLAIMED THESE ARE VALID TOLL DATES:		
1	when settling with the McGuires in January, 2014	2014-1-22
2	when he questioned the appropriateness of settling with the McGuires	
3	(During Daley Disability Law Firm representation)	2012-09 to 2016-05
4	(when the statement about "suing attorney" was made)	2015-02-22
5	by the time Popovich withdrew	2015-03-15
6	(During Balke's representation)	2015-03 to 2015-06
7	(while communicating with "hundreds" of attorneys)	2015-6 to 2015-09
8	when being represented by the Baudins	2015-03 to 2016-12
9	February 27, 2016 after Lanford sent his opinion to the Baudins	2016-02-27
10	July 2016 (after reading Dr Lanford's findings)	2016-07

According to Table 4A and 4B Dulberg's own attorneys implied that the dates listed in Table 5B below should be used to toll Dulberg's statute of limitations.

1 Statements in parethesis are Flynn's implications

TABLE 5B: TOLL DATES GIVEN BY DULBERG'S OWN ATTORNEYS GOOCH, CLINTON AND WILLIAMS

TABLE 5B:	DULBERG'S OWN COUNSEL CLAIMED THESE TOLL DATES:	
1	December 12, 2016 (after binding medation award)	2016-12-12
2	December 16, 2016 (after speaking with Gooch)	2016-12-16
3	December 8, 2016 (after reading Lanford's findings)	2016-12-08

176. Every one of Flynn's dates (Table 5A) and reasons ignores the McGuire's Vicarious Liability for the agent's negligent actions. Flynn claims the "injury" is the McGuire settlement.

177. Dulberg's attorneys Gooch, Clinton and Williams (Table 5B) also ignores the McGuire's Vicarious Liability for it's agent's negligent actions. Gooch, Clinton and Williams claim the "injury" is also the McGuire settlement.

178. Both (Table 5A and Table 5B) omit and ignore that the Vicarious Liability aspect makes it impossible to quantify a pecuniary injury attributable to the principal before the amount is awarded for its agent's negligent actions.

179. In simple terms:

a. If the agent paid the whole award for its negligent actions then the principal wouldn't owe the plaintiff anything because the amount owed is zero and there is nothing left to quantify or realize as a pecuniary loss or injury.

b. If the agent cannot pay the whole award for its negligent actions then the principal would owe the plaintiff greater than zero and the amount can be quantified and realized as a pecuniary loss or injury.

c. If the plaintiff was found to be greater than 50% at fault then neither the agent nor its principal would owe the plaintiff and there is nothing left to quantify or realize as a pecuniary loss or injury.

In any scenario above the plaintiff's pecuniary injury attributable to a principal vicariously liable for its agent's negligent actions cannot be calculated, quantified or realized until an award is issued for the agent's negligent actions.

180. Illinois law on this issue states that toll cannot begin until pecuniary injury is received as explained in ***Suburban Real Estate Servs. v. Carlson, 2020 Ill. App. 191953 (Ill. App. Ct. 2020).***

181. Vicarious Liability and exactly when the statute of limitations begins in 735 ILCS 5/13-214.3(b) is well founded in Illinois law.

182. In a recent opinion handed down on April 21, 2022, the Illinois Supreme Court now allows direct and vicarious liability actions against employers. If the decision (***McQueen v. Green, 2022 IL 126666***) was available in the years 2012-2014 then and only then could the McGuires be held directly liable separate from their agent. That may have changed when a

pecuniary injury could have been realized for a principal independent of its agent and perhaps have changed when the statute of limitations begins in 735 ILCS 5/13-214.3 (b) when it pertains to Principals sued directly for their agent's negligence.

183. Dulberg could not use ***McQueen v. Green, 2022 IL 126666*** to bring suite 'direct' against McGuire in the years 2012-2014 for the negligent actions of McGuire's agent Gagnon.

184. All entries in Table 5A and Table 5B were inventions of Flynn and Dulberg's attorneys to give false impressions of Dulberg claiming late discovery of an "injury" that occurred in January, 2014. Dulberg never used the discovery rule since according to ***Suburban*** Dulberg filed within 1 year of the final judgment in 12LA178. None of the reasons given in Table 5A and 5B are founded in Illinois law (***Suburban Real Estate v Carlson*** and cited cases).

185. All entries in Tables 4A and 4B were inventions of Dulberg's attorneys to give the false impression of a late discovery of an "injury' while ignoring ***Suburban Real Estate v Carlson*** and McGuire's Vicarious Liability for its agent's negligent actions as the first time Dulberg could realize a pecuniary injury.

186. Dulberg's own attorneys set him up with the toll dates and reasons listed in Tables 4A, 4B and 5B which are not founded in Illinois law. Flynn gave his own toll dates and reasons (in Table 5A) which are also not founded in Illinois law.

187. The reasons given in Tables 4A, 4B, 5A and 5B ignore ***Suburban Real Estate v Carlson*** and its cited cases. Dulberg never used the discovery rule since according to Suburban. Dulberg filed within 1 year of the final judgment in 12LA178 and McGuire's Vicarious Liability for its agent's negligent actions could be quantified and realized for the first time.

188. All 5 Versions in Table 3 are inventions created by Dulberg's attorneys to conceal the true origin of the 'upper cap'. None of them are accurate. Dulberg was described as the source of all 5 versions.

189. In Table 6 below Flynn's key accusations against Dulberg in his 2022 Summary Judgment are listed in Column 1. Column 2 shows how most every Flynn's accusation made by Flynn against Dulberg in 2022 were set up and reinforced years earlier by Dulberg's own counsel (acting in collaboration with opposing counsel) to sabotage Dulberg's claims.

TABLE 6: HOW OPPOSING COUNSEL'S SUMMARY JUDGMENT ARGUMENTS IN 2022 WERE SET UP BY DULBERG'S OWN ATTORNEYS SINCE 2016

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
1	In his First Amended Complaint, Dulberg modified his "discovery" allegations and alleged "it was not until the mediation in December 2016, based on the expert's opinion that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000 on an "all or nothing" basis.	Accusation 1 was set up by Gooch. Gooch filed Version 1 (COMPLAINT[1]) of when Dulberg "first knew" of his "injury". About 7 months later Gooch filed Version 2 which is different than Version 1. Accusation 1 quotes Version 2 (AMENDED COMPLAINT[2]) Gooch identified his first meeting with Dulberg as the date from which the toll runs. Gooch expressed this opinion clearly at his first meeting with Dulberg and never expressed any doubt about this to Dulberg. 18 months later Gooch changed his opinion on when to toll the statute of limitations when Gooch filed Version 2. (See Table 4A and Table 4B for summary of Gooch statements)
2	Dulberg's first substitute counsel in this case filed a Second Amended Complaint, further modifying the allegations. It is alleged that "after accepting a $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating that "I trust your judgment."	Accusation 2 was set up by Williams and Clinton. They filed a third version (Version 3, Table 4A and Table 4B) in SECOND AMENDED COMPLAINT[3].
3	Dulberg has hired a personal injury attorney in 2002 and has hired a corporate lawyer in the past.	
4	He further alleges in ¶55 of Ex. C that "only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable."	Accusation 4 was set up by Gooch and reinforced by Clinton and Williams.

1 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf
2 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf
3 Exhibit 132_2018-12-06_Second Amended Complaint.pdf

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
5	He also alleges that following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information that Mast and Popovich had given Dulberg was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake.	Accusation 5 was set up by Gooch and reinforced by Clinton and Williams by making an identical statement in Version 3.
6	He alleged that it was not until the mediation in December 2016 based on the expert's opinions that Dulberg retained for the mediation that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000 on an "all or nothing" basis.	Accusation 6 was set up by Gooch in AMENDED COMPLAINT[1] (Version 2 in Tables 4A and Table 4B) Accusation 6 was reinforced by Clinton and Williams in SECOND AMENDED COMPLAINT[2] where they repeated the statement. (Version 3 in Table 4A and Table 4B) Flynns accusations 1 to 6 all claim that Dulberg made each statement. Neither Version 1, 2 or 3 (in Table 4A and Table 4B) are what Dulberg told his attorneys. None of the 3 versions are accurate. It was Gooch that told Dulberg Version 1 on December 16, 2016. Gooch wrote Version 1 on November 28, 2017. It was also Gooch that chose to change from Version 1 to Version 2 on June 6, 2018. In each case it was the attorney that told their client how to toll the statute. Dulberg is then accused of changing his statement. Dulberg is being made to appear "evasive". Version 1 changes to Version 2 (by Gooch) and then changes to Version 3 (by Clinton and Williams) as Dulberg is accused of "fiddling with" a "contrived" toll date and "changing his theory".

1 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf
2 Exhibit 132_2018-12-06_Second Amended Complaint.pdf

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
7	Dulberg asked hundreds of lawyers to take over his case when Popovich withdrew, but none accepted.	Accusation 7 was set up by Popovich and Mast. "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation" (Exhibit 1) gives detailed descriptions and evidence of Popovich and Mast forging and manipulating many documents, destroying evidence, leading witnesses to commit perjury, suppressing admissions of negligence and fault from ones own client.
8	Brad Balke substituted for Dulberg on March 19, 2015 when Popovich withdrew. While Brad Balke handled the case, Balke never gave him an opinion as to the liability of the McGuires and whether the prior settlement was appropriate.	Accusation 8 was set up by Williams and Clinton. They suppressed around 40 email documents between Balke and Dulberg.[1] The emails included Balke waiting for a package of documents seemingly in the possession of attorney Saul Ferris for about 2 months.[2] [3] Flynn also attempted to accuse Dulberg of receiving a letter by mail at Dulberg's home.[4] The letter was actually in the possession of his client Popovich for about 2 months and had the address of Popovich at the top of the letter.
9	Dulberg wrote in an email to Mast "Now I'm left wondering ... how hard it is to sue an attorney?"	Accusation 9 was set up by Popovich and Mast. was set up by Popovich and Mast. "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation" (Exhibit 1) gives detailed descriptions and evidence of Popovich and Mast forging and manipulating many documents, destroying evidence, leading witnesses to commit perjury, suppressing admissions of negligence and fault from ones own client. With this concealed from Dulberg, Flynn claimed the 2 year toll begins to run when Dulberg states dissatisfaction with how he was treated or makes negative comments about Popovich or Mast. Accusation 9 was reinforced by Clinton and Williams who suppressed email documents around the quote and the event.[5]

1 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1 and Chapter 2, Section 2D
2 Exhibit 1_"Evidence of Fraud on the Court in 17LA178 During Popovich-Mast Representation", paragraph 1-252 to 1-264
3 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2B
4 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2B
5 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
10	Dulberg told Mast "First, I'm sorry that I'm not a better witness to prove David cut me with a chainsaw."	Accusation 10 was set up by Popovich and Mast. See answer to accusation #7 and #9 (column 2). Accusation 10 was reinforced by Clinton and Williams when they suppressed email documents around the quote and the event.[1]
11	Dulberg admitted that the allegation in his complaint regarding Popovich being involved with the high/low agreement in the mediation was a mistake.	Accusation 11 was set up by Gooch. He created 3 different versions of how the 'upper cap' of $300,000 was placed on the value of PI case 12LA178 (Table 3, Versions 1, 2 and 3). None of the versions were true. Gooch also suppressed all information about Dulberg's bankruptcy from court records as explained in "TEAM-WORK" Example 3 Accusation 11 was reinforced by Clinton and Williams when they created 2 more (untrue) versions of how the 'upper cap' was placed on the value of PI case 12LA178 (Table 3, versions 4 and 5). Clinton and Williams also suppressed information which would connect a "high/low" agreement with bankruptcy.[2] Dulberg's counsel is on record stating (at least) 5 different versions of the source of the 'upper cap placed on the value of PI case 12LA178 (see Table 3). Dulberg is assumed to be the source of all 5 versions. None of the 5 versions are accurate. Dulberg never told his attorneys any of the 5 versions. The true source of the 'upper cap' was available in 17LA377 Reports of Proceedings 2016-06-13 to 2016-08-10. All 5 versions in Table 3 were intentionally invented by Dulberg's own counsel to leave Dulberg vulnerable to accusation 11. The true origin of the "high-low agreement" is shown in "TEAM-WORK" EXAMPLE 4.
12	Dulberg testified that it was Baudin that advised him to seek an independent opinion from an attorney handling legal malpractice matters.	Dulberg asked Baudin if he wanted to pursue Popovich and Mast. Baudin answered, "I can't I have to work here and we do business with Popovich."[paraphrasing] Baudin recommended Gooch as a legal malpratice attorney on 2016-12-12.

1 Exhibit 5 "Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation". Chapter 1
2 Exhibit 5 "Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2A

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
13	The lawyer he received the legal opinion on December 16, 20l6 was Thomas Gooch, the drafter of the Complaint in this case. (Exhibit E, p. 108). It was confirmed by Gooch on December 16 2016 that Dulberg had a valid case against Popovich.	Accusation 13 was set up by Gooch. On December 16, 2016 Gooch told Dulberg that Gooch is considered an "expert" in legal malpractice and since Gooch as "expert" informed Dulberg he has a valid case on December 16, 2016 (at their first meeting), Gooch told Dulberg the Statute of Limitations starts from the day of Dulberg's first meeting with Gooch. Gooch wrote the same in the COMPLAINT[1]. Gooch must have known that this is not how the statute of limitations starts in Dulberg's case. Gooch then changed his opinion about 18 months later and filed Version 2 in AMENDED COMPLAINT[2]. Defendant's Popovich and Mast then claim Dulberg is responsible for making all the statements.
14	He did not file a lawsuit until nearly a year later because "Thomas Gooch had some health issues and that his wife had some health issues. It took a while."	Accusation 14 was set up by Gooch. Gooch sent a letter to Popovich in December 16, 2016 claiming he intended to file suit within 7 days.[3] Gooch did not even scan Dulberg's documents at his office for about 6 months[4] and did not file a complaint for about 11 months. Gooch used excuses such as health issues and needing to contact an expert witness. Gooch filed about 330 days from the time he claimed he would file within 7 days. Dulberg was set up by Gooch to be left vulnerable to accusation 14.

1 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf
2 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf
3 See paragraph 29
4 See paragraph 31

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
15	Dulberg alleged that Popovich concealed his malpractice and coerced him to settle with the McGuires, but his own testimony does not bear out any such concealment	Accusation 15 was set up by Popovich and Mast. "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation" (Exhibit 1) gives detailed descriptions and evidence of Popovich and Mast forging and manipulating many documents, destroying evidence, leading witnesses to commit perjury, suppressing Defendant's admissions of negligence and fault from ones own client. Accusation 15 was reinforced by Gooch, Clinton and Williams when they successfully suppressed the certified slip ruling of Tilschner v Spangler that Mast gave to Dulberg for over 6 years.[1] [2]
16	He also attempts to plead that he did not discover the malpractice and his injury until December 12, 2016, but his anticipatory pleading is not supported by his own testimony.	Accusation 16 was set up by Gooch, Clinton and Williams. They created 3 incorrect versions of how Dulberg "first knew" of the "injury" (in Tables 4A and 4B). Each of the 3 versions inexplicably gives multiple times when Dulberg "first knew" of his "injury". Table 5B lists 3 different toll dates which Dulberg's own attorneys claimed and attributed to Dulberg.
17	Dulberg agreed that the legal opinion he received on December 16, 2016 was responsive to Interrogatory No. 1 from Dulberg's answers to Mast's lnterrogatories.	Accusation 17 was set up by Gooch. Gooch told Dulberg this with conviction at their first meeting and Dulberg simply repeated what Gooch told Dulberg at their first meeting. Gooch changed his own claim 18 months later and wrote it in AMENDED COMPLAINT[3].
18	Dulberg has fiddled with his "discovery" allegations, going back and forth as to when and how he became aware of his malpractice claim and damages.	Accusation 18 was set up by Gooch, Clinton and Williams. 3 different versions (each with multiple toll dates listed) were designed to produce the appearance of Dulberg "fiddling with" and "contriving" a "late toll date". (Table 4A and Table 4B)

1 See "TEAM-WORK" Example 1: Concealing key evidence (Tilschner v Spangler)
2 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Sections 2C and 2K
3 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
19	First, he plead that he sought a legal opinion. and received that opinion on December 16, 2016. The legal opinion was supplied by the same attorney who filed his first two pleadings in this case.	Accusation 19 was set up by Gooch. This is what Gooch told Dulberg during their first meeting. This is what Gooch claimed to Dulberg and what Gooch wrote in the COMPLAINT[1].
20	Then he changed his pleading and theory and attempted to rely on discovery by virtue of the report of a "chainsaw expert" he read in connection with the December 2016 mediation.	Accusation 20 was set up by Gooch on June 13, 2018 (Version 2, Tables 4A and 4B). Gooch created Version 1 on November 28, 2017. Gooch created Version 2 on June 7, 2018. Flynn accuses: "Then he changed his pleading and theory..". Gooch, an experienced legal malpractice attorney, first claimed with confidence the toll of the statute of limitations begins when Dulberg first met Gooch. Gooch created Version 1 without telling Dulberg. Gooch then created Version 2 without telling Dulberg. Gooch waited 11 months to file a complaint and 18 months after Gooch first met Dulberg Gooch changed his mind on when the toll begins. Accusation 20 can then claim Dulberg "changed his pleading and theory".
21	he actually received the opinion (Exhibit I) in July 2016 but "you don't catch everything the first time you read it." Notably the report from Dr. Lanford is dated much earlier, February 27, 2016 and was addressed to Dulberg's then attorney, Randy Baudin.	Accusation 21 was set up by Gooch. Gooch told Dulberg at their first meeting that the statute tolls from when Dulberg first talked to Gooch since Gooch is considered an 'expert'. In Version 1 (Table 4A and 4B) Gooch claimed the "independent opinion" came from Gooch. In Version 2 Gooch claimed that the "Expert opinion" came from Lanford. (Table 4A and 4B). Once Gooch changed Version 1 into Version 2, the further confusion allowed Flynn to make accusation 21 and 22 in an attempt to move the toll date yet again. Each of these "changes of pleadings" is then blamed on Dulberg.

1 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
22	Here defendants painstakingly attempted to seek discovery as to how Popovich allegedly breached the standard of care, and when and how Dulberg became aware of any damages. Dulberg's discovery responses and deposition testimony were repeatedly evasive. See Dulberg testimony, Exhibit D, pages 106 to 141. This behavior continued and caused the need for a motion to compel (See Group Exhibit J, Motion to Compel, Motion to Supplement Motion to Compel, and July 19, 2021 transcript from hearing).	Acccusation 22 was set up by Gooch when Gooch changed from Version 1 to Version 2 (in Tables 4A and 4B) and reinforced by Clinton and Williams when they wrote Version 3. Clinton and Williams intentionally 'flooded' their permanently disabled client (Dulberg) with over 6000 documents[1] (concealing many documents they suppressed up to that time just before they withdrew as counsel). Dulberg was left with no attorney. Defendants Popovich and Mast then claim Dulberg was "evasive" of supplimental interrogatories issued one week before Dulberg's counsel released over 6000 documents and withdrew as counsel.
23	Moreover, Dulberg's dissatisfaction with Popovich's representation surfaced much earlier, and he even threatened in writing to sue Mast as early as February 22, 2015.	Accusation 23 was set up by Popovich and Mast. "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation" (Exhibit 1) gives detailed descriptions and evidence of Popovich and Mast forging and manipulating many documents, destroying evidence, leading witnesses to commit perjury, suppressing Defendant's admissions of negligence and fault from ones own client.

1 See "TEAM-WORK" Example 5 and Exhibit 5_"Evidence of Fraud on the Court During Clinton-Williams Representation", Chapter 1 starting paragraph 35 and Chapter 2, Section 2E

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
24	Dulberg, no "babe in the woods" when it comes to experience with litigation retention, had opportunity after opportunity to investigate and inquire as to whether Popovich breached the standard of care and caused him any damage in connection with the case (including prosecution of the case against Gagnon and the McGuires).	Accusation 24 was set up through the "team-work" of Popovich, Mast, Gooch, Clinton and Williams. All 3 Law Firms targeted their permanently disabled client from basically the first time they met and stripped Dulberg of key evidence he needed to defend himself.[1] [2] [3] Popovich and Mast then claimed Dulberg had experience and knowledge in litigation and access to attorneys.
25	The many cases cited above establish the Plaintiffs duty to inquire, and here Dulberg had the tools, the information, and opportunity to inquire.	Accusation 25 was set up through the 'team-work' of Popovich, Mast, Gooch, Clinton and Williams. This document, in addition to "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation" (Exhibit 1) and "Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation" (Exhibit 5) demonstrates that Dulberg's own attorneys systematically stripped Dulberg of the tools, the information and opportunity to inquire into their fraudulant actions. Defendants Popovich and Mast then claim Dulberg had "duty to inquire, and here Dulberg had the tools, the information, and opportunity to inquire. "

1 Exhibit 1 "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation" (the entire document)
2 The contents of this document
3 Exhibit 5 "Evidence of Fraud on the Court in 17A377 During Clinton-Williams Representation" (the entire document)

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
26	His contrived late discovery of his claims and damages should not be countenanced by this court.	Accusation 26 of Dulberg "contriving" a "late discovery" was set up by Gooch at his first meeting with Dulberg on December 16, 2016. Accusation 26 was reinforced by Gooch on November 28, 2017 (Version 1, Tables 4A and 4B). Accusation 26 was reinforced again by Gooch on June 7, 2018 (Version 2, Tables 4A and 4B). Accusation 26 was further reinforced by Williams and Clinton on December 6, 2018 (Version 3, Tables 4A and 4B).
27	He was clearly questioning whether he should agree to accept the McGuires' offer, and he deliberated on it extensively.	Accusation 27 was set up by suppressing 2 key documents: (1) Walgreens RX receipts with timestamps[1] and (2) certified slip ruling of Tilschner v Spangler[2]. Accusation 27 was set up by Popovich and Mast. "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation" (Exhibit 1) gives detailed descriptions and evidence of Popovich and Mast forging and manipulating many documents, destroying evidence, leading witnesses to commit perjury, suppressing Defendant's admissions of negligence and fault from ones own client. Accusation 27 was then reinforced by Gooch and Clinton and Williams by suppressing key evidence[3] of a certified slip ruling of Tilschner v Spangler which Mast gave to Dulberg as justification for why the McGuires were not liable for Dulberg's injury.[4]

1 Exhibit 1_"Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation", starting paragraph 1-96

2 Exhibit 5_"Evidence of Fraud on the Court in 17A377 During Clinton-Williams Representation"and see TEAM-WORK Example 1: Concealing key evidence (Tilschner v Spangler)

3 Exhibit 5_"Evidence of Fraud on the Court in 17A377 During Clinton-Williams Representation", Chapter 2, Sections 2C and 2K and see TEAM-WORK Example 1: Concealing key evidence (Tilschner v Spangler)

4 Exhibit 1_"Evidence of Fraud on the Court in 12LA178 During popovich-Mast Representation", starting paragraph 1-166

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
28	Nothing prevented him from seeking a second opinion.	Accusation 28 was set up by Popovich and Mast. "Evidence of Fraud on the Court in 12LA178 During popovich-Mast Representation" (Exhibit 1) gives detailed descriptions and evidence of Popovich and Mast forging and manipulating many documents, destroying evidence, leading witnesses to commit perjury, suppressing Defendant's admissions of negligence and fault from ones own client. a) Dulberg's key evidence[1] (Walgreens RX receipts with timestamps) was being actively suppressed by Popovich and Mast. b) Mast released an extremely disorganized version of the case file on March 23 or 24, 2015.[2] c) Mast and Popovich kept a packet of depositions in their office that Dulberg needed for about 2 months without Dulberg being aware of it.[3] All these acts are concealed from Dulberg so Defendants Popovich and Mast can later claim "Nothing prevented him from seeking a second opinion."
29	nothing prevented him from inquiring of Mr. Balke or the Baudin firm whether his injury was wrongfully caused.	Accusation 29 was set up by Clinton and Williams. They suppressed around 40 email documents between Dulberg and Balke.[4] The suppression of Dulberg's actual exchanges with Balke is concealed so Defendants Popovich and Mast can later claim "nothing prevented him from inquiring of Mr. Balke".

190. Table 6 shows there is a direct one-on-one relation between Flynn's accusations in the 2022 MSJ and how Dulberg's own attorneys intentionally left Dulberg vulnerable to Flynn's accusations. In fact, most every accusation Flynn made against Dulberg in his Summary Judgment (on left) can be shown to have been originally set up by Dulberg's own attorneys (on right):

*Gooch was setting Dulberg up to be accused by Flynn of items in Column 1, Table 6 from the first time they met.

1 Exhibit 1_ "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation", starting paragraph 1-95

2 Exhibit 1_ "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation", starting paragraph 1-254

3 Exhibit 1_ "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation", starting paragraph 1-240

4 Exhibit 5_ "Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1, Chapter 2, Section 2D

*Dulberg was set up by Clinton and Williams within days of their first meeting[1].

*Dulberg was set up by Popovich and Mast within days of their first meeting.[2]

All 3 Law Firms targeted their own permanently disabled client basically from the moment Dulberg first met them. The Baudins and Balke also targeted Dulberg from about their first meeting.

191. On February 1, 2023, Judge Berg, in his first day as Judge in the case, granted[3] the opposing counsel's arguments in support of an Motion for Summary Judgment based on statute of limitation arguments Flynn gave. Judge Berg tolled the statute of limitations this way:

> Dulberg's 'injury" was the settlement with the McGuires (receiving $5,000)
>
> The settlement with the McGuires took place in January, 2014
>
> Dulberg "knew or should have known" of his "injury" since January, 2014 (because it was public information).
>
> Dulberg may have experienced another "injury" on December 12, 2016 due to an 'upper cap' limit that was placed on the value of PI case12LA178 but that injury happened way after Popovich and Mast were "out of Dodge".

192. On February 1, 2023 Flynn made the following claims against Dulberg in court.

> So Mr. Gooch met with him. Allegedly provided an opinion that there was a case without any reason and then almost a year later filed a lawsuit. Again, first Mr. Dulberg raised privilege when I asked him how -- how and what -- how you became aware of this legal malpractice case, the injury and the wrongful causation, he claimed privilege. Finally, that was waived or otherwise disposed of, and then, he admitted he couldn't -- I said the legal opinion Dulberg received from Gooch was verbal. Gooch simply stated you have a case here. You have a valid case. When asked did he tell you exactly what they did wrong in connection with the representation, Dulberg said he probably did. I'm not recalling it right now. I'm pulling a blank. There are no specifics.

193. Gooch misled Dulberg into believing a false claim that the toll starts on December 16, 2016 because Dulberg met with Gooch and Gooch is an expert in such matters.:The quote in paragraph 184 by opposing counsel Flynn shows how a permanently disabled client was set up through collaboration between opposing attorneys and was intentionally misinformed by his own attorney from the first meeting. Gooch was playing with his permanently disabled client by setting Dulberg up in December, 2016 so that Flynn could make the above accusations against Dulberg on February, 2023.

194. As Flynn implied in the quote (long after Gooch resigned, was fired or changed his claim) Dulberg is left hanging as if it was ***Dulberg's idea*** that the toll starts when he met Gooch

1 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1
2 Exhibit 1_"Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation", Chapter 1
3 Exhibit 145_2023-02-01_ROP dismissal of case.pdf

for the first time. Then Dulberg is pressed, "why does the toll start when you first met Gooch?" "What happened during the first meeting to toll the statute? Gooch must have known from his first meeting with Dulberg that Gooch was setting Dulberg up to later be accused like Flynn does in paragraph 184.

195. Flynn again used the way Gooch set up Dulberg to make the following claim:[1]

> Mr. Dulberg had every opportunity in discovery through interrogatories, production requests, I took his deposition. **I asked him over and over again in several different ways how he first became aware of his injury and that it was wrongfully caused. The only response he could give was that a lawyer told him that he had a case. He couldn't provide any specifics.** He has a burden of proving the -- a late discovery. He cannot meet it. He will never be able to meet it.

196. The only notions of an "injury" Dulberg received from Gooch, Clinton and Williams is included in Tables 4A and 4B. The only notions by Gooch, Clinton and Williams of how Dulberg "first discovered" his "injury" and when are in Tables 4A, 4B and Table 5B. The only reason both Gooch and Clinton and Williams gave for tolling from December 8, 2016 is because Dulberg "read Lanford's letter". At no time over 6 years did Gooch, Clinton or Williams claim, write or inform Dulberg that December 12, 2016 tolls Dulberg's financial injury. Gooch, Clinton and Williams all omit or ignore that McGuire's Vicarious Liability for its agent's negligent actions could be quantified and realized for the first time on December 12, 2016 as a financial or pecuniary injury for when the statute of limitations begins in 735 ILCS 5/13-214.3 (b).

197. Over a period of 6 years Gooch, Clinton and Williams never referred to pecuniary injury as cited in ***Suburban Real Estate v Carlson*** or the related cases[2] cited within and they all omited or ignored that McGuire's Vicarious Liability for its agent's negligent actions could be quantified and realized for the first time on December 12, 2016 as a pecuniary injury. Neither Judge Meyer nor Judge Berg could see any relevance in ***Suburban Real Estate v Carlson*** or the notion of receiving a 'financial injury' on December 12, 2016. Judge Meyer "didn't buy" the claim. Judge Berg found no relevance in the claim of a 'financial injury' that was received on December 12, 2016.

198. On ***Suburban Real Estate v Carlson*** opposing counsel Flynn also found no relevance and stated:

> The **only case cited by the plaintiff in its response with respect to the accrual of the injury was a Suburban Real Estate case which is a transactional legal malpractice case, not a litigated matter.** I think the -- all of the cases we have cited and including the dicta in that Suburban Real Estate case indicates that the accrual date in a litigated matter is the date of settlement, judgment or dismissal.

The above quote is the only comment opposing counsel Flynn made concerning a claim of 'financial injury' on December 12, 2016 over a period of about 6 years.

1 Exhibit 145_2023-02-01_ROP dismissal of case.pdf
2 See paragraph 209

199. About the 'upper cap' Judge Berg stated:

> So how is his change in strategy somehow extend -- so in other words, what you're saying -- well, I'm trying to wrap my head around this. You are saying that that agreement your client never wished to enter into, he didn't sign, Popovich didn't sign, Mr. Mast didn't sign. His actual third attorney signed it, Mr. Baudin, not even Mr. Balke. But because that was somehow signed and in effect, then the cause of action against Mast and Popovich for legal malpractice is extended out to the date of the final mediation hearing because of an agreement and limitation on damages at the mediation hearing over which they had zero control?

Judge Berg referred to "a change of strategy" as if Dulberg changed his story to try to make Popovich and Mast responsible for the effect of an 'upper cap' that took place on August 10, 2016 in 12LA178 in violation of the bankruptcy courts automatic stay and was executed on December 8, 2016.

> Mr. Talarico, and please correct me if I'm wrong because this is where I'm getting the disconnect, the but-for portion of this analysis but for the high-low agreement limiting damages to the policy amount of $300,000, he would have had a judgment for the entire $660,000 if Tom Popovich and Hans Mast had never even existed What I'm asking is isn't the failure to recover the $660,000 as opposed to 300,000 attributable to the high-low agreement that was entered into well over a year or if not two or more years after Popovich and Mast were out of the case? But again, counsel -- but again, my point being I don't really care if he signed it or didn't sign it. My point being that it is that agreement that limited his damages, and that agreement was entered into way after Popovich and Mast withdrew from this case, right?

Judge Berg claimed that the 'upper cap' is Dulberg's "injury". Judge Berg doesn't know how the 'upper cap' came into being, doesn't care and doesn't care if Dulberg signed the agreement. The simple point according to Judge Berg is that it has nothing to do with Popovich and Mast so none of it matters in this case.

200. According to Judge Berg, a financial transaction that took place in December 12, 2018 cannot be connected to Popovich and Mast, who ended their contract with Dulberg in March 2015 and are accused of "injuring" Dulberg during a settlement in January. 2014. Judge Berg cannot "wrap his mind around" Mr Talerico citing ***Suburban Real Estate v Carlson*** since (to Judge Berg) the claim seems so outrageous and quite a stretch. This is also what Judge Meyer "won't buy". Judge Berg also perceived this claim as Dulberg making a "change in strategy" implying Dulberg earlier had a "different strategy" ("injury" being settlement with the McGuires in January, 2014) and then made a "change in strategy" ("injury being capped award on December 12, 2016). This is the impression that Versions 1, 2 and 3 in Table 4A and 4B and Versions 1, 2, 3, 4 and 5 in Table 3 crafted by Gooch, Clinton and Williams were intended to create: That Dulberg somehow ***changed his claim and legal strategy*** since first filing his suit. Judge Berg, just like Defendants Popovich and Mast, are accusing Dulberg of changing his legal theory well after he filed his complaint.

201. According to Judge Berg, Dulberg was "injured" by an 'upper cap' on a settlement judgment on December 12, 2016. Popovich and Mast never signed an 'upper cap' so they have no relation to the 'upper cap' as Dulberg's "injury". Dulberg's only other "injury" was during the McGuire settlement in January, 2014 which is now subject to the statute of limitations.

202. On how and when Dulberg "knew or should have known" about his "injury" Judge Berg stated:

> He was clearly alerted. Let's cut to the chase. He was hesitant -- he was hesitant to ever even sign the settlement agreement to the point where it took him over two months to do it. He clearly had his doubts. He clearly had his lack of faith. He signed the settlement agreement anyway. A year later, the attorneys withdrew. He went to another attorney, still raised the issue. Went to another attorney, still raised the issue.
>
> Met with hundreds of attorneys. He was clearly alerted. **When did the pecuniary loss occur?** Here is the amazing part, and this is what -- where the disconnect comes on this case and it's why I'm having so much trouble with it, **I'm being urged that the pecuniary loss occurred when the decision was given on the binding mediation**. But the reason I believe that's a disconnect is because -- for two reasons. The loss that occurred on the binding mediation that is being urged upon the Court is a loss of what appears to be $360,000. The difference between the $660,000 that the mediator indicated the -- were the appropriate measure of damages against Mr. Gagnon and the $300,000 insurance policy limit, that $360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that somebody entered into. We don't know who that somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge
>
> But didn't the pecuniary loss itself, in fact, occur if there was a cause of action to which you were alerted? **The pecuniary loss occurred when he only got $5,000.** I agree with defense counsel. Statute of limitations lapsed. Merely denying the statute of limitation without more in the depositions and the sworn testimony does not itself create an issue of material fact.

203. Judge Berg identified Dulberg's "injury" with a "pecuniary loss" that occurred when Dulberg received $5,000 from the McGuires. Judge Berg identified a different "injury" to Dulberg on December 12, 2016 which Judge Berg identifed as the 'upper cap' placed on the award.

204. Judge Berg knew nothing about where the cap came from or why. Judge Berg didn't know if the 'upper cap' was legal or illegal or whether it was fraudulent. Judge Berg didn't care because the "injury" of the 'upper cap' "occurred well after they [Popovich and Mast] were out of Dodge".

205. About the true origin of the 'upper cap' Judge Berg stated: "that $360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that **somebody entered into. We don't know who that**

somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge"

206. By this statement Judge Berg implied that Popovich and Mast were so distant from the 'upper cap' that they couldn't have anything to do with an "injury" that happened on December 12, 2016 through an 'upper cap'. Nobody seems to know where the 'upper cap' came from and Dulberg claimed he refused to agree and refused to sign any agreement. But in this case none of it matters because any limit from an 'upper cap' cannot be connected to Popovich and Mast since the "**agreement occurred well after they were out of Dodge".**

207. Dulberg's current attorney Mr Talerico is on the record since February 10, 2021 (Mr Talerico was retained on October 23, 2020) explaining the application of ***Suburban Real Estate v Carlson*** to Dulberg's case in order to claim that the statute is counted from December 12, 2016. Mr Talerico explained that ***Suburban Real Estate v Carlson*** makes clear that if Dulberg filed a legal malpractice suit against Popovich and Mast at any time before December 12, 2016 his filing would have been ruled premature. Mr Talerico explained Illinois law is clear that the first day that Dulberg had standing to file a legal malpractice suit against Popovich and Mast was December 12, 2016 and not one day sooner.

208. This notion of a "financial injury" on December 12, 2016 consistent with Illinois law in ***Suburban Real Estate v Carlson*** was never explained to Dulberg by Gooch, Clinton, or Williams, not even as a suggestion or possibility. Opposing counsel Flynn found no relevance in ***Suburban Real Estate v Carlson***. It was not used or referenced in any of the 14 items in Table 5A and 5B. There is no notion of financial injury or application of Illinois law ***Suburban Real Estate v Carlson*** in any of the versions in Table 4A nd 4B. Neither Judge Meyer or Judge Berg saw any relevance in ***Suburban Real Estate v Carlson*** and did not recognize any notion of a 'financial injury' occurring on December 12, 2016 consistent with ***Suburban Real Estate v Carlson*** in Dulberg's case. The views of each of these officers of the court are summarized in Table 7 below:

TABLE 7: 12LA178 OFFICERS OF THE COURT APPLYING CURRENT ILLINOIS LAW AND DULBERG'S CASE

TABLE 7: Judge Meyer Describing the Relation between *Suburban Real Estate v Carlson* and Dulberg's case:
I'm not buying that. The arbitrator's award gave you insight as to the value. Where you lose me is -- Well, let me rephrase that. It gave you their insight as to what they perceived the value of the case to be. It did not tell you whether or not you could have known that there was a viable cause of action against another defendant --
I fail to understand how an arbitrator's award would explain that because I can't imagine -- I certainly don't -- I'm not an arbitrator, I don't know what they put in their decisions, but I would be surprised if they spend a lot of time telling you about people you could have sued but for malpractice, so the issue for me is knew or should have known, and I am going to direct production of those documents.

TABLE 7: Judge Meyer Describing the Relation between *Suburban Real Estate v Carlson* and Dulberg's case:
But that's a different argument. That's a rule -- that's an argument related to the applicability of -- or, in my analysis, of how the rule applies to the circumstances that we have. It doesn't address the issue of whether you should have known of the existence of the cause of action, and the information I have is that you did not and could not have known about the cause of action until the disclosure from the expert or from Mr. Gooch, and if we're going to explore that issue, you've got to produce that. You've put those items into evidence or at issue, so defense has a right to see them.

TABLE 7: Judge Berg describing the relation of *Suburban Real Estate v Carlson* to Dulberg's case:
He was clearly alerted. Let's cut to the chase. He was hesitant -- he was hesitant to ever even sign the settlement agreement to the point where it took him over two months to do it. He clearly had his doubts. He clearly had his lack of faith. He signed the settlement agreement anyway. A year later, the attorneys withdrew. He went to another attorney, still raised the issue. Went to another attorney, still raised the issue.
Met with hundreds of attorneys. He was clearly alerted. **When did the pecuniary loss occur?** Here is the amazing part, and this is what -- where the disconnect comes on this case and it's why I'm having so much trouble with it, **I'm being urged that the pecuniary loss occurred when the decision was given on the binding mediation**. But the reason I believe that's a disconnect is because -- for two reasons. The loss that occurred on the binding mediation that is being urged upon the Court is a loss of what appears to be $360,000. The difference between the $660,000 that the mediator indicated the -- were the appropriate measure of damages against Mr. Gagnon and the $300,000 insurance policy limit, that $360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that somebody entered into. We don't know who that somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge
But didn't the pecuniary loss itself, in fact, occur if there was a cause of action to which you were alerted? **The pecuniary loss occurred when he only got $5,000.** I agree with defense counsel.

TABLE 7: Defendants Popovich and Mast (Flynn) describing relation of *Suburban Real Estate v Carlson* to Dulberg's case:
The **only case cited by the plaintiff in its response with respect to the accrual of the injury was a Suburban Real Estate case which is a transactional legal malpractice case, not a litigated matter.** I think the -- all of the cases we have cited and including the dicta in that Suburban Real Estate case indicates that the accrual date in a litigated matter is the date of settlement, judgment or dismissal.

TABLE 7: Legal Malpractice Attorney Gooch applying Illinois law to Dulberg's case:
Following the execution of the mediation agreement with the"high-low agreement" contained therein, and the final mediation award
based on the expert's opinions that DULBERG retained for the mediation
received independent opinion from a legal malpractice attorney on or about December 16, 2016.

TABLE 7: Legal Malpractice Attorneys Clinton and Williams applying Illinois law to Dulberg's case:
Only after Dulberg obtained an award against Gagnon...
Following the execution of the mediation agreement and the final mediation award...in December of 2016
based on the expert's opinions that DULBERG retained for the mediation

209. The arguments in ***Suburban Real Estate Servs. v. Carlson, 2020 Ill. App. 191953 (Ill. App. Ct. 2020)*** reference 5 other key cases:

Successful Appellant ***Suburban Real Estate*** relied on ***Lucey***[1] and ***Warnock***[2] (and ***Northern Illinois Emergency Physicians***[3])

Unsuccessful Appellee ***Carlson*** relied on ***FagelHaber***[4] and ***Nelson***[5] (and ***Goran***[6])

210. None of the statements in Table 7 made by Judge Meyer, Judge Berg, Defendants Popovich and Mast, Dulberg's former attorneys Gooch, Clinton and Williams reference or are based on any of the case law cited in paragraph 201 (which is current Illinois law applicable to Dulberg's case).

211. None of the statements made in Table 3 are accurate though Dulberg's attorneys entered them into the record on behalf of Dulberg. None of the entries in Table 4A and Table 4B are in accordance with Illinois law cited in paragraph 201. None of the entries of Table 5A or Table 5B are in accordance with Illinois law cited in paragraph 201.

212. Even if taking Flynn's dates of discovering the pecuniary injury as true, Popovich and Mast's fraudlent concealment of the initial offer to Barch/McGuire on October 22, 2013 (which remained concealed until May 30, 2018) is a legitimate legal justification for Dulberg to toll the statute of limitations.

1 Lucey v. Law Offices of Pretzel & Stouffer, Chartered, 301 Ill. App. 3d 349 (1998)
2 Warnock v. Karm Winand & Patterson, 376 Ill. App. 3d 364 (2007)
3 Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd., 216 Ill. 2d 294, 306 (2005)
4 Construction Systems, Inc. v. FagelHaber, LLC, 2019 IL App (1st) 172430
5 Nelson v. Padgitt, 2016 IL App (1st) 160571
6 Goran v. Glieberman, 276 Ill. App. 3d 590, 595-96 (1995)

SUPPLEMENTAL INFORMATION SUBMITTED TO THE ARDC OF DULBERG'S EFFORTS TO NOTIFY THE ILLINOIS SUPREME COURT (THROUGH THE ARDC) AND PRESIDING JUDGES OF THE CLINTON-GOOCH-POPOVICH NETWORK OF FRAUD ON THE COURT SINCE FIRST DISCOVERING IT (IN OCTOBER, 2022)

Group Exhibit 49 contains the timeline of Dulberg's first discovery of Clinton-Gooch-Popovich fraud on court and of Dulberg's efforts over more than 1 year to notify presiding Judges and the Illinois Supreme Court (through the ARDC) of fraud on the court. Visual Aid 24 helps see how the timeline shows Dulberg's efforts over more than 1 year to notify the Illinois Supreme Court (through the ARDC) after first discovering the fraud.

The timeline provides detailed evidence of the following:

- Dulberg first discovered that Clinton and Williams suppressed large numbers of documents to benefit the opposing party between October 22 and October 28, 2022.
- Thomas Kost required about 90 pages of handwritten notes and around-the-clock effort over 6 days to "reverse engineer" and map the sophisticated system of document and information suppression that Clinton and Williams used against Dulberg.
- About one week later on November 4, 2022 Clinton and Williams appeared in court in 17LA377 to address a subpoena they were issued.
- On November 9, 2022 Dulberg sent a folder of documents called document_suppression_smoking_gun to Alphonse Talerico. The folder contained a detailed description of how documents were suppressed.
- The suppressed documents favor the defendants. Clinton-Williams were collaborating with opposing counsel to sabotage Dulberg's case (which is why the author used the term "smoking gun" to name the folder).
- Dulberg sent Alphonse Talerico drafts of an ARDC Complaint to file on Clinton and Williams less than 1 week later.
- The timeline demonstrates that Dulberg has made repeated efforts since November, 2022 to notify the ARDC and presiding Judges of the sophisticated system of document and information suppression that Clinton and Williams used against Dulberg.
- In December 8, 2022 Dulberg filed a complaint against the Baudins.

After the events listed above, the following events occurred:

- On February 1, 2023 defendants Popovich and Mast were dismissed from the case based on 2 year SoL argument. The Judge stated that Dulberg 'should have known or inquired' during the time Dulberg was represented by Popovich and Mast, Balke, and the Baudins.
- On May 25, 2023 defendants were dismissed from the case based on 2 year SoL argument. The Judge stated that Dulberg 'should have known or inquired' during the time Dulberg was represented by Clinton-Williams and Gooch-Walczyk.
- On August 29, 2023 the Baudin defendants were dismissed from the case based on 2 year SoL argument. The Judge stated that Dulberg 'should have known or inquired' during the time Dulberg was represented by Clinton-Williams and Gooch-Walczyk.
- When 17LA377 was appealed the issue of collaboration between Clinton-Williams and opposing counsel was never raised. We were told we could not raise the issue.
- We are also being told that if 17LA377 appeal is brought before the Supreme Court we will not be able to raise the issue of the 9 ARDC complaints we have filed about fraud on the mechanism of the court itself during 17LA377.

Group Exhibit 49 shows (document by document) the many ways that Dulberg tried to raise these issues since

first discovering them in October, 2022. Despite these many efforts the issues were never raised before any presiding Judge. Throughout the timeline Dulberg was asking his attorney the questions shown in the table below:

REPORTING FRAUD WITNESSED DURING LITIGATION IN ILLINOIS COURTS
(ACCORDING TO ILLINOIS PROTOCOL)

FOR CLIENT	FOR ATTORNEY
CASE 1: **How does client raise issue of fraud committed during litigation by opposing counsel?**	**CASE 1**: How does attorney raise issue of fraud committed during litigation by opposing counsel? 1) Follow Himmel Rule: Through ARDC (only authorized agent of Supreme Court) promptly
CASE 2: **How does client raise issue of fraud committed during litigation by ones own attorney or former attorney to sabotage case?**	**CASE 2**: How does attorney raise issue of fraud committed during litigation by client's former attorney to sabotage case? 1) Follow Himmel Rule: Through ARDC (only authorized agent of Supreme Court) promptly
CASE 3: **How does client raise issue of fraud of collusion during litigation between ones own atty and opposing counsel?**	**CASE 3**: How does attorney raise issue of fraud of collusion during litigation between client's former atty and opposing counsel? 1) Follow Himmel Rule: Through ARDC (only authorized agent of Supreme Court) promptly

We are not attorneys. We do not know how to answer the questions in red. It is clear that an Illinois attorney must follow the Himmel Rule in cases 1, 2 and 3. We have tried to raise these issues from November, 2022 to the present (as documented in the timeline). We were told we could not raise these issues to a presiding Judge and we are still being told we cannot raise these issues. Perhaps it is true.

It does not seem reasonable for us to be asked to endure fraud in the court that we know is happening as it happens and not inform any presiding Judge. I will cite 3 examples:

1) a high stakes poker game
2) children playing together
3) criminal rape

If during a high stakes poker game a person was caught cheating during a hand, the game would (most probably) be stopped immediately and the cheating would be dealt with before anything else. It is not sensible to ask those who were being cheated to finish the hand as if the cheating was not happening, and then to deal with the cheating at some later date.

Even groups of children playing a game tend to call out a cheater at the time the cheating is detected. They wouldn't allow a known cheater to gain significant advantage during a game and then "deal with it later", only after the game is won or lost.

As for rape, it is not possible for us to believe that the act should only be confronted after allowing the rapist time to finish the act of rape. ***Prompt intervention*** in an act of 'newly discovered' and ongoing rape is instinctive

common sense and common decency.

The timeline shows that Dulberg has made repeated attempts to treat evidence of collusion with opposing attorney as a "front-burner" issue since first discovering it. The timeline shows that Dulberg's attorney has treated evidence of collusion with opposing counsel as a "back-burner" issue. This is what the timeline shows month after month for around 15 months. Dulberg is constantly trying to place evidence of collusion with opposing counsel on the "front-burner" (and bring it to the attention of a Judge). Alphonse Talerico is constantly pushing it to a "back-burner" (and taking no interest in bringing evidence of collusion to the attention of a Judge).

We question this because of the examples of cheating in poker, or how children will call out a 'cheater' when caught, or the example of rape cited earlier. We have never understood why evidence of collaboration between Clinton-Williams and opposing counsel was repeatedly pushed to a "back-burner" by Dulberg's own attorney for the last 15 months. We do not know if or when Alphonse Talerico filed his own ARDC complaints (so we do not know if he violated the Himmel rule). We have reason to believe that Alphonse Talerico only filed his own ARDC complaints sometime after September 28, 2023 (in response to seeing our website online) but we do not know for sure.

We are certain that we have never been given a legally coherent explanation as to why a presiding Judge should not be informed of evidence of collusion between opposing attorneys that strongly influences the case over which they are issuing orders. We are certain of this because the timeline does not have a single document which provides a legally coherent explanation. In fact, we couldn't not find ***any explanation at all*** given to Dulberg in the whole timeline.

For the reasons stated above Dulberg is using an approach coined by Reagan and Gorbachev called "Trust but Verify". Applying Reagan's maxim here, Dulberg is providing an open detailed timeline (with supporting evidence) to both the ARDC and to the general public of:

(a) when and how Dulberg first learned of the Clinton-Williams system of document and information suppression and collaboration with opposing counsel to sabotage Dulberg's case

(b) efforts Dulberg has made since then to notify presiding Judges and the proper authorities about the system of document and information suppression we discovered.

Thank you for your help with this matter and feel free to contact us if you need any additional information or have any specific questions.

/s/ Paul Dulberg
Paul Dulberg

/s/ Thomas Kost
Thomas Kost
Full Trustee of the Paul R. Dulberg Revocable Trust

A4-1

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Transaction ID: 2-23-0072
File Date: 11/3/2023 7:49 PM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

SC

No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,	) Appeal from the Circuit Court of the) 22nd Judicial Circuit, McHenry County,) Illinois
Plaintiff-Appellant	) **Relief Sought: Appellant's Brief Due Date Extended** **) 35 Days to December 8, 2023; Appellant be allowed** **) to retain an auditor to review both the McHenry** **)Circuit Clerks systems and the Appellate Clerks** **)Systems for County Circuit Clerks systems for** **)changed or missing documents; Supplement the** **)Record on Appeal to include the known missing Report** **)of Proceedings;** **) Supplement the Record on Appeal to include the** **) subpoenaed recording of the Deposition of Defendant** **) Hans Mast and to include the original transcript of** **) the changed transcript of September 16, 2022**
HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C.	)
Defendants-Appellees	) Honorable Joel D. Berg, Judge Presiding) Date of Notice of Appeal March 3, 2023) Date of Judgment February 1, 2023, 2017 LA 000377) Date of Post judgment Motion Order: None) Circuit Court 2017LA000377

EMERGENCY MOTION

AND FOURTH MOTION TO EXTEND TIME TO FILE APPELLANT"S BRIEF

(CIVIL)

EMERGENCY MOTION TO CONDUCT AN AUDIT OF THE RECORD ON APPEAL TO DISCOVER CHANGED OR MISSING DOCUMENTS; SUPPLEMENT THE RECORD ON APPEAL AND, IF GRANTED, FOR 35 DAYS EXTENSION OF TIME AFTER THE TRIAL

COURT CLERK HAS SUPPLEMENTED AND/OR CORRECTED THE RECORD ON APPEAL TO FILE APPELLANT'S BRIEF

I. APPELLANT'S FOURTH MOTION FOR AN EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

1) On November 2, 2023, Plaintiffs Attorney communicated with Appellees' Attorney indicating the nature of this Motion, to which Appellees' Attorney indicating his objection to the Motion. (Ill. S. Ct. 361(a) and Local Rule Article 1 General Rules 102(b).

2) Appellant's Attorneys e-mailed a copy of this Motion to Appellees' Attorneys before filing it.

3) The number of days previously requested is 211, the number of days previously granted is 155, and the total number of days is 155. (Local rule 104 (a)(l))

4) The total number of days requested, and the total number of days granted to other parties are (0) none. (Local Rule 104(a)(2))

5) The number of days that will have elapsed from the date of filing of the Notice of Appeal to the date that the case will be ready for disposition is three hundred twenty-nine days. (Local Rule 104(a)(3), Local Rule 106(b) and Local Rule 108(a) & (b))

6) Appellant filed his Notice of Appeal on March 3, 2023.

7) The Record on Appeal was filed on April 24, 2023 and made available for download on April 25, 2023 at 8:48 AM. (Please

see Appellant Exhibit F attached)

7a. Common Law Volume 1 has a creation date of April 24, 2023 at 9:31 AM. Common Law Volume 2 has a creation date of April 24, 2023 at 9:28 AM. The Reports of proceedings has a creation date of April 25, 2023 at 806 AM. (Please see Exhibit G attached)

7b. Common Law Record Volume 1, Common Law Record Volume 2 and Reports of proceedings all have a submission date of April 24, 2023 from 10:00 Am to 10:03 AM. (Please see Appellant Exhibit H attached)

8) Appellant's Brief due date was first extended sixty days by this Honorable Court to July 31, 2023.

9) Appellant's Brief due date was thereafter extended a second time by this Honorable Court to September 29, 2023.

10) Appellant's Brief due date was extended a third time by this Honorable Court to November 3, 2023.

11) Twenty-One days is insufficient to prepare and file Appellant's Brief for the following reasons:

(a) The record on appeal consists of three volumes totaling 2,660 pages; Appellant requested the entire record be prepared, but Appellant's attorney has discovered missing Report of Proceedings, mismatched sections,

documents with only one of the Defendants' names where it should be all, Memorandums of Law where the body of the motions should be, violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal (Revised- Effective March 1, 2022) regarding §1. Definitions (i) Hyperlink... and so on. (Investigation Continues.)

(b) Appellant's attorney has made extensive efforts to have Appellant's Brief ready for filing by the November 3, 2023 considering his extremely heavy court schedule, with two active Appellate cases, two active Decedent's Estates, a First Judicial Law Division with nineteen named Defendants … and being a sole proprietor without full time staff and the following facts that relate to this matter.

II. APPELLANT's BASIS FOR AN EMERGENCY MOTION

1) Appellant has recently discovered that the Trial Court Judge for this case, 2017LA000377 from inception on November 28, 2017 to December 21, 2022 was a friend of Defendant The Law Offices of Thomas J Popovich, P.C.'s owner Thomas J. Popovich and said Judge had recused himself from at least one

case where Thomas J. Popovich was a named Defendant. (Please see Appellant's Exhibit A attached)

2) That the Trial Court Judge for this case, 2017LA000377 from inception on November 28, 2017 to December 21, 2022 was also the Judge at all times in 2012 LA 000178 where Appellant herein was represented by the Law Offices of Thomas A. Popovich P.C. and Thomas J. Popovich individually. (Please see Appellant's Exhibits B page 3 L22 to page 4 L5, C page 4L8-10) where the afore- mentioned Judge acknowledged this fact at least two separate times on the record.

3) That the Trial Court Judge refused a subpoenaed certified electronic thumb drive complete recording by the certified Shorthand Reporter of the deposition of Defendant Hans Mast which reflects the violations of Supreme Court rules and local rules during a hearing to strike the Deposition of Defendant Hans Mast. (Please see appellant's Exhibit D page 477 L21-24 to page 481 line 9)

4) Appellant has discovered missing Transcripts and a materially changed transcript to support Appellant's request for a professional audit trail be produced by an independent service and to supplement the questionable Record on Appeal. The Auditor's Report was finalized and submitted late in the day

yesterday, November 2, 2023 (and was the reason for the delay in filing and serving of this Emergency Motion).(Please see Appellant Exhibit E which is a sample test of changed and missing transcripts by an independent service.)

Wherefore, Plaintiff-Appellant prays that this Honorable Court recognize Plaintiff-Appellant's Attorney good faith and extensive efforts to comply with the extended briefing schedules, the problems caused by the Record on Appeal based on its page size and the errors by the Clerk of the 22nd Judicial Circuit in preparation of the Record on Appeal, grant Appellant a 35-day extension of time to file Appellant's Brief, allow Appellant to amend his Docketing Statement to include related cases, order the Clerk of the 22nd Judicial District to amend the Record on Appeal to include all missing documents and hyperlinks, allow Appellant to Request the Record on Appeal for all related cases, file and for any and all additional relief this Honorable Court deems equitable and just.

Dated: November 3, 2023

Respectfully submitted,

By: /s/ Alphonse A. Talarico ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico

E-FILED
Transaction ID: 2-23-0072
File Date: 11/3/2023 7:49 PM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

PROOF OF DELIVERY

SC

I am sending this Motion for Extension of Time to File Appellant's Brief, Proposed Order and Notice of Filing to George K. Flynn and Michelle M. Blum , Karbal Cohen Economou Silk Dunne, LLC., 200 S Wacker Drive, Suite 2550, Chicago, Illinois 60606, Tel: (312) 431-3700, Fax: (312) 431-3670, gflyn@karballaw.com, mblum@karballaw.com by an approved electronic filing service provider (EFSP) on November 3, 2023 at 4:59 p.m.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement herein is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Dated: November 3, 2023

/s/ Alphonse A. Talarico ARDC
6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

EXHIBIT A

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McDonald
v.
Poborich

) Case No. 12LA326

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

FILED
OCT 19 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): friends with Defendant

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: _____

JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

Status on November 7, 2012 at 9:15am

☒ Assigned to the Civil Division, Courtroom 202

(Judge Michael J. Chmiel currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 10-19-12

Michael J. Sullivan, Chief Judge

Michael Holden
33 N. LaSalle St. Ste 2000
Chicago, IL 60602

Daniel Konicek
21 W. State St
Geneva, IL 60134

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on: 10-19-2012

** FILED ** Env: 17220244
McHenry County, Illinois
17LA000377
Date: 3/24/2022 10:51 AM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 3rd day of February, 2020, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE CLINTON LAW FIRM
BY: MS. JULIA C. WILLIAMS
On behalf of Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC
BY: MR. GEORGE K. FLYNN
On behalf of Defendants.

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THE COURT: Any other agreed, uncontested or sides?

MS. WILLIAMS: Good morning, Your Honor.

THE COURT: Good morning.

MS. WILLIAMS: Julia Williams. We're here on Dulberg vs. --

THE COURT: Okay. The Dulberg vs. Mast.

MS. WILLIAMS: Yes, that's correct. And I'm --

MR. FLYNN: Good morning, Your Honor.

MS. WILLIAMS: -- for plaintiff.

MR. FLYNN: George Flynn for defendants.

THE COURT: Okay. What are we doing?

MS. WILLIAMS: We're just going to set it out again for status on discovery. We are pretty well finished with written discovery, at least between the parties.

THE COURT: Really old for F1 written --

MS. WILLIAMS: Right. Here's our -- we're actually -- we should be done today. We had some 201(k) issues.

THE COURT: Okay.

MS. WILLIAMS: We are going to the law firm to look through their -- through their documents today. I believe everything has been produced, but we just

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want to verify -- there were some blank pages, and we just want to verify --

THE COURT: Okay.

MS. WILLIAMS: -- what those are.

So I think we're actually going to be fully completed with that today and looking to do -- getting ready to do deps, I think, is our next step --

THE COURT: How many are --

MS. WILLIAMS: -- for depositions.

THE COURT: How many F1 deps do you anticipate?

MS. WILLIAMS: Well, we'll have probably two. One from the firm and one -- defendant counsel and then defendant firm.

THE COURT: Okay.

MS. WILLIAMS: And then, obviously, the plaintiff. Now, whether we need more witness deps -- this is a legal malpractice case. Witness deps were taken in the underlying case. I don't know if we're going to need to take those a second time to --

THE COURT: I think I pre-tried the underlying case. I have a recollection of this, so -- but I'm not a hundred percent sure, so just throwing that

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out there...

MS. WILLIAMS: Okay.

MR. FLYNN: I think I did see Your Honor's name in connection with maybe one order in the case; but I don't see it as an issue.

THE COURT: Okay. I'll periodically throw it out there. But in any event, so if we come back in 60 days, do you think that gives you enough time to complete?

MR. FLYNN: I think it gives us enough time to complete the main F1 witnesses.

MS. WILLIAMS: At least the three parties.

MR. FLYNN: There were -- there were four -- four or five doctors deposed in the underlying case. And four other five other --

THE COURT: All right.

MR. FLYNN: -- (indiscernible). I don't know if we'll need to redo everybody, but I think we'll have a better idea after we take the party deps.

THE COURT: All right. Let's put it out 60 days. Can you make April 3rd, a Friday?

MS. WILLIAMS: Yes. Let me just double-check.

THE COURT: Okay.

MS. WILLIAMS: But I believe that's just fine.

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And that will be status completion of F1. That's -- yes.

THE COURT: That's just to tell me what we're supposed to be doing.

MS. WILLIAMS: Sure. So status completion of F1s on April 3rd, and we'll come back.

THE COURT: Okay.

MS. WILLIAMS: Thank you very much.

MR. FLYNN: Thanks, Judge.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, MAUREEN S. URBANSKI, an Official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Maureen S. Urbanski

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 10th day of May, 2018, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE GOOCH FIRM, by
MS. SABINA WALCZYK,
On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.

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THE COURT: Let's go to work on Dulberg.

MS. WALCZYK: Good morning, Your Honor.

THE COURT: Good morning.

MS. WALCZYK: Sabina Walczyk on behalf of Dulberg.

MR. FLYNN: Good morning. George Flynn on behalf of the Popovich firm and Hans Mast.

THE COURT: It is -- it is rare when I know both the plaintiff and the defendant ahead of time. Only through the courtroom, but still unusual.

I looked at -- I'm going to tell you what I'm thinking. And then if you choose to argue, you can to -- if you wish to convince me that I'm wrong; or we can go forward. Either is fine.

I felt that the 2-615 motion was appropriate because I felt that -- and I -- for a specific reason, not -- not perhaps all the reasons that were cited by the defendant. I felt that the complaint, when it talked about how -- I'm looking for the words, misled -- when it said that the attorneys misled -- lied and misled Mr. Dulberg, I felt that there was some specificity that was going to be required. Because they -- ultimately, these things are going to factor into the statute of

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limitations issue. And if you're going to say that it was a breach of his duty in lying or misleading, I think we need more particularity in the allegations. You can't just make a conclusory statement to that effect.

That's my perspective. What would you like -- I'll give you an opportunity -- opportunity to replead; but if you want to argue against my thinking, I'll listen.

MS. WALCZYK: Well, Your Honor, I -- I won't argue with the Court. If Your Honor would like some more specificity as to those certain terms, we can certainly replead and plead those a little bit more specifically to --

THE COURT: And with respect to the discovery rule issue --

MS. WALCZYK: Uh-huh.

THE COURT: -- since it's going to come up one way or another, although I think it's a question of fact, I would like to see it touched upon, because I'm not following the -- the fact that he got more from the arbitrator than had been initially suggested by his attorneys, isn't really telling me anything. So I need maybe a little bit more

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information to understand the relationship of the two things.

With respect to the issue of -- on the 2-619, I felt that in light of how I was going with the 2-615, I really couldn't rule on the -- the application of the discovery rule. And, ultimately, I saw that in the long run, it was going to be a question of fact, and I would probably need -- and I could only address that with some more facts than what's just contained in the complaint.

With respect to estoppel, I didn't agree -- and you can tell me why you think I'm wrong, but I didn't agree with the argument that you were making because it -- it, carried to its logical conclusion, I could mislead and lie to my client about the -- about the implications and why he should settle, and then once he agrees to it, then I'm -- I'm released from my breach of my duty.

So I don't think that it -- that that was the type of scenario involved when the courts were discussing the estoppel issue.

Do you have anything -- do you want to contest that?

MR. FLYNN: Not at this time, Your Honor. I --

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I've always learned that it's better to quit while you're ahead. And with -- without giving a roadmap to the plaintiff, I do think that having their best complaint on file benefits us all.

THE COURT: Yes.

MR. FLYNN: So going back to the 2-615 issues, again, a legal malpractice case, they've got to plead and prove, not only the legal malpractice, but the elements of the underlying case. And it seemed to me, and as we pointed out, that -- that all of the allegations were very conclusory. That they would have gotten more, they wouldn't have done this, that the -- that Hans Mast and the Popovich firm should have undertaken additional actions in the underlying case, but they don't say what those are. And I think that they -- they're required to if they believe that there was a breach of a duty that led to damages.

The high-low agreement, which is very confusing to me and to my client, frankly, because he's never seen it, and as I understand it, that's outside of the four corners --

THE COURT: It is outside, but it did lead to an area where I was also a little bit confused. And

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I -- and I think you touched on -- I'll ask you: Is the complaint having to do with the settlement with the McGuires, or does it somehow relate to the suit that continued with respect to Gagnon and the high-low agreement?

MS. WALCZYK: Well, I think it's a little bit of both, because it started with the suit against McGuires, which settled. And then it looks like there was a high-low agreement signed.

THE COURT: Okay.

MS. WALCZYK: And --

THE COURT: Was it signed by Mr. Mast?

MS. WALCZYK: Oh, I believe it was signed by Mr. Dulberg. I haven't seen it.

THE COURT: Okay.

MS. WALCZYK: However, we can attach it if -- if you want --

THE COURT: If -- if you are going to allege malpractice as a result of entering into the high-low agreement, yes, I would require you, then, to attach it and to make that a little more explicit.

MS. WALCZYK: Yes.

THE COURT: Because I -- I came away thinking

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that was not part of your complaint, but I wasn't a 100 percent sure.

Also, let's see -- yeah, I need to know with some specificity what facts were concealed and how he was misled. I had problems with, particularly, I had -- paragraphs 20 and 21 and felt that you should have included more in that. And I won't probably say more than that.

MS. WALCZYK: Uh-huh.

THE COURT: And I -- on the estoppel argument, as I've said, I don't think that it is clear that the signing of the release was something that could be assumed to be knowing and voluntary when the plaintiff is alleging that he was misled as to the ramifications of that. Excuse me. Let's see. Okay.

Any -- so I'm granting on the 2-615. I will grant you leave to refile or replead.

MS. WALCZYK: Okay.

THE COURT: And what else? Is there anything else that we need?

MR. FLYNN: Just as a housekeeping, again, depending on what theory you're going under, if it's related to the Gagnon settlement, and we may have

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more people coming to the party; but if not, then that's it.

THE COURT: Yeah. I mean, if you're going to draw that in, then I need it a little more explicit.

MS. WALCZYK: Okay.

THE COURT: And I got -- in fact -- I'm reading from my notes. I need facts on what was false, misleading and what -- what you mean by coercion.

MR. FLYNN: So the 615 is granted with leave to replead.

THE COURT: Yes.

MR. FLYNN: I wasn't clear, I guess, on whether there's an actual ruling on the 619 or --

THE COURT: 619, I'm denying because --

MR. FLYNN: Okay.

THE COURT: -- there's a question of fact --

MR. FLYNN: Okay.

THE COURT: -- at this stage.

And I think that even if they include additional facts in their complaint, I would still come back to it being a question of fact, because I -- there's going to be a lot more about their relationship than I think can be reflected in merely the complaint. I would -- so I mean, if you were to

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bring another 2-619, feel free.

MR. FLYNN: Sure.

THE COURT: But I would still think it's going to be a question of fact as to what is clear -- Dulberg's claims are with respect to how he was misled or facts were concealed.

MR. FLYNN: Okay.

THE COURT: Because it's going to depend on their interaction.

MR. FLYNN: And it is the -- the language of statute is "knew or reasonably should have been known." And, again, this -- he does have counsel that came in right after my clients got out. So, again, the Blue Water Partners case says you -- potentially, you can't bury your head in the sand.

THE COURT: No, you can't. But because I -- of the absence of information --

MR. FLYNN: Fair enough.

THE COURT: -- I was reluctant to go further. The statute of limitations, you might get a little bit farther, but I still might run into a fact question.

MR. FLYNN: Understood.

THE COURT: So how long do you need?

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MS. WALCZYK: If I could have 28 days, Your Honor.

THE COURT: Sure.

MS. WALCZYK: We have a trial coming up.

THE COURT: And to answer or otherwise plead?

MR. FLYNN: 28, please.

THE COURT: All right. That would -- excuse me. Why don't we come back in -- 60 days is July 9th. How about July 11th, a Wednesday? Or do you have -- it's all the same to me, so long as I am here.

MR. FLYNN: Let's see. I believe I'm going to be out of state that week.

THE COURT: Okay. When is it convenient for you to come here? She's here all the time, so I don't --

MR. FLYNN: The following week would be --

THE COURT: What day works for either of you the following week?

MS. WALCZYK: We may actually have a trial that week. That may or may not go; I'm not sure at this point. At least the first two days, if we could do towards the end of week, that would be great for us.

THE COURT: 20th?

MR. FLYNN: 20th works.

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MS. WALCZYK: That's perfect.

THE COURT: All right. We'll see you on July 20th.

MR. FLYNN: Thank you, Your Honor.

MS. WALCZYK: Thank you very much.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, MAUREEN URBANSKI, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Maureen S. Urbanski

Certified Shorthand Reporter
License No. 084-003308

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 21st day of December, 2022, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by MR. ALPHONSE A. TALARICO (via Zoom),

On behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by MR. GEORGE K. FLYNN (via Zoom),

On behalf of the Defendants.

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THE COURT: For the record, this is on Dulberg versus Mast.

Plaintiff's counsel, if you could identify yourself.

MR. TALARICO: Yes, your Honor. My name is Alphonse Talarico.

THE COURT: And defendant.

MR. FLYNN: Good morning, your Honor. George Flynn for the defendants.

THE COURT: And for the record, I -- Mr. Dulberg is in attendance, and once again, I hope we're not being recorded. That being said, we'll move on to the motion.

Plaintiff, you have a motion.

MR. TALARICO: Yes, Judge. I'd like to -- we filed our motion -- we filed -- counsel filed a response, we filed a reply. We'd like to rely on that, with one additional presentation or request of the Court.

THE COURT: Okay. What is that?

MR. TALARICO: I'd like to offer an informal proof -- an offer of proof, which is the exact and -- and -- what is the best way -- the audio transmission of the deposition, in full, with all

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the parties, which was sent to us through a subpoena.

THE COURT: Okay. You mean from Mr. Mast's -- or Mast's -- deposition?

MR. TALARICO: Correct. Everything that -- that would help the Court understand all of these problems. Because you --

THE COURT: Well, we do have -- we have the transcript.

MR. TALARICO: Yes, your Honor, but the transcript is selective.

THE COURT: Okay. Mr. Flynn, comment.

MR. FLYNN: I would object, Judge. The plaintiff has already filed a second amended motion and response. He's had plenty of opportunity to bring this to the Court's attention.

THE COURT: Okay. Mr. Talarico, final word.

MR. TALARICO: Judge, this is for the aid to -- for the Court -- this Honorable Court to understand what's going on.

As to the second amended, I replied to that, that -- the only difference between the amended and the second amended, Judge, was the stamp on Exhibit 17 didn't show up, so I re-filed it. But

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it was filed timely. As soon as I realized the stamp didn't show up on Exhibit 17, I re-filed it with an emphasis on the Exhibit 17. Mr. Flynn received it on time with notification that it's Exhibit 17.

THE COURT: Well, that's not the issue, but the issue is --

MR. FLYNN: It's not. And just for the record, there was a typo in my response brief. I wasn't taking issue with the timing of the filing of the second amended, other than the fact that it's two years after the deposition.

THE COURT: But that -- that's a different --

MR. FLYNN: But --

THE COURT: That's a different issue.

MR. FLYNN: Exactly.

THE COURT: The first issue is whether or not to -- the Court will accept plaintiff's request to submit the audio of the deposition at issue of Mr. Mast that, I believe, was taken June 25th, 2020.

And, Mr. Talarico, anything else to say in support of that oral motion?

MR. TALARICO: No, Judge. That -- that's -- if you'll accept it, it's in the -- I believe

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Mr. Dulberg is in the courtroom, and if he may approach the bench, he will hand it to you.

THE COURT: No, he's on Zoom. In any event, I'm going to deny the -- oh, are you -- Come on up.

MR. SCOTT DULBERG: Do you mind if I just hand it here?

THE COURT: Well, no, you're going to come up. I'm not going to accept that.

Your name, sir?

MR. SCOTT DULBERG: Scott Dulberg.

THE COURT: Okay. And you're here to deliver a Zip drive of the audio; am I correct?

MR. SCOTT DULBERG: Yes.

THE COURT: All right. And I -- But I'm going to rule on plaintiff's motion. I'm not going to accept it. I'm not going to consider it for purposes of the hearing on this motion. So you can keep it, but thank you for -- for showing up and bringing it.

MR. SCOTT DULBERG: Thank you.

THE COURT: Because -- I'm not going to accept it because I don't think it adds, materially, to my understanding of what transpired. I've got the deposition transcript. I've read the parts that I

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believe are relevant. I've read the motions. I've heard this argument.

I don't think that the audio tran- -- the audio recording is going to assist me in any way, based upon my understanding of what the ultimate issue is on this motion.

So that will be denied, and we'll incorporate that into the motion -- or in the order. I'm sorry.

Moving on to the motion, this is plaintiff's motion to either re-depose or strike, or both, the deposition of Mr. Mast taken June 25th, 2020; am I correct?

MR. TALARICO: Yes, your Honor.

THE COURT: And, further, am I correct that the -- the reason for this is issues with respect to what's identified as Exhibit 12?

MR. TALARICO: No, your Honor. That's just one small part of it. The entire motion is based on Supreme Court rules and on -- or in effect at the time the deposition was taken.

THE COURT: No, no, no. Tell me the substance. Don't tell me what the rules are. Because my reading of your motion focused on Exhibit 12 and the

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failure -- or the alleged failure to produce it prior to the deposition or give an exhibit list.

So tell me, what is the reason why you want to re-depose Mr. Mast? Because I think that's ultimately your request.

MR. TALARICO: That's right. Judge, within our motion and our reply, we've indicated that it's not just Exhibit 12. Focusing on Exhibit 12 makes it too easy. The entire deposition -- the Internet went down almost the entire time. It's in the notes that I highlighted. It's in the transcript. They were not seeing Exhibits 1 through 15 at the same time. They weren't seeing them. They weren't being uploaded to the admin- -- the administer of -- of oath. 12 wasn't even part of it. It was added, I don't know, 14 days later.

THE COURT: But, ultimately --

MR. TALARICO: So we --

THE COURT: -- the exhibits were seen; am I correct?

MR. TALARICO: No. They were not seen.

THE COURT: None of the exhibits were seen?

MR. TALARICO: They were not seen in accordance with the rules, your Honor.

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THE COURT: That's -- see, you --
MR. TALARICO: The rules --
THE COURT: You throw those phrases in, in accordance with the rules.
Did the deponent see the exhibits, yes or no?
MR. TALARICO: No.
THE COURT: Mr. Flynn, comment.
MR. FLYNN: Judge, to say that the Internet was down for --
THE COURT: I don't want to go down there. Did the -- did Mr. Mast see the exhibits?
MR. FLYNN: My recollection and understanding is that Mr. Mast saw all of the exhibits. There may have been an issue with a portion of Exhibit 12; however, he was -- he was cross-examined at Page 49 through 52 regarding Exhibit 12, generally speaking, and the case law that was contained in his file.
The bottom line is, it doesn't add anything. He didn't recall the specific cases that he discussed with --
THE COURT: Did he see the exhibits? That's all I wanted to know.
MR. FLYNN: I don't know that he saw the full

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exhibit in its entirety.

THE COURT: Okay.

MR. FLYNN: It -- But it wasn't necessarily provided to him, so --

THE COURT: For purposes of this record, Exhibit 12 is copies of case law; am I correct?

MR. FLYNN: Generally speaking, correct.

THE COURT: Mr. Talarico.

MR. TALARICO: That's correct, Judge. But, again, we're not just focusing on Exhibit 12. We're focusing on all the exhibits that were supposedly shown to Mr. -- to Mr. Mast. He didn't see them. He didn't see them.

THE COURT: Okay.

MR. TALARICO: There was confusion as to what the numbers were.

THE COURT: Whose exhibits were they?

MR. TALARICO: They were the plaintiff's, but it was the defendant's equipment that caused the problem.

THE COURT: And the plaintiff conducted the deposition; am I correct?

MR. TALARICO: That is correct.

THE COURT: And the plaintiff was aware of

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any -- the plaintiff's attorney, at that time, was aware of any glitches or difficulties with respect to having the deponent view all of the exhibits; am I correct?

MR. TALARICO: That's correct, your Honor.

THE COURT: And the plaintiff (sic) who was representing Mr. Dulberg at the time, for whatever reason, did not raise an objection at the time or ever with respect to the manner in which the deposition proceeded.

MR. TALARICO: No, your Honor. (Indiscernible) she left it to me -- or to the following counsel. She said to Mr. Dulberg, Mr. Dulberg, whatever those objections are, your next counsel has to make them.

THE COURT: Okay. Well, that -- but the handling attorney at the time who represented Mr. Dulberg's interests proceeded with the deposition and did not give notice to anyone of any complaint with respect to the manner in which it was conducted; am I correct?

MR. TALARICO: You are correct.

THE COURT: Okay. What else do you want me to know?

MR. TALARICO: I want you to know, Judge, also,

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that not only does the objection have to take place at the time of the deposition itself. When the evidence is being brought -- when the evidence is being subject to admission, I can bring that -- I can raise that now and object to it.

THE COURT: Okay. But the -- the exhibits were always in control of the plaintiff's attorneys, and you're asking to penalize the defendant for what appears to be a -- an issue you have with the manner in which prior counsel conducted the deposition.

MR. TALARICO: No, your Honor. It's -- as far as the defendant, it's their electronic equipment that failed.

THE COURT: And there were no objections made at the time or subsequent, and this motion was brought approximately two and a half years after the deposition in question; am I correct?

MR. TALARICO: You are correct. But it's also within the time of the ruling. I can do this now.

THE COURT: You can file any motion you like, but I'm -- I'm going to deny your request. I don't think that there's any reasonable basis under which I can compel the defendant to appear for a second deposition because of these issues. It appears that

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prior counsel was satisfied with the -- her ability to conduct the deposition, and she was always in control of all of the exhibits, so I don't see a problem there.

If anybody should have been raising an objection about the problems, it should have been defendant, not -- not the plaintiff two and a half years after the deposition they proceeded with. So I'm going to deny the request.

Anything else that we need to do today?

MR. FLYNN: Judge, just that there was some additional relief requested in the latest reply brief filed, and that included a request that the Court take judicial notice of -- what's really an implication. I think this is on Page 17 of the response.

I would just request that that specific request for relief also be denied in connection with the motion.

THE COURT: Okay. Let me just call it up. I'm looking at Page 18. What is it?

MR. FLYNN: I believe it was on Page 17 of the response -- I'm sorry -- the reply brief that was

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just filed.

THE COURT: Okay. The notice of the adjudicative facts?

MR. FLYNN: Correct. I think it says in Paragraph 12(j), plaintiff requests that this Honorable Court take judicial notice of the adjudicative fact that the references to Restatement (Second) of Torts Section 318 impliedly references Tilschner versus Spangler.

THE COURT: That -- that's not really ultimately the purpose of this motion, and it's not contained in the prayer for relief. That strikes me as a new motion. Wasn't going to consider it, and so I'm -- to the extent that I have to rule on it, on an issue I don't even think that's in front of me appropriately --

MR. FLYNN: It's just relief that was in -- in this response that I didn't have any opportunity to address.

THE COURT: I will -- I will deny all aspects of plaintiff's motion.

MR. FLYNN: Okay.

THE COURT: I think that covers it.

Is there anything else?

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MR. FLYNN: Thank you. That's it.
THE COURT: Okay. We have a future date, don't we?
MR. FLYNN: We have a pending motion for summary judgment, and plaintiff's response is due, I think, next week.
THE COURT: Okay. All right.
MR. FLYNN: But I don't --
THE COURT: You're back February 1st, and I -- Mr. Flynn, could you draft the order and please get it in as early as possible.
MR. FLYNN: I will. And, Judge, we spoke last time about your continued handling of the case. Do you have any information to share in that regard?
THE COURT: Nope. Nope. I -- I'm in a different division and, um, I can't take cases with me.
MR. FLYNN: Okay.
THE COURT: That would be interesting, but no, I can't take them. I can't take them with me. Too many --
MR. FLYNN: Okay. So --
THE COURT: -- egos involved. Not -- I'm not

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referring to Judge Berg.

MR. FLYNN: Sure.

THE COURT: But there -- Yeah, there's too many hurdles to try --

MR. FLYNN: I understand. So the schedule stands?

THE COURT: The schedule stands. If you wish to have that addressed, you'll have to bring it in front of Judge Berg.

MR. FLYNN: Okay.

THE COURT: I will warn you, he's got a small claims call. I would -- I'm warned to avoid Thursdays and Fridays for hearing because those, apparently, are heavy days.

But you may find out the hard way. Who knows?

MR. FLYNN: Okay.

THE COURT: All right.

MR. FLYNN: Thank you very much, your Honor.

THE COURT: You can send in the order. I will sign it when I see it.

MR. FLYNN: Thank you.

THE COURT: All right. Thank you. Have a good

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day.

MR. FLYNN: You, too. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, KATHLEEN STROMBACH, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Kathleen Strombach
Kathleen Strombach
Official Court Reporter
License No. 084-003755

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Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable JOEL D. BERG, Judge of said Court of McHenry County, Illinois, on the 1st day of February, 2023, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE TALARICO, by
MR. ALPHONSE TALARICO, (Via Zoom)
On behalf of the Plaintiff;
KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendant.

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THE COURT: You are here on Dulberg against Mast?

MR. FLYNN: I am, Judge.

THE COURT: I have the other side here on that as well. Well, no. I have Mr. Dulberg here. I have Mr. Talarico as well. Mr. Talarico, are you ready for a hearing if I call it early, sir? I'm sorry, sir, you are muted. I'm not --

MR. TALARICO: Yes, your Honor.

THE COURT: Good morning. Are you ready for hearing a couple minutes early, sir?

MR. TALARICO: Absolutely.

THE COURT: Thank you very much. This is Dulberg against Mast, et al. I have Mr. Talarico present via Zoom as is Mr. Dulberg. Counsel, would you please state your name?

MR. FLYNN: Thank you, your Honor, George Flynn on behalf of the defendants.

THE COURT: Thank you, Mr. Flynn. We are before the Court for a hearing on pending motions. The one most notable is the summary judgment. What else are we hearing this morning, gentlemen?

MR. FLYNN: That's all we have, as far as I know, Judge.

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THE COURT: Good. Because that's all I read.

MR. TALARICO: That's all I know, Judge.

THE COURT: Now I feel way better. It just said pending motions. All I could find was summary judgment. I read the motion. I read the response. I read the reply. I have read all the attachments, as they were relevant. It's your motion.

MR. FLYNN: Thank you, Judge. And I wasn't sure I -- with Judge Meyer's standing orders, with respect to courtesy copies, I wasn't sure if the Court had a chance to review the briefs, but since your Honor has indicated that you have --

THE COURT: I have read everything. It's all based on a two-year statute of limitations on a lawsuit over a chain saw.

MR. FLYNN: That's exactly right. So I will be brief. The only case cited by the plaintiff in its response with respect to the accrual of the injury was a Suburban Real Estate case which is a transactional legal malpractice case, not a litigated matter. I think the -- all of the cases we have cited and including the dicta in that Suburban Real Estate case indicates that the accrual date in a litigated matter is the date of

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settlement, judgment or dismissal.

Here, we had a January 14 settlement that was consummated. There was a good faith finding and dismissal at that time. Mast and Popovich continued to represent Mr. Dulberg for another year or so and prosecuting the case against the other defendant in the case.

Dulberg became disillusioned with Mast, admitted that he was looking for additional counsel -- or substitute counsel even as early as July of 2014. Ultimately, Mast and Popovich withdrew in March of 2015. The case proceeded against Gagnon. There was a mediation in December of 2016 at which time he indicates now that he first became aware of his legal malpractice case.

Mr. Dulberg had every opportunity in discovery through interrogatories, production requests, I took his deposition. I asked him over and over again in several different ways how he first became aware of his injury and that it was wrongfully caused. The only response he could give was that a lawyer told him that he had a case. He couldn't provide any specifics. He has a burden of proving the -- a late discovery. He cannot meet it.

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He will never be able to meet it.

THE COURT: Do we know, by the way, how did he come to me because the lawyer, if I recall, was Mr. Gooch. So he was represented by I believe Mr. Balke if I recall correctly followed by Mr. Baudin.

MR. FLYNN: That's correct.

THE COURT: Where did Mr. Gooch come into this? Who shipped him off to Mr. Gooch to even get opinion, do we know?

MR. FLYNN: One of those two lawyers, I think, recommended that he seek an opinion from a lawyer, generally speaking, that handles legal malpractice cases. Whether it was a direct referral, I don't know if the evidence shows that. I think Mr. Dulberg testified that I believe it was Mr. Baudin recommended that he see a legal malpractice attorney.

So Mr. Gooch met with him. Allegedly provided an opinion that there was a case without any reason and then almost a year later filed a lawsuit. Again, first Mr. Dulberg raised privilege when I asked him how -- how and what -- how you became aware of this legal malpractice case, the

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injury and the wrongful causation, he claimed privilege. Finally, that was waived or otherwise disposed of, and then, he admitted he couldn't -- I said the legal opinion Dulberg received from Gooch was verbal. Gooch simply stated you have a case here. You have a valid case. When asked did he tell you exactly what they did wrong in connection with the representation, Dulberg said he probably did. I'm not recalling it right now. I'm pulling a blank. There are no specifics.

So again, the burden is his to prove a later discovery. He's not able to do that. I'm happy to answer any questions the Court has, but again, I'll rest on the briefs.

THE COURT: Thank you very much. Mr. Talarico, sir?

MR. TALARICO: Yes, sir. I'm -- what would you like me to address first? I guess we could start with the fact that defendant didn't follow the local rules, and therefore, plaintiff could not properly respond. And the local rule says that if they do not follow the local rules, you can strike the motion or deny it.

All I'm asking is deny the motion based on

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the fact that they did not follow the local rules.

THE COURT: I respectfully decline to do so, sir. A written motion could have been filed expressly asking for that relief. A response was filed that addressed it. I've read the response. I understand your concerns that by not following the local rules, they may have made it more difficult for us to suss out what are the disputed issues of material fact and what aren't. But I've been able to pretty much get a grip on everything the way it's been filed.

MR. TALARICO: All right. Thank you, Judge. The second thing is, again, we didn't follow the rules that (indiscernible) we didn't respond -- we responded generally. So I would like that the ruling you just made to extend to our response too.

THE COURT: Of course it does.

MR. TALARICO: Thank you, sir. Okay. Then, the next issue is the Suburban case. Plaintiff -- defendant, I'm sorry, defendant seems to indicate -- well, he does indicate that the reason that Suburban doesn't apply is that there is a difference between a transactional case and a litigation case. Now, I read the Suburban case many, many times over and the

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Supreme Court does not distinguish that their ruling is for one type of case or the other. What their ruling is is that the statute of limitation and they construed the exact specific statute does not begin until there is a pec -- pecuniary loss.

Prior to that, Mr. Dulberg would have brought an action, he would have had no damages. So that -- what that does is because the general rule and which has been voiced in -- by the Illinois Supreme Court Justice Thomas in the Porter case is that when the Supreme Court construes a statute, that becomes part of the statute until the -- the -- I can't think of the word, legislation -- legislature decides to change it. So what we have is the prior cases cited by Mr. Dulberg are not effective because he's citing it to the rule and not to the particular case we are talking about. The Suburban case says no damages, the statute does not begin to run. And that is part of the statute. It hasn't been changed.

Now, as to the last thing, we have raised many affirmative -- I mean, I'm sorry, many issues of material fact that are in dispute. But most important -- the clearest ones, Judge, are the

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defendant's affirmative defenses. There are four affirmative defenses which -- which plaintiff has denied all four.

Now, there is a recent case, if you'll hold on just one second, and I'll find it, but the indication -- it's not that recent, but it's -- the indication is that -- this is West Suburban Mass Transit versus Consolidated Rail Corporation. It's 1-89-2916. If this was done the Appellate Court but it was by the -- the opinion was by Justice McMorrow, who of course became Supreme Court judge, that summary judgment is not appropriate when there is affirmative defenses in dispute.

I think that pretty much sums it all, Judge. We have got many material facts in dispute, including four affirmative defenses which were denied specifically by plaintiff.

THE COURT: Respectfully, sir, merely saying something is in dispute does not make it so though, does it?

MR. TALARICO: Judge, I'm saying that the answer filed was it was in dispute.

THE COURT: So by filing a response to their affirmative defense denying the affirmative defense,

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you're telling me that that in and of itself is sufficient to defeat summary judgment.

MR. TALARICO: Yes, I am.

THE COURT: What if your client --

MR. TALARICO: I --

THE COURT: What if your client at subsequent depositions testifies inconsistent with the answer?

MR. TALARICO: In the case that I cited, Judge, the burden is upon the person, in effect, in this case the defendant, to eliminate that dispute. The dispute exists as he did not resolve that dispute.

THE COURT: So when did the cause of action arise?

MR. TALARICO: December 12, 2016, I believe.

THE COURT: Why on that date?

MR. TALARICO: Because there was an arbitrary -- a mandatory arbitration hearing which I included the -- the findings that showed that the judge -- the retired judge in that case evaluated it at $660,000, and Mr. Dulberg was not able to obtain anything close to that.

THE COURT: And why not?

MR. TALARICO: Well, for two reasons, one, because he settled first improperly for $5,000 with

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the landowner, and the second case is because he was instructed improperly to -- to sign -- well, he actually claims he never signed the agreement, but that there was an agreement to do a binding arbitration limited to the policy amount of 300,000.

THE COURT: Who entered into that agreement?

MR. TALARICO: That is a question of fact. I don't know, but Dulberg says he did not sign it and never wanted to.

THE COURT: When was the agreement entered into?

MR. TALARICO: I don't have the exact date, Judge. A few months before that. I can only say that that was -- that was during the time that Mr. Dulberg was in bankruptcy, and that was also part of the Baudin's instruction.

THE COURT: So the agreement to limit recovery to 300,000 was signed well after the Popovich firm was no longer representing Mr. Dulberg on this matter?

MR. TALARICO: Yes, that's true.

THE COURT: So how is his change in strategy somehow extend -- so in other words, what you're saying -- well, I'm trying to wrap my head around this. You are saying that that agreement your

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client never wished to enter into, he didn't sign, Popovich didn't sign, Mr. Mast didn't sign. His actual third attorney signed it, Mr. Baudin, not even Mr. Balke. But because that was somehow signed and in effect, then the cause of action against Mast and Popovich for legal malpractice is extended out to the date of the final mediation hearing because of an agreement and limitation on damages at the mediation hearing over which they had zero control?

MR. TALARICO: What I am saying, Judge, is the analysis in the Suburban case, the damages -- prior to that, Mr. Dulberg had no actual damages, therefore, he couldn't bring an action. He had nothing to say that Mast cost him this much or this much or Popovich cost him this much because that would -- that would have been stricken for -- they had no damages, so he had no cause of action.

The damages arrive -- arose on the days that Mr. Dulberg found out through the binding arbitration that the case was worth so much more than what he's going to get, and therefore -- that -- that enumerates the damages.

THE COURT: But respectfully, Mr. Talarico, and please correct me if I'm wrong because this is where

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I'm getting the disconnect, the but-for portion of this analysis but for the high-low agreement limiting damages to the policy amount of $300,000, he would have had a judgment for the entire $660,000 if Tom Popovich and Hans Mast had never even existed.

MR. TALARICO: I'm not clear on what you are asking, Judge. Could you --

THE COURT: What I'm asking is isn't the failure to recover the $660,000 as opposed to 300,000 attributable to the high-low agreement that was entered into well over a year or if not two or more years after Popovich and Mast were out of the case?

MR. TALARICO: Well, Judge, I -- first of all, he didn't enter into it. He's claimed over and over that that's not his signature. It was forged. There is many issues about that in the bankruptcy.

THE COURT: But again, counsel -- but again, my point being I don't really care if he signed it or didn't sign it. My point being that it is that agreement that limited his damages, and that agreement was entered into way after Popovich and Mast withdrew from this case, right?

MR. TALARICO: That's right, but --

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THE COURT: He so would have got -- so he would have gotten all 660,000 had that agreement not been entered into.

MR. TALARICO: Judge, but at -- before the judge ruled in that binding mediation, he had no idea how much the case was worth. They had told him it was worth $5,000 and then some. That -- that date -- that's the date when he knows when there was a factual pecuniary damage. He knows the case is worth much more than they told him and he's got numbers behind it. Before that, he had nothing to plead.

THE COURT: Respectfully, the case is worth that much against Mr. Gagnon, not necessarily against Mr. Gagnon's -- I believe it was his parents, the two people that settled out of it. The $660,000 is a finding of liability against Mr. Gagnon, isn't it?

MR. TALARICO: Yes, it is.

THE COURT: So how is it a finding of liability against the two people that were settled with?

MR. TALARICO: Because those people were settled with instructions by Mr. Mast that they could not win any money against them. His instructions were that they -- they would get out on summary judgment,

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he would get nothing, take $5,000 as a gift. He was over and over that that -- that that argument was made between Mast and between Dulberg, and some of those documents are part of what we filed.

THE COURT: All right. Anything else, Mr. Talarico?

MR. TALARICO: Not at the moment, Judge. Thank you.

THE COURT: Thank you, sir. Final word, please.

MR. FLYNN: Thank you, Judge. Just briefly with respect to the pecuniary loss, the loss or the injury, which is the language used in the statute, was in January of 2014 when the case against the McGuires, Bill and Caroline McGuire. Caroline was Gagnon's mother. Bill McGuire was the stepfather. That case was foreclosed in January of 2014. No recovery could have been had other than the $5,000 at that point in time. That's when there was an injury.

The question -- the second prong of the analysis is when did he have a reasonable belief that the injury was wrongfully caused. Dulberg had every opportunity, he admitted that he had talked to hundreds of lawyers. He could have asked Balke, he

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could have asked Baudin. He didn't ask any of them, allegedly.

Under Illinois law, he has a duty to investigate if he thinks there is an issue. He had -- he became disillusioned with Mast in 2014. Mast withdrew in March of 2015. Again, the injury is January 2014.

THE COURT: Thank you very much.

MR. TALARICO: Judge, may I say one thing?

THE COURT: You may.

MR. TALARICO: Thank you. The Supreme Court case, the Suburban case makes it clear that being alerted to a problem or alerted to malpractice is not sufficient enough until -- they use the specific word alerted and say that is not sufficient. There has to be a pecuniary loss.

So whether he talked to a thousand attorneys and whether they all told him all different things, he's alerted but he had to face a loss. That's all, Judge. Thank you.

THE COURT: Thank you. He was clearly alerted. Let's cut to the chase. He was hesitant -- he was hesitant to ever even sign the settlement agreement to the point where it took him over two months to do

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it. He clearly had his doubts. He clearly had his lack of faith. He signed the settlement agreement anyway. A year later, the attorneys withdrew. He went to another attorney, still raised the issue. Went to another attorney, still raised the issue. Met with hundreds of attorneys. He was clearly alerted.

When did the pecuniary loss occur? Here is the amazing part, and this is what -- where the disconnect comes on this case and it's why I'm having so much trouble with it, I'm being urged that the pecuniary loss occurred when the decision was given on the binding mediation. But the reason I believe that's a disconnect is because -- for two reasons. The loss that occurred on the binding mediation that is being urged upon the Court is a loss of what appears to be $360,000. The difference between the $660,000 that the mediator indicated the -- were the appropriate measure of damages against Mr. Gagnon and the $300,000 insurance policy limit, that $360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that somebody entered into. We don't know who that

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somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge.

But didn't the pecuniary loss itself, in fact, occur if there was a cause of action to which you were alerted? The pecuniary loss occurred when he only got $5,000. I agree with defense counsel. Statute of limitations lapsed. Merely denying the statute of limitation without more in the depositions and the sworn testimony does not itself create an issue of material fact.

The motion for summary judgment is heard. It is most respectfully allowed. Thank you very much, gentlemen.

MR. FLYNN: Thank you.

THE COURT: Both of you, outstanding. Even though they didn't comply with local rules, I will say gentlemen, to both of you, outstanding pleadings. Very thorough, very well written. I had no issues going through them. I spent three days going through all of them repeatedly, and you both made my job -- well, I'm not going to say easy, but you certainly did your jobs. And I very much

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appreciate your time. Thank you, gentlemen.

MR. FLYNN: Thank you, Judge. And for what it's worth, I apologize for not doing numbered paragraphs on the statement of facts. I did follow that format with Judge Meyer in another summary judgment motion that was granted. This case was originally before Judge Meyer. So --

THE COURT: I take no offense. I take no offense by anybody. The pleadings were what they were, and I had no issue reading them. Thank you all very much for your time.

MR. TALARICO: Thank you, Judge.

THE COURT: Thank you, sir.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, JUDY CARLSON, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Judy A. Carlson

Certified Shorthand Reporter
License No. 084-003347

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AFFIDAVIT

Saira Pasha, being first duly sworn on oath, deposes and states as follows:

1. I am a licensed attorney in Illinois. I graduated from Chicago-Kent College of Law in 2012 and was admitted to the bar the same year. I have a Bachelor of Science degree in Operations and Information Management with an emphasis in information systems from Northern Illinois University. Since August 2020, I have worked as an independent consultant and testifying expert specializing in audit trail analysis, specifically in medical malpractice cases. I consult for and testify on behalf of both plaintiffs and defendants. A large portion of my work focuses on data integrity and completeness of production, such as obtaining prior versions of modified records and identifying, requesting, and obtaining data and records that were created but have not yet been produced. I have reviewed over 300 audit trails from more than 20 electronic medical record systems. The underlying concepts of audit trails for systems and the storage and retrieval of data from a database are essentially universal and apply to many kinds of systems, including court filing systems.

2. An audit trail is a timestamped report of actions performed by all users in a system, such as view, edit, add, delete, print, etc. In addition to audit trails, there are other reports and analytical tools that can be performed on record systems to conduct a comprehensive forensic analysis of electronically stored information.

3. I have been retained as a consultant by The Law Office of Alphonse A. Talarico for the purpose of evaluating file content discrepancies and missing file contents for a case under appellate review.

4. I reviewed the following materials for my analysis:

    - Transcript of court proceeding from 9/16/2022 titled “Dash Dash 09-16-2022 17LA377 Dulberg”
    - Transcript of court proceeding from 9/16/2022 titled “Dilatory Dilatory 09-16-2022 17LA377 Dulberg”
    - Emails to and from court reporters related to the transcripts listed above
    - Report titled “[Compare Report] Dash Dash 09-16-2022 17LA377 Dulberg”
    - Table of Contents of the Report of Proceedings filed on 4/24/2023 for the appellate case (2-23-0072) listing all Report of Proceedings in the file in chronological order
    - McHenry County Circuit Court’s Public Case Access website information for the underlying case (2017LA000377)

5. Based on my analysis of these materials, I conclude to a reasonable degree of professional certainty and recommend as follows:

- There are multiple substantive differences, including modifications and deletions, between two transcripts for the same court proceeding that took place on 9/16/2022. One of the edits is about a material issue: whether expert discovery was closed. To verify the accuracy of what was said at this proceeding, I recommend a forensic investigation, including but not limited to obtaining a copy of the original recording and obtaining an audit trail for the recording system itself. Based on what the audit trail from the audio recording system shows, a live forensic inspection of the system may be warranted.

- The Table of Contents for the Report of Proceedings for the appellate review that was filed on 4/24/2023 does not list all court proceeding recordings that were created in the underlying matter. It is also inconsistent with representations made on the McHenry County Circuit Court Public Case Access website. I recommend an audit trail of the appellate court's filing system(s) be produced to objectively determine which documents were uploaded to its system(s), when they were uploaded, the user(s) who uploaded the documents, and if applicable, which documents were removed from the appellate review file. Based on what the audit trails from the systems show, a live forensic inspection of the systems may be warranted.

- Because there are allegations of removing the existence of recordings from specific court proceedings from the public access website for the McHenry County Circuit, I recommend an audit and forensic investigation to obtain objective facts and the timeline of when data was added and then removed from the underlying case's record. I recommend obtaining the audit trails for McHenry County Circuit Court's filing system(s) and performing a live forensic inspection of the system if warranted by the audit trail data.

Discrepancies between two transcripts for the 9/16/2022 court proceeding

6. A court proceeding was held on 9/16/2022 in Judge Meyer's courtroom in the McHenry County Circuit Court courthouse for the underlying case (2017 L 000377).

7. The McHenry County Circuit Court courthouse uses technology that creates audio recordings of court proceedings which court reporters can access to create transcripts of those proceedings.

8. There are two distinct transcripts for this proceeding. The first transcript was emailed from a court reporter to Plaintiff on 9/26/2022 and is titled "Dash Dash 09-16-2022 17LA377 Dulberg." The second transcript was emailed from a different court reporter to Plaintiff on 9/27/2022 and is titled "Dilatory Dilatory 09-16-2022 17LA377 Dulberg." (The names of the files were presumably created to distinguish the transcripts).

9. There are multiple substantive differences between the two transcripts. Below is one example of a significant substantive difference in a statement made by defense counsel George Flynn about a material issue: expert discovery. The first transcript includes the phrase "You gave a ruling that expert discovery is completed" (page 5, lines 12-13)

So those (indiscernible) all relied on facts regarding the accident itself that would have taken, you know, additional five to ten pages of facts that are -- So we'd like to do that separately. In fact, we might wait until -- You gave a ruling that expert discovery is completed, but I'm going to (indiscernible) but I think (indiscernible).

10. The second transcript includes phrase "if and when expert discovery is completed" for the same page and line numbers:

So those (indiscernible) all relied on facts regarding the accident itself that would have taken, you know, additional five to ten pages of facts that are -- So we'd like to do that separately. In fact, we might wait until if and when expert discovery is completed, but -- I'm going to have some more thoughts, but I think we have plenty to chew on now.

11. These two statements are not only substantively different, they also do not sound alike when spoken aloud.

12. Another substantive difference between the two transcripts is the inclusion of the word "dilatory" in two sentences.

13. In the "Dash Dash 09-16-2022 17LA377 Dulberg" transcript (page 11, line 2) the court reporter uses "(indiscernible)", implying that the word stated by Mr. Flynn could not be understood. In the next line, there are hyphens at the end of "do" in Mr. Talarico's response, implying Mr. Talarico never said any word after "do."

```
just don't see what the issue is.  It seems as if
it's a (indiscernible) tactic to avoid --
    MR. TALARICO:  I don't do --
    THE COURT:  Hold on.  I can't rule on the motion
until I see it.  I can't rule -- I can't determine
```

14. In "Dilatory Dilatory 09-16-2022 17LA377 Dulberg," page 11, line 2, the transcription of defense counsel's statement by replacing the "(indiscernible)" with "dilatory " On the next line, plaintiff's Mr. Talarico's response is transcribed as "I don't to dilatory.." implying that the word was spoken, while the original transcript indicates no word was spoken nor was there an indiscernible sound.

```
I just don't see what the issue is.  It seems as if
it's a another dilatory tactic to avoid --
    MR. TALARICO:  I don't do dilatory --
    THE COURT:  Hold on.  I can't rule on the motion
until I see it.  I can't rule -- I can't determine
```

15. These are two examples of significant and substance differences between the two transcripts that warrant further investigation to confirm accuracy.

16. To verify the accuracy of both transcripts and determine what was actually said by the parties on 9/16/2022, I recommend obtaining the original recording of the proceeding from the McHenry County Circuit Court's audio recording system. I also recommend simultaneously obtaining an audit trail for the specific audio recording file at issue, from 9/16/2022 through present, to identify all parties who accessed the recording, when they accessed it, if any edits were made to the recording, and other objective data pertaining to the veracity of the recording.

Missing recordings of court proceedings from January and February 2018

17. The Table of Contents for the Report of Proceedings from the appellate case was filed on 4/24/2023. It lists all reports of proceedings from the underlying case included in chronological order beginning on 5/10/2018, as seen in the excerpt below:

Table of Contents 2-23-0072

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

DULBERG, PAUL
Plaintiff/Petitioner

v.

MAST, HANS ET AL
Defendant/Respondent

Reviewing Court No: 2-23-0072
Circuit Court/Agency No: 2017LA000377
Trial Judge/Hearing Officer: JOEL D BERG

E-FILED 2
Transaction ID: 2-23-0072
File Date: 4/24/2023 10:03 AM
Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

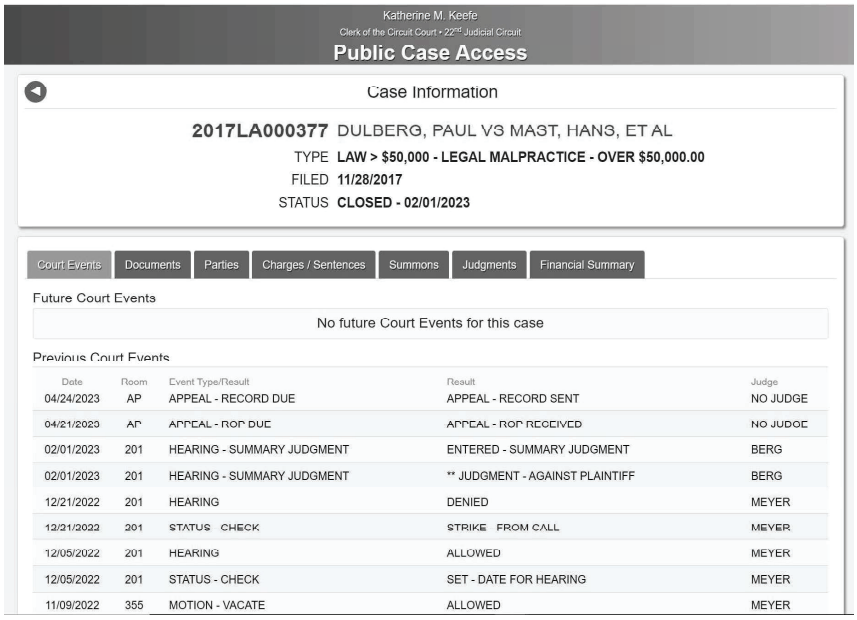
APPELLATE COURT, STATE OF ILLINOIS FIAT JUSTITIA JULY 1, 1877 SECOND DISTRICT

REPORT OF PROCEEDINGS - TABLE OF CONTENTS

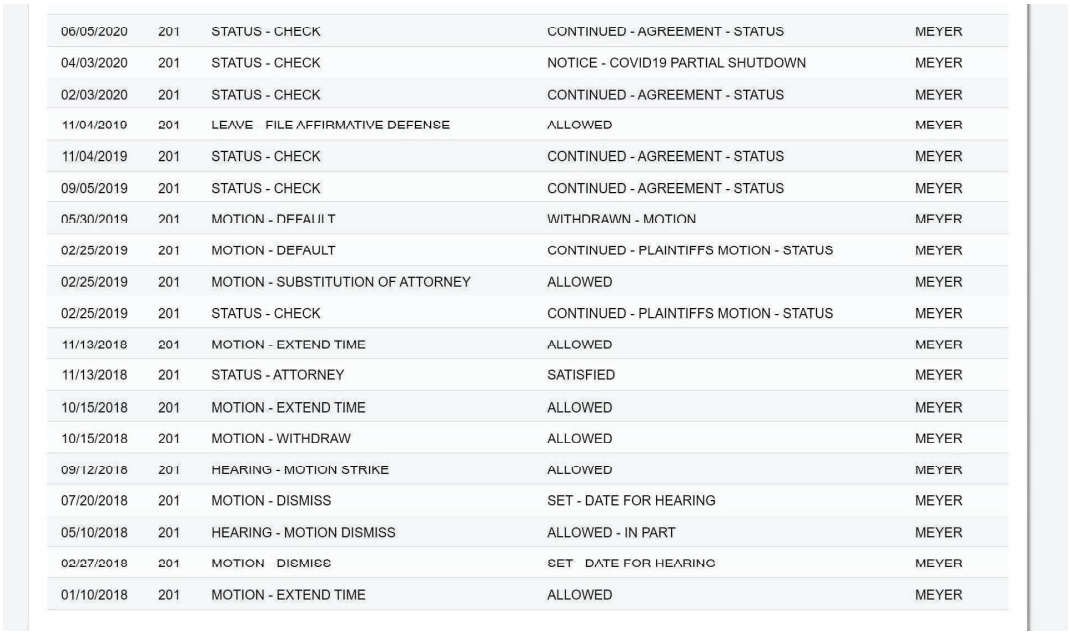
Page 1 of 2

Date of Proceeding	Title/Description	Page No.
05/10/2018	HEARING - MOTION DISMISS	R 3-R 14 (Volume 1)
07/20/2018	MOTDIM	R 15-R 18 (Volume 1)
09/12/2018	HEARING - MOTION STRIKE	R 19-R 28 (Volume 1)

18. The public case access website for the McHenry County Circuit Court allows users to search for court events and documents related to cases. For the underlying case at issue, the top of the "Court Events" tab looks like this:



19. Scrolling to the bottom of the same tab reveals the court events beginning from 1/10/2018.



06/05/2020	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
04/03/2020	201	STATUS - CHECK	NOTICE - COVID19 PARTIAL SHUTDOWN	MEYER
02/03/2020	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
11/04/2019	201	LEAVE FILE AFFIRMATIVE DEFENSE	ALLOWED	MEYER
11/04/2019	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
09/05/2019	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
05/30/2019	201	MOTION - DEFAULT	WITHDRAWN - MOTION	MEYER
02/25/2019	201	MOTION - DEFAULT	CONTINUED - PLAINTIFFS MOTION - STATUS	MEYER
02/25/2019	201	MOTION - SUBSTITUTION OF ATTORNEY	ALLOWED	MEYER
02/25/2019	201	STATUS - CHECK	CONTINUED - PLAINTIFFS MOTION - STATUS	MEYER
11/13/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER
11/13/2018	201	STATUS - ATTORNEY	SATISFIED	MEYER
10/15/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER
10/15/2018	201	MOTION - WITHDRAW	ALLOWED	MEYER
09/12/2018	201	HEARING - MOTION STRIKE	ALLOWED	MEYER
07/20/2018	201	MOTION - DISMISS	SET - DATE FOR HEARING	MEYER
05/10/2018	201	HEARING - MOTION DISMISS	ALLOWED - IN PART	MEYER
02/27/2018	201	MOTION DISMISS	SET DATE FOR HEARING	MEYER
01/10/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER

20. As seen in the screen shot above, there was a court event on 1/10/2018 during which a motion to extend time was granted and a court event on 2/27/2019 during which a motion to dismiss was set for hearing. The third court event listed took place on 5/10/2018.

21. The recordings from the first two court events in the underlying case were not included in the file contents for appellate review. I did perform a line-item check for evert court event; it is possible recordings for other events are also missing.

22. The 1/10/2018 court event was listed as "Motion – Extend Time." I reviewed the Table of Contents to determine if any recording for a "Motion- Extend Time" court event existed and found one for 3/15/2021. Therefore, there is no reason to conclude that the 1/10/2018 recording was not included in the file materials because that type of court event is not recorded.

02/10/2021	HEARING - MOTION COMPEL	R 101-R 124 (Volume 1)
03/15/2021	MOTION - EXTEND TIME	R 125-R 153 (Volume 1)
03/25/2021	HEARING - MOTION COMPEL	R 154-R 159 (Volume 1)

23. Plaintiff/Appellant alleges that the public record access system for McHenry County originally listed recordings for these two 2018 proceedings under the documents tab but were removed at a later date. Below is a screen shot of the top portion of the "Documents" tab for the underlying case. As the image below indicates, "Report – Proceedings" is a type of document included in the list.

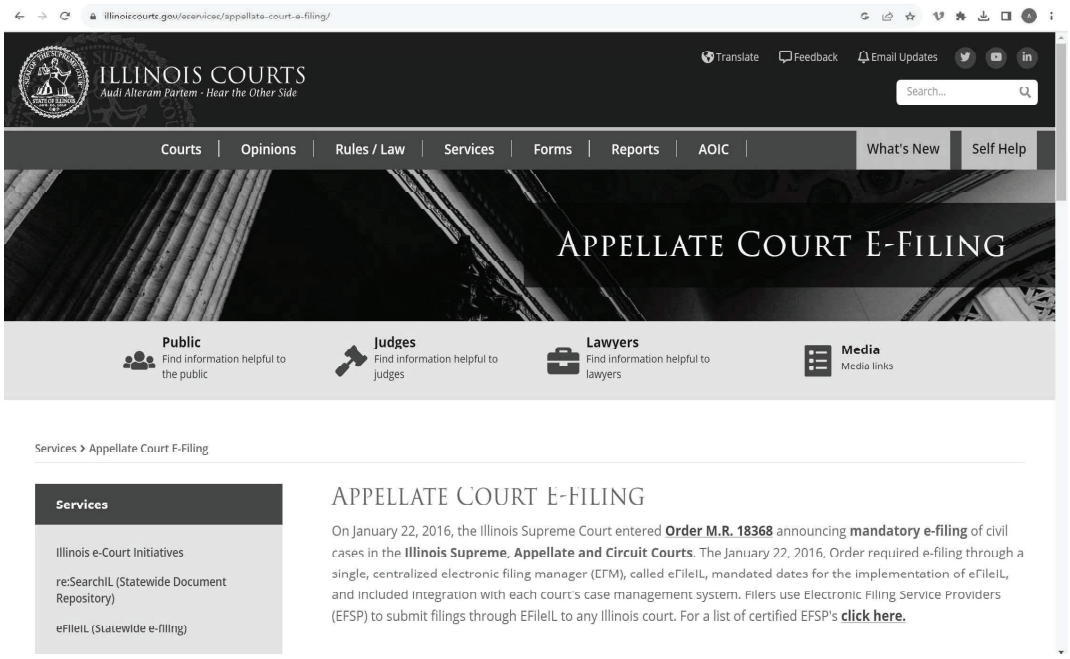


24. To objectively determine if the "Documents" tab of the McHenry County Circuit Court public portal ever included a listing of "Report – Proceedings" for the 1/10/2018 and 2/27/2018 court events, I recommend a forensic audit of the system(s) in which these data elements are stored and used to display information on the public access portal website.

25. To objectively determine if the recordings from the 1/10/2018 and 2/27/2018 court events were 1)ever part of the McHenry County Circuit Court file for the underlying, 2) were transmitted/uploaded to the appellate court filing system, and 3) were ever received or were part of the appellate court's filing system or file, audit trails from each of the respective systems must be generated and produced. Based on the data included in those reports, a live forensic inspection of the systems may be warranted. If audit trails from those systems are not produced, I recommend performing a live forensic inspection of the systems at issue.

26. To objectively determine if recordings were created for the 1/10/2018 and 2/27/2018 court events, an audit trail from the McHenry County Circuit Court audio recording system must be generated and produced. Based on the data contained in those reports, a live forensic audit of the audio recording system may be necessary.

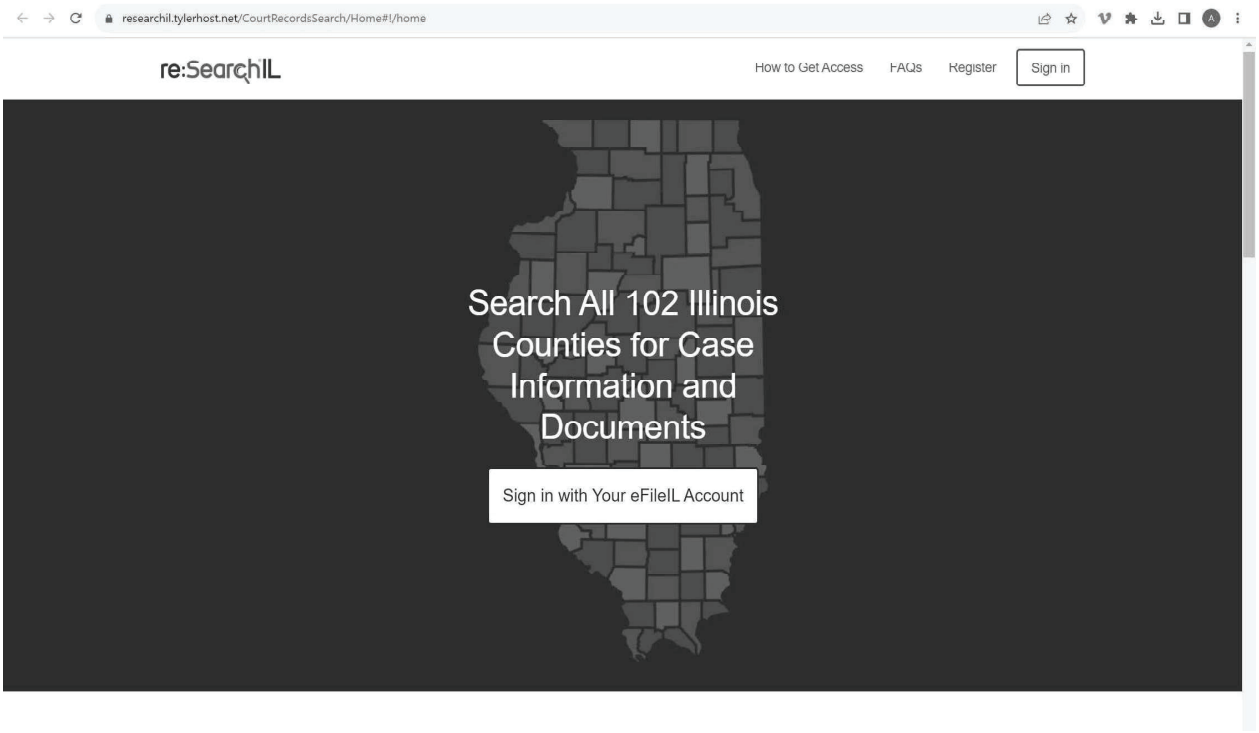
27. The website for Illinois's court systems makes reference to two distinct systems: one document repository system and efiling systems.



28. The website displays several options for efiling:



29. The document repository system link takes you to a separate system called re:SearchIL, managed by Tyler Technologies.



30. Based on my preliminary review of these websites and technologies, the systems used by both the appellate court and the circuit court in this case are capable of producing audit trails for regulatory and compliance reporting. These reports can also be used to verify the integrity of the records and data in this matter.

Under penalty of perjury, I certify the above statements are true and correct.

Saira Pasha

Exhibit F

From: **Alphonse Talarico** contact@lawofficeofalphonsetalarico.com
Subject: Fw: Appellate Court - 2nd District Case No. 2-23-0072: Record
Date: November 3, 2023 at 4:02 PM
To: Paul Dulberg pdulberg@icloud.com, Paul Dulberg Paul_Dulberg@comcast.net, T Kost tkost999@gmail.com

AT

From: DoNotReply-ILCourts@illinoiscourts.gov <DoNotReply-ILCourts@illinoiscourts.gov>
Sent: Tuesday, April 25, 2023 8:48 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Subject: Appellate Court - 2nd District Case No. 2-23-0072: Record

Record - Record on Appeal Filed has been filed by the Appellate Court - 2nd District in 2-23-0072.
This email was sent to contact@lawofficeofalphonsetalarico.com.

ILLINOIS APPELLATE COURT
SECOND DISTRICT

55 SYMPHONY WAY
ELGIN, IL 60120
(847) 695-3750

April 25, 2023

Alphonse A. Talarico
Law office of Alphonse Talarico
707 Skokie Boulevard, #600
Northbrook, IL 60062

RE: Dulberg, Paul R., v. Mast, Hans, et al.
Appeal No.: 2-23-0072
County: McHenry County
Trial Court No.: 17LA377

The electronic record on appeal in the above case has been filed. In most cases, you may access all sections of the electronic record at https://researchil.tylerhost.net. In any other case, a link to the appropriate section(s) of the electronic record will be e-mailed to you from no-reply@efilingmail.tylertech.cloud. (Please ensure that you are a service contact in Odyssey eFileIL.) The court hereby orders briefing due dates as follows:

Appellant's brief due:	05/30/2023
Appellee's brief due:	07/05/2023
Appellant's reply brief due: (Ill. S. Ct. Rs. 341, 342, 343)	07/18/2023

Jeffrey H. Kaplan
Clerk of the Court

cc: George Kenneth Flynn
Michelle Marie Blum

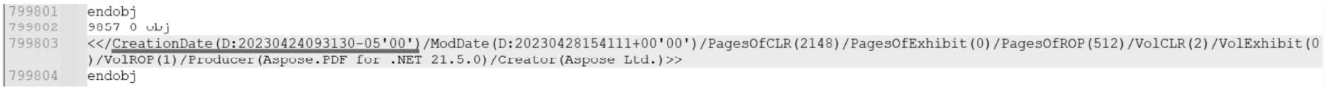
Exhibit G

Paul Dulberg <Paul_Dulberg@comcast.net>

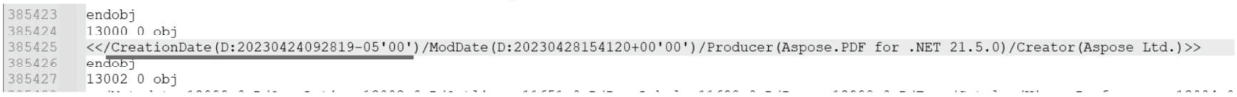
Fri 11/3/2023 4:51 PM

To:Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Common Law Record Vol 1 creation date pdf metadata:



Common Law Record Vol 2 creation date pdf metadata:



Reports of Proceedings creation date pdf metadata:

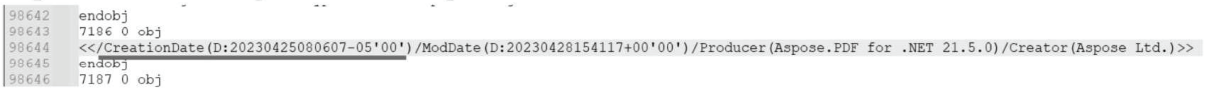


Exhibit H

Paul Dulberg <Paul_Dulberg@comcast.net>

Fri 11/3/2023 4:51 PM

To:Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

DOCUMENT	CREATION DATE	SUBMISSION DATE	
Common Law Record Volume 1	**April 24, 2023 at 9:31 AM**	ndent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:00 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **CERTIFICATION OF RECORD**	**SUBMITTED 29 MINUTES AFTER CREATED**
Common Law Record Volume 2	**April 24, 2023 at 9:28AM**	:/Respondent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:03 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **COMMON LAW RECORD - TABLE OF CONTENTS**	**SUBMITTED 35 MINUTES AFTER CREATED**
Report of Proceedings **(missing pages)**	**April 25, 2023 at 8:06AM**	Trial Judge/Hearing Officer: dant/Respondent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:03 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **REPORT OF PROCEEDINGS - TABLE OF CONTENTS**	**SUBMITTED 22 HOURS BEFORE CREATED**

A4-2

IN THE RCUIT COURT OF THE 22ND JU CIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

IRMO Popovich) Case No. 11DV324

FILED
JUL 27 2011
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): _____

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: July 27, 2011

JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

☒ Assigned to the CIVIL Division, Courtroom 201

(Judge MEYER currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: JULY 27, 2011

Michael J. Sullivan, Chief Judge

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on:

_____

IN THE RCUIT COURT OF THE 22ND JI CIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

IRMO Popovich

Case No. 11DV324

FILED
JUL 28 2011
KATHERINE M. KIEFER
McHENRY CTY. CIR. CLK.

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): Friends with both Parties

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: _____

JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

☒ Assigned to the CIVIL Division, Courtroom 204

(Judge CALDWELL currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: JULY 28, 2011

Michael J. Sullivan, Chief Judge

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on:

_____

Separator
Intentionally Blank

IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
OCT 19 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

Mark McDonald, etc., et al)
)
v) Case No. 12LA326
)
Law Offices of Thomas J. Popovich, et al.)

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

Reason for Reassignment:

____Motion for Substitution of Judge: ____ by Right ____ for Cause

_X_ Recusal/Judicial Conflict (Reason) _____*Defendant Popovich is a personal friend*_____

____Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Presiding Judge for reassignment.

Dated: _____Oct. 17, 2012_____ Michael L. Caldwell
JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge;

IT IS HEREBY ORDERED that, pursuant to assignment by the office of the Chief Judge, this cause is reassigned for _____

_____

X Assigned to the Civil Division, Courtroom 201 (Judge Thomas H. Meyer currently assigned to that division/courtroom).

____Assigned to the Honorable_____.

____Case transferred to the Chief Judge for reassignment to a judge outside of McHenry County.

Dated: 10-19-12 Michael J. Sullivan
Chief Judge

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on: _____20____

_____

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McDonald
v.
Potbuick

Case No. 12LA326

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

FILED
OCT 19 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): friends with Defendant

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: _____

JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

Status on November 7, 2012 at 9:15am

☒ Assigned to the Civil Division, Courtroom 202

(Judge Michael J. Chmiel currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 10-19-12

Michael J. Sullivan, Chief Judge

Michael Holden
33 N. LaSalle St. Ste 2000
Chicago, IL 60602

Daniel Konicek
21 W. State St
Geneva, IL 60134

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on: 10-19-2012

Separator
Intentionally Blank

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
SEP 15 2015
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

KIMBERLY POPOVICH	)	
vs	)	**Case No. 15LA78**
ZUKOWSKI, ROGERS, FLOOD and McARDLE, ET AL	)	

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): Judge's former firm is a party

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: 9/16/15

Kim M. Costello
JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

_____

☐ Assigned to the _____ Division, Courtroom _____

(Judge _____ currently assigned to that division/courtroom)

☒ Assigned to the Honorable Joel D. Berg

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 9/16/15

Michael J. Sullivan
Michael J. Sullivan, Chief Judge

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on:

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
SEP 15 2015
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

KIMBERLY POPOVICH vs ZUKOWSKI, ROGERS, FLOOD and McARDLE, ET AL	))))	Case No. 15LA78

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): _____

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: 9/15/15

JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

_____

☐ Assigned to the _____ Division, Courtroom _____

(Judge _____, currently assigned to that division/courtroom)

☒ Assigned to the Honorable Mary A. Kader

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 9/15/15

Michael J. Sullivan, Chief Judge

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on:

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Kimberly Popovich
v
Zukowski Rogers Flood & McArdle

Case No. 15 LA 78

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

Reason for Reassignment:

FILED
JUL - 2 2015
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

☒ Motion for Substitution of Judge: ☒ by Right ☐ for Cause

☐ Recusal/Judicial Conflict (Reason): by Defendant Wakeman

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: _____ _____ JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

Status on July 20, 2015 at 9am

☒ Assigned to the Civil Division, Courtroom 204

(Judge Michael T Caldwell currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 7/2/15 _____ Michael J. Sullivan, Chief Judge

See Attached Service List

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on: 7/2/15
Agnes Pena

Service List

Matthew R Henderson
Hinshaw & Culbertson LLC
222 N. LaSalle St
Chicago, IL 60601

John Duffy & Zach T. Bowles
Donohue Brown Mathewson & Smyth LLC
140 S Dearborn St Suite 800
Chicago, IL 60603

William B Oberts
Tribler Orpett & Meyer P.C.
225 W Washington Suite 1300
Chicago, IL 60606

Elizabeth Wakeman
Botto Gehris & Lancaster
970 McHenry Ave
Crystal Lake, IL 60014

Daniel F Konicek
Konicek & Dillon
21 W State St
Geneva, IL 60134

Kimberly A. Popovich
PO Box 1264
McHenry, IL 60051

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
SEP 16 2015
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

KIMBERLY POPOVICH	)	
vs	)	**Case No. 15LA78**
ZUKOWSKI, ROGERS, FLOOD and McARDLE, ET AL	)	

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☑ Recusal/Judicial Conflict (Reason): RESPONDENT PRACTICES REGULARLY BEFORE JUDGE

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: 9/16/15

JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

_____

☐ Assigned to the _____ Division, Courtroom _____

(Judge _____, currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☑ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 9/16/15

Michael J. Sullivan, Chief Judge

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on:

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
SEP 17 2015
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

KIMBERLY POPOVICH vs ZUKOWSKI, ROGERS, FLOOD and McARDLE, ET AL	))))	Case No. 15LA78

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): _____

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: September 17, 2015

Michael J. Sullivan
JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

_____

☐ Assigned to the _____ Division, Courtroom _____

(Judge _____, currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☒ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: September 17, 2015

Michael J. Sullivan
Michael J. Sullivan, Chief Judge

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on:

FILED
SEP 28 2015
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

M.R. 898

IN THE
SUPREME COURT OF ILLINOIS

Assignment of Out-of-Circuit Judge

On the request of Honorable Michael J. Sullivan, Chief Judge of the Twenty-Second Judicial Circuit, that a judge of another judicial circuit be assigned to hear McHenry County case *In the matter of Kimberly Popovich, vs. Zukowski, Rogers, Flood & McArdle, et al., Defendant,* Case No. 15-LA-78 and the Supreme Court having determined that the public necessity so requires:

IT IS ORDERED that the Chief Judge of the Twenty-Third Judicial Circuit shall assign a judge of the Twenty-Third Judicial Circuit to preside over this request; and, further, the Chief Judge of the Twenty-Third Judicial Circuit shall have administrative authority over all matters associated with the request to the same extent as a case of the Twenty-Third Judicial Circuit.

Dated this 28th day of September, 2015

Rita B Garman
Chief Justice, Supreme Court of Illinois

I, Carolyn Taft Grosboll, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof, do hereby certify the foregoing to be a true copy of an Assignment Order filed in this office on the 28th day of September, 2015.

Carolyn Taft Grosboll

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 28th day of September, 2015.

[SEAL] Supreme Court of Illinois

Separator
Intentionally Blank

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

State

vs

Popovich

Case No. 16CV265

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

FILED
MAR 28 2017
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): _____

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: 3/28/17

JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

☒ Assigned to the Criminal Division, Courtroom 357

(Judge Joel D. Berg, currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 3/28/2017

Michael J. Sullivan, Chief Judge

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on:

_____

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

People
vs
Poporich

Case No. 16 CV 265

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

FILED
APR 4 2017
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): _____

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: 4/3/2017

_____
JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

Status, April 18, 2017 at 9:00a.m.

☐ Assigned to the _____ Division, Courtroom _____

(Judge _____, currently assigned to that division/courtroom)

☒ Assigned to the Honorable Thomas A. Meyer, Courtroom 201

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 4/4/17

Michael J. Sullivan
Michael J. Sullivan, Chief Judge

McHenry County
States Attorneys Office

Thomas J. Poporich
3416 W Elm Street
McHenry, IL 60050

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on: 4/5/17

Marisela Foley

Separator
Intentionally Blank

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
AUG 31 2016
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

ORDER

Thomas Popovich)
v) Case No. 16MR400
Kimberly Popovich)

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): parties are personal friends

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: Aug. 31, 2016 Michael J. Sullivan
JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

Status, September 16, 2016 at 9:00AM

☒ Assigned to the Civil Division, Courtroom 201

(Judge Thomas A. Meyer currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 8.31.2016 Michael J. Sullivan
Michael J. Sullivan, Chief Judge

Thomas J. Popovich
3416 W. Elm street
McHenry, IL 60050

Kimberly Popovich
4702 N. Waltshire
Johnsburg, IL 60051

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on: 8.31.16
Bryanna Blackard

16MR400

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Popovich

) **Case No.** 16MR400

)

)

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): knows both parties

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: _____ _____
JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for status, November 9, 2016 at 9:00AM

☒ Assigned to the Civil Division, Courtroom 202

(Judge Michael J. Chmiel currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 10.21.16 _____
Michael J. Sullivan, Chief Judge

Thomas J. Popovich
3416 W. Elm street
McHenry, IL 60050

Kimberly Popovich
H702 N. Waltshire
Johnsburg, IL 60051

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on: 10.21.16
Bryanna Blackard

A5-1

E-FILED
Transaction ID: 2-23-0072
File Date: 11/3/2023 7:49 PM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

SC

No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,	) Appeal from the Circuit Court of the) 22nd Judicial Circuit, McHenry County,) Illinois
Plaintiff-Appellant	) **Relief Sought: Appellant's Brief Due Date Extended** **) 35 Days to December 8, 2023; Appellant be allowed** **) to retain an auditor to review both the McHenry** **)Circuit Clerks systems and the Appellate Clerks** **)Systems for County Circuit Clerks systems for** **)changed or missing documents; Supplement the** **)Record on Appeal to include the known missing Report** **)of Proceedings;** **) Supplement the Record on Appeal to include the** **) subpoenaed recording of the Deposition of Defendant** **) Hans Mast and to include the original transcript of** **) the changed transcript of September 16, 2022**
HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C.	)
Defendants-Appellees	) Honorable Joel D. Berg, Judge Presiding) Date of Notice of Appeal March 3, 2023) Date of Judgment February 1, 2023, 2017 LA 000377) Date of Post judgment Motion Order: None) Circuit Court 2017LA000377

EMERGENCY MOTION

AND FOURTH MOTION TO EXTEND TIME TO FILE APPELLANT"S BRIEF

(CIVIL)

EMERGENCY MOTION TO CONDUCT AN AUDIT OF THE RECORD ON APPEAL TO DISCOVER CHANGED OR MISSING DOCUMENTS; SUPPLEMENT THE RECORD ON APPEAL AND, IF GRANTED, FOR 35 DAYS EXTENSION OF TIME AFTER THE TRIAL

COURT CLERK HAS SUPPLEMENTED AND/OR CORRECTED THE RECORD ON APPEAL TO FILE APPELLANT'S BRIEF

I. APPELLANT'S FOURTH MOTION FOR AN EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

1) On November 2, 2023, Plaintiffs Attorney communicated with Appellees' Attorney indicating the nature of this Motion, to which Appellees' Attorney indicating his objection to the Motion. (Ill. S. Ct. 361(a) and Local Rule Article 1 General Rules 102(b).

2) Appellant's Attorneys e-mailed a copy of this Motion to Appellees' Attorneys before filing it.

3) The number of days previously requested is 211, the number of days previously granted is 155, and the total number of days is 155. (Local rule 104 (a)(l))

4) The total number of days requested, and the total number of days granted to other parties are (0) none. (Local Rule 104(a)(2))

5) The number of days that will have elapsed from the date of filing of the Notice of Appeal to the date that the case will be ready for disposition is three hundred twenty-nine days. (Local Rule 104(a)(3), Local Rule 106(b) and Local Rule 108(a) & (b))

6) Appellant filed his Notice of Appeal on March 3, 2023.

7) The Record on Appeal was filed on April 24, 2023 and made available for download on April 25, 2023 at 8:48 AM. (Please

see Appellant Exhibit F attached)

7a. Common Law Volume 1 has a creation date of April 24, 2023 at 9:31 AM. Common Law Volume 2 has a creation date of April 24, 2023 at 9:28 AM. The Reports of proceedings has a creation date of April 25, 2023 at 806 AM. (Please see Exhibit G attached)

7b. Common Law Record Volume 1, Common Law Record Volume 2 and Reports of proceedings all have a submission date of April 24, 2023 from 10:00 Am to 10:03 AM. (Please see Appellant Exhibit H attached)

8) Appellant's Brief due date was first extended sixty days by this Honorable Court to July 31, 2023.

9) Appellant's Brief due date was thereafter extended a second time by this Honorable Court to September 29, 2023.

10) Appellant's Brief due date was extended a third time by this Honorable Court to November 3, 2023.

11) Twenty-One days is insufficient to prepare and file Appellant's Brief for the following reasons:

(a) The record on appeal consists of three volumes totaling 2,660 pages; Appellant requested the entire record be prepared, but Appellant's attorney has discovered missing Report of Proceedings, mismatched sections,

documents with only one of the Defendants' names where it should be all, Memorandums of Law where the body of the motions should be, violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal (Revised- Effective March 1, 2022) regarding §1. Definitions (i) Hyperlink... and so on. (Investigation Continues.)

(b) Appellant's attorney has made extensive efforts to have Appellant's Brief ready for filing by the November 3, 2023 considering his extremely heavy court schedule, with two active Appellate cases, two active Decedent's Estates, a First Judicial Law Division with nineteen named Defendants … and being a sole proprietor without full time staff and the following facts that relate to this matter.

II. APPELLANT's BASIS FOR AN EMERGENCY MOTION

1) Appellant has recently discovered that the Trial Court Judge for this case, 2017LA000377 from inception on November 28, 2017 to December 21, 2022 was a friend of Defendant The Law Offices of Thomas J Popovich, P.C.'s owner Thomas J. Popovich and said Judge had recused himself from at least one

case where Thomas J. Popovich was a named Defendant. (Please see Appellant's Exhibit A attached)

2) That the Trial Court Judge for this case, 2017LA000377 from inception on November 28, 2017 to December 21, 2022 was also the Judge at all times in 2012 LA 000178 where Appellant herein was represented by the Law Offices of Thomas A. Popovich P.C. and Thomas J. Popovich individually. (Please see Appellant's Exhibits B page 3 L22 to page 4 L5, C page 4L8-10) where the afore- mentioned Judge acknowledged this fact at least two separate times on the record.

3) That the Trial Court Judge refused a subpoenaed certified electronic thumb drive complete recording by the certified Shorthand Reporter of the deposition of Defendant Hans Mast which reflects the violations of Supreme Court rules and local rules during a hearing to strike the Deposition of Defendant Hans Mast. (Please see appellant's Exhibit D page 477 L21-24 to page 481 line 9)

4) Appellant has discovered missing Transcripts and a materially changed transcript to support Appellant's request for a professional audit trail be produced by an independent service and to supplement the questionable Record on Appeal. The Auditor's Report was finalized and submitted late in the day

yesterday, November 2, 2023 (and was the reason for the delay in filing and serving of this Emergency Motion).(Please see Appellant Exhibit E which is a sample test of changed and missing transcripts by an independent service.)

Wherefore, Plaintiff-Appellant prays that this Honorable Court recognize Plaintiff-Appellant's Attorney good faith and extensive efforts to comply with the extended briefing schedules, the problems caused by the Record on Appeal based on its page size and the errors by the Clerk of the 22nd Judicial Circuit in preparation of the Record on Appeal, grant Appellant a 35-day extension of time to file Appellant's Brief, allow Appellant to amend his Docketing Statement to include related cases, order the Clerk of the 22nd Judicial District to amend the Record on Appeal to include all missing documents and hyperlinks, allow Appellant to Request the Record on Appeal for all related cases, file and for any and all additional relief this Honorable Court deems equitable and just.

Dated: November 3, 2023

Respectfully submitted,

By: /s/ Alphonse A. Talarico ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico

E-FILED
Transaction ID: 2-23-0072
File Date: 11/3/2023 7:49 PM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

PROOF OF DELIVERY

SC

I am sending this Motion for Extension of Time to File Appellant's Brief, Proposed Order and Notice of Filing to George K. Flynn and Michelle M. Blum , Karbal Cohen Economou Silk Dunne, LLC., 200 S Wacker Drive, Suite 2550, Chicago, Illinois 60606, Tel: (312) 431-3700, Fax: (312) 431-3670, gflyn@karballaw.com, mblum@karballaw.com by an approved electronic filing service provider (EFSP) on November 3, 2023 at 4:59 p.m.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement herein is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Dated: November 3, 2023

/s/ Alphonse A. Talarico ARDC
6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

EXHIBIT A

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McDonald
v.
Poborich

) Case No. 12LA326

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

FILED
OCT 19 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): friends with Defendant

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: _____

JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

Status on November 7, 2012 at 9:15am

☒ Assigned to the Civil Division, Courtroom 202

(Judge Michael J. Chmiel currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 10-19-12

Michael J. Sullivan, Chief Judge

Michael Holden
33 N. LaSalle St. Ste 2000
Chicago, IL 60602

Daniel Konicek
21 W. State St
Geneva, IL 60134

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on: 10-19-2012

** FILED ** Env: 17220244
McHenry County, Illinois
17LA000377
Date: 3/24/2022 10:51 AM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 3rd day of February, 2020, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE CLINTON LAW FIRM
BY: MS. JULIA C. WILLIAMS
On behalf of Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC
BY: MR. GEORGE K. FLYNN
On behalf of Defendants.

Received 03-24-2022 10:58 AM / Circuit Clerk Accepted on 03-24-2022 11:13 AM / Transaction #17220244 / Case #17LA000377
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THE COURT: Any other agreed, uncontested or sides?

MS. WILLIAMS: Good morning, Your Honor.

THE COURT: Good morning.

MS. WILLIAMS: Julia Williams. We're here on Dulberg vs. --

THE COURT: Okay. The Dulberg vs. Mast.

MS. WILLIAMS: Yes, that's correct. And I'm --

MR. FLYNN: Good morning, Your Honor.

MS. WILLIAMS: -- for plaintiff.

MR. FLYNN: George Flynn for defendants.

THE COURT: Okay. What are we doing?

MS. WILLIAMS: We're just going to set it out again for status on discovery. We are pretty well finished with written discovery, at least between the parties.

THE COURT: Really old for F1 written --

MS. WILLIAMS: Right. Here's our -- we're actually -- we should be done today. We had some 201(k) issues.

THE COURT: Okay.

MS. WILLIAMS: We are going to the law firm to look through their -- through their documents today. I believe everything has been produced, but we just

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want to verify -- there were some blank pages, and we just want to verify --

THE COURT: Okay.

MS. WILLIAMS: -- what those are.

So I think we're actually going to be fully completed with that today and looking to do -- getting ready to do deps, I think, is our next step --

THE COURT: How many are --

MS. WILLIAMS: -- for depositions.

THE COURT: How many F1 deps do you anticipate?

MS. WILLIAMS: Well, we'll have probably two. One from the firm and one -- defendant counsel and then defendant firm.

THE COURT: Okay.

MS. WILLIAMS: And then, obviously, the plaintiff. Now, whether we need more witness deps -- this is a legal malpractice case. Witness deps were taken in the underlying case. I don't know if we're going to need to take those a second time to --

THE COURT: I think I pre-tried the underlying case. I have a recollection of this, so -- but I'm not a hundred percent sure, so just throwing that

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out there...

MS. WILLIAMS: Okay.

MR. FLYNN: I think I did see Your Honor's name in connection with maybe one order in the case; but I don't see it as an issue.

THE COURT: Okay. I'll periodically throw it out there. But in any event, so if we come back in 60 days, do you think that gives you enough time to complete?

MR. FLYNN: I think it gives us enough time to complete the main F1 witnesses.

MS. WILLIAMS: At least the three parties.

MR. FLYNN: There were -- there were four -- four or five doctors deposed in the underlying case. And four other five other --

THE COURT: All right.

MR. FLYNN: -- (indiscernible). I don't know if we'll need to redo everybody, but I think we'll have a better idea after we take the party deps.

THE COURT: All right. Let's put it out 60 days. Can you make April 3rd, a Friday?

MS. WILLIAMS: Yes. Let me just double-check.

THE COURT: Okay.

MS. WILLIAMS: But I believe that's just fine.

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Purchased from re:SearchIL

And that will be status completion of F1. That's -- yes.

THE COURT: That's just to tell me what we're supposed to be doing.

MS. WILLIAMS: Sure. So status completion of F1s on April 3rd, and we'll come back.

THE COURT: Okay.

MS. WILLIAMS: Thank you very much.

MR. FLYNN: Thanks, Judge.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

Received 03-24-2022 10:58 AM / Circuit Clerk Accepted on 03-24-2022 11:13 AM / Transaction #17220244 / Case #17LA000377
Purchased from re:SearchIL

STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, MAUREEN S. URBANSKI, an Official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Maureen S. Urbanski

Certified Shorthand Reporter
License No. 084-003308

Received 03-24-2022 10:58 AM / Circuit Clerk Accepted on 03-24-2022 11:13 AM / Transaction #17220244 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 11951962
McHenry County, Illinois
17LA000377
Date: 1/25/2021 11:03 AM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 10th day of May, 2018, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE GOOCH FIRM, by
MS. SABINA WALCZYK,
On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.

Received 01-25-2021 11:17 AM / Circuit Clerk Accepted on 01-25-2021 11:24 AM / Transaction #11951962 / Case #17LA000377
Purchased from re:SearchIL

THE COURT: Let's go to work on Dulberg.

MS. WALCZYK: Good morning, Your Honor.

THE COURT: Good morning.

MS. WALCZYK: Sabina Walczyk on behalf of Dulberg.

MR. FLYNN: Good morning. George Flynn on behalf of the Popovich firm and Hans Mast.

THE COURT: It is -- it is rare when I know both the plaintiff and the defendant ahead of time. Only through the courtroom, but still unusual.

I looked at -- I'm going to tell you what I'm thinking. And then if you choose to argue, you can to -- if you wish to convince me that I'm wrong; or we can go forward. Either is fine.

I felt that the 2-615 motion was appropriate because I felt that -- and I -- for a specific reason, not -- not perhaps all the reasons that were cited by the defendant. I felt that the complaint, when it talked about how -- I'm looking for the words, misled -- when it said that the attorneys misled -- lied and misled Mr. Dulberg, I felt that there was some specificity that was going to be required. Because they -- ultimately, these things are going to factor into the statute of

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Purchased from re:SearchIL

limitations issue. And if you're going to say that it was a breach of his duty in lying or misleading, I think we need more particularity in the allegations. You can't just make a conclusory statement to that effect.

That's my perspective. What would you like -- I'll give you an opportunity -- opportunity to replead; but if you want to argue against my thinking, I'll listen.

MS. WALCZYK: Well, Your Honor, I -- I won't argue with the Court. If Your Honor would like some more specificity as to those certain terms, we can certainly replead and plead those a little bit more specifically to --

THE COURT: And with respect to the discovery rule issue --

MS. WALCZYK: Uh-huh.

THE COURT: -- since it's going to come up one way or another, although I think it's a question of fact, I would like to see it touched upon, because I'm not following the -- the fact that he got more from the arbitrator than had been initially suggested by his attorneys, isn't really telling me anything. So I need maybe a little bit more

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information to understand the relationship of the two things.

With respect to the issue of -- on the 2-619, I felt that in light of how I was going with the 2-615, I really couldn't rule on the -- the application of the discovery rule. And, ultimately, I saw that in the long run, it was going to be a question of fact, and I would probably need -- and I could only address that with some more facts than what's just contained in the complaint.

With respect to estoppel, I didn't agree -- and you can tell me why you think I'm wrong, but I didn't agree with the argument that you were making because it -- it, carried to its logical conclusion, I could mislead and lie to my client about the -- about the implications and why he should settle, and then once he agrees to it, then I'm -- I'm released from my breach of my duty.

So I don't think that it -- that that was the type of scenario involved when the courts were discussing the estoppel issue.

Do you have anything -- do you want to contest that?

MR. FLYNN: Not at this time, Your Honor. I --

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I've always learned that it's better to quit while you're ahead. And with -- without giving a roadmap to the plaintiff, I do think that having their best complaint on file benefits us all.

THE COURT: Yes.

MR. FLYNN: So going back to the 2-615 issues, again, a legal malpractice case, they've got to plead and prove, not only the legal malpractice, but the elements of the underlying case. And it seemed to me, and as we pointed out, that -- that all of the allegations were very conclusory. That they would have gotten more, they wouldn't have done this, that the -- that Hans Mast and the Popovich firm should have undertaken additional actions in the underlying case, but they don't say what those are. And I think that they -- they're required to if they believe that there was a breach of a duty that led to damages.

The high-low agreement, which is very confusing to me and to my client, frankly, because he's never seen it, and as I understand it, that's outside of the four corners --

THE COURT: It is outside, but it did lead to an area where I was also a little bit confused. And

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I -- and I think you touched on -- I'll ask you: Is the complaint having to do with the settlement with the McGuires, or does it somehow relate to the suit that continued with respect to Gagnon and the high-low agreement?

MS. WALCZYK: Well, I think it's a little bit of both, because it started with the suit against McGuires, which settled. And then it looks like there was a high-low agreement signed.

THE COURT: Okay.

MS. WALCZYK: And --

THE COURT: Was it signed by Mr. Mast?

MS. WALCZYK: Oh, I believe it was signed by Mr. Dulberg. I haven't seen it.

THE COURT: Okay.

MS. WALCZYK: However, we can attach it if -- if you want --

THE COURT: If -- if you are going to allege malpractice as a result of entering into the high-low agreement, yes, I would require you, then, to attach it and to make that a little more explicit.

MS. WALCZYK: Yes.

THE COURT: Because I -- I came away thinking

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that was not part of your complaint, but I wasn't a 100 percent sure.

Also, let's see -- yeah, I need to know with some specificity what facts were concealed and how he was misled. I had problems with, particularly, I had -- paragraphs 20 and 21 and felt that you should have included more in that. And I won't probably say more than that.

MS. WALCZYK: Uh-huh.

THE COURT: And I -- on the estoppel argument, as I've said, I don't think that it is clear that the signing of the release was something that could be assumed to be knowing and voluntary when the plaintiff is alleging that he was misled as to the ramifications of that. Excuse me. Let's see. Okay.

Any -- so I'm granting on the 2-615. I will grant you leave to refile or replead.

MS. WALCZYK: Okay.

THE COURT: And what else? Is there anything else that we need?

MR. FLYNN: Just as a housekeeping, again, depending on what theory you're going under, if it's related to the Gagnon settlement, and we may have

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more people coming to the party; but if not, then that's it.

THE COURT: Yeah. I mean, if you're going to draw that in, then I need it a little more explicit.

MS. WALCZYK: Okay.

THE COURT: And I got -- in fact -- I'm reading from my notes. I need facts on what was false, misleading and what -- what you mean by coercion.

MR. FLYNN: So the 615 is granted with leave to replead.

THE COURT: Yes.

MR. FLYNN: I wasn't clear, I guess, on whether there's an actual ruling on the 619 or --

THE COURT: 619, I'm denying because --

MR. FLYNN: Okay.

THE COURT: -- there's a question of fact --

MR. FLYNN: Okay.

THE COURT: -- at this stage.

And I think that even if they include additional facts in their complaint, I would still come back to it being a question of fact, because I -- there's going to be a lot more about their relationship than I think can be reflected in merely the complaint. I would -- so I mean, if you were to

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bring another 2-619, feel free.

MR. FLYNN: Sure.

THE COURT: But I would still think it's going to be a question of fact as to what is clear -- Dulberg's claims are with respect to how he was misled or facts were concealed.

MR. FLYNN: Okay.

THE COURT: Because it's going to depend on their interaction.

MR. FLYNN: And it is the -- the language of statute is "knew or reasonably should have been known." And, again, this -- he does have counsel that came in right after my clients got out. So, again, the Blue Water Partners case says you -- potentially, you can't bury your head in the sand.

THE COURT: No, you can't. But because I -- of the absence of information --

MR. FLYNN: Fair enough.

THE COURT: -- I was reluctant to go further. The statute of limitations, you might get a little bit farther, but I still might run into a fact question.

MR. FLYNN: Understood.

THE COURT: So how long do you need?

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MS. WALCZYK: If I could have 28 days, Your Honor.

THE COURT: Sure.

MS. WALCZYK: We have a trial coming up.

THE COURT: And to answer or otherwise plead?

MR. FLYNN: 28, please.

THE COURT: All right. That would -- excuse me. Why don't we come back in -- 60 days is July 9th. How about July 11th, a Wednesday? Or do you have -- it's all the same to me, so long as I am here.

MR. FLYNN: Let's see. I believe I'm going to be out of state that week.

THE COURT: Okay. When is it convenient for you to come here? She's here all the time, so I don't --

MR. FLYNN: The following week would be --

THE COURT: What day works for either of you the following week?

MS. WALCZYK: We may actually have a trial that week. That may or may not go; I'm not sure at this point. At least the first two days, if we could do towards the end of week, that would be great for us.

THE COURT: 20th?

MR. FLYNN: 20th works.

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MS. WALCZYK: That's perfect.

THE COURT: All right. We'll see you on July 20th.

MR. FLYNN: Thank you, Your Honor.

MS. WALCZYK: Thank you very much.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, MAUREEN URBANSKI, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Maureen S. Urbanski

Certified Shorthand Reporter
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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 21st day of December, 2022, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by MR. ALPHONSE A. TALARICO (via Zoom),

On behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by MR. GEORGE K. FLYNN (via Zoom),

On behalf of the Defendants.

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THE COURT: For the record, this is on Dulberg versus Mast.

Plaintiff's counsel, if you could identify yourself.

MR. TALARICO: Yes, your Honor. My name is Alphonse Talarico.

THE COURT: And defendant.

MR. FLYNN: Good morning, your Honor. George Flynn for the defendants.

THE COURT: And for the record, I -- Mr. Dulberg is in attendance, and once again, I hope we're not being recorded. That being said, we'll move on to the motion.

Plaintiff, you have a motion.

MR. TALARICO: Yes, Judge. I'd like to -- we filed our motion -- we filed -- counsel filed a response, we filed a reply. We'd like to rely on that, with one additional presentation or request of the Court.

THE COURT: Okay. What is that?

MR. TALARICO: I'd like to offer an informal proof -- an offer of proof, which is the exact and -- and -- what is the best way -- the audio transmission of the deposition, in full, with all

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the parties, which was sent to us through a subpoena.

THE COURT: Okay. You mean from Mr. Mast's -- or Mast's -- deposition?

MR. TALARICO: Correct. Everything that -- that would help the Court understand all of these problems. Because you --

THE COURT: Well, we do have -- we have the transcript.

MR. TALARICO: Yes, your Honor, but the transcript is selective.

THE COURT: Okay. Mr. Flynn, comment.

MR. FLYNN: I would object, Judge. The plaintiff has already filed a second amended motion and response. He's had plenty of opportunity to bring this to the Court's attention.

THE COURT: Okay. Mr. Talarico, final word.

MR. TALARICO: Judge, this is for the aid to -- for the Court -- this Honorable Court to understand what's going on.

As to the second amended, I replied to that, that -- the only difference between the amended and the second amended, Judge, was the stamp on Exhibit 17 didn't show up, so I re-filed it. But

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it was filed timely. As soon as I realized the stamp didn't show up on Exhibit 17, I re-filed it with an emphasis on the Exhibit 17. Mr. Flynn received it on time with notification that it's Exhibit 17.

THE COURT: Well, that's not the issue, but the issue is --

MR. FLYNN: It's not. And just for the record, there was a typo in my response brief. I wasn't taking issue with the timing of the filing of the second amended, other than the fact that it's two years after the deposition.

THE COURT: But that -- that's a different --

MR. FLYNN: But --

THE COURT: That's a different issue.

MR. FLYNN: Exactly.

THE COURT: The first issue is whether or not to -- the Court will accept plaintiff's request to submit the audio of the deposition at issue of Mr. Mast that, I believe, was taken June 25th, 2020.

And, Mr. Talarico, anything else to say in support of that oral motion?

MR. TALARICO: No, Judge. That -- that's -- if you'll accept it, it's in the -- I believe

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Mr. Dulberg is in the courtroom, and if he may approach the bench, he will hand it to you.

THE COURT: No, he's on Zoom. In any event, I'm going to deny the -- oh, are you -- Come on up.

MR. SCOTT DULBERG: Do you mind if I just hand it here?

THE COURT: Well, no, you're going to come up. I'm not going to accept that.

Your name, sir?

MR. SCOTT DULBERG: Scott Dulberg.

THE COURT: Okay. And you're here to deliver a Zip drive of the audio; am I correct?

MR. SCOTT DULBERG: Yes.

THE COURT: All right. And I -- But I'm going to rule on plaintiff's motion. I'm not going to accept it. I'm not going to consider it for purposes of the hearing on this motion. So you can keep it, but thank you for -- for showing up and bringing it.

MR. SCOTT DULBERG: Thank you.

THE COURT: Because -- I'm not going to accept it because I don't think it adds, materially, to my understanding of what transpired. I've got the deposition transcript. I've read the parts that I

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believe are relevant. I've read the motions. I've heard this argument.

I don't think that the audio tran- -- the audio recording is going to assist me in any way, based upon my understanding of what the ultimate issue is on this motion.

So that will be denied, and we'll incorporate that into the motion -- or in the order. I'm sorry.

Moving on to the motion, this is plaintiff's motion to either re-depose or strike, or both, the deposition of Mr. Mast taken June 25th, 2020; am I correct?

MR. TALARICO: Yes, your Honor.

THE COURT: And, further, am I correct that the -- the reason for this is issues with respect to what's identified as Exhibit 12?

MR. TALARICO: No, your Honor. That's just one small part of it. The entire motion is based on Supreme Court rules and on -- or in effect at the time the deposition was taken.

THE COURT: No, no, no. Tell me the substance. Don't tell me what the rules are. Because my reading of your motion focused on Exhibit 12 and the

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failure -- or the alleged failure to produce it prior to the deposition or give an exhibit list.

So tell me, what is the reason why you want to re-depose Mr. Mast? Because I think that's ultimately your request.

MR. TALARICO: That's right. Judge, within our motion and our reply, we've indicated that it's not just Exhibit 12. Focusing on Exhibit 12 makes it too easy. The entire deposition -- the Internet went down almost the entire time. It's in the notes that I highlighted. It's in the transcript. They were not seeing Exhibits 1 through 15 at the same time. They weren't seeing them. They weren't being uploaded to the admin- -- the administer of -- of oath. 12 wasn't even part of it. It was added, I don't know, 14 days later.

THE COURT: But, ultimately --

MR. TALARICO: So we --

THE COURT: -- the exhibits were seen; am I correct?

MR. TALARICO: No. They were not seen.

THE COURT: None of the exhibits were seen?

MR. TALARICO: They were not seen in accordance with the rules, your Honor.

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THE COURT: That's -- see, you --
MR. TALARICO: The rules --
THE COURT: You throw those phrases in, in accordance with the rules.
Did the deponent see the exhibits, yes or no?
MR. TALARICO: No.
THE COURT: Mr. Flynn, comment.
MR. FLYNN: Judge, to say that the Internet was down for --
THE COURT: I don't want to go down there. Did the -- did Mr. Mast see the exhibits?
MR. FLYNN: My recollection and understanding is that Mr. Mast saw all of the exhibits. There may have been an issue with a portion of Exhibit 12; however, he was -- he was cross-examined at Page 49 through 52 regarding Exhibit 12, generally speaking, and the case law that was contained in his file.
The bottom line is, it doesn't add anything. He didn't recall the specific cases that he discussed with --
THE COURT: Did he see the exhibits? That's all I wanted to know.
MR. FLYNN: I don't know that he saw the full

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exhibit in its entirety.

THE COURT: Okay.

MR. FLYNN: It -- But it wasn't necessarily provided to him, so --

THE COURT: For purposes of this record, Exhibit 12 is copies of case law; am I correct?

MR. FLYNN: Generally speaking, correct.

THE COURT: Mr. Talarico.

MR. TALARICO: That's correct, Judge. But, again, we're not just focusing on Exhibit 12. We're focusing on all the exhibits that were supposedly shown to Mr. -- to Mr. Mast. He didn't see them. He didn't see them.

THE COURT: Okay.

MR. TALARICO: There was confusion as to what the numbers were.

THE COURT: Whose exhibits were they?

MR. TALARICO: They were the plaintiff's, but it was the defendant's equipment that caused the problem.

THE COURT: And the plaintiff conducted the deposition; am I correct?

MR. TALARICO: That is correct.

THE COURT: And the plaintiff was aware of

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any -- the plaintiff's attorney, at that time, was aware of any glitches or difficulties with respect to having the deponent view all of the exhibits; am I correct?

MR. TALARICO: That's correct, your Honor.

THE COURT: And the plaintiff (sic) who was representing Mr. Dulberg at the time, for whatever reason, did not raise an objection at the time or ever with respect to the manner in which the deposition proceeded.

MR. TALARICO: No, your Honor. (Indiscernible) she left it to me -- or to the following counsel. She said to Mr. Dulberg, Mr. Dulberg, whatever those objections are, your next counsel has to make them.

THE COURT: Okay. Well, that -- but the handling attorney at the time who represented Mr. Dulberg's interests proceeded with the deposition and did not give notice to anyone of any complaint with respect to the manner in which it was conducted; am I correct?

MR. TALARICO: You are correct.

THE COURT: Okay. What else do you want me to know?

MR. TALARICO: I want you to know, Judge, also,

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that not only does the objection have to take place at the time of the deposition itself. When the evidence is being brought -- when the evidence is being subject to admission, I can bring that -- I can raise that now and object to it.

THE COURT: Okay. But the -- the exhibits were always in control of the plaintiff's attorneys, and you're asking to penalize the defendant for what appears to be a -- an issue you have with the manner in which prior counsel conducted the deposition.

MR. TALARICO: No, your Honor. It's -- as far as the defendant, it's their electronic equipment that failed.

THE COURT: And there were no objections made at the time or subsequent, and this motion was brought approximately two and a half years after the deposition in question; am I correct?

MR. TALARICO: You are correct. But it's also within the time of the ruling. I can do this now.

THE COURT: You can file any motion you like, but I'm -- I'm going to deny your request. I don't think that there's any reasonable basis under which I can compel the defendant to appear for a second deposition because of these issues. It appears that

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prior counsel was satisfied with the -- her ability to conduct the deposition, and she was always in control of all of the exhibits, so I don't see a problem there.

If anybody should have been raising an objection about the problems, it should have been defendant, not -- not the plaintiff two and a half years after the deposition they proceeded with. So I'm going to deny the request.

Anything else that we need to do today?

MR. FLYNN: Judge, just that there was some additional relief requested in the latest reply brief filed, and that included a request that the Court take judicial notice of -- what's really an implication. I think this is on Page 17 of the response.

I would just request that that specific request for relief also be denied in connection with the motion.

THE COURT: Okay. Let me just call it up. I'm looking at Page 18. What is it?

MR. FLYNN: I believe it was on Page 17 of the response -- I'm sorry -- the reply brief that was

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just filed.

THE COURT: Okay. The notice of the adjudicative facts?

MR. FLYNN: Correct. I think it says in Paragraph 12(j), plaintiff requests that this Honorable Court take judicial notice of the adjudicative fact that the references to Restatement (Second) of Torts Section 318 impliedly references Tilschner versus Spangler.

THE COURT: That -- that's not really ultimately the purpose of this motion, and it's not contained in the prayer for relief. That strikes me as a new motion. Wasn't going to consider it, and so I'm -- to the extent that I have to rule on it, on an issue I don't even think that's in front of me appropriately --

MR. FLYNN: It's just relief that was in -- in this response that I didn't have any opportunity to address.

THE COURT: I will -- I will deny all aspects of plaintiff's motion.

MR. FLYNN: Okay.

THE COURT: I think that covers it.

Is there anything else?

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MR. FLYNN: Thank you. That's it.
THE COURT: Okay. We have a future date, don't we?
MR. FLYNN: We have a pending motion for summary judgment, and plaintiff's response is due, I think, next week.
THE COURT: Okay. All right.
MR. FLYNN: But I don't --
THE COURT: You're back February 1st, and I -- Mr. Flynn, could you draft the order and please get it in as early as possible.
MR. FLYNN: I will. And, Judge, we spoke last time about your continued handling of the case. Do you have any information to share in that regard?
THE COURT: Nope. Nope. I -- I'm in a different division and, um, I can't take cases with me.
MR. FLYNN: Okay.
THE COURT: That would be interesting, but no, I can't take them. I can't take them with me. Too many --
MR. FLYNN: Okay. So --
THE COURT: -- egos involved. Not -- I'm not

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referring to Judge Berg.

MR. FLYNN: Sure.

THE COURT: But there -- Yeah, there's too many hurdles to try --

MR. FLYNN: I understand. So the schedule stands?

THE COURT: The schedule stands. If you wish to have that addressed, you'll have to bring it in front of Judge Berg.

MR. FLYNN: Okay.

THE COURT: I will warn you, he's got a small claims call. I would -- I'm warned to avoid Thursdays and Fridays for hearing because those, apparently, are heavy days.

But you may find out the hard way. Who knows?

MR. FLYNN: Okay.

THE COURT: All right.

MR. FLYNN: Thank you very much, your Honor.

THE COURT: You can send in the order. I will sign it when I see it.

MR. FLYNN: Thank you.

THE COURT: All right. Thank you. Have a good

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day.

MR. FLYNN: You, too. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, KATHLEEN STROMBACH, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Kathleen Strombach
Kathleen Strombach
Official Court Reporter
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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable JOEL D. BERG, Judge of said Court of McHenry County, Illinois, on the 1st day of February, 2023, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE TALARICO, by
MR. ALPHONSE TALARICO, (Via Zoom)
On behalf of the Plaintiff;
KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendant.

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THE COURT: You are here on Dulberg against Mast?

MR. FLYNN: I am, Judge.

THE COURT: I have the other side here on that as well. Well, no. I have Mr. Dulberg here. I have Mr. Talarico as well. Mr. Talarico, are you ready for a hearing if I call it early, sir? I'm sorry, sir, you are muted. I'm not --

MR. TALARICO: Yes, your Honor.

THE COURT: Good morning. Are you ready for hearing a couple minutes early, sir?

MR. TALARICO: Absolutely.

THE COURT: Thank you very much. This is Dulberg against Mast, et al. I have Mr. Talarico present via Zoom as is Mr. Dulberg. Counsel, would you please state your name?

MR. FLYNN: Thank you, your Honor, George Flynn on behalf of the defendants.

THE COURT: Thank you, Mr. Flynn. We are before the Court for a hearing on pending motions. The one most notable is the summary judgment. What else are we hearing this morning, gentlemen?

MR. FLYNN: That's all we have, as far as I know, Judge.

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THE COURT: Good. Because that's all I read.

MR. TALARICO: That's all I know, Judge.

THE COURT: Now I feel way better. It just said pending motions. All I could find was summary judgment. I read the motion. I read the response. I read the reply. I have read all the attachments, as they were relevant. It's your motion.

MR. FLYNN: Thank you, Judge. And I wasn't sure I -- with Judge Meyer's standing orders, with respect to courtesy copies, I wasn't sure if the Court had a chance to review the briefs, but since your Honor has indicated that you have --

THE COURT: I have read everything. It's all based on a two-year statute of limitations on a lawsuit over a chain saw.

MR. FLYNN: That's exactly right. So I will be brief. The only case cited by the plaintiff in its response with respect to the accrual of the injury was a Suburban Real Estate case which is a transactional legal malpractice case, not a litigated matter. I think the -- all of the cases we have cited and including the dicta in that Suburban Real Estate case indicates that the accrual date in a litigated matter is the date of

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settlement, judgment or dismissal.

Here, we had a January 14 settlement that was consummated. There was a good faith finding and dismissal at that time. Mast and Popovich continued to represent Mr. Dulberg for another year or so and prosecuting the case against the other defendant in the case.

Dulberg became disillusioned with Mast, admitted that he was looking for additional counsel -- or substitute counsel even as early as July of 2014. Ultimately, Mast and Popovich withdrew in March of 2015. The case proceeded against Gagnon. There was a mediation in December of 2016 at which time he indicates now that he first became aware of his legal malpractice case.

Mr. Dulberg had every opportunity in discovery through interrogatories, production requests, I took his deposition. I asked him over and over again in several different ways how he first became aware of his injury and that it was wrongfully caused. The only response he could give was that a lawyer told him that he had a case. He couldn't provide any specifics. He has a burden of proving the -- a late discovery. He cannot meet it.

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He will never be able to meet it.

THE COURT: Do we know, by the way, how did he come to me because the lawyer, if I recall, was Mr. Gooch. So he was represented by I believe Mr. Balke if I recall correctly followed by Mr. Baudin.

MR. FLYNN: That's correct.

THE COURT: Where did Mr. Gooch come into this? Who shipped him off to Mr. Gooch to even get opinion, do we know?

MR. FLYNN: One of those two lawyers, I think, recommended that he seek an opinion from a lawyer, generally speaking, that handles legal malpractice cases. Whether it was a direct referral, I don't know if the evidence shows that. I think Mr. Dulberg testified that I believe it was Mr. Baudin recommended that he see a legal malpractice attorney.

So Mr. Gooch met with him. Allegedly provided an opinion that there was a case without any reason and then almost a year later filed a lawsuit. Again, first Mr. Dulberg raised privilege when I asked him how -- how and what -- how you became aware of this legal malpractice case, the

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injury and the wrongful causation, he claimed privilege. Finally, that was waived or otherwise disposed of, and then, he admitted he couldn't -- I said the legal opinion Dulberg received from Gooch was verbal. Gooch simply stated you have a case here. You have a valid case. When asked did he tell you exactly what they did wrong in connection with the representation, Dulberg said he probably did. I'm not recalling it right now. I'm pulling a blank. There are no specifics.

So again, the burden is his to prove a later discovery. He's not able to do that. I'm happy to answer any questions the Court has, but again, I'll rest on the briefs.

THE COURT: Thank you very much. Mr. Talarico, sir?

MR. TALARICO: Yes, sir. I'm -- what would you like me to address first? I guess we could start with the fact that defendant didn't follow the local rules, and therefore, plaintiff could not properly respond. And the local rule says that if they do not follow the local rules, you can strike the motion or deny it.

All I'm asking is deny the motion based on

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the fact that they did not follow the local rules.

THE COURT: I respectfully decline to do so, sir. A written motion could have been filed expressly asking for that relief. A response was filed that addressed it. I've read the response. I understand your concerns that by not following the local rules, they may have made it more difficult for us to suss out what are the disputed issues of material fact and what aren't. But I've been able to pretty much get a grip on everything the way it's been filed.

MR. TALARICO: All right. Thank you, Judge. The second thing is, again, we didn't follow the rules that (indiscernible) we didn't respond -- we responded generally. So I would like that the ruling you just made to extend to our response too.

THE COURT: Of course it does.

MR. TALARICO: Thank you, sir. Okay. Then, the next issue is the Suburban case. Plaintiff -- defendant, I'm sorry, defendant seems to indicate -- well, he does indicate that the reason that Suburban doesn't apply is that there is a difference between a transactional case and a litigation case. Now, I read the Suburban case many, many times over and the

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Supreme Court does not distinguish that their ruling is for one type of case or the other. What their ruling is is that the statute of limitation and they construed the exact specific statute does not begin until there is a pec -- pecuniary loss.

Prior to that, Mr. Dulberg would have brought an action, he would have had no damages. So that -- what that does is because the general rule and which has been voiced in -- by the Illinois Supreme Court Justice Thomas in the Porter case is that when the Supreme Court construes a statute, that becomes part of the statute until the -- the -- I can't think of the word, legislation -- legislature decides to change it. So what we have is the prior cases cited by Mr. Dulberg are not effective because he's citing it to the rule and not to the particular case we are talking about. The Suburban case says no damages, the statute does not begin to run. And that is part of the statute. It hasn't been changed.

Now, as to the last thing, we have raised many affirmative -- I mean, I'm sorry, many issues of material fact that are in dispute. But most important -- the clearest ones, Judge, are the

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defendant's affirmative defenses. There are four affirmative defenses which -- which plaintiff has denied all four.

Now, there is a recent case, if you'll hold on just one second, and I'll find it, but the indication -- it's not that recent, but it's -- the indication is that -- this is West Suburban Mass Transit versus Consolidated Rail Corporation. It's 1-89-2916. If this was done the Appellate Court but it was by the -- the opinion was by Justice McMorrow, who of course became Supreme Court judge, that summary judgment is not appropriate when there is affirmative defenses in dispute.

I think that pretty much sums it all, Judge. We have got many material facts in dispute, including four affirmative defenses which were denied specifically by plaintiff.

THE COURT: Respectfully, sir, merely saying something is in dispute does not make it so though, does it?

MR. TALARICO: Judge, I'm saying that the answer filed was it was in dispute.

THE COURT: So by filing a response to their affirmative defense denying the affirmative defense,

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you're telling me that that in and of itself is sufficient to defeat summary judgment.

MR. TALARICO: Yes, I am.

THE COURT: What if your client --

MR. TALARICO: I --

THE COURT: What if your client at subsequent depositions testifies inconsistent with the answer?

MR. TALARICO: In the case that I cited, Judge, the burden is upon the person, in effect, in this case the defendant, to eliminate that dispute. The dispute exists as he did not resolve that dispute.

THE COURT: So when did the cause of action arise?

MR. TALARICO: December 12, 2016, I believe.

THE COURT: Why on that date?

MR. TALARICO: Because there was an arbitrary -- a mandatory arbitration hearing which I included the -- the findings that showed that the judge -- the retired judge in that case evaluated it at $660,000, and Mr. Dulberg was not able to obtain anything close to that.

THE COURT: And why not?

MR. TALARICO: Well, for two reasons, one, because he settled first improperly for $5,000 with

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the landowner, and the second case is because he was instructed improperly to -- to sign -- well, he actually claims he never signed the agreement, but that there was an agreement to do a binding arbitration limited to the policy amount of 300,000.

THE COURT: Who entered into that agreement?

MR. TALARICO: That is a question of fact. I don't know, but Dulberg says he did not sign it and never wanted to.

THE COURT: When was the agreement entered into?

MR. TALARICO: I don't have the exact date, Judge. A few months before that. I can only say that that was -- that was during the time that Mr. Dulberg was in bankruptcy, and that was also part of the Baudin's instruction.

THE COURT: So the agreement to limit recovery to 300,000 was signed well after the Popovich firm was no longer representing Mr. Dulberg on this matter?

MR. TALARICO: Yes, that's true.

THE COURT: So how is his change in strategy somehow extend -- so in other words, what you're saying -- well, I'm trying to wrap my head around this. You are saying that that agreement your

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client never wished to enter into, he didn't sign, Popovich didn't sign, Mr. Mast didn't sign. His actual third attorney signed it, Mr. Baudin, not even Mr. Balke. But because that was somehow signed and in effect, then the cause of action against Mast and Popovich for legal malpractice is extended out to the date of the final mediation hearing because of an agreement and limitation on damages at the mediation hearing over which they had zero control?

MR. TALARICO: What I am saying, Judge, is the analysis in the Suburban case, the damages -- prior to that, Mr. Dulberg had no actual damages, therefore, he couldn't bring an action. He had nothing to say that Mast cost him this much or this much or Popovich cost him this much because that would -- that would have been stricken for -- they had no damages, so he had no cause of action.

The damages arrive -- arose on the days that Mr. Dulberg found out through the binding arbitration that the case was worth so much more than what he's going to get, and therefore -- that -- that enumerates the damages.

THE COURT: But respectfully, Mr. Talarico, and please correct me if I'm wrong because this is where

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I'm getting the disconnect, the but-for portion of this analysis but for the high-low agreement limiting damages to the policy amount of $300,000, he would have had a judgment for the entire $660,000 if Tom Popovich and Hans Mast had never even existed.

MR. TALARICO: I'm not clear on what you are asking, Judge. Could you --

THE COURT: What I'm asking is isn't the failure to recover the $660,000 as opposed to 300,000 attributable to the high-low agreement that was entered into well over a year or if not two or more years after Popovich and Mast were out of the case?

MR. TALARICO: Well, Judge, I -- first of all, he didn't enter into it. He's claimed over and over that that's not his signature. It was forged. There is many issues about that in the bankruptcy.

THE COURT: But again, counsel -- but again, my point being I don't really care if he signed it or didn't sign it. My point being that it is that agreement that limited his damages, and that agreement was entered into way after Popovich and Mast withdrew from this case, right?

MR. TALARICO: That's right, but --

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THE COURT: He so would have got -- so he would have gotten all 660,000 had that agreement not been entered into.

MR. TALARICO: Judge, but at -- before the judge ruled in that binding mediation, he had no idea how much the case was worth. They had told him it was worth $5,000 and then some. That -- that date -- that's the date when he knows when there was a factual pecuniary damage. He knows the case is worth much more than they told him and he's got numbers behind it. Before that, he had nothing to plead.

THE COURT: Respectfully, the case is worth that much against Mr. Gagnon, not necessarily against Mr. Gagnon's -- I believe it was his parents, the two people that settled out of it. The $660,000 is a finding of liability against Mr. Gagnon, isn't it?

MR. TALARICO: Yes, it is.

THE COURT: So how is it a finding of liability against the two people that were settled with?

MR. TALARICO: Because those people were settled with instructions by Mr. Mast that they could not win any money against them. His instructions were that they -- they would get out on summary judgment,

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he would get nothing, take $5,000 as a gift. He was over and over that that -- that that argument was made between Mast and between Dulberg, and some of those documents are part of what we filed.

THE COURT: All right. Anything else, Mr. Talarico?

MR. TALARICO: Not at the moment, Judge. Thank you.

THE COURT: Thank you, sir. Final word, please.

MR. FLYNN: Thank you, Judge. Just briefly with respect to the pecuniary loss, the loss or the injury, which is the language used in the statute, was in January of 2014 when the case against the McGuires, Bill and Caroline McGuire. Caroline was Gagnon's mother. Bill McGuire was the stepfather. That case was foreclosed in January of 2014. No recovery could have been had other than the $5,000 at that point in time. That's when there was an injury.

The question -- the second prong of the analysis is when did he have a reasonable belief that the injury was wrongfully caused. Dulberg had every opportunity, he admitted that he had talked to hundreds of lawyers. He could have asked Balke, he

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could have asked Baudin. He didn't ask any of them, allegedly.

Under Illinois law, he has a duty to investigate if he thinks there is an issue. He had -- he became disillusioned with Mast in 2014. Mast withdrew in March of 2015. Again, the injury is January 2014.

THE COURT: Thank you very much.

MR. TALARICO: Judge, may I say one thing?

THE COURT: You may.

MR. TALARICO: Thank you. The Supreme Court case, the Suburban case makes it clear that being alerted to a problem or alerted to malpractice is not sufficient enough until -- they use the specific word alerted and say that is not sufficient. There has to be a pecuniary loss.

So whether he talked to a thousand attorneys and whether they all told him all different things, he's alerted but he had to face a loss. That's all, Judge. Thank you.

THE COURT: Thank you. He was clearly alerted. Let's cut to the chase. He was hesitant -- he was hesitant to ever even sign the settlement agreement to the point where it took him over two months to do

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it. He clearly had his doubts. He clearly had his lack of faith. He signed the settlement agreement anyway. A year later, the attorneys withdrew. He went to another attorney, still raised the issue. Went to another attorney, still raised the issue. Met with hundreds of attorneys. He was clearly alerted.

When did the pecuniary loss occur? Here is the amazing part, and this is what -- where the disconnect comes on this case and it's why I'm having so much trouble with it, I'm being urged that the pecuniary loss occurred when the decision was given on the binding mediation. But the reason I believe that's a disconnect is because -- for two reasons. The loss that occurred on the binding mediation that is being urged upon the Court is a loss of what appears to be $360,000. The difference between the $660,000 that the mediator indicated the -- were the appropriate measure of damages against Mr. Gagnon and the $300,000 insurance policy limit, that $360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that somebody entered into. We don't know who that

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somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge.

But didn't the pecuniary loss itself, in fact, occur if there was a cause of action to which you were alerted? The pecuniary loss occurred when he only got $5,000. I agree with defense counsel. Statute of limitations lapsed. Merely denying the statute of limitation without more in the depositions and the sworn testimony does not itself create an issue of material fact.

The motion for summary judgment is heard. It is most respectfully allowed. Thank you very much, gentlemen.

MR. FLYNN: Thank you.

THE COURT: Both of you, outstanding. Even though they didn't comply with local rules, I will say gentlemen, to both of you, outstanding pleadings. Very thorough, very well written. I had no issues going through them. I spent three days going through all of them repeatedly, and you both made my job -- well, I'm not going to say easy, but you certainly did your jobs. And I very much

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appreciate your time. Thank you, gentlemen.

MR. FLYNN: Thank you, Judge. And for what it's worth, I apologize for not doing numbered paragraphs on the statement of facts. I did follow that format with Judge Meyer in another summary judgment motion that was granted. This case was originally before Judge Meyer. So --

THE COURT: I take no offense. I take no offense by anybody. The pleadings were what they were, and I had no issue reading them. Thank you all very much for your time.

MR. TALARICO: Thank you, Judge.

THE COURT: Thank you, sir.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, JUDY CARLSON, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Judy A. Carlson

Certified Shorthand Reporter
License No. 084-003347

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AFFIDAVIT

Saira Pasha, being first duly sworn on oath, deposes and states as follows:

1. I am a licensed attorney in Illinois. I graduated from Chicago-Kent College of Law in 2012 and was admitted to the bar the same year. I have a Bachelor of Science degree in Operations and Information Management with an emphasis in information systems from Northern Illinois University. Since August 2020, I have worked as an independent consultant and testifying expert specializing in audit trail analysis, specifically in medical malpractice cases. I consult for and testify on behalf of both plaintiffs and defendants. A large portion of my work focuses on data integrity and completeness of production, such as obtaining prior versions of modified records and identifying, requesting, and obtaining data and records that were created but have not yet been produced. I have reviewed over 300 audit trails from more than 20 electronic medical record systems. The underlying concepts of audit trails for systems and the storage and retrieval of data from a database are essentially universal and apply to many kinds of systems, including court filing systems.

2. An audit trail is a timestamped report of actions performed by all users in a system, such as view, edit, add, delete, print, etc. In addition to audit trails, there are other reports and analytical tools that can be performed on record systems to conduct a comprehensive forensic analysis of electronically stored information.

3. I have been retained as a consultant by The Law Office of Alphonse A. Talarico for the purpose of evaluating file content discrepancies and missing file contents for a case under appellate review.

4. I reviewed the following materials for my analysis:

    - Transcript of court proceeding from 9/16/2022 titled “Dash Dash 09-16-2022 17LA377 Dulberg”
    - Transcript of court proceeding from 9/16/2022 titled “Dilatory Dilatory 09-16-2022 17LA377 Dulberg”
    - Emails to and from court reporters related to the transcripts listed above
    - Report titled “[Compare Report] Dash Dash 09-16-2022 17LA377 Dulberg”
    - Table of Contents of the Report of Proceedings filed on 4/24/2023 for the appellate case (2-23-0072) listing all Report of Proceedings in the file in chronological order
    - McHenry County Circuit Court’s Public Case Access website information for the underlying case (2017LA000377)

5. Based on my analysis of these materials, I conclude to a reasonable degree of professional certainty and recommend as follows:

- There are multiple substantive differences, including modifications and deletions, between two transcripts for the same court proceeding that took place on 9/16/2022. One of the edits is about a material issue: whether expert discovery was closed. To verify the accuracy of what was said at this proceeding, I recommend a forensic investigation, including but not limited to obtaining a copy of the original recording and obtaining an audit trail for the recording system itself. Based on what the audit trail from the audio recording system shows, a live forensic inspection of the system may be warranted.

- The Table of Contents for the Report of Proceedings for the appellate review that was filed on 4/24/2023 does not list all court proceeding recordings that were created in the underlying matter. It is also inconsistent with representations made on the McHenry County Circuit Court Public Case Access website. I recommend an audit trail of the appellate court's filing system(s) be produced to objectively determine which documents were uploaded to its system(s), when they were uploaded, the user(s) who uploaded the documents, and if applicable, which documents were removed from the appellate review file. Based on what the audit trails from the systems show, a live forensic inspection of the systems may be warranted.

- Because there are allegations of removing the existence of recordings from specific court proceedings from the public access website for the McHenry County Circuit, I recommend an audit and forensic investigation to obtain objective facts and the timeline of when data was added and then removed from the underlying case's record. I recommend obtaining the audit trails for McHenry County Circuit Court's filing system(s) and performing a live forensic inspection of the system if warranted by the audit trail data.

Discrepancies between two transcripts for the 9/16/2022 court proceeding

6. A court proceeding was held on 9/16/2022 in Judge Meyer's courtroom in the McHenry County Circuit Court courthouse for the underlying case (2017 L 000377).

7. The McHenry County Circuit Court courthouse uses technology that creates audio recordings of court proceedings which court reporters can access to create transcripts of those proceedings.

8. There are two distinct transcripts for this proceeding. The first transcript was emailed from a court reporter to Plaintiff on 9/26/2022 and is titled "Dash Dash 09-16-2022 17LA377 Dulberg." The second transcript was emailed from a different court reporter to Plaintiff on 9/27/2022 and is titled "Dilatory Dilatory 09-16-2022 17LA377 Dulberg." (The names of the files were presumably created to distinguish the transcripts).

9. There are multiple substantive differences between the two transcripts. Below is one example of a significant substantive difference in a statement made by defense counsel George Flynn about a material issue: expert discovery. The first transcript includes the phrase "You gave a ruling that expert discovery is completed" (page 5, lines 12-13)

So those (indiscernible) all relied on facts regarding the accident itself that would have taken, you know, additional five to ten pages of facts that are -- So we'd like to do that separately. In fact, we might wait until -- You gave a ruling that expert discovery is completed, but I'm going to (indiscernible) but I think (indiscernible).

10. The second transcript includes phrase "if and when expert discovery is completed" for the same page and line numbers:

So those (indiscernible) all relied on facts regarding the accident itself that would have taken, you know, additional five to ten pages of facts that are -- So we'd like to do that separately. In fact, we might wait until if and when expert discovery is completed, but -- I'm going to have some more thoughts, but I think we have plenty to chew on now.

11. These two statements are not only substantively different, they also do not sound alike when spoken aloud.

12. Another substantive difference between the two transcripts is the inclusion of the word "dilatory" in two sentences.

13. In the "Dash Dash 09-16-2022 17LA377 Dulberg" transcript (page 11, line 2) the court reporter uses "(indiscernible)", implying that the word stated by Mr. Flynn could not be understood. In the next line, there are hyphens at the end of "do" in Mr. Talarico's response, implying Mr. Talarico never said any word after "do."

```
just don't see what the issue is.  It seems as if
it's a (indiscernible) tactic to avoid --
    MR. TALARICO:  I don't do --
    THE COURT:  Hold on.  I can't rule on the motion
until I see it.  I can't rule -- I can't determine
```

14. In "Dilatory Dilatory 09-16-2022 17LA377 Dulberg," page 11, line 2, the transcription of defense counsel's statement by replacing the "(indiscernible)" with "dilatory " On the next line, plaintiff's Mr. Talarico's response is transcribed as "I don't to dilatory.." implying that the word was spoken, while the original transcript indicates no word was spoken nor was there an indiscernible sound.

```
I just don't see what the issue is.  It seems as if
it's a another dilatory tactic to avoid --
    MR. TALARICO:  I don't do dilatory --
    THE COURT:  Hold on.  I can't rule on the motion
until I see it.  I can't rule -- I can't determine
```

15. These are two examples of significant and substance differences between the two transcripts that warrant further investigation to confirm accuracy.

16. To verify the accuracy of both transcripts and determine what was actually said by the parties on 9/16/2022, I recommend obtaining the original recording of the proceeding from the McHenry County Circuit Court's audio recording system. I also recommend simultaneously obtaining an audit trail for the specific audio recording file at issue, from 9/16/2022 through present, to identify all parties who accessed the recording, when they accessed it, if any edits were made to the recording, and other objective data pertaining to the veracity of the recording.

Missing recordings of court proceedings from January and February 2018

17. The Table of Contents for the Report of Proceedings from the appellate case was filed on 4/24/2023. It lists all reports of proceedings from the underlying case included in chronological order beginning on 5/10/2018, as seen in the excerpt below:

Table of Contents 2-23-0072

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

DULBERG, PAUL
Plaintiff/Petitioner

v.

MAST, HANS ET AL
Defendant/Respondent

Reviewing Court No: 2-23-0072
Circuit Court/Agency No: 2017LA000377
Trial Judge/Hearing Officer: JOEL D BERG

E-FILED 2
Transaction ID: 2-23-0072
File Date: 4/24/2023 10:03 AM
Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

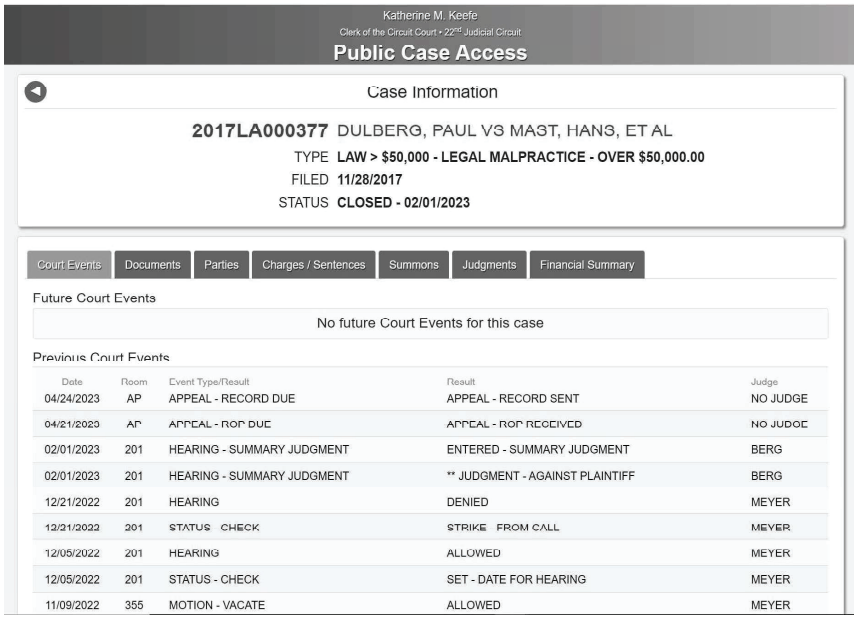
APPELLATE COURT, STATE OF ILLINOIS FIAT JUSTITIA JULY 1, 1877 SECOND DISTRICT

REPORT OF PROCEEDINGS - TABLE OF CONTENTS

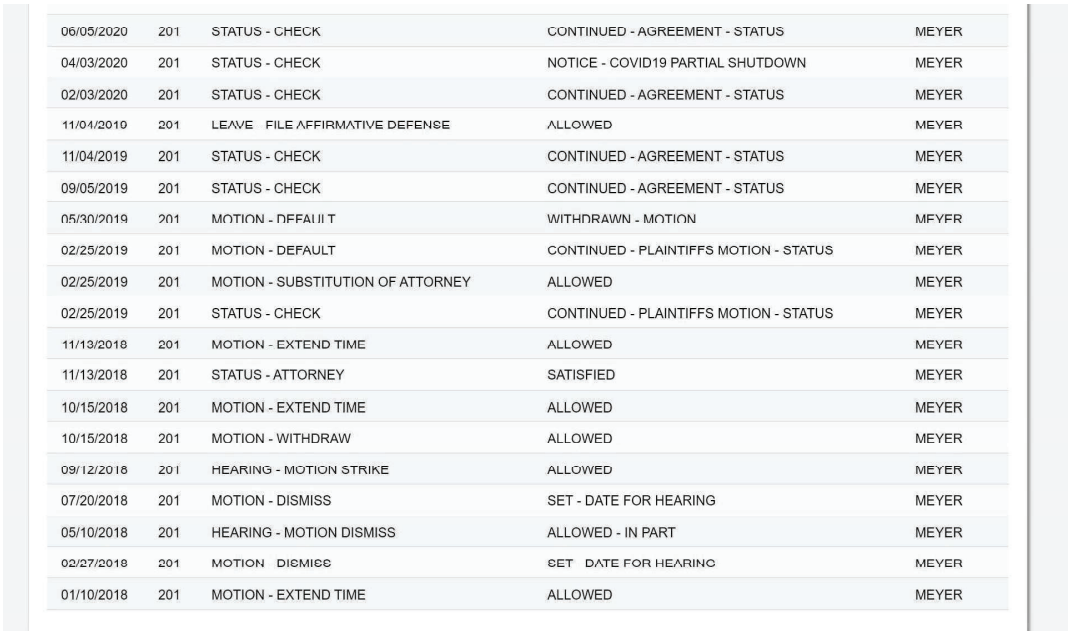
Page 1 of 2

Date of Proceeding	Title/Description	Page No.
05/10/2018	HEARING - MOTION DISMISS	R 3-R 14 (Volume 1)
07/20/2018	MOTDIM	R 15-R 18 (Volume 1)
09/12/2018	HEARING - MOTION STRIKE	R 19-R 28 (Volume 1)

18. The public case access website for the McHenry County Circuit Court allows users to search for court events and documents related to cases. For the underlying case at issue, the top of the "Court Events" tab looks like this:



19. Scrolling to the bottom of the same tab reveals the court events beginning from 1/10/2018.



06/05/2020	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
04/03/2020	201	STATUS - CHECK	NOTICE - COVID19 PARTIAL SHUTDOWN	MEYER
02/03/2020	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
11/04/2019	201	LEAVE FILE AFFIRMATIVE DEFENSE	ALLOWED	MEYER
11/04/2019	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
09/05/2019	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
05/30/2019	201	MOTION - DEFAULT	WITHDRAWN - MOTION	MEYER
02/25/2019	201	MOTION - DEFAULT	CONTINUED - PLAINTIFFS MOTION - STATUS	MEYER
02/25/2019	201	MOTION - SUBSTITUTION OF ATTORNEY	ALLOWED	MEYER
02/25/2019	201	STATUS - CHECK	CONTINUED - PLAINTIFFS MOTION - STATUS	MEYER
11/13/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER
11/13/2018	201	STATUS - ATTORNEY	SATISFIED	MEYER
10/15/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER
10/15/2018	201	MOTION - WITHDRAW	ALLOWED	MEYER
09/12/2018	201	HEARING - MOTION STRIKE	ALLOWED	MEYER
07/20/2018	201	MOTION - DISMISS	SET - DATE FOR HEARING	MEYER
05/10/2018	201	HEARING - MOTION DISMISS	ALLOWED - IN PART	MEYER
02/27/2018	201	MOTION DISMISS	SET DATE FOR HEARING	MEYER
01/10/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER

20. As seen in the screen shot above, there was a court event on 1/10/2018 during which a motion to extend time was granted and a court event on 2/27/2019 during which a motion to dismiss was set for hearing. The third court event listed took place on 5/10/2018.

21. The recordings from the first two court events in the underlying case were not included in the file contents for appellate review. I did perform a line-item check for evert court event; it is possible recordings for other events are also missing.

22. The 1/10/2018 court event was listed as "Motion – Extend Time." I reviewed the Table of Contents to determine if any recording for a "Motion- Extend Time" court event existed and found one for 3/15/2021. Therefore, there is no reason to conclude that the 1/10/2018 recording was not included in the file materials because that type of court event is not recorded.

02/10/2021	HEARING - MOTION COMPEL	R 101-R 124 (Volume 1)
03/15/2021	MOTION - EXTEND TIME	R 125-R 153 (Volume 1)
03/25/2021	HEARING - MOTION COMPEL	R 154-R 159 (Volume 1)

23. Plaintiff/Appellant alleges that the public record access system for McHenry County originally listed recordings for these two 2018 proceedings under the documents tab but were removed at a later date. Below is a screen shot of the top portion of the "Documents" tab for the underlying case. As the image below indicates, "Report – Proceedings" is a type of document included in the list.

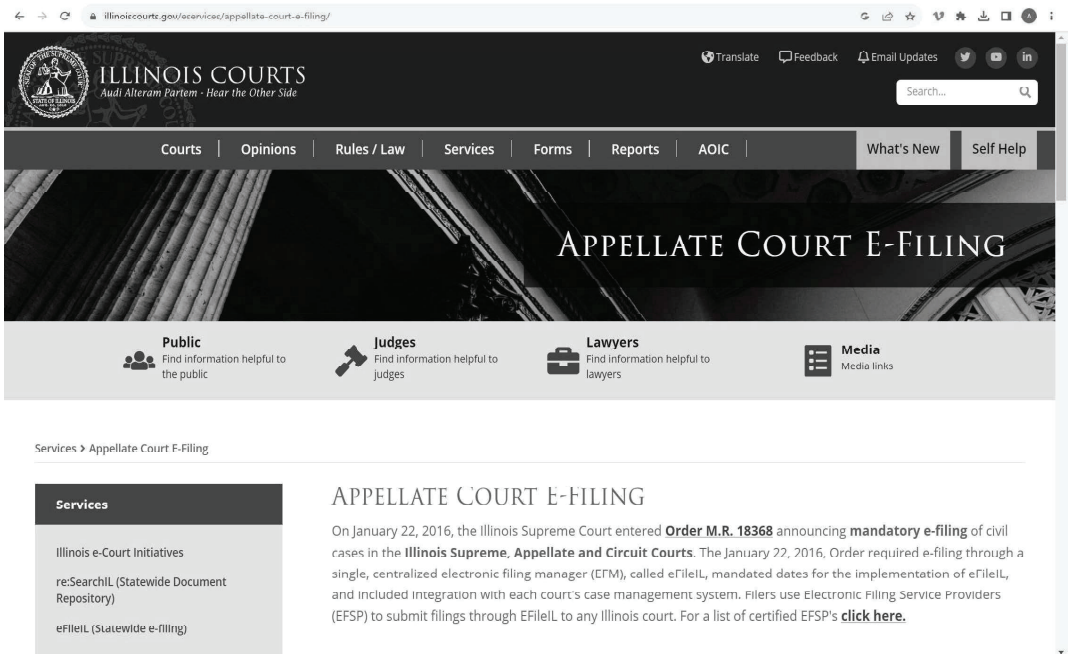


24. To objectively determine if the "Documents" tab of the McHenry County Circuit Court public portal ever included a listing of "Report – Proceedings" for the 1/10/2018 and 2/27/2018 court events, I recommend a forensic audit of the system(s) in which these data elements are stored and used to display information on the public access portal website.

25. To objectively determine if the recordings from the 1/10/2018 and 2/27/2018 court events were 1)ever part of the McHenry County Circuit Court file for the underlying, 2) were transmitted/uploaded to the appellate court filing system, and 3) were ever received or were part of the appellate court's filing system or file, audit trails from each of the respective systems must be generated and produced. Based on the data included in those reports, a live forensic inspection of the systems may be warranted. If audit trails from those systems are not produced, I recommend performing a live forensic inspection of the systems at issue.

26. To objectively determine if recordings were created for the 1/10/2018 and 2/27/2018 court events, an audit trail from the McHenry County Circuit Court audio recording system must be generated and produced. Based on the data contained in those reports, a live forensic audit of the audio recording system may be necessary.

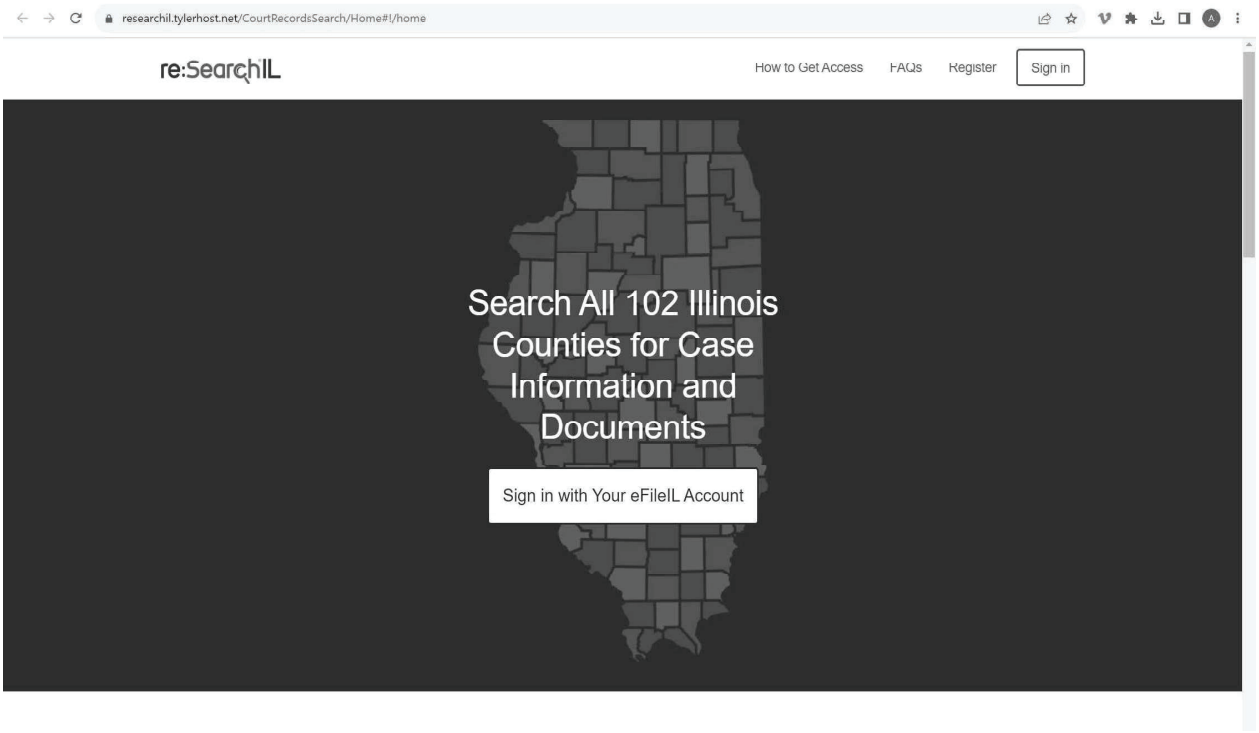
27. The website for Illinois's court systems makes reference to two distinct systems: one document repository system and efiling systems.



28. The website displays several options for efiling:



29. The document repository system link takes you to a separate system called re:SearchIL, managed by Tyler Technologies.



30. Based on my preliminary review of these websites and technologies, the systems used by both the appellate court and the circuit court in this case are capable of producing audit trails for regulatory and compliance reporting. These reports can also be used to verify the integrity of the records and data in this matter.

Under penalty of perjury, I certify the above statements are true and correct.

Saira Pasha

Exhibit F

From: **Alphonse Talarico** contact@lawofficeofalphonsetalarico.com
Subject: Fw: Appellate Court - 2nd District Case No. 2-23-0072: Record
Date: November 3, 2023 at 4:02 PM
To: Paul Dulberg pdulberg@icloud.com, Paul Dulberg Paul_Dulberg@comcast.net, T Kost tkost999@gmail.com

AT

From: DoNotReply-ILCourts@illinoiscourts.gov <DoNotReply-ILCourts@illinoiscourts.gov>
Sent: Tuesday, April 25, 2023 8:48 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Subject: Appellate Court - 2nd District Case No. 2-23-0072: Record

Record - Record on Appeal Filed has been filed by the Appellate Court - 2nd District in 2-23-0072.
This email was sent to contact@lawofficeofalphonsetalarico.com.

ILLINOIS APPELLATE COURT
SECOND DISTRICT

55 SYMPHONY WAY
ELGIN, IL 60120
(847) 695-3750

April 25, 2023

Alphonse A. Talarico
Law office of Alphonse Talarico
707 Skokie Boulevard, #600
Northbrook, IL 60062

RE: Dulberg, Paul R., v. Mast, Hans, et al.
Appeal No.: 2-23-0072
County: McHenry County
Trial Court No.: 17LA377

The electronic record on appeal in the above case has been filed. In most cases, you may access all sections of the electronic record at https://researchil.tylerhost.net. In any other case, a link to the appropriate section(s) of the electronic record will be e-mailed to you from no-reply@efilingmail.tylertech.cloud. (Please ensure that you are a service contact in Odyssey eFileIL.) The court hereby orders briefing due dates as follows:

Appellant's brief due:	05/30/2023
Appellee's brief due:	07/05/2023
Appellant's reply brief due: (Ill. S. Ct. Rs. 341, 342, 343)	07/18/2023

Jeffrey H. Kaplan
Clerk of the Court

cc: George Kenneth Flynn
Michelle Marie Blum

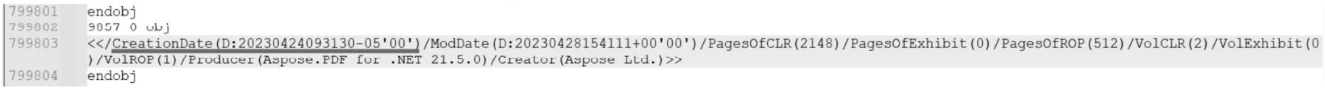
Exhibit G

Paul Dulberg <Paul_Dulberg@comcast.net>

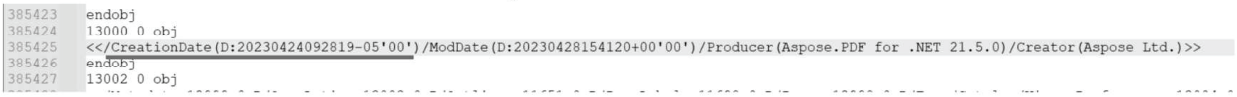
Fri 11/3/2023 4:51 PM

To:Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Common Law Record Vol 1 creation date pdf metadata:



Common Law Record Vol 2 creation date pdf metadata:



Reports of Proceedings creation date pdf metadata:

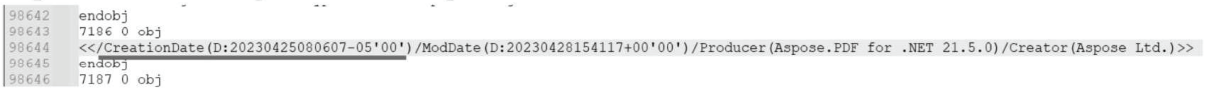


Exhibit H

Paul Dulberg <Paul_Dulberg@comcast.net>

Fri 11/3/2023 4:51 PM

To:Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

DOCUMENT	CREATION DATE	SUBMISSION DATE	
Common Law Record Volume 1	**April 24, 2023 at 9:31 AM**	ndent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:00 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **CERTIFICATION OF RECORD**	**SUBMITTED 29 MINUTES AFTER CREATED**
Common Law Record Volume 2	**April 24, 2023 at 9:28AM**	:/Respondent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:03 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **COMMON LAW RECORD - TABLE OF CONTENTS**	**SUBMITTED 35 MINUTES AFTER CREATED**
Report of Proceedings **(missing pages)**	**April 25, 2023 at 8:06AM**	Trial Judge/Hearing Officer: dant/Respondent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:03 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **REPORT OF PROCEEDINGS - TABLE OF CONTENTS**	**SUBMITTED 22 HOURS BEFORE CREATED**



Instructions to play the multimedia content contained in this PDF:
1. Open in either Adobe Acrobat Reader or Adobe Acrobat DC.
2. Click the box above to activate the multimedia content.
3. In the banner that pops up at the top of the page select options then trust this document.

Person Recording: Court Reporter Barbara G. Smith
Hans A. Mast - Remote Zoom Deposition Recording
Mast.wav

Attachment available until Aug 13, 2020

Dear Noelle,

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

put this X in folder on desktop & renamed bad file 12-A - this is the new 12

Click to Download
Dulberg Mast Dep Exh 12 Legal Research .pdf
35.1 MB

still couldn't read 1-22 → "There was a problem reading this document"

On Jul 13, 2020, at 8:37 PM, Noelle Kappes <nkappes@uslegalsupport.com> wrote:

called Noelle - 10:30 - 7-14 - she will have William look at it or email williams

Hi there,

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you,
Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.
Witness: Hans Mast
Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.
Date: 06/25/2020
Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)
Location:

Reporter and all Parties will appear via Video Conference.

Thank you for choosing U.S. Legal Support.
Court Reporting | Record Retrieval | Trial Services

Please note: To ensure your safety and the safety of others, when visiting a U.S. Legal Support office, please practice responsible social distancing measures. We ask that you provide and wear your own mask in common areas (halls, restrooms, break areas, cube areas, conference rooms, etc.). Thank you for your understanding and cooperation.

<CFM923267.PDF>

Hi Ms. Williams -- This is Barb Smith, the court reporter from US Legal that was present at the dep of Hans Mast on 6-25-20. I am currently working on the transcript and while preparing the exhibits I noticed that Exhibit No. 12, which is the 27 pages of legal research, did not download completely. The Exhibit 12 that I have has blank pages 1-22 and only pages 23-27 have print on them. I just wanted to let you know and check if you wanted to resend or if that's how No. 12 is supposed to be.

Thank you.

Barb

7-2-20

Williams responded 7-2-20
but the ~~dots~~ space was
blank.
called 7-6-20 Left ~~Message~~
7-7 submitted job and emailed
Noelle about it

Job 923267

From: Smith Family (barbnwally@att.net)

To: nkappes@uslegalsupport.com

Date: Tuesday, July 7, 2020, 09:32 PM CDT

Hi Noelle -- Hope you're doing well. I just want to let you know I submitted this job, 923267, last night. Two things I wanted to let you know about. First, this job and 925187 were both submitted last night. These are the first two I used Box for the exhibits. I hope I did them correctly. If there's any problems, please let me know.

For 923267 I have another issue. One of the exhibits, #12, was downloaded during the Zoom session. It's 27 pages and when I first looked at it I noticed that pages 1-22 were blank. I emailed Julia Williams, our client, on 7-2 about this. She responded and the message section of her email was blank. I waited for another email but received none. On 7-6 I called and left her a message and have not received a response. I did note all of this information in the email that I sent the job with.

The main reason I'm telling you all of this is that I am going to be out of town Thursday and Friday. My daughter is getting married in Arkansas so I will not be bringing my computer with me and will be quite busy. Hopefully I hear from her on Wednesday.

Thanks,

Barb

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF,	)	
v.	)	No. 17 LA 377
THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	)	

AMENDED NOTICE OF DEPOSITION

TO: **All Attorneys of Record (See Attached Service List)**

YOU ARE HEREBY NOTIFIED, that pursuant to the provisions of Section 2-1003 of the Illinois Code of Civil Procedure and Supreme Court Rule 206, the following deposition will be taken for the purpose of discovery before a Notary Public via remote electronic deposition at the time and place specified, upon oral interrogatories to be propounded to said witness.

Deponent	***Location***	***Date***	***Time***
Hans Mast	Compton Law Group 85 Market St. Elgin, IL 60123 (remote electronic deposition)	June 25, 2020	10:00a.m.

YOU ARE HEREBY FURTHER NOTIFIED that you are by this Notice required to have present at the date, time, and place stated, the said Deponent for oral examination for the purpose of discovery. YOU ARE FURTHER NOTIFIED that PAUL DULBERG, a party to this case, intends to be present at the above noticed deposition.

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed by 5:00 p.m. on June 4, 2020.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Julia C. Williams
Julia C. Williams

SERVICE LIST:

George Flynn
Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

rep dept
ELFPLT

Sps
David Gagnon
Caroline & Bill McGuire
Elder Avenue
Ronald Burch

Exam
Williams 5
Flynn ~~78~~ 76

X
1 - 16
2 - 17
3 - 18
4 - ~~28~~ 26
5 - ~~30~~ 28
6 - ~~34~~ 32
7 - ~~37~~ 35
8 - ~~38~~ 36
9 - ~~42~~ 40
10 - ~~48~~ 46
11 - ~~50~~ 48
12 - ~~51~~ 49
13 - ~~55~~ 53
14 - ~~57~~ 55
15 - ~~66~~ 64

Choi - is - Commonwealth Edison is the only case I have in #12 download

/s/ Julia C. Williams
Julia C. Williams

witness said he only has Lajato case in his #12

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

U.S. Legal Support - Chicago
200 West Jackson
Suite 600
Chicago, IL 60606
Telephone: 312-236-8352
Fax: 312-236-3344

U.S. Legal Support

JOB WORKSHEET

#12 1-22 blank
23-27 only

Resource	**Barbara G. Smith**		
Job No.	**923267**	**Job Type**	**Deposition**
Job Date	**06/25/2020**	**Job Time**	**10:00 AM** (GMT-06:00) Central Time (US & Canada)
Due Date	07/10/2020	**Notation**	R/VC
Witness	Hans Mast		
Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	**17LA377**		
Location	***U.S. Legal Support, Inc. - Remote Video Conference** **Reporter and all Parties will appear via Video Conference.** , **Phone:** **Room No.:** **Detail: To join the Video Conference, a website link will be provided by U.S. Legal Support the business day prior to the setting.**		
Remarks	Court Reporter & RemoteDepo *everyone appearing remotely except attorney George Flynn who will be with the deponent REPORTER MUST READ THE ATTACHED READ ON		

Client	Clinton Law Firm 111 West Washington Street Suite 1437 Chicago, IL 60602 Phone: 312-357-1515 Fax: 312-701-0737		
Contact	Julia Williams		
Ordered By	Julia Williams via email		
Requested Service	Service Item RemoteDepo w/InstantExhibit - Videoconferencing	Units 1.00	

julia williams @ clintonlaw.net

Thank you for accepting this assignment. Please note that by accepting this assignment, you acknowledge U.S. Legal Support's requirement to have an up-to-date W-9, BAA, and CIA form submitted prior to our releasing payment.

Please provide the transcript to our production team by due date reflected above.
Exhibits to be delivered to production within 3 days after deposition.

13 interrog
14 interrogs
15 ~~mtg~~

16
17
18
19
20

#1 retainer
2 complaint
3 memo
4 ~~settle~~ demand
5 email

Nov 13
6 email
7 email 11-15
8 email
9 memo
10 memo 12-18
11 settlement letter
12 case law

witness & atty flyn in McHenry Co.

start 10:08
end 12:20
#18

Aps Paul
~~[illegible]~~
Bulberg

Mr. Flynn - dept
copy reg + memo

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

X _____
Client

_____
Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

COPY
FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs. No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 204 ON
7/18 20 12, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ON
20 , AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry. County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20 That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	No.:

AFFIDAVIT

I, HANS A. MAST, being first duly sworn on oath, depose and state as follows:

1. That I am one of the attorneys responsible for the prosecution of the above-entitled case.

2. That on behalf Plaintiff, PAUL DULBERG, I am hereby requesting money damages in an amount not to exceed $50,000.00, together with the costs of this action, against each of the above-named Defendants.

FURTHER, Affiant sayeth naught.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
ARDC No. 06203684

MEMORANDUM

TO: Tom, Marla, Diana and Alarie

FROM: Hans

DATE: December 5, 2011

SUBJECT: **PAUL DULBERG - NEW CLIENT**

HAM
B/C the accident occurred on their premises, their H.O. med-pay will cover the bills.

On December 1, 2011, I met Paul Dulberg and his mother, concerning a recent injury that Paul suffered at a friend's house due to a chainsaw accident on June 28, 2011. Paul was referred to our office by a former client, Hubert McArtor. Paul had previously been with Francisco Botto in Woodstock but they rejected the case. He did sign a contract with Botto but we have correspondence in the file that they rejected him and sent him away. They did not refer him to us. Apparently, they rejected the case because they did not think that they would be able to prove that the defendant was more than 50% negligent causing the accident. I disagree.

Paul's contact information is as follows:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051
847/497-4250
SSN 323-76-4001
DOB 03-19-70
DOA 06/28/11

Paul describes that he was at a friend's house, Caroline and Bill McGuire who live at 1016 W. Elder Avenue, McHenry, IL 60051, phone 815/344-4274. The McGuire's son, Dave was at the home and Dave was cutting up some tree limbs in the yard. Caroline had called Paul over to the house earlier to see if he wanted the wood for firewood. Dave asked Paul to hold some tree limbs while he cut them up. He had held two tree branches previously and then about an hour after he arrived he was holding another branch and Dave suddenly swung around with the chainsaw rising it in the air and cutting his Paul's forearm severely while holding on to a branch. Paul said that the chainsaw went about 40% through his forearm. Dave took him immediately to NIMC where they stitched him up. It was a very deep and open wound. Unfortunately, he did not take any photos of the wound. Instead, he followed up with his family physician, Dr. Frank Sek on Route 120 in McHenry who removed the stitches about a week later. Dr. Sek thought there was going to be possible nerve damage due to his arm being very painful. About two weeks later he went to a doctor at the Associates in Neurology in Libertyville and they took and EMG test which found that there were some branch nerves that had been severed which may be the cause of his ongoing pain. They thought that the pain was probably more ligamentous and they referred him to Dr. Paul Papierski, phone 847/247-0547. That was in August. He has not returned to see Dr. Papierski because apparently they needed an MRI and he did not have money to pay for an MRI. I urged him to return

to see Dr. Papierski and to have the MRI done even if they have to hold a lien on our case. His arm is very painful when he lifts anything and he drops things continuously. He said that he will follow up with Dr. Papierski and advise me further what needs to be done as far as treatment.

At the time of the accident he was not employed but he had been just recently hired when the accident occurred by AMS Screw Products in Spring Grove. He was going to earn $12 an hour for 40 hours per week. He had talked to Karen over at AMS Screw and she agreed to hire him, but unfortunately, he was injured before he could start work. Their phone number is 732/545-8888x231.

The central issue in my view in this case is whether there is insurance coverage. Since the son was not living with the McGuire's at the time of the accident, it may be that David Gagnon is not going to be insured for the accident. However, Paul and his mother advised me that Dave also had a home and lived at 39010 90th Place in Genoa City, Wisconsin. Therefore, hopefully he has homeowner's insurance that will apply to this claim as well as med-pay coverage to help pay for the MRI that needs to be done.

The McGuire's were insured by:

Auto Owners Insurance
Tom Malatia, Adjuster
6000 Tallgate Road, Suite D
Elgin, IL 60123
847/587-3077
847/531-5420
847/531-8063x3808 gen. #
Claim No. 13-2779-11

By copy of this memo, I ask **Alarie** to set up a new file.

By copy of this memo, I ask **Marla** to order the medical records and bills from NIMC, Dr. Frank Sek and Associates in Neurology in Libertyville. Please also diary the 1 and 2 year SOL deadlines in this case.

Thanks,

Hans

S:\Main\DULBERG, PAUL\Memos\Memo re new client 12-5-11.wpd

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

FAXED

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for $7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

** Transmit Conf.Report **

P.1 Oct 22 2013 12:24pm
LAW OFFICE T POPOVICH Fax 1-815-344-5280

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
18152267701	Normal	22:12:23pm	0'25"	1	* O K	

The Law Offices of Thomas J. Popovich P.C.

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Thomas J. Popovich
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October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
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Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

XFINITY Connect

hansmast@comcast.ne

+ Font Size -

Re: Medical depositions

From : Hans Mast <hansmast@comcast.net>

Wed, Oct 30, 2013 02:34 PM

Subject : Re: Medical depositions

To : Paul Dulberg <pdulberg@comcast.net>

Cc : Hans Mast <hansmast@comcast.net>

Paul, here are my thoughts regarding your case. There are two issues. The first liability, or whether Mr. Gagnon is liable for your injury. If he is not proven liable, then it does not matter how badly you were hurt since he will not be found responsible for your damages. The second issue is your damages, or to what extent you were injured due to Mr. Gagnon’s acts.
Both of these issues are strongly contested in your case.
As to liability, there were no witnesses to the accident. So, whether Mr. Gagnon will be held responsible for your damages is uncertain and a gamble. That is because it is your word against his word. Our argument is that you were simply holding a limb when he caused the chain saw to strike you. His argument is that you moved your arm in the path of the chain saw unexpectedly. If the jury determines that we did not prove your "version" of the accident, then they can find against you and in favor of Mr. Gagnon at trial.
As to damages, the issue is complicated. That is because your treating physicians do not all agree on exactly what injury you suffered or whether your had a fully recovery or not.
Dr. Talerico at MidAmerica Hand and Shoulder, saw you twice. The first time was in December, six months after your injury. He was not supportive of your claim in most respects. He didn’t really feel there was anything wrong with you - as to the forearm. He said that you complained mostly of pain radiating down the forearm from the laceration site with numbness and tingling. On exam he noted no tenderness and it was mostly a normal presentation. Strength was good. He did not see any nerve problem. He prescribed physical therapy due to a muscular sort of symptomology - not nerve related. Apparently you did only 2 sessions of therapy and returned January, 2012. No new complaints at the time. The EMG was normal. He did not believe you were disabled. He continued you on therapy. He saw no evidence of nerve problems. The only symptoms were subjective - not represented by any abnormal exam finding.
Dr. Sagerman has also been deposed. I will summarize his testimony for your soon. His was more favorable, but still limited in what he related to the chain saw accident. Apparently he does not believe you presently have any symptoms relatable to the chain saw injury.
Think about these issues. I will provide you Dr. Sagerman’s summary soon.
Hans

----- Original Message -----From: Paul Dulberg <pdulberg@comcast.net>To: Hans Mast <hansmast@comcast.net>Sent: Fri, 25 Oct 2013 13:18:24 -0000 (UTC)Subject: Medical depositions

Morning Hans,Wanted to touch base this morning because the call from you about something not being medically linked has been on my mind.I'm not sure what was said during that deposition with the drs that prompted the call but I have been thinking about what it could be. Most likely it was the right elbow procedure. During my deposition I remember being asked if the two were linked and I answered yes. Let me explain my answer to you. If the chainsaw had not gone through my arm then the procedure on my elbow wouldn't have happened. That procedure was exploratory to find what was bothering the arm from the chainsaw. Upon opening up the arm they did find some compressions which from my understanding was nothing unusual for a male of my age and very well may or may not have happened during my retreat from the chainsaw when I ended up half way across the yard on the ground. Incidental finding or not it still would not have been found if I hadn't had the chainsaw incident. So as I see it they are linked good or bad and cannot be separated. The exploratory procedure was to find and possibly fix issues relating to the chainsaw incident. They also removed a ton of scar tissue in the forearm on the same day during the same exploratory procedure that was a direct result of the chainsaw.

Hope this helps explain things better.Let me know,Thanks,Paul

Paul Dulberg847-497-4250Sent from my iPad

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: 3 pm meeting**
Date: December 28, 2016 10:39:25 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 5, 2013 at 9:46:33 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: 3 pm meeting

Hans,

Below is a link to an article talking about the integration of digital cameras at the centegra facilities.

A friend of mine who works at NIMC for well over a decade just replied to me and she says everything is recorded and available exactly for the purposes we discussed.

http://www.sdmmag.com/articles/print/success-stories-in-integrating-video-surveillance

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 5, 2013, at 9:00 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> no chance, sorry
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Mon, 04 Nov 2013 22:54:28 -0000 (UTC)
> Subject: Re: 3 pm meeting
> Also,
> Any chance the hospital (centegra) has video of their parking lots?
> This could disprove David's claim of talking before entering the ER.
> Thanks,
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 4, 2013, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> No need to bring anything, your mom is welcome...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Mon, 04 Nov 2013 17:31:20 -0000 (UTC)
>> Subject: 3 pm meeting
>> Hi Hans,
>> Curious if I should bring anything with me at 3 pm?
>> Mind if my Mom comes along?
>> Thanks and see you soon,
>> Paul
>> Paul Dulberg
>> 847-497-4250
>> Sent from my iPad

XFINITY Connect

hansmast@comcast.ne

+ Font Size -

Re: Dave's Best and oldest friend John

From : Paul Dulberg <pdulberg@comcast.net> Tue, Nov 19, 2013 02:29 AM

Subject : Re: Dave's Best and oldest friend John

To : Hans Mast <hansmast@comcast.net>

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>
> Sent from my iPhone
>
>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>
>> Only 5, That's not much at all.
>> Is this a take it or leave it or do we have any other options?
>>
>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>
>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.
>>
>> They all left me out in the yard screaming for help while they were busy making sure they were covered.
>>
>> She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.
>>
>> How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.
>>
>> I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.
>>
>> I'm not happy with the offer.
>>
>> As far as John Choyinski, he knows he has to call you and said he will tomorrow.
>>
>> Paul
>>
>> Paul Dulberg
>> 847-497-4250
>> Sent from my iPad
>>
>>> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>>>
>>> Im waiting to hear from John. I tried calling him last week, but no one answered.
>>>
>>> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at

some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>>>
>>> Let me know what you think..
>>>
>>> Hans
>>> ----- Original Message -----
>>> From: Paul Dulberg <pdulberg@comcast.net>
>>> To: Hans Mast <hansmast@comcast.net>
>>> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
>>> Subject: Dave's Best and oldest friend John
>>> Hans,
>>> Just spoke with John Choyinski again about talking with you.
>>> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
>>> I believe he will try and call sometime tomorrow.
>>> Paul
>>> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
>>> Sorry for the rant but Dave was a complete ass all the way and deserves this.
>>> Paul Dulberg
>>> 847-497-4250
>>> Sent from my iPad

CICERO, FRANCE, BARCH & ALEXANDER, P.C.
A Professional Corporation
Attorneys at Law
6323 EAST RIVERSIDE BOULEVARD
ROCKFORD, ILLINOIS 61114

PAUL R. CICERO
JOHN W. FRANCE
RONALD A. BARCH
CHARLES P. ALEXANDER

CHANTEL R. BIELSKIS
ANDREW T. SMITH

TEL: (815) 226-7700
FAX: (815) 226-7701

November 18, 2013

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich, PC
3416 West Elm Street
McHenry, IL 60050

Case: *Paul Dulberg v. David Gagnon, Caroline McGuire and Bill McGuire*
(McHenry County Case No. 12 LA 178)

Issued For Settlement Purposes Only

Dear Mr. Mast:

I am writing to confirm our telephone conversation earlier this morning, wherein I advised you that I was authorized to propose settlement of Mr. Dulberg's claim against Carolyn and Bill McGuire for a lump-sum total of $5,000.00. The settlement would of course be contingent upon customary settlement documents, including a release, a good faith settlement finding and dismissal.

Pursuant to your request, I searched my file materials for lien notices. The only notice of lien contained in my file at this time is your Attorney's Lien (enclosed). I have asked my contact at Auto-Owners Insurance Company to confirm no lien notices have arrived on his end since Mr. Dulberg's case was assigned to me for the defense of Mr. and Mrs. McGuire. I do not anticipating any lien notices, but just wanted to be safe.

I understand that you intend to run my settlement proposal by Mr. Dulberg. I look forward to hearing from you once you have had a chance to confer with him.

Very truly yours,

RONALD A. BARCH

RB:mj\37ltr.HAM
cc Tom Malatia (Claim No. 13-2779-11)
Encl.

MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the $5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans

MEMORANDUM

TO: File

FROM: Hans

DATE: December 20, 2013

SUBJECT: **PAUL DULBERG**

On December 18, 2013, I called Paul today after an email and we had a long discussion about the McGuire's liability and he seemed to concede and understand that probably based on the testimony there is nothing we can prove against the McGurie's and he is willing to take their $5,000 settlement offer.

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

FAXED 12/27

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

December 26, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

Please be advised that we will accept your $5,000 settlement offer on behalf of you clients, Caroline and Bill McGuire. Please forward your settlement agreement to my attention. Also, please present a motion for good faith finding with regard to the settlement.

As I understand it, you have no liens on the file other than our attorney's lien.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

power plant to recover for injuries sustained when he slipped and fell on wet concrete floor. The Circuit Court, Cook County, Dean Sodaro, J., granted summary judgment for owner, and employee appealed. The Appellate Court, Cerda, P.J., held that owner's duty to maintain safe workplace did not include mopping up water that accumulated on floor when snow and ice from pipes used in construction project melted onto floor, causing puddles of water.

Affirmed.

1. Judgment ⇐185(2)

Although plaintiff does not have to try his case on defendant's motion for summary judgment, he must provide factual basis which would arguably entitle him to judgment.

2. Appeal and Error ⇐949

Determination that summary judgment is appropriate will not be reversed absent abuse of trial court's discretion such that plaintiff's right to fundamental justice is violated.

3. Negligence ⇐32(2.10)

Landowner owed duty to independent contractor's employee to maintain reasonably safe workplace.

4. Negligence ⇐50

Landowner's duty to independent contractor's employee to maintain reasonably safe workplace did not extend to taking precautions against water tracked inside from natural accumulation outside.

5. Negligence ⇐2, 10

Duty is determined by considering number of factors, including foreseeability of harm, likelihood of injury, magnitude of burden of guarding against it, consequences of placing that burden on defendant, public policy, and social considerations.

6. Negligence ⇐29, 44

Landowner owes no duty where natural accumulation of snow, ice or water exists on outside or is tracked into building by pedestrian traffic.

7. Negligence ⇐28

Property owner has duty and may be liable in negligence when injuries are result of unnatural or artificial accumulation of snow, ice or water, or natural condition aggravated by owner's use of area and creation of condition.

8. Negligence ⇐50

Duty owed by owner of nuclear power plant to independent contractor's employee to provide reasonably safe workplace did not include duty to mop up water that accumulated on concrete floor when snow and ice from pipes being brought in from outside for use in construction project melted onto floor, causing puddles of water, where there was no evidence that owner did anything to aggravate that condition, but instead condition was continuation of natural accumulation.

Lane and Munday, Thomas J. Nathan, Chicago, for plaintiff-appellant.

Johnson, Cusack and Bell, Ltd., John W. Bell, Michael B. Gunzburg and Thomas H. Fegan, Chicago, for defendant-appellee.

Presiding Justice CERDA delivered the opinion of the court:

Plaintiff, Byong K. Choi, brought this action against defendant Commonwealth Edison Company seeking recovery for injuries sustained when plaintiff fell on a concrete floor while working at a construction site. The trial court granted defendant's motion for summary judgment. On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary judgment because a genuine issue of material fact exists. In addition, he argues that the trial court erred by failing to recognize defendant's duty to provide a safe workplace for workmen engaged in construction work on its premises and by failing to extend that duty to include taking precautions against the accumulation of water inside the building.

On January 10, 1979, plaintiff Choi was employed by Universal Power Piping, Inc. (UPP) as a welder at the Dresden Nuclear Power Plant, which is owned by defendant

Dulberg 000302

Commonwealth Edison Company. UPP was a subcontractor hired by Commonwealth Edison to complete installation of a decontamination flushing system in the Reactor 1 building. Plaintiff was working on the third-floor turbine deck receiving pipes brought in from the outside by UPP employees. While stored outside, the pipes became encrusted with snow and ice. Once inside, the pipes were raised from the ground floor to the third-floor turbine deck area by an overhead crane, which was operated by a Commonwealth Edison employee. Then, the pipe was taken from the crane, placed on a cart, and moved through the interlock hatch to the reactor building by UPP employees, including plaintiff. Snow and ice melted from the frozen pipes, forming puddles of water on the deck wherever the pipes were transported. Plaintiff was working in this manner all day prior to the accident.

As plaintiff and a co-worker were carrying a pipe, approximately 20 feet long and 10 inches in diameter, plaintiff slipped on water that was on the concrete floor. He fell backward, hitting his back on a pipe, and a floor spacer fell across his mid-section, causing injuries.

Previously, the appellate court upheld the trial court's summary judgment order for defendant regarding a Structural Work Act (Ill.Rev.Stat.1983, ch. 48, pars. 60 through 69). (*Choi v. Commonwealth Edison Co.* (1984), 129 Ill.App.3d 878, 85 Ill. Dec. 17, 473 N.E.2d 385.) In plaintiff's second amended complaint, he alleged that defendant was guilty of several negligent acts in its supervision of the construction work. Defendant filed a motion for summary judgment, arguing that under Illinois law, it had no duty to take precautions against natural accumulations of snow, ice or water that were tracked into a building. Defendant noted that the UPP foreman's deposition stated that he did not inform Edison of the condition because it was the duty of the contractor's own employees to clean up after themselves. Defendant pointed out that the snow came from pipes that plaintiff and his co-workers had brought in and carried to the area.

In response to defendant's motion for summary judgment, plaintiff argued that defendant owed him a duty to maintain a reasonably safe work place because it retained control over the construction work performed by UPP employees and could stop the work in progress for safety or other reasons. Plaintiff also argued that defendant breached that duty by failing to provide a reasonably safe workplace and by failing to stop work that was being performed in an unsafe manner. In addition, plaintiff contended that the melted snow and ice that caused the unsafe condition did not accumulate naturally, was not transported into the building by pedestrian traffic, and was caused by defendant's refusal to allow the pipes to be brought into the building and cleaned off before being transported to the work area. Plaintiff notes that the deposition of Commonwealth Edison's superintendent stated that Commonwealth Edison employees had the responsibility to clean snow and ice which came into the building, had the authority to stop work being performed in an unsafe manner, and regularly inspected the area.

Concluding that the facts were essentially undisputed, the trial court ordered summary judgment for defendant. The trial court stated that there was a common law duty of an occupier of land to exercise reasonable care for the safety of people lawfully on the premises, but that duty did not extend to a building owner being required to mop up water from an accumulation of snow, ice or water brought inside a building construction site. The trial court indicated that it would be an impossible burden placed on an owner of a building construction site to require following the independent contractor's employees around, mopping up every drip of water brought in from the outside. The trial court further ruled that Commonwealth Edison did not create the dangerous condition, but merely failed to clean up a mess which is common whenever building materials from the outside of a building are moved into a building.

The trial court analogized this case to *Lohan v. Walgreens Co.* (1986), 140 Ill. App.3d 171, 173, 94 Ill.Dec. 680, 488 N.E.2d 679, which ruled that a landowner has no duty to clean up snow, ice or water that is

tracked into a building from a natural accumulation on the outside. The trial court made no finding whether the accumulation inside the building was natural or unnatural, but did state that the water began as a natural accumulation of snow and ice on the pipes outside, and was brought into the building the same way as people tracking it on their feet. The trial court did not consider the expert's affidavit and deposition because it was not factually based. The expert did not actually examine the premises, the court noted, but merely looked at photographs.

After the trial court denied plaintiff's motion to reconsider, plaintiff appealed the summary judgment order. Plaintiff's argument emphasizes that Commonwealth Edison owed him a duty to maintain a safe workplace even though he was employed by an independent contractor hired by Commonwealth Edison. He asserts that the duty included mopping up water that accumulated on the building's floor when snow and ice from the pipes melted onto the floor, causing puddles of water. Plaintiff relies on cases holding that the landowner owes a duty to the employee of an independent contractor if the owner retains sufficient control over the contractor's work. *Claudy v. City of Sycamore* (1988), 170 Ill.App.3d 990, 120 Ill.Dec. 812, 524 N.E.2d 994; See *Haberer v. Village of Sauget* (1987), 158 Ill.App.3d 313, 110 Ill.Dec. 628, 511 N.E.2d 805; *Tsourmas v. Dineff* (1987), 161 Ill.App.3d 897, 113 Ill.Dec. 758, 515 N.E.2d 743; *Weber v. Northern Illinois Gas Co.* (1973), 10 Ill.App.3d 625, 295 N.E.2d 41; *Pasko v. Commonwealth Edison Co.* (1973), 14 Ill.App.3d 481, 302 N.E.2d 642. These cases state that the duty owed is to maintain a reasonably safe workplace.

Even if the water began as a natural accumulation on the outside, plaintiff asserts, Commonwealth Edison's intervening acts caused the water to be unnaturally accumulated on the inside of the building. In the alternative, plaintiff states, the condition was aggravated by Commonwealth Edison because it would not allow the pipes to be stored inside where the snow and ice could be safely removed after it melted. Furthermore, plaintiff argues, the pipes were brought in from the outside and loaded onto an overhead crane operated by a Commonwealth Edison employee. The overhead crane then took the pipes to the third floor of the building, where UPP employees transported the pipes through a tunnel into the reactor building. By the time the pipes reached the third floor, the snow and ice was melting, and water from the pipes was dripping on the floor. It is on that water that plaintiff fell and injured himself.

Defendant responds that the water was a natural accumulation tracked in from the outside by UPP employees, including plaintiff. It asserts that this situation should be treated the same as a natural accumulation tracked in from the outside by pedestrian traffic, thus creating no duty by the landowner.

Defendant relies on two types of cases: those concerning natural accumulations of snow, ice or water outdoors and those concerning snow, ice or water tracked into a building from the outside, whether tracked in by pedestrians' shoes, coats or umbrellas. In *Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679, the plaintiff slipped and fell on water that had been tracked from the outside into the common hallway of the defendants' stores. The appellate court ruled that the owners did not have a duty to continuously remove the tracks left by customers who had walked through the natural accumulations of snow or water outside, tracking them inside. Even if the owner has knowledge that the accumulation caused a dangerous condition, the court stated, there is no duty if the accumulation is natural. (*Lohan*, 140 Ill.App.3d at 173, 94 Ill.Dec. 680, 488 N.E.2d 679.) See also *Handy v. Sears, Roebuck & Co.* (1989), 182 Ill.App.3d 969, 131 Ill.Dec. 471, 538 N.E.2d 846 (summary judgment in favor of defendant store affirmed where plaintiff slipped and fell on water located within store); *Shoemaker v. Rush–Presbyterian–St. Luke's Medical Center* (1989), 187 Ill.App.3d 1040, 135 Ill.Dec. 446, 543 N.E.2d 1014 (hospital had no duty to clean up natural accumulation of water tracked into hospital on pedestrians' coats and umbrellas); *Serritos v. Chicago Transit Authority* (1987), 153 Ill.App.3d 265, 106 Ill.Dec. 243, 505 N.E.2d 1034 (city transit authority had no duty where plain-

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tiff fell on snow and slush covered steps of bus owned and operated by defendant).

[1, 2] The purpose of summary judgment is to determine whether a triable issue of fact exists. (*Haberer*, 158 Ill.App.3d at 316, 110 Ill.Dec. 628, 511 N.E.2d 805.) It may be granted if the pleadings, exhibits, affidavits, and depositions on file establish that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (Ill.Rev. Stat.1985, ch. 110, par. 2–1005(c); *Branson v. R & L Investment, Inc.* (1990), 196 Ill. App.3d 1088, 1090, 143 Ill.Dec. 689, 554 N.E.2d 624.) Although the plaintiff does not have to try his case, he must provide a factual basis which would arguably entitle him to judgment. (*Handy*, 182 Ill.App.3d at 972, 131 Ill.Dec. 471, 538 N.E.2d 846.) The determination that summary judgment is appropriate will not be reversed absent an abuse of the trial court's discretion such that the plaintiff's right to fundamental justice is violated. *Breeze v. Payne* (1989), 181 Ill.App.3d 720, 727, 130 Ill.Dec. 386, 537 N.E.2d 453.

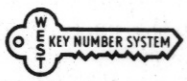
[3–5] Commonwealth Edison owed plaintiff the duty to maintain a reasonably safe workplace, but it did not extend to taking precautions against water tracked inside from a natural accumulation outside. Duty is determined by considering a number of factors: the foreseeability of harm (*Breeze*, 181 Ill.App.3d at 727, 130 Ill.Dec. 386, 537 N.E.2d 453), the likelihood of the injury, the magnitude of the burden of guarding against it, the consequences of placing that burden on the defendant, public policy, and social considerations. *Dealers Service & Supply Co. v. St. Louis National Stock.* (1987), 155 Ill.App.3d 1075, 1080, 108 Ill.Dec. 664, 508 N.E.2d 1241.

[6, 7] In Illinois, a landowner owes no duty where a natural accumulation of snow, ice or water exists on the outside or is tracked into a building by pedestrian traffic. (*Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679.) However, a property owner does have a duty and may be liable where the injuries are a result of an unnatural or artificial accumulation, or a natural condition aggravated by the owner's use of the area and creation of the condition. (*Handy v. Sears, Roebuck & Co.* (1989), 182 Ill.App.3d 969, 971, 131 Ill. Dec. 471, 538 N.E.2d 846.) To establish a duty, the plaintiff must make an affirmative showing of an unnatural accumulation or an aggravation of a natural condition before recovery will be allowed. (*McCann v. Bethesda Hospital* (1979), 80 Ill.App.3d 544, 549, 35 Ill.Dec. 879, 400 N.E.2d 16.) Plaintiff made no such showing in this case.

[8] Therefore, summary judgment for defendant was proper. The water in the nuclear power plant was a continuation of a natural accumulation. There was no evidence presented that Commonwealth Edison did anything to aggravate the condition. To require an owner of a construction site to follow workmen around and immediately clean up any melting snow, ice or water that had been brought in from the outside would be too high a burden.

Affirmed.

WHITE and GREIMAN, JJ., concur.



217 Ill.App.3d 958
578 N.E.2d 37

FISTER/WARREN, successor in interest to Charles L. Fister and Associates, Inc., a corporation; Charles L. Fister and Robert J. Warren, Plaintiffs–Appellants/Counter–Defendants–Appellees,

v.

BASINS, INC., a Wyoming corporation, and Georgia Marble Company, a Georgia corporation, Defendants–Appellees/Counter–Plaintiffs–Appellants.

Nos. 1–90–2260, 1–90–2882.

Appellate Court of Illinois,
First District, Sixth Division.

July 12, 1991.

Rehearing Denied Aug. 30, 1991.

Stock sellers brought action against buyer of corporation and corporation, seek-

Duberg 000305

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	Case No. 12 LA 178

ANSWER TO PLAINTIFF'S INTERROGATORIES TO DEFENDANTS BILL McGUIRE AND CAROLYN McGUIRE

TO: Paul Dulberg
c/o Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

Defendants, BILL McGUIRE AND CAROLYN McGUIRE (improperly named Caroline), by and through their attorneys, Cicero, France, Barch & Alexander, PC, and for their Answer to Plaintiff's Interrogatories, state as follows:

1. State the full name of the defendant(s) answering, as well as your current residence address, date of birth, marital status, and social security number, and, if different, give the full name, as well as the current residence address, date of birth, marital status, and social security number of the individual(s) signing these Answers.

ANSWER:

William "Bill" McGuire	Carolyn McGuire
1016 W. Elder Avenue	1016 W. Elder Avenue
McHenry, IL 60051	McHenry, IL 60051
Married: Carolyn	Married: Bill
DOB: July 29, 1952	November 26, 1946

Defendants object to providing Social Security Numbers. Such information is highly sensitive and private and is furthermore irrelevant to any issues in the pending lawsuit.

2. State the full name and current residence address of each person who witnessed or claims to have witnessed the accident to the Plaintiff on the premises as described in the complaint.

ANSWER: David Gagnon
39010 90th Place
Genoa City, WI 53128

Paul Dulberg
4606 Hayden
McHenry, IL 60051

3. State the full name and current residence address of each person who witnessed or claims to have witnessed the work and/or conditions existing as described in the complaint at the location of the accident on the date of the accident described.

ANSWER: See answer to Interrogatory No. 2.

4. State the name and address of the person(s) or entity that owned the property premises whereat the accident occurred as alleged, as of the date in question.

ANSWER: Bill and Carolyn McGuire
1016 W. Elder Avenue
McHenry, IL 60051

5. State the name and address of the person(s) or entity that was involved in the work and/or maintenance of the exterior of the premises as alleged on the date in question.

ANSWER: See response to Interrogatory No. 2.

6. State the name and address of the person(s) or entity that decided or chose to undertake the work and/or maintenance of the exterior of the premises as alleged on the date in question, including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

7. State the name and address of the person(s) or entity that was to supervise or oversee the work and/or maintenance at the exterior of the premises as alleged on the date in question including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

8. State the full name and current residence address of each person, who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after said occurrence.

ANSWER:

Before:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
At Time Of Occurrence:	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
After:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051

9. State the name and address of each witness that knows or claims to know the circumstances of the alleged accident, how it occurred or how the Plaintiff became injured – as alleged in the Complaint.

ANSWER: On information and belief, David Gagnon and Paul Dulberg were present at the time of the alleged occurrence and therefore know the circumstances surrounding the occurrence. Answering further, Defendants Bill McGuire and Carolyn McGuire were not present at the time of the occurrence but knew that David Gagnon and Paul Dulberg were present on the date of the occurrence. From conversations with David Gagnon, the answering Defendants believe that Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Investigation continues.

10. With respect to the chain saw that was being operated on the premises at the time of the alleged injury, state as follows:

a. Who was operating the chain saw at the time of the Plaintiff's alleged injury;

b. Who owned the chain saw at the time of Plaintiff's alleged injury;

c. who requested that the chain saw be used to perform work at the time of Plaintiff's injury.

ANSWER:

a. On information and belief, David Gagnon was operating the chain saw at the time Mr. Dulberg was injured.

b. Bill McGuire was the owner of the chain saw on the date of the occurrence.

c. David Gagnon had Bill McGuire's permission to use the chain saw.

11. With respect to David Gagnon's experience in use of a chain saw prior to the date of the alleged accident, state as follows:

a. How many times had David Gagnon operated the same or similar chain saw prior to the date of alleged accident;

b. What formal training did David Gagnon receive in use or operation of a chain saw prior to the occurrence alleged;

c. Who, if any, (names and addresses) trained David Gagnon in use or operation of a chain saw prior to the occurrence.

ANSWER:

a. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, and to the best of the answering parties' knowledge, David Gagnon has used chain saws in the past but the answering parties do not known how often he has used chain saws in the past.

b. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering parties do not know whether David Gagnon has been formally trained the use or operation of a chain saw. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

c. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering party do now know whether or by whom David Gagnon was trained in the use of chain saws. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

12. What was the scope of work or task David Gagnon was engaged in with use of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent "scope of work" or "engaged" constitute legal conclusions, the answering Defendants object to Interrogatory No. 12. Answering subject to objection, at the time of the alleged occurrence, the answering Defendants were in the process of replacing an old shed on their property. Paul Dulberg helped David Gagnon tear down the old shed. The answering Defendants further believe that Mr. Dulberg took the components of the old shed to his property for eventual reassembly. On the date of the occurrence, Mr. Dulberg was helping David Gagnon take down several trees to make room for a new shed. On information and belief, prior to the occurrence Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Answering further, the answering Defendants did not engage, hire or pay either individual for their activities on site. Nor did either answering Defendant dictate, control or otherwise supervise the methods and means by which Mr. Gagnon and Mr. Dulberg performed the tree and branch cutting at issue.

13. Who (names and addresses) requested or chose to engage Gagnon in the "task" of use and operation of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent the words "chose" and "engage" constitute legal conclusions, the answering Defendants object to Interrogatory No. 13. Answering subject to objection, David Gagnon undertook the tree cutting and trimming in question as a favor to his parents. He was not engaged, hired or paid for the activities in question.

14. What instructions or guidance, if any, was given to Gagnon prior to Plaintiff's alleged injury/accident with regard to how he was to perform the chain saw work at the premises.

ANSWER: See response to Interrogatory No. 11.

15 Were you (Defendant) covered under any policy of insurance at the time of the occurrence. If so, were you named or covered under any policy, policy, or policies, of liability insurance effective on the date of said occurrence, and: State the name of each such company or companies, the policy number of numbers, the effective period(s) occurrence, including umbrella or excess insurance coverage, property damage and medical payment coverage.

ANSWER: Yes.
Auto-Owners Insurance Company
Policy No. 48-010-965-01
Eff.: May 9, 2011 thru May 9, 2012
Personal Liability (Each Occurrence): $300,000.00
Medical Payments (Each Person): $1,000.00

16. Do you have any information:

(a) That any plaintiff was, within the 5 years immediately prior to said occurrence, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than person injury? If so, state each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or other health care professional, the approximate date of such confinement or service and state the reason for such confinement or service;

(b) That any plaintiff has suffered any serious personal injury and/or illness prior to the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(c) That any plaintiff has suffered any serious personal injury and/or illness since the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(d) That any plaintiff has ever filed any other suit for his or her own personal injuries? If so, state each plaintiff so involved, state the court, and caption in which filed, the year filed, the title and docket number of said case.

ANSWER:

a. On information and belief, the answering parties believe that Paul Dulberg was involved in a motor vehicle accident that resulted in a shoulder injury of some sort. The answering parties do not know of any other details about the auto accident or injuries, if any.
b. See answer to Interrogatory No. 16(a).
c-d. No.

17. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, the name, address and occupation and employer of the person taking them.

ANSWER: None, other than those furnished as part of Plaintiff's discovery response.

18. Have you (or anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with regard to the injuries complained of by plaintiff or the manner in which the occurrence complained of occurred? If the answer to this Interrogatory is in the affirmative, state the following:

(a) The date or dates of such conversations and/or statements;
(b) The place of such conversations and/or statements;
(c) All persons present for the for the conversations and/or statements;
(d) The matters and things stated by the person in the conversations and/or statements;
(e) Whether the conversation was oral, written and/or recorded; and
(f) Who has possession of said statement if written and/or recorded.

ANSWER: (a) thru (f): See summary of oral communication received from David Gagnon set forth in response to Interrogatory No. 9. Answering further, on information and belief, a few weeks after the subject occurrence Paul Dulberg did roofing work and moved heavy pieces of lumber for Mike Thomas, 460 Walbeck Drive, Twin Lakes, WI 53181 (312/961-9655). Investigation continues.

19. Do you know of any statements made by any person relating to the occurrence complained of by the plaintiff? If so, give the name and address of each such witness, the date of said statement, and state whether such statement was written and/or oral.

ANSWER: See answers to Interrogatories No. 9 and 18.

20. State the name and address of each person having knowledge of Plaintiff's activities on the premises PRIOR to the accident in question.

ANSWER: Paul Dulberg and David Gagnon.

21. State the name and address of each person having knowledge of Plaintiff's activities on the premises AFTER the accident in question.

ANSWER: Paul Dulberg, David Gagnon, Bill McGuire and Carolyn McGuire.

22. Had the Plaintiff ever used or operated a chain saw on the premises or for the Defendant's prior to his alleged accident. If so, state the dates and times such occurred.

ANSWER: Yes. In June 2011 Carolyn and Bill McGuire had a contractor take down a large tree on their property. The contractor left the fallen limbs. Shortly thereafter, Paul Dulberg brought his own chain saw down to the property. He cut the limbs into logs. David Gagnon helped him cut and load the logs.

23. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial, and state the subject of each witness' testimony, giving the following information:

(a) The subject matter on which the opinion witness is expected to testify;
(b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of said witness, if any;
(c) The qualifications of each opinion witness, including a Curriculum Vitae and/or resume, if any; and
(d) Identify any written reports of the opinion witness regarding this occurrence.

ANSWER:

Illinois Supreme Court Rule 213(f)(1) – Lay Witnesses:

The answering party has not yet determined the identity of the witnesses that might be called upon to offer lay witness testimony and opinions at trial. However, each of the following individuals are possible trial witnesses:

a. Paul Dulberg. Presumably, Mr. Kemp will testify about his age, education and work experience. He may testify concerning all the events and occurrences alleged in his complaint. He may also testify concerning his state of health before the events and occurrences alleged in his complaint, the injuries he attributes to the events and occurrences alleged in his complaint, and his current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

b. David Gagnon. The answering party does not know the specifics of Mr. Gagnon's potential trial testimony. Presumably, however, Mr. Gagnon will testify about his age, education and work experience. He may testify concerning his connection to Bill McGuire and Carolyn McGuire. He may testify concerning the events and occurrences alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health before the events and occurrences alleged in Plaintiff's Complaint, observations he made about the injuries Mr.

Dulberg attributes to the events and occurrences alleged in Plaintiff's Complaint, and observations he made about Mr. Dulberg's current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

c. Bill McGuire. If called upon to testify, Mr. McGuire will testify about his age, education and work experience. He will testify concerning his connection to David Gagnon and Carolyn McGuire. He may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations he made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

d. Carolyn McGuire. If called upon to testify, Mrs. McGuire will testify about her age, education and work experience. She will testify concerning her connection to David Gagnon and Bill McGuire. She may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. She may also testify concerning observations she made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations she made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that she will testify concerning all matters covered by her discovery responses and discovery deposition, if taken. Investigation continues.

e. Mike Thomas. If called upon to testify, Mr. Thomas may testify about his age, education and work experience. He may testify concerning his connection to Paul Dulberg. He may also testify concerning observations he made about Mr. Dulberg's state of health after the occurrence alleged in Plaintiff's Complaint, including observations he made of Mr. Dulberg performing roofing work and moving lumber. Lastly, it is anticipated that he will testify concerning all matters covered in his discovery deposition, if taken. Investigation continues.

f. Investigation continues.

Illinois Supreme Court Rule 213(f)(2) – Independent Opinion Witnesses.

To the extent any of the individuals disclosed above as potential Rule 213(f)(1) witnesses also qualify for disclosure as an independent expert witness within the meaning of Illinois Supreme Court Rule 213(f)(2), the responding Defendants incorporate the above Rule 213(f)(1) disclosure as though fully and completely set forth herein as a Rule 213(f)(2) disclosure. Answering further, the responding Defendants further incorporate the identity and opinions of any medical provider that treated Plaintiff for injuries he claims are associated with the occurrence alleged in his Complaint. For additional detail, see the medical records and materials produced by Plaintiff as part of his production response. Investigation continues.

Illinois Supreme Court Rule 213(f)(3) – Controlled Opinion Witnesses.

None at this time. Answering further, Defendants reserve the right to retain and disclose controlled opinion witnesses and will do so, if necessary, in accordance with all applicable court orders and discovery rules.

24. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of said occurrence and/or of the injuries and damages claimed to have resulted therefrom.

ANSWER: None, other than as disclosed in response to the interrogatories above.

25. Identify any statements, information and/or documents known to you and requested by any of the foregoing Interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each Interrogatory, specify the legal basis for the claim as required by Supreme Court Rule 201(n).

ANSWER: None at this time.

26. State the name and address of each person at the premises (although maybe at different location or not a witness to the incident) described at the time of the occurrence.

ANSWER: See response to Interrogatory Nos. 1 and 2.

27. Was the Plaintiff struck and injured by the chain saw while in operation on the date and time alleged. If so, what caused the chain saw to strike the Plaintiff.

ANSWER: On information and belief, yes. Answering further, Defendants were not present at the time of the occurrence. See answer to Interrogatory No. 9.

28. Describe what, if any, of the Plaintiff's conduct caused or contributed to his injury on the date and time in question.

ANSWER: See answer to Interrogatory No. 9.

29. Did the chain saw malfunction at any time during its use prior to Plaintiff's alleged injury.

ANSWER: To the best of the answering parties' knowledge, no.

30. Prior to Plaintiff's alleged injury, was the subject chain saw operating safely and properly.

ANSWER: To the best of the answering parties knowledge, yes.

CAROLYN MCGUIRE and BILL MCGUIRE,
Defendants, by their attorneys,
CICERO, FRANCE, BARCH & ALEXANDER, P.C.,

By _____
RONALD A. BARCH (6209572)

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

BILL McGUIRE, being first duly sworn on oath, deposes and states that he is one of the defendants herein; that he has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of his knowledge and belief.

Bill McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

Notary Public

OFFICIAL SEAL
RONALD A BARCH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 06/07/14

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

CAROLYN McGUIRE, being first duly sworn on oath, deposes and states that she is one of the defendants herein; that she has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of her knowledge and belief.

Carolyn McGuire

Carolyn McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

Notary Public

OFFICIAL SEAL
RONALD A BARCH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 05/07/14

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon:

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid, at Rockford, Illinois, at 5:00 o'clock p.m. on 8/6/12.



Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff(s), vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendant(s).	CASE NO. 12LA000178

ANSWERS TO CO-DEFENDANT INTERROGATORIES

The Defendant, DAVID GAGNON, in response to the Interrogatories propounded states as follows:

1. State the full name, present residence address and birth date of the person answering these Interrogatories.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128
DOB: 4/3/1697

2. State your marital status on the date of the occurrence in question and, if married, your spouse's name and age on said date.

ANSWER: Married; Pamela Gagnon, 39010 90th Place, Genoa City Wisconsin 53128.

3. State the full name and present or last known address (indicating which) of each person who:

(a) Witnessed or claims to have witnessed the occurrence in question.
(b) Was present or claims to have been present at the scene immediately before said occurrence.
(c) Was present or claims to have been present immediately after said occurrence.
(d) Otherwise has or claims to have any knowledge of the facts or possible causes of the occurrence to include any damages or injuries alleged to have resulted from said occurrence.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128; Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050; Carolyn McGuire, 1016 W. Elder

EXHIBIT
Gagnon 3
PENGAD 800-631-6989

Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051.

4. State specifically and with certainty the personal injuries and property damage, if any, sustained by PAUL DULBERG as a result of said occurrence.

ANSWER: Defendant has no knowledge regarding the plaintiff's personal injuries and/or property damage claims.

7. State whether PAUL DULBERG was hospitalized or had suffered any illness or personal injury prior to or subsequent to the date of said occurrence, and if so, state the nature and date of each such hospitalization, illness or personal injury.

ANSWER: I do not know.

8. State whether PAUL DULBERG suffered any permanent scarring as a result of the accident alleged in the complaint. If so, state the location of such scar, the width and length of such scar or scars. (Pursuant to Supreme Court Rule 214, please attach any photos of any such scar to your answers hereto.)

ANSWER: I do not know.

9. State whether prior to the accident alleged in the complaint PAUL DULBERG suffered any physical disability or impairment of any kind whatsoever. If so, state the nature of such physical disability or impairment and how PAUL DULBERG came to have such physical disability or impairment.

ANSWER: I do not know.

10. State the location of the alleged occurrence, pinpointing such location in feet, inches and direction from fixed objects or boundaries at the scene of the occurrence.

ANSWER: The accident occurred in ~~front~~ BACK of my parent's home at 1016 W. Elder Avenue, McHenry Illinois 60051.

11. State with particularity the nature of the alleged defect, object substance or condition which caused the alleged occurrence giving the exact dimensions and physical description of such including the size, shape, color, height, length and depth of such defect or object.

ANSWER: Chainsaw, EFCO, Model # MT3500, 2.38 Cubic Inch, 16" blade.

12. State with particularity what PAUL DULBERG was doing at the time of the accident alleged in the complaint.

ANSWER: He was helping me trim a tree by holding a branch.

13. State with particularity what DAVID GAGNON was doing at the time of the accident alleged in the complaint.

ANSWER: I was cutting through a branch with the chainsaw.

14. State with particularity the address for David Gagnon on June 28, 2011.

ANSWER: 39010 90th Place, Genoa City Wisconsin 53128.

15. State with particularity all the reasons why PAUL DULBERG was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I asked him to help me trim the tree at my parents' home.

16. State with particularity all the reasons why DAVID GAGNON was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I was trimming a tree for my parents.

17. State with particularity your basis for alleging that David Gagnon was working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

18. State with particularity your basis for alleging that Defendants Bill McGuire and Carolyn McGuire instructed and/or advised David Gagnon in the use of a chain saw on or before the date of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

19. State with particularity your basis for alleging that David Gagnon was under the supervision and control of Defendants Bill McGuire and Carolyn McGuire and working as their apparent and actual agent on the date of and at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

20. State with particularity any and all defects associated with the chain saw you believe or claim was involved in the occurrence alleged in Plaintiff's Complaint.

ANSWER: None.

21. State whether any photographs or videos were taken of the scene of the occurrence or of the persons, objects or premises involved, and if so, state the number of photographs or videos taken, their subject matter and who now has custody of them.

ANSWER: No.

22. Pursuant to Supreme Court Rule 213(f), furnish the identity and addresses of witnesses who will testify at trial and the following information:

(a) For each lay witness, identify the subjects on which the witness will testify.

(b) For each independent expert witness, identify the subjects on which the witness will testify and the opinions the party expects to elicit.

(c) For each controlled expert witness, identify:

(i) the subject matter on which the witness will testify;

(ii) the conclusions and opinions of the witness and the bases therefor;

(iii) the qualifications of the witness; and

(iv) any reports prepared by the witness about .the case.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128— This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his insurance policy and coverage; maintenance, repair and inspection of the chainsaw; as to any dangerous or defective area on the premises. This witness is also expected to testify regarding his observations of the plaintiff before, during and after the alleged occurrence; his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050—This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his relationship to the tenants of the building; his observations prior, during and after his alleged injury; the nature of his injury, medical bills, medical records and recovery; his understanding of his injury and recovery. This witness is also expected to testify to his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Carolyn McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051— These witnesses are expected to testify as to their ownership of the property in question; their insurance policy and coverage; their knowledge of the area, chainsaw and tree; maintenance, repair and inspection of the chainsaw; as to any violations the premises; as to any dangerous or defective area on the premises. These witnesses are also expected to testify regarding their observations of the plaintiff before, during and after the alleged occurrence; their understanding as to the facts of the accident; their observations of the scene and they are expected to testify as to any conversations which took place between the parties and witnesses. These witnesses are also expected to testify consistent with any testimony they may have given and/or may give at a discovery deposition.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

David A. Gagnon

DAVID GAGNON

I HEREBY CERTIFY that on 1/31/13, a true and correct copy of the foregoing Answers to Interrogatories were filed with the Clerk of the Circuit Court of McHenry County and a copy of same was also mailed to:

Hans A. Mast
Law Offices of Thomas J. Popovich, P.C.
3416 W Elm St
McHenry IL 60050

Attorney for Plaintiff(s) Paul Dulberg

Cicero, France, Barch & Alexander PC
6323 East Riverside Blvd
Rockford, IL 61114

Attorney for Co-Defendants, Caroline and Bill McGuire

LAW OFFICE OF M. GERARD GREGOIRE
200 N LaSalle St Ste 2650
Chicago, IL 60601-1092
Telephone: 312-558-9821

By: _____
PERRY A. ACCARDO
Firm No.: 46878
E-MAIL ADDRESS:
ILLINOISLEGAL@ALLSTATE.COM
Attorney Bar No.: 6228720
Attorney for Defendant(s):
David Gagnon

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
McHenry County, Illinois
MAR 13 2015
KATHERINE M. KEEFE
Clerk of the Circuit Court

PAUL DULBERG, Plaintiff,	)	
vs.	)	No. 12 LA 178
DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, Individually, Defendants.	)	

COPY

NOTICE OF MOTION

TO: *VIA FIRST CLASS MAIL:*
Perry Accardo
Law Office of Steven A. Lihosit
200 N. LaSalle Street, Suite 2550
Chicago, IL 60601-1092

VIA CERTIFIED MAIL:
Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

On **March 13, 2015 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Thomas A. Meyer** or any judge sitting in his stead, in courtroom 201 in the Circuit Court of McHenry County in Woodstock, Illinois and shall then and there present **MOTION TO WITHDRAW AS COUNSEL**, a copy of which is hereby served upon you

AFFIDAVIT OF SERVICE

I certify that I served this Notice by mailing to whom it is directed at approximately 5:00 p.m. on March 5, 2015 in McHenry, IL and further that the statements set forth in this Affidavit of Service are true and correct.

Hans A. Mast, Attorney for Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, IL 60050
815-344-3797
Attorney ID No. 06208070

7014 0150 0001 6391 9351

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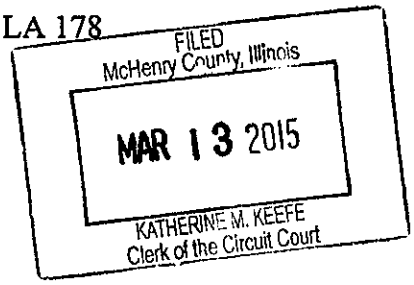
Sent To: Paul Dulberg
Street, Apt. or PO Box: 4606 Hayden Court
City, State: McHenry, IL 60051

PS Form 3800, August 2006 — See Reverse for Instructions

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, Individually, Defendants.	)	No. 12 LA 178



MOTION TO WITHDRAW AS COUNSEL

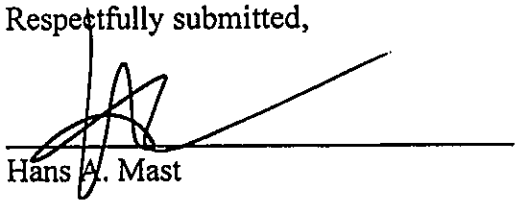
NOW COME the LAW OFFICES OF THOMAS J. POPOVICH, P.C., attorneys for the Plaintiff, PAUL DULBERG, and hereby move to withdraw as counsel for the Plaintiff in this cause pursuant to Supreme Court Rule 13. In support of said Motion, the attorneys hereby state as follows:

1. Communication between Plaintiff and Plaintiff's counsel has broken down resulting in an unworkable situation for both attorney and client.

2. By copy of this motion, Plaintiff is hereby advised that, to ensure notice of any further action in this cause, she should retain new counsel or within 21 days of the hearing of this motion and withdrawal of counsel, retain other counsel or file her own supplementary appearance with the clerk of the circuit court, stating an address at which service of notices or other papers may be had upon her.

WHEREFORE, the LAW OFFICES OF THOMAS J. POPOVICH, P.C. respectfully requests that this Court enter an Order granting the LAW OFFICES OF THOMAS J. POPOVICH, P.C. leave to withdraw as counsel for the Plaintiff, PAUL DULBERG.

Respectfully submitted,



Hans A. Mast

LAW OFFICES OF THOMAS J. POPOVICH
3416 West Elm Street
McHenry, IL 60050
(815) 344-3797
Attorney No. 06208070

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

X _____
Client

_____
Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

Exhibit 1
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Exhibit 2
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

COPY

FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 204 ON
7/18 20 12, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ____ ON
____ 20 ____, AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry. County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20 That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	No.:

AFFIDAVIT

I, HANS A. MAST, being first duly sworn on oath, depose and state as follows:

1. That I am one of the attorneys responsible for the prosecution of the above-entitled case.

2. That on behalf Plaintiff, PAUL DULBERG, I am hereby requesting money damages in an amount not to exceed $50,000.00, together with the costs of this action, against each of the above-named Defendants.

FURTHER, Affiant sayeth naught.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
ARDC No. 06203684

MEMORANDUM

TO: Tom, Marla, Diana and Alarie

FROM: Hans

DATE: December 5, 2011

SUBJECT: **PAUL DULBERG - NEW CLIENT**

HAM
B/C the accident occurred on their premises, their H.O. med-pay will cover the bills.

On December 1, 2011, I met Paul Dulberg and his mother, concerning a recent injury that Paul suffered at a friend's house due to a chainsaw accident on June 28, 2011. Paul was referred to our office by a former client, Hubert McArtor. Paul had previously been with Francisco Botto in Woodstock but they rejected the case. He did sign a contract with Botto but we have correspondence in the file that they rejected him and sent him away. They did not refer him to us. Apparently, they rejected the case because they did not think that they would be able to prove that the defendant was more than 50% negligent causing the accident. I disagree.

Paul's contact information is as follows:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051
847/497-4250
SSN 323-76-4001
DOB 03-19-70
DOA 06/28/11

Paul describes that he was at a friend's house, Caroline and Bill McGuire who live at 1016 W. Elder Avenue, McHenry, IL 60051, phone 815/344-4274. The McGuire's son, Dave was at the home and Dave was cutting up some tree limbs in the yard. Caroline had called Paul over to the house earlier to see if he wanted the wood for firewood. Dave asked Paul to hold some tree limbs while he cut them up. He had held two tree branches previously and then about an hour after he arrived he was holding another branch and Dave suddenly swung around with the chainsaw rising it in the air and cutting his Paul's forearm severely while holding on to a branch. Paul said that the chainsaw went about 40% through his forearm. Dave took him immediately to NIMC where they stitched him up. It was a very deep and open wound. Unfortunately, he did not take any photos of the wound. Instead, he followed up with his family physician, Dr. Frank Sek on Route 120 in McHenry who removed the stitches about a week later. Dr. Sek thought there was going to be possible nerve damage due to his arm being very painful. About two weeks later he went to a doctor at the Associates in Neurology in Libertyville and they took and EMG test which found that there were some branch nerves that had been severed which may be the cause of his ongoing pain. They thought that the pain was probably more ligamentous and they referred him to Dr. Paul Papierski, phone 847/247-0547. That was in August. He has not returned to see Dr. Papierski because apparently they needed an MRI and he did not have money to pay for an MRI. I urged him to return

Exhibit 3
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

to see Dr. Papierski and to have the MRI done even if they have to hold a lien on our case. His arm is very painful when he lifts anything and he drops things continuously. He said that he will follow up with Dr. Papierski and advise me further what needs to be done as far as treatment.

At the time of the accident he was not employed but he had been just recently hired when the accident occurred by AMS Screw Products in Spring Grove. He was going to earn $12 an hour for 40 hours per week. He had talked to Karen over at AMS Screw and she agreed to hire him, but unfortunately, he was injured before he could start work. Their phone number is 732/545-8888x231.

The central issue in my view in this case is whether there is insurance coverage. Since the son was not living with the McGuire's at the time of the accident, it may be that David Gagnon is not going to be insured for the accident. However, Paul and his mother advised me that Dave also had a home and lived at 39010 90th Place in Genoa City, Wisconsin. Therefore, hopefully he has homeowner's insurance that will apply to this claim as well as med-pay coverage to help pay for the MRI that needs to be done.

The McGuire's were insured by:

Auto Owners Insurance
Tom Malatia, Adjuster
6000 Tallgate Road, Suite D
Elgin, IL 60123
847/587-3077
847/531-5420
847/531-8063x3808 gen. #
Claim No. 13-2779-11

By copy of this memo, I ask **Alarie** to set up a new file.

By copy of this memo, I ask **Marla** to order the medical records and bills from NIMC, Dr. Frank Sek and Associates in Neurology in Libertyville. Please also diary the 1 and 2 year SOL deadlines in this case.

Thanks,

Hans

S:\Main\DULBERG, PAUL\Memos\Memo re new client 12-5-11.wpd

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

FAXED

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for $7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Exhibit 4
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

** Transmit Conf.Report **

P.1 Oct 22 2013 12:24pm
LAW OFFICE T POPOVICH Fax 1-815-344-5280

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
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The Law Offices of Thomas J. Popovich P.C.

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October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for $7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

XFINITY Connect

hansmast@comcast.ne

+ Font Size -

Re: Medical depositions

From : Hans Mast <hansmast@comcast.net>

Wed, Oct 30, 2013 02:34 PM

Subject : Re: Medical depositions

To : Paul Dulberg <pdulberg@comcast.net>

Cc : Hans Mast <hansmast@comcast.net>

Paul, here are my thoughts regarding your case. There are two issues. The first liability, or whether Mr. Gagnon is liable for your injury. If he is not proven liable, then it does not matter how badly you were hurt since he will not be found responsible for your damages. The second issue is your damages, or to what extent you were injured due to Mr. Gagnon’s acts.
Both of these issues are strongly contested in your case.
As to liability, there were no witnesses to the accident. So, whether Mr. Gagnon will be held responsible for your damages is uncertain and a gamble. That is because it is your word against his word. Our argument is that you were simply holding a limb when he caused the chain saw to strike you. His argument is that you moved your arm in the path of the chain saw unexpectedly. If the jury determines that we did not prove your "version" of the accident, then they can find against you and in favor of Mr. Gagnon at trial.
As to damages, the issue is complicated. That is because your treating physicians do not all agree on exactly what injury you suffered or whether your had a fully recovery or not.
Dr. Talerico at MidAmerica Hand and Shoulder, saw you twice. The first time was in December, six months after your injury. He was not supportive of your claim in most respects. He didn’t really feel there was anything wrong with you - as to the forearm. He said that you complained mostly of pain radiating down the forearm from the laceration site with numbness and tingling. On exam he noted no tenderness and it was mostly a normal presentation. Strength was good. He did not see any nerve problem. He prescribed physical therapy due to a muscular sort of symptomology - not nerve related. Apparently you did only 2 sessions of therapy and returned January, 2012. No new complaints at the time. The EMG was normal. He did not believe you were disabled. He continued you on therapy. He saw no evidence of nerve problems. The only symptoms were subjective - not represented by any abnormal exam finding.
Dr. Sagerman has also been deposed. I will summarize his testimony for your soon. His was more favorable, but still limited in what he related to the chain saw accident. Apparently he does not believe you presently have any symptoms relatable to the chain saw injury.
Think about these issues. I will provide you Dr. Sagerman’s summary soon.
Hans

----- Original Message -----From: Paul Dulberg <pdulberg@comcast.net>To: Hans Mast <hansmast@comcast.net>Sent: Fri, 25 Oct 2013 13:18:24 -0000 (UTC)Subject: Medical depositions

Morning Hans,Wanted to touch base this morning because the call from you about something not being medically linked has been on my mind.I'm not sure what was said during that deposition with the drs that prompted the call but I have been thinking about what it could be. Most likely it was the right elbow procedure. During my deposition I remember being asked if the two were linked and I answered yes. Let me explain my answer to you. If the chainsaw had not gone through my arm then the procedure on my elbow wouldn't have happened. That procedure was exploratory to find what was bothering the arm from the chainsaw. Upon opening up the arm they did find some compressions which from my understanding was nothing unusual for a male of my age and very well may or may not have happened during my retreat from the chainsaw when I ended up half way across the yard on the ground. Incidental finding or not it still would not have been found if I hadn't had the chainsaw incident. So as I see it they are linked good or bad and cannot be separated. The exploratory procedure was to find and possibly fix issues relating to the chainsaw incident. They also removed a ton of scar tissue in the forearm on the same day during the same exploratory procedure that was a direct result of the chainsaw.

Hope this helps explain things better.Let me know,Thanks,Paul

Paul Dulberg847-497-4250Sent from my iPad

Exhibit 5
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: 3 pm meeting**
Date: December 28, 2016 10:39:25 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 5, 2013 at 9:46:33 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: 3 pm meeting

Hans,

Below is a link to an article talking about the integration of digital cameras at the centegra facilities.

A friend of mine who works at NIMC for well over a decade just replied to me and she says everything is recorded and available exactly for the purposes we discussed.

http://www.sdmmag.com/articles/print/success-stories-in-integrating-video-surveillance

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 5, 2013, at 9:00 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> no chance, sorry
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Mon, 04 Nov 2013 22:54:28 -0000 (UTC)
> Subject: Re: 3 pm meeting
> Also,
> Any chance the hospital (centegra) has video of their parking lots?
> This could disprove David's claim of talking before entering the ER.
> Thanks,
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 4, 2013, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> No need to bring anything, your mom is welcome...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Mon, 04 Nov 2013 17:31:20 -0000 (UTC)
>> Subject: 3 pm meeting
>> Hi Hans,
>> Curious if I should bring anything with me at 3 pm?
>> Mind if my Mom comes along?
>> Thanks and see you soon,
>> Paul
>> Paul Dulberg
>> 847-497-4250
>> Sent from my iPad

Exhibit 6
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

XFINITY Connect

hansmast@comcast.ne

+ Font Size -

Re: Dave's Best and oldest friend John

From : Paul Dulberg <pdulberg@comcast.net> Tue, Nov 19, 2013 02:29 AM

Subject : Re: Dave's Best and oldest friend John

To : Hans Mast <hansmast@comcast.net>

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>
> Sent from my iPhone
>
>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>
>> Only 5, That's not much at all.
>> Is this a take it or leave it or do we have any other options?
>>
>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>
>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.
>>
>> They all left me out in the yard screaming for help while they were busy making sure they were covered.
>>
>> She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.
>>
>> How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.
>>
>> I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.
>>
>> I'm not happy with the offer.
>>
>> As far as John Choyinski, he knows he has to call you and said he will tomorrow.
>>
>> Paul
>>
>> Paul Dulberg
>> 847-497-4250
>> Sent from my iPad
>>
>>> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>>>
>>> Im waiting to hear from John. I tried calling him last week, but no one answered.
>>>
>>> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at

Exhibit 7
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>>>
>>> Let me know what you think..
>>>
>>> Hans
>>> ----- Original Message -----
>>> From: Paul Dulberg <pdulberg@comcast.net>
>>> To: Hans Mast <hansmast@comcast.net>
>>> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
>>> Subject: Dave's Best and oldest friend John
>>> Hans,
>>> Just spoke with John Choyinski again about talking with you.
>>> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
>>> I believe he will try and call sometime tomorrow.
>>> Paul
>>> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
>>> Sorry for the rant but Dave was a complete ass all the way and deserves this.
>>> Paul Dulberg
>>> 847-497-4250
>>> Sent from my iPad

CICERO, FRANCE, BARCH & ALEXANDER, P.C.
A Professional Corporation
Attorneys at Law
6323 EAST RIVERSIDE BOULEVARD
ROCKFORD, ILLINOIS 61114

PAUL R. CICERO
JOHN W. FRANCE
RONALD A. BARCH
CHARLES P. ALEXANDER

CHANTEL R. BIELSKIS
ANDREW T. SMITH

TEL: (815) 226-7700
FAX: (815) 226-7701

November 18, 2013

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich, PC
3416 West Elm Street
McHenry, IL 60050

Case: *Paul Dulberg v. David Gagnon, Caroline McGuire and Bill McGuire*
(McHenry County Case No. 12 LA 178)

Issued For Settlement Purposes Only

Dear Mr. Mast:

I am writing to confirm our telephone conversation earlier this morning, wherein I advised you that I was authorized to propose settlement of Mr. Dulberg's claim against Carolyn and Bill McGuire for a lump-sum total of $5,000.00. The settlement would of course be contingent upon customary settlement documents, including a release, a good faith settlement finding and dismissal.

Pursuant to your request, I searched my file materials for lien notices. The only notice of lien contained in my file at this time is your Attorney's Lien (enclosed). I have asked my contact at Auto-Owners Insurance Company to confirm no lien notices have arrived on his end since Mr. Dulberg's case was assigned to me for the defense of Mr. and Mrs. McGuire. I do not anticipating any lien notices, but just wanted to be safe.

I understand that you intend to run my settlement proposal by Mr. Dulberg. I look forward to hearing from you once you have had a chance to confer with him.

Very truly yours,

RONALD A. BARCH

RB:mj\37ltr.HAM
cc Tom Malatia (Claim No. 13-2779-11)
Encl.

Exhibit 8
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the $5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans



MEMORANDUM

TO: File

FROM: Hans

DATE: December 20, 2013

SUBJECT: **PAUL DULBERG**

On December 18, 2013, I called Paul today after an email and we had a long discussion about the McGuire's liability and he seemed to concede and understand that probably based on the testimony there is nothing we can prove against the McGurie's and he is willing to take their $5,000 settlement offer.

Exhibit 10
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
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Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

FAXED 12/27

December 26, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

Please be advised that we will accept your $5,000 settlement offer on behalf of you clients, Caroline and Bill McGuire. Please forward your settlement agreement to my attention. Also, please present a motion for good faith finding with regard to the settlement.

As I understand it, you have no liens on the file other than our attorney's lien.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Exhibit 11
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	Case No. 12 LA 178

ANSWER TO PLAINTIFF'S INTERROGATORIES TO DEFENDANTS BILL McGUIRE AND CAROLYN McGUIRE

TO: Paul Dulberg
c/o Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

Defendants, BILL McGUIRE AND CAROLYN McGUIRE (improperly named Caroline), by and through their attorneys, Cicero, France, Barch & Alexander, PC, and for their Answer to Plaintiff's Interrogatories, state as follows:

1. State the full name of the defendant(s) answering, as well as your current residence address, date of birth, marital status, and social security number, and, if different, give the full name, as well as the current residence address, date of birth, marital status, and social security number of the individual(s) signing these Answers.

ANSWER:

William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051 Married: Carolyn DOB: July 29, 1952	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051 Married: Bill November 26, 1946

Defendants object to providing Social Security Numbers. Such information is highly sensitive and private and is furthermore irrelevant to any issues in the pending lawsuit.

Exhibit 13
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

2. State the full name and current residence address of each person who witnessed or claims to have witnessed the accident to the Plaintiff on the premises as described in the complaint.

ANSWER: David Gagnon
39010 90th Place
Genoa City, WI 53128

Paul Dulberg
4606 Hayden
McHenry, IL 60051

3. State the full name and current residence address of each person who witnessed or claims to have witnessed the work and/or conditions existing as described in the complaint at the location of the accident on the date of the accident described.

ANSWER: See answer to Interrogatory No. 2.

4. State the name and address of the person(s) or entity that owned the property premises whereat the accident occurred as alleged, as of the date in question.

ANSWER: Bill and Carolyn McGuire
1016 W. Elder Avenue
McHenry, IL 60051

5. State the name and address of the person(s) or entity that was involved in the work and/or maintenance of the exterior of the premises as alleged on the date in question.

ANSWER: See response to Interrogatory No. 2.

6. State the name and address of the person(s) or entity that decided or chose to undertake the work and/or maintenance of the exterior of the premises as alleged on the date in question, including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

7. State the name and address of the person(s) or entity that was to supervise or oversee the work and/or maintenance at the exterior of the premises as alleged on the date in question including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

8. State the full name and current residence address of each person, who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after said occurrence.

ANSWER:

Before:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
At Time Of Occurrence:	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
After:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051

9. State the name and address of each witness that knows or claims to know the circumstances of the alleged accident, how it occurred or how the Plaintiff became injured – as alleged in the Complaint.

ANSWER: On information and belief, David Gagnon and Paul Dulberg were present at the time of the alleged occurrence and therefore know the circumstances surrounding the occurrence. Answering further, Defendants Bill McGuire and Carolyn McGuire were not present at the time of the occurrence but knew that David Gagnon and Paul Dulberg were present on the date of the occurrence. From conversations with David Gagnon, the answering Defendants believe that Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Investigation continues.

10. With respect to the chain saw that was being operated on the premises at the time of the alleged injury, state as follows:

a. Who was operating the chain saw at the time of the Plaintiff's alleged injury;

b. Who owned the chain saw at the time of Plaintiff's alleged injury;

c. who requested that the chain saw be used to perform work at the time of Plaintiff's injury.

ANSWER:

a. On information and belief, David Gagnon was operating the chain saw at the time Mr. Dulberg was injured.

b. Bill McGuire was the owner of the chain saw on the date of the occurrence.

c. David Gagnon had Bill McGuire's permission to use the chain saw.

11. With respect to David Gagnon's experience in use of a chain saw prior to the date of the alleged accident, state as follows:

a. How many times had David Gagnon operated the same or similar chain saw prior to the date of alleged accident;

b. What formal training did David Gagnon receive in use or operation of a chain saw prior to the occurrence alleged;

c. Who, if any, (names and addresses) trained David Gagnon in use or operation of a chain saw prior to the occurrence.

ANSWER:

a. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, and to the best of the answering parties' knowledge, David Gagnon has used chain saws in the past but the answering parties do not known how often he has used chain saws in the past.

b. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering parties do not know whether David Gagnon has been formally trained the use or operation of a chain saw. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

c. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering party do now know whether or by whom David Gagnon was trained in the use of chain saws. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

12. What was the scope of work or task David Gagnon was engaged in with use of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent "scope of work" or "engaged" constitute legal conclusions, the answering Defendants object to Interrogatory No. 12. Answering subject to objection, at the time of the alleged occurrence, the answering Defendants were in the process of replacing an old shed on their property. Paul Dulberg helped David Gagnon tear down the old shed. The answering Defendants further believe that Mr. Dulberg took the components of the old shed to his property for eventual reassembly. On the date of the occurrence, Mr. Dulberg was helping David Gagnon take down several trees to make room for a new shed. On information and belief, prior to the occurrence Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Answering further, the answering Defendants did not engage, hire or pay either individual for their activities on site. Nor did either answering Defendant dictate, control or otherwise supervise the methods and means by which Mr. Gagnon and Mr. Dulberg performed the tree and branch cutting at issue.

13. Who (names and addresses) requested or chose to engage Gagnon in the "task" of use and operation of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent the words "chose" and "engage" constitute legal conclusions, the answering Defendants object to Interrogatory No. 13. Answering subject to objection, David Gagnon undertook the tree cutting and trimming in question as a favor to his parents. He was not engaged, hired or paid for the activities in question.

14. What instructions or guidance, if any, was given to Gagnon prior to Plaintiff's alleged injury/accident with regard to how he was to perform the chain saw work at the premises.

ANSWER: See response to Interrogatory No. 11.

15 Were you (Defendant) covered under any policy of insurance at the time of the occurrence. If so, were you named or covered under any policy, policy, or policies, of liability insurance effective on the date of said occurrence, and: State the name of each such company or companies, the policy number of numbers, the effective period(s) occurrence, including umbrella or excess insurance coverage, property damage and medical payment coverage.

ANSWER: Yes.
Auto-Owners Insurance Company
Policy No. 48-010-965-01
Eff.: May 9, 2011 thru May 9, 2012
Personal Liability (Each Occurrence): $300,000.00
Medical Payments (Each Person): $1,000.00

16. Do you have any information:

(a) That any plaintiff was, within the 5 years immediately prior to said occurrence, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than person injury? If so, state each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or other health care professional, the approximate date of such confinement or service and state the reason for such confinement or service;

(b) That any plaintiff has suffered any serious personal injury and/or illness prior to the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(c) That any plaintiff has suffered any serious personal injury and/or illness since the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(d) That any plaintiff has ever filed any other suit for his or her own personal injuries? If so, state each plaintiff so involved, state the court, and caption in which filed, the year filed, the title and docket number of said case.

ANSWER:

a. On information and belief, the answering parties believe that Paul Dulberg was involved in a motor vehicle accident that resulted in a shoulder injury of some sort. The answering parties do not know of any other details about the auto accident or injuries, if any.
b. See answer to Interrogatory No. 16(a).
c-d. No.

17. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, the name, address and occupation and employer of the person taking them.

ANSWER: None, other than those furnished as part of Plaintiff's discovery response.

18. Have you (or anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with regard to the injuries complained of by plaintiff or the manner in which the occurrence complained of occurred? If the answer to this Interrogatory is in the affirmative, state the following:

(a) The date or dates of such conversations and/or statements;
(b) The place of such conversations and/or statements;
(c) All persons present for the for the conversations and/or statements;
(d) The matters and things stated by the person in the conversations and/or statements;
(e) Whether the conversation was oral, written and/or recorded; and
(f) Who has possession of said statement if written and/or recorded.

ANSWER: (a) thru (f): See summary of oral communication received from David Gagnon set forth in response to Interrogatory No. 9. Answering further, on information and belief, a few weeks after the subject occurrence Paul Dulberg did roofing work and moved heavy pieces of lumber for Mike Thomas, 460 Walbeck Drive, Twin Lakes, WI 53181 (312/961-9655). Investigation continues.

19. Do you know of any statements made by any person relating to the occurrence complained of by the plaintiff? If so, give the name and address of each such witness, the date of said statement, and state whether such statement was written and/or oral.

ANSWER: See answers to Interrogatories No. 9 and 18.

20. State the name and address of each person having knowledge of Plaintiff's activities on the premises PRIOR to the accident in question.

ANSWER: Paul Dulberg and David Gagnon.

21. State the name and address of each person having knowledge of Plaintiff's activities on the premises AFTER the accident in question.

ANSWER: Paul Dulberg, David Gagnon, Bill McGuire and Carolyn McGuire.

22. Had the Plaintiff ever used or operated a chain saw on the premises or for the Defendant's prior to his alleged accident. If so, state the dates and times such occurred.

ANSWER: Yes. In June 2011 Carolyn and Bill McGuire had a contractor take down a large tree on their property. The contractor left the fallen limbs. Shortly thereafter, Paul Dulberg brought his own chain saw down to the property. He cut the limbs into logs. David Gagnon helped him cut and load the logs.

23. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial, and state the subject of each witness' testimony, giving the following information:

(a) The subject matter on which the opinion witness is expected to testify;
(b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of said witness, if any;
(c) The qualifications of each opinion witness, including a Curriculum Vitae and/or resume, if any; and
(d) Identify any written reports of the opinion witness regarding this occurrence.

ANSWER:

Illinois Supreme Court Rule 213(f)(1) – Lay Witnesses:

The answering party has not yet determined the identity of the witnesses that might be called upon to offer lay witness testimony and opinions at trial. However, each of the following individuals are possible trial witnesses:

a. Paul Dulberg. Presumably, Mr. Kemp will testify about his age, education and work experience. He may testify concerning all the events and occurrences alleged in his complaint. He may also testify concerning his state of health before the events and occurrences alleged in his complaint, the injuries he attributes to the events and occurrences alleged in his complaint, and his current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

b. David Gagnon. The answering party does not know the specifics of Mr. Gagnon's potential trial testimony. Presumably, however, Mr. Gagnon will testify about his age, education and work experience. He may testify concerning his connection to Bill McGuire and Carolyn McGuire. He may testify concerning the events and occurrences alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health before the events and occurrences alleged in Plaintiff's Complaint, observations he made about the injuries Mr.

Dulberg attributes to the events and occurrences alleged in Plaintiff's Complaint, and observations he made about Mr. Dulberg's current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

c. Bill McGuire. If called upon to testify, Mr. McGuire will testify about his age, education and work experience. He will testify concerning his connection to David Gagnon and Carolyn McGuire. He may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations he made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

d. Carolyn McGuire. If called upon to testify, Mrs. McGuire will testify about her age, education and work experience. She will testify concerning her connection to David Gagnon and Bill McGuire. She may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. She may also testify concerning observations she made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations she made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that she will testify concerning all matters covered by her discovery responses and discovery deposition, if taken. Investigation continues.

e. Mike Thomas. If called upon to testify, Mr. Thomas may testify about his age, education and work experience. He may testify concerning his connection to Paul Dulberg. He may also testify concerning observations he made about Mr. Dulberg's state of health after the occurrence alleged in Plaintiff's Complaint, including observations he made of Mr. Dulberg performing roofing work and moving lumber. Lastly, it is anticipated that he will testify concerning all matters covered in his discovery deposition, if taken. Investigation continues.

f. Investigation continues.

Illinois Supreme Court Rule 213(f)(2) – Independent Opinion Witnesses.

To the extent any of the individuals disclosed above as potential Rule 213(f)(1) witnesses also qualify for disclosure as an independent expert witness within the meaning of Illinois Supreme Court Rule 213(f)(2), the responding Defendants incorporate the above Rule 213(f)(1) disclosure as though fully and completely set forth herein as a Rule 213(f)(2) disclosure. Answering further, the responding Defendants further incorporate the identity and opinions of any medical provider that treated Plaintiff for injuries he claims are associated with the occurrence alleged in his Complaint. For additional detail, see the medical records and materials produced by Plaintiff as part of his production response. Investigation continues.

Illinois Supreme Court Rule 213(f)(3) – Controlled Opinion Witnesses.

None at this time. Answering further, Defendants reserve the right to retain and disclose controlled opinion witnesses and will do so, if necessary, in accordance with all applicable court orders and discovery rules.

24. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of said occurrence and/or of the injuries and damages claimed to have resulted therefrom.

ANSWER: None, other than as disclosed in response to the interrogatories above.

25. Identify any statements, information and/or documents known to you and requested by any of the foregoing Interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each Interrogatory, specify the legal basis for the claim as required by Supreme Court Rule 201(n).

ANSWER: None at this time.

26. State the name and address of each person at the premises (although maybe at different location or not a witness to the incident) described at the time of the occurrence.

ANSWER: See response to Interrogatory Nos. 1 and 2.

27. Was the Plaintiff struck and injured by the chain saw while in operation on the date and time alleged. If so, what caused the chain saw to strike the Plaintiff.

ANSWER: On information and belief, yes. Answering further, Defendants were not present at the time of the occurrence. See answer to Interrogatory No. 9.

28. Describe what, if any, of the Plaintiff's conduct caused or contributed to his injury on the date and time in question.

ANSWER: See answer to Interrogatory No. 9.

29. Did the chain saw malfunction at any time during its use prior to Plaintiff's alleged injury.

ANSWER: To the best of the answering parties' knowledge, no.

30. Prior to Plaintiff's alleged injury, was the subject chain saw operating safely and properly.

ANSWER: To the best of the answering parties knowledge, yes.

CAROLYN MCGUIRE and BILL MCGUIRE,
Defendants, by their attorneys,
CICERO, FRANCE, BARCH & ALEXANDER, P.C.,

By _____
RONALD A. BARCH (6209572)

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

BILL McGUIRE, being first duly sworn on oath, deposes and states that he is one of the defendants herein; that he has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of his knowledge and belief.

Bill McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

Notary Public

OFFICIAL SEAL
RONALD A BARCH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 06/07/14

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

CAROLYN McGUIRE, being first duly sworn on oath, deposes and states that she is one of the defendants herein; that she has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of her knowledge and belief.

Carolyn McGuire

Carolyn McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

Notary Public

OFFICIAL SEAL
RONALD A BARCH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 05/07/14

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon:

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid, at Rockford, Illinois, at 5:00 o'clock p.m. on 8/6/12.



Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

Exhibit 14
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff(s),

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendant(s).

CASE NO. 12LA000178

ANSWERS TO CO-DEFENDANT INTERROGATORIES

The Defendant, DAVID GAGNON, in response to the Interrogatories propounded states as follows:

1. State the full name, present residence address and birth date of the person answering these Interrogatories.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128
DOB: 4/3/1697

2. State your marital status on the date of the occurrence in question and, if married, your spouse's name and age on said date.

ANSWER: Married; Pamela Gagnon, 39010 90th Place, Genoa City Wisconsin 53128.

3. State the full name and present or last known address (indicating which) of each person who:

(a) Witnessed or claims to have witnessed the occurrence in question.
(b) Was present or claims to have been present at the scene immediately before said occurrence.
(c) Was present or claims to have been present immediately after said occurrence.
(d) Otherwise has or claims to have any knowledge of the facts or possible causes of the occurrence to include any damages or injuries alleged to have resulted from said occurrence.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128; Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050; Carolyn McGuire, 1016 W. Elder

EXHIBIT
Gagnon 3
PENGAD 800-631-6989

Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051.

4. State specifically and with certainty the personal injuries and property damage, if any, sustained by PAUL DULBERG as a result of said occurrence.

ANSWER: Defendant has no knowledge regarding the plaintiff's personal injuries and/or property damage claims.

7. State whether PAUL DULBERG was hospitalized or had suffered any illness or personal injury prior to or subsequent to the date of said occurrence, and if so, state the nature and date of each such hospitalization, illness or personal injury.

ANSWER: I do not know.

8. State whether PAUL DULBERG suffered any permanent scarring as a result of the accident alleged in the complaint. If so, state the location of such scar, the width and length of such scar or scars. (Pursuant to Supreme Court Rule 214, please attach any photos of any such scar to your answers hereto.)

ANSWER: I do not know.

9. State whether prior to the accident alleged in the complaint PAUL DULBERG suffered any physical disability or impairment of any kind whatsoever. If so, state the nature of such physical disability or impairment and how PAUL DULBERG came to have such physical disability or impairment.

ANSWER: I do not know.

10. State the location of the alleged occurrence, pinpointing such location in feet, inches and direction from fixed objects or boundaries at the scene of the occurrence.

ANSWER: The accident occurred in ~~front~~ BACK of my parent's home at 1016 W. Elder Avenue, McHenry Illinois 60051.

11. State with particularity the nature of the alleged defect, object substance or condition which caused the alleged occurrence giving the exact dimensions and physical description of such including the size, shape, color, height, length and depth of such defect or object.

ANSWER: Chainsaw, EFCO, Model # MT3500, 2.38 Cubic Inch, 16" blade.

12. State with particularity what PAUL DULBERG was doing at the time of the accident alleged in the complaint.

ANSWER: He was helping me trim a tree by holding a branch.

13. State with particularity what DAVID GAGNON was doing at the time of the accident alleged in the complaint.

ANSWER: I was cutting through a branch with the chainsaw.

14. State with particularity the address for David Gagnon on June 28, 2011.

ANSWER: 39010 90th Place, Genoa City Wisconsin 53128.

15. State with particularity all the reasons why PAUL DULBERG was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I asked him to help me trim the tree at my parents' home.

16. State with particularity all the reasons why DAVID GAGNON was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I was trimming a tree for my parents.

17. State with particularity your basis for alleging that David Gagnon was working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

18. State with particularity your basis for alleging that Defendants Bill McGuire and Carolyn McGuire instructed and/or advised David Gagnon in the use of a chain saw on or before the date of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

19. State with particularity your basis for alleging that David Gagnon was under the supervision and control of Defendants Bill McGuire and Carolyn McGuire and working as their apparent and actual agent on the date of and at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

20. State with particularity any and all defects associated with the chain saw you believe or claim was involved in the occurrence alleged in Plaintiff's Complaint.

ANSWER: None.

21. State whether any photographs or videos were taken of the scene of the occurrence or of the persons, objects or premises involved, and if so, state the number of photographs or videos taken, their subject matter and who now has custody of them.

ANSWER: No.

22. Pursuant to Supreme Court Rule 213(f), furnish the identity and addresses of witnesses who will testify at trial and the following information:

(a) For each lay witness, identify the subjects on which the witness will testify.

(b) For each independent expert witness, identify the subjects on which the witness will testify and the opinions the party expects to elicit.

(c) For each controlled expert witness, identify:

(i) the subject matter on which the witness will testify;

(ii) the conclusions and opinions of the witness and the bases therefor;

(iii) the qualifications of the witness; and

(iv) any reports prepared by the witness about .the case.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128— This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his insurance policy and coverage; maintenance, repair and inspection of the chainsaw; as to any dangerous or defective area on the premises. This witness is also expected to testify regarding his observations of the plaintiff before, during and after the alleged occurrence; his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050—This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his relationship to the tenants of the building; his observations prior, during and after his alleged injury; the nature of his injury, medical bills, medical records and recovery; his understanding of his injury and recovery. This witness is also expected to testify to his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Carolyn McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051— These witnesses are expected to testify as to their ownership of the property in question; their insurance policy and coverage; their knowledge of the area, chainsaw and tree; maintenance, repair and inspection of the chainsaw; as to any violations the premises; as to any dangerous or defective area on the premises. These witnesses are also expected to testify regarding their observations of the plaintiff before, during and after the alleged occurrence; their understanding as to the facts of the accident; their observations of the scene and they are expected to testify as to any conversations which took place between the parties and witnesses. These witnesses are also expected to testify consistent with any testimony they may have given and/or may give at a discovery deposition.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

David A. Gagnon

DAVID GAGNON

I HEREBY CERTIFY that on 1/31/13, a true and correct copy of the foregoing Answers to Interrogatories were filed with the Clerk of the Circuit Court of McHenry County and a copy of same was also mailed to:

Hans A. Mast
Law Offices of Thomas J. Popovich, P.C.
3416 W Elm St
McHenry IL 60050

Attorney for Plaintiff(s) Paul Dulberg

Cicero, France, Barch & Alexander PC
6323 East Riverside Blvd
Rockford, IL 61114

Attorney for Co-Defendants, Caroline and Bill McGuire

LAW OFFICE OF M. GERARD GREGOIRE
200 N LaSalle St Ste 2650
Chicago, IL 60601-1092
Telephone: 312-558-9821

By: _____
PERRY A. ACCARDO
Firm No.: 46878
E-MAIL ADDRESS:
ILLINOISLEGAL@ALLSTATE.COM
Attorney Bar No.: 6228720
Attorney for Defendant(s):
David Gagnon

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
McHenry County, Illinois
MAR 13 2015
KATHERINE M. KEEFE
Clerk of the Circuit Court

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, Individually, Defendants.	)	No. 12 LA 178

COPY

NOTICE OF MOTION

TO: *VIA FIRST CLASS MAIL:*
Perry Accardo
Law Office of Steven A. Lihosit
200 N. LaSalle Street, Suite 2550
Chicago, IL 60601-1092

VIA CERTIFIED MAIL:
Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

On **March 13, 2015 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Thomas A. Meyer** or any judge sitting in his stead, in courtroom 201 in the Circuit Court of McHenry County in Woodstock, Illinois and shall then and there present **MOTION TO WITHDRAW AS COUNSEL**, a copy of which is hereby served upon you

AFFIDAVIT OF SERVICE

I certify that I served this Notice by mailing to whom it is directed at approximately 5:00 p.m. on March 5, 2015 in McHenry, IL and further that the statements set forth in this Affidavit of Service are true and correct.

Hans A. Mast, Attorney for Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, IL 60050
815-344-3797
Attorney ID No. 06208070

Exhibit 15
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

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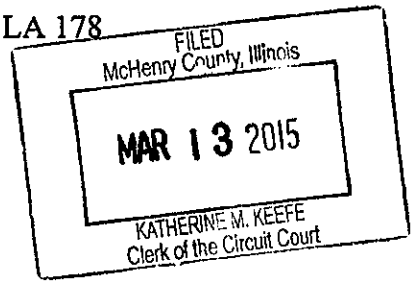
City, State: McHenry, IL 60051

PS Form 3800, August 2006 — See Reverse for Instructions

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, Individually, Defendants.	)	No. 12 LA 178



MOTION TO WITHDRAW AS COUNSEL

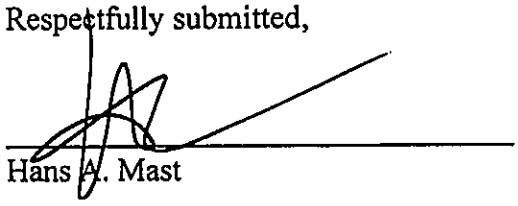
NOW COME the LAW OFFICES OF THOMAS J. POPOVICH, P.C., attorneys for the Plaintiff, PAUL DULBERG, and hereby move to withdraw as counsel for the Plaintiff in this cause pursuant to Supreme Court Rule 13. In support of said Motion, the attorneys hereby state as follows:

1. Communication between Plaintiff and Plaintiff's counsel has broken down resulting in an unworkable situation for both attorney and client.

2. By copy of this motion, Plaintiff is hereby advised that, to ensure notice of any further action in this cause, she should retain new counsel or within 21 days of the hearing of this motion and withdrawal of counsel, retain other counsel or file her own supplementary appearance with the clerk of the circuit court, stating an address at which service of notices or other papers may be had upon her.

WHEREFORE, the LAW OFFICES OF THOMAS J. POPOVICH, P.C. respectfully requests that this Court enter an Order granting the LAW OFFICES OF THOMAS J. POPOVICH, P.C. leave to withdraw as counsel for the Plaintiff, PAUL DULBERG.

Respectfully submitted,



Hans A. Mast

LAW OFFICES OF THOMAS J. POPOVICH
3416 West Elm Street
McHenry, IL 60050
(815) 344-3797
Attorney No. 06208070

power plant to recover for injuries sustained when he slipped and fell on wet concrete floor. The Circuit Court, Cook County, Dean Sodaro, J., granted summary judgment for owner, and employee appealed. The Appellate Court, Cerda, P.J., held that owner's duty to maintain safe workplace did not include mopping up water that accumulated on floor when snow and ice from pipes used in construction project melted onto floor, causing puddles of water.

Affirmed.

1. Judgment ⇐185(2)

Although plaintiff does not have to try his case on defendant's motion for summary judgment, he must provide factual basis which would arguably entitle him to judgment.

2. Appeal and Error ⇐949

Determination that summary judgment is appropriate will not be reversed absent abuse of trial court's discretion such that plaintiff's right to fundamental justice is violated.

3. Negligence ⇐32(2.10)

Landowner owed duty to independent contractor's employee to maintain reasonably safe workplace.

4. Negligence ⇐50

Landowner's duty to independent contractor's employee to maintain reasonably safe workplace did not extend to taking precautions against water tracked inside from natural accumulation outside.

5. Negligence ⇐2, 10

Duty is determined by considering number of factors, including foreseeability of harm, likelihood of injury, magnitude of burden of guarding against it, consequences of placing that burden on defendant, public policy, and social considerations.

6. Negligence ⇐29, 44

Landowner owes no duty where natural accumulation of snow, ice or water exists on outside or is tracked into building by pedestrian traffic.

7. Negligence ⇐28

Property owner has duty and may be liable in negligence when injuries are result of unnatural or artificial accumulation of snow, ice or water, or natural condition aggravated by owner's use of area and creation of condition.

8. Negligence ⇐50

Duty owed by owner of nuclear power plant to independent contractor's employee to provide reasonably safe workplace did not include duty to mop up water that accumulated on concrete floor when snow and ice from pipes being brought in from outside for use in construction project melted onto floor, causing puddles of water, where there was no evidence that owner did anything to aggravate that condition, but instead condition was continuation of natural accumulation.

Lane and Munday, Thomas J. Nathan, Chicago, for plaintiff-appellant.

Johnson, Cusack and Bell, Ltd., John W. Bell, Michael B. Gunzburg and Thomas H. Fegan, Chicago, for defendant-appellee.

Presiding Justice CERDA delivered the opinion of the court:

Plaintiff, Byong K. Choi, brought this action against defendant Commonwealth Edison Company seeking recovery for injuries sustained when plaintiff fell on a concrete floor while working at a construction site. The trial court granted defendant's motion for summary judgment. On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary judgment because a genuine issue of material fact exists. In addition, he argues that the trial court erred by failing to recognize defendant's duty to provide a safe workplace for workmen engaged in construction work on its premises and by failing to extend that duty to include taking precautions against the accumulation of water inside the building.

On January 10, 1979, plaintiff Choi was employed by Universal Power Piping, Inc. (UPP) as a welder at the Dresden Nuclear Power Plant, which is owned by defendant

Dulberg 000302

Commonwealth Edison Company. UPP was a subcontractor hired by Commonwealth Edison to complete installation of a decontamination flushing system in the Reactor 1 building. Plaintiff was working on the third-floor turbine deck receiving pipes brought in from the outside by UPP employees. While stored outside, the pipes became encrusted with snow and ice. Once inside, the pipes were raised from the ground floor to the third-floor turbine deck area by an overhead crane, which was operated by a Commonwealth Edison employee. Then, the pipe was taken from the crane, placed on a cart, and moved through the interlock hatch to the reactor building by UPP employees, including plaintiff. Snow and ice melted from the frozen pipes, forming puddles of water on the deck wherever the pipes were transported. Plaintiff was working in this manner all day prior to the accident.

As plaintiff and a co-worker were carrying a pipe, approximately 20 feet long and 10 inches in diameter, plaintiff slipped on water that was on the concrete floor. He fell backward, hitting his back on a pipe, and a floor spacer fell across his mid-section, causing injuries.

Previously, the appellate court upheld the trial court's summary judgment order for defendant regarding a Structural Work Act (Ill.Rev.Stat.1983, ch. 48, pars. 60 through 69). (*Choi v. Commonwealth Edison Co.* (1984), 129 Ill.App.3d 878, 85 Ill. Dec. 17, 473 N.E.2d 385.) In plaintiff's second amended complaint, he alleged that defendant was guilty of several negligent acts in its supervision of the construction work. Defendant filed a motion for summary judgment, arguing that under Illinois law, it had no duty to take precautions against natural accumulations of snow, ice or water that were tracked into a building. Defendant noted that the UPP foreman's deposition stated that he did not inform Edison of the condition because it was the duty of the contractor's own employees to clean up after themselves. Defendant pointed out that the snow came from pipes that plaintiff and his co-workers had brought in and carried to the area.

In response to defendant's motion for summary judgment, plaintiff argued that defendant owed him a duty to maintain a reasonably safe work place because it retained control over the construction work performed by UPP employees and could stop the work in progress for safety or other reasons. Plaintiff also argued that defendant breached that duty by failing to provide a reasonably safe workplace and by failing to stop work that was being performed in an unsafe manner. In addition, plaintiff contended that the melted snow and ice that caused the unsafe condition did not accumulate naturally, was not transported into the building by pedestrian traffic, and was caused by defendant's refusal to allow the pipes to be brought into the building and cleaned off before being transported to the work area. Plaintiff notes that the deposition of Commonwealth Edison's superintendent stated that Commonwealth Edison employees had the responsibility to clean snow and ice which came into the building, had the authority to stop work being performed in an unsafe manner, and regularly inspected the area.

Concluding that the facts were essentially undisputed, the trial court ordered summary judgment for defendant. The trial court stated that there was a common law duty of an occupier of land to exercise reasonable care for the safety of people lawfully on the premises, but that duty did not extend to a building owner being required to mop up water from an accumulation of snow, ice or water brought inside a building construction site. The trial court indicated that it would be an impossible burden placed on an owner of a building construction site to require following the independent contractor's employees around, mopping up every drip of water brought in from the outside. The trial court further ruled that Commonwealth Edison did not create the dangerous condition, but merely failed to clean up a mess which is common whenever building materials from the outside of a building are moved into a building.

The trial court analogized this case to *Lohan v. Walgreens Co.* (1986), 140 Ill. App.3d 171, 173, 94 Ill.Dec. 680, 488 N.E.2d 679, which ruled that a landowner has no duty to clean up snow, ice or water that is

tracked into a building from a natural accumulation on the outside. The trial court made no finding whether the accumulation inside the building was natural or unnatural, but did state that the water began as a natural accumulation of snow and ice on the pipes outside, and was brought into the building the same way as people tracking it on their feet. The trial court did not consider the expert's affidavit and deposition because it was not factually based. The expert did not actually examine the premises, the court noted, but merely looked at photographs.

After the trial court denied plaintiff's motion to reconsider, plaintiff appealed the summary judgment order. Plaintiff's argument emphasizes that Commonwealth Edison owed him a duty to maintain a safe workplace even though he was employed by an independent contractor hired by Commonwealth Edison. He asserts that the duty included mopping up water that accumulated on the building's floor when snow and ice from the pipes melted onto the floor, causing puddles of water. Plaintiff relies on cases holding that the landowner owes a duty to the employee of an independent contractor if the owner retains sufficient control over the contractor's work. *Claudy v. City of Sycamore* (1988), 170 Ill.App.3d 990, 120 Ill.Dec. 812, 524 N.E.2d 994; See *Haberer v. Village of Sauget* (1987), 158 Ill.App.3d 313, 110 Ill.Dec. 628, 511 N.E.2d 805; *Tsourmas v. Dineff* (1987), 161 Ill.App.3d 897, 113 Ill.Dec. 758, 515 N.E.2d 743; *Weber v. Northern Illinois Gas Co.* (1973), 10 Ill.App.3d 625, 295 N.E.2d 41; *Pasko v. Commonwealth Edison Co.* (1973), 14 Ill.App.3d 481, 302 N.E.2d 642. These cases state that the duty owed is to maintain a reasonably safe workplace.

Even if the water began as a natural accumulation on the outside, plaintiff asserts, Commonwealth Edison's intervening acts caused the water to be unnaturally accumulated on the inside of the building. In the alternative, plaintiff states, the condition was aggravated by Commonwealth Edison because it would not allow the pipes to be stored inside where the snow and ice could be safely removed after it melted. Furthermore, plaintiff argues, the pipes were brought in from the outside and loaded onto an overhead crane operated by a Commonwealth Edison employee. The overhead crane then took the pipes to the third floor of the building, where UPP employees transported the pipes through a tunnel into the reactor building. By the time the pipes reached the third floor, the snow and ice was melting, and water from the pipes was dripping on the floor. It is on that water that plaintiff fell and injured himself.

Defendant responds that the water was a natural accumulation tracked in from the outside by UPP employees, including plaintiff. It asserts that this situation should be treated the same as a natural accumulation tracked in from the outside by pedestrian traffic, thus creating no duty by the landowner.

Defendant relies on two types of cases: those concerning natural accumulations of snow, ice or water outdoors and those concerning snow, ice or water tracked into a building from the outside, whether tracked in by pedestrians' shoes, coats or umbrellas. In *Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679, the plaintiff slipped and fell on water that had been tracked from the outside into the common hallway of the defendants' stores. The appellate court ruled that the owners did not have a duty to continuously remove the tracks left by customers who had walked through the natural accumulations of snow or water outside, tracking them inside. Even if the owner has knowledge that the accumulation caused a dangerous condition, the court stated, there is no duty if the accumulation is natural. (*Lohan*, 140 Ill.App.3d at 173, 94 Ill.Dec. 680, 488 N.E.2d 679.) See also *Handy v. Sears, Roebuck & Co.* (1989), 182 Ill.App.3d 969, 131 Ill.Dec. 471, 538 N.E.2d 846 (summary judgment in favor of defendant store affirmed where plaintiff slipped and fell on water located within store); *Shoemaker v. Rush–Presbyterian–St. Luke's Medical Center* (1989), 187 Ill.App.3d 1040, 135 Ill.Dec. 446, 543 N.E.2d 1014 (hospital had no duty to clean up natural accumulation of water tracked into hospital on pedestrians' coats and umbrellas); *Serritos v. Chicago Transit Authority* (1987), 153 Ill.App.3d 265, 106 Ill.Dec. 243, 505 N.E.2d 1034 (city transit authority had no duty where plain-

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tiff fell on snow and slush covered steps of bus owned and operated by defendant).

[1, 2] The purpose of summary judgment is to determine whether a triable issue of fact exists. (*Haberer*, 158 Ill.App.3d at 316, 110 Ill.Dec. 628, 511 N.E.2d 805.) It may be granted if the pleadings, exhibits, affidavits, and depositions on file establish that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (Ill.Rev. Stat.1985, ch. 110, par. 2–1005(c); *Branson v. R & L Investment, Inc.* (1990), 196 Ill. App.3d 1088, 1090, 143 Ill.Dec. 689, 554 N.E.2d 624.) Although the plaintiff does not have to try his case, he must provide a factual basis which would arguably entitle him to judgment. (*Handy*, 182 Ill.App.3d at 972, 131 Ill.Dec. 471, 538 N.E.2d 846.) The determination that summary judgment is appropriate will not be reversed absent an abuse of the trial court's discretion such that the plaintiff's right to fundamental justice is violated. *Breeze v. Payne* (1989), 181 Ill.App.3d 720, 727, 130 Ill.Dec. 386, 537 N.E.2d 453.

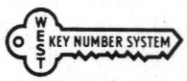
[3–5] Commonwealth Edison owed plaintiff the duty to maintain a reasonably safe workplace, but it did not extend to taking precautions against water tracked inside from a natural accumulation outside. Duty is determined by considering a number of factors: the foreseeability of harm (*Breeze*, 181 Ill.App.3d at 727, 130 Ill.Dec. 386, 537 N.E.2d 453), the likelihood of the injury, the magnitude of the burden of guarding against it, the consequences of placing that burden on the defendant, public policy, and social considerations. *Dealers Service & Supply Co. v. St. Louis National Stock.* (1987), 155 Ill.App.3d 1075, 1080, 108 Ill.Dec. 664, 508 N.E.2d 1241.

[6, 7] In Illinois, a landowner owes no duty where a natural accumulation of snow, ice or water exists on the outside or is tracked into a building by pedestrian traffic. (*Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679.) However, a property owner does have a duty and may be liable where the injuries are a result of an unnatural or artificial accumulation, or a natural condition aggravated by the owner's use of the area and creation of the condition. (*Handy v. Sears, Roebuck & Co.* (1989), 182 Ill.App.3d 969, 971, 131 Ill. Dec. 471, 538 N.E.2d 846.) To establish a duty, the plaintiff must make an affirmative showing of an unnatural accumulation or an aggravation of a natural condition before recovery will be allowed. (*McCann v. Bethesda Hospital* (1979), 80 Ill.App.3d 544, 549, 35 Ill.Dec. 879, 400 N.E.2d 16.) Plaintiff made no such showing in this case.

[8] Therefore, summary judgment for defendant was proper. The water in the nuclear power plant was a continuation of a natural accumulation. There was no evidence presented that Commonwealth Edison did anything to aggravate the condition. To require an owner of a construction site to follow workmen around and immediately clean up any melting snow, ice or water that had been brought in from the outside would be too high a burden.

Affirmed.

WHITE and GREIMAN, JJ., concur.



217 Ill.App.3d 958
578 N.E.2d 37

FISTER/WARREN, successor in interest to Charles L. Fister and Associates, Inc., a corporation; Charles L. Fister and Robert J. Warren, Plaintiffs–Appellants/Counter–Defendants–Appellees,

v.

BASINS, INC., a Wyoming corporation, and Georgia Marble Company, a Georgia corporation, Defendants–Appellees/Counter–Plaintiffs–Appellants.

Nos. 1–90–2260, 1–90–2882.

Appellate Court of Illinois,
First District, Sixth Division.

July 12, 1991.

Rehearing Denied Aug. 30, 1991.

Stock sellers brought action against buyer of corporation and corporation, seek-

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E-FILED
Transaction ID: 2-23-0072
File Date: 10/2/2023 12:00 AM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

SC

No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,	) Appeal from the Circuit Court of the) 22nd Judicial Circuit, McHenry County,) Illinois
Plaintiff-Appellant	) **Relief Sought: Appellant's Brief Due Date Extended** **) to December 29, 2023/Allow Appellant to Amend** **) his Docketing Statement to Include Related** **) Cases/Order the Clerk of the 22nd Judicial Circuit to** **) Amend the Record on Appeal to Include All** **) Missing Documents and Hyperlinks at No** **) Additional Cost to Appellant and to Include an** **) Affidavit of Completeness & Certification /Allow** **) Appellant to Request the Record On Appeal for All** **) Related Cases /To File a Brief In Excess Of The** **) Prescribed Page Limits**
HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C.	)
Defendants-Appellees	)
	) Honorable Joel D. Berg, Judge Presiding) Date of Notice of Appeal March 3, 2023) Date of Judgment February 1, 2023, 2017 LA 000377) Date of Post judgment Motion Order: None) Circuit Court 2017LA000377

AMENDED THIRD MOTION FOR EXTENSION OF TIME TO FILE APPELLANT"S BRIEF and MOTION TO ALLOW APPELLANT TO AMEND HIS DOCKETING STATEMENT TO INCLUDE RELATED CASES / TO ORDER THE CLERK OF THE 22nd JUDICIAL CIRCUIT TO AMEND HER REPORT ON APPEAL TO INCLUDE ALL MISSING DOCUMENTS AND HYPERLINKS AT NO ADDITIONAL COST TO APPELLANT AND TO INCLUDE AN AFFIDAVIT OF COMPLETENESS & CERTIFICATION /ALLOW APPELLANT TO REQUEST THE RECORD ON APPEAL FOR ALL RELATED CASES/ TO FILE A BRIEF IN EXCESS OF THE PRESCRIBED PAGE LIMITS ALL PURSUANT TO SUPREME COURT RULES 323(b), 329, 341(b), 343(c), 361, 366(a)(3) and (a)(5), 608.

(Civil)

Plaintiff-Appellant Paul R Dulberg (Appellant) moves this Honorable Court for an EXTENSION OF TIME TO FILE APPELLANT"S BRIEF and MOTION TO ALLOW APPELLANT TO AMEND HIS DOCKETING STATEMENT TO INCLUDE RELATED CASES / TO ORDER THE CLERK OF THE 22nd JUDICIAL CIRCUIT TO AMEND THE RECORD ON APPEAL TO INCLUDE ALL MISSING DOCUMENTS AND HYPERLINKS AT NO ADDITIONAL COST TO APPELLANT AND TO INCLUDE AN AFFIDAVIT OF COMPLETENESS & CERTIFICATION /ALLOW APPELLANT TO REQUEST THE RECORD ON APPEAL FOR ALL RELATED CASES/ TO FILE A BRIEF IN EXCESS OF THE PRESCRIBED PAGE LIMITS ALL PURSUANT TO SUPREME COURT RULES 323(b), 329, 341(b), 343(c), 361, 366(a)(3) and (a)(5) and 608. and in support of said motion states as

follows:

I. APPELLANT'S AMENDED MOTION FOR AN EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

1. On September 28, Plaintiff's Attorney spoke with Appellees' Attorney indicating the nature of this Motion, to which Appellees' Attorney indicated a need to contact his clients regarding any objection to the Motion. Appellees' Attorney stated that he would get back to me as soon as the Appellees decide, and Appellees Attorney's response is attached to this Amended Motion as Appellant's Exhibit A. Appellees object to all relief requested in this Amended Motion and counter with no objection to a 21-day extension to file Appellant's Brief. (Ill. S. Ct. 361(a) and Local Rule Article 1 General Rules 102(b). Please see Appellants Exhibit A attached)
2. Appellant's Attorneys also e-mailed a copy of this Amended Motion to Appellees' Attorneys before filing it.
3. The number of days previously requested is 120, the number of days previously granted is 120, and the total number of days is 120. (Local rule 104 (a)(1))
4. The total number of days requested, and the total number of days granted to other parties

are (0) none. (Local Rule 104(a)(2))

5. The number of days that will have elapsed from the date of filing of the Notice of Appeal to the date that the case will be ready for disposition is three hundred forty-nine days. (Local Rule 104(a)(3), Local Rule 106(b) and Local Rule 108(a) & (b))
6. Appellant filed his Notice of Appeal on March 3, 2023.
7. The Record on Appeal was filed on April 24, 2023 and made available for download on April 25, 2023.
8. Appellant's Brief due date was first extended sixty days by this Honorable Court to July 31, 2023.
9. Appellant's Brief due date was thereafter extended a second time by this Honorable Court to September 29, 2023.
10. Sixty days is insufficient to prepare and file Appellant's Brief for the following reasons:

(a) The record on appeal consists of three volumes totaling 2,660 pages;

(b) Appellant requested the entire record be prepared, but Appellant's attorney has discovered missing Report of Proceedings, mismatched sections, documents with only one of the Defendants' names where it should be all, Memorandums of Law where the body of the motions should be, violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal (Revised- Effective March 1, 2022) regarding §1. Definitions (i) Hyperlink … and so on. (Investigation Continues.)

(c) Appellant's attorney has made extensive efforts to have Appellant's Brief ready for filing by the September 29, 2023 considering the above listed problems and his Court hearing/filing schedule on April 25, 2023 case # 2021P008775 Public Administrator's

motion, May 4, 2023 case # 2022L010905 where he argued a "Motion for a Special Order'" and additionally he had to brief two separate 735 ILCS 5/2-619.1 motions and a Separate 735 ILCS 5/2-615 motion for hearings on May 25, 2023 and July 31, 2023, resolve a dispute regarding an order to be entered on May 4, 2023 where the Honorable Judge declined to choose between proposed orders and there wasn't a Court Reporter present, drafting and filing/serving case # 2023CH04351 on May 2, 2023 a Complaint for Declaratory Judgment with an expiring Statute of Limitations against a municipal corporation and twenty-one additional defendants and two emergency personal problems as previously stated in support of Appellant's first Motion for Extension of Time.

Subsequent to the filing of Appellant's initial Motion for Extension of Time the following court schedule required Appellant's Attorney's preparation and appearances: May 31, 2023 The Estate of Hutchinson, Deceased 19PR000098 continuing after remand from the Illinois Appellate Court, 2nd District for further proceedings; Dulberg v. Baudins et al 2022L010905 drafting and filing Response to Defendants' 735 ILCS 2-619.1 Motions to Dismiss; Dulberg v. Olsen Notice of Supreme Court rule 304(a) Appeal First District 1-23-1142 on June 26, 2023; (on June 28, 2023 a traumatic personal event that was experienced by Appellant Paul R. Dulberg" attorney that continues to the filing of this Second Motion for Extension of Time and onward (Please see below); preparation for a sur-response in Dulberg v. Baudins et al; preparation for an Amended Complaint and Response for a Motion for Summary Judgment due with an appearance July 31, 2023 in 2022L010905, Court Appearance on July 20, 2023 two separate Defendants' 735 ILCS 5/2-615 Motions to Dismiss Case 2023CH 04351, First District, Kost v. Village of Mt. Prospect et al; August 22, 2023 The Estate of Hutchinson,

Deceased 19PR000098 Hearing and Decision on Motion to Reconsider; August 29, 2023 Dulberg v. Baudins et al 2022L010905 Hearing on Defendants' 735 ILCS 2-619.1 Motions to Dismiss; September 18, 2023 Dulberg v. Baudins et al 2022L010905 drafting, filing, and serving Plaintiffs' 7 page 735 ILCS 5/2-1005(c) Counter-Affidavit; throughout the second 60 days consulting and advising client regarding his allegations of custodial parent's child abuse based upon 2015D007566; consulting and advising client regarding his allegations of wrongful taking without personal jurisdiction based upon 2017M1108676; September 21, 2023 Hearing on Motion for Summary Judgment, Dulberg v. Baudins et al 2022L010905; September 26, 2023 The Estate of Hutchinson, Deceased 19PR000098 Hearing Motion to Compel.

(d) Appellant's Attorney traumatic ongoing event that began on June 28, 2023 and continues. On June 28, 2023 Appellant's Attorney's Fiancée entered the airport in Manila, Philippines to take a flight to the United States to meet with future family, current friends, and Appellant's Attorney. The schedule flight was to stop in Tokyo, Japan for a short lay over then on to O'Hare International Airport (ORD) Illinois. June 28, 2023 in the Manilla, Philippines was the last time anyone has seen or heard from her. She did not arrive at O'Hare and a cooperative customs agent told Appellant's Attorney that she was not being detained by customs in the United States and upon further investigation stated she was not on the passenger manifest of the connecting flight in Tokyo, Japan. Subsequently, the Embassies in both countries were contacted, an international investigation firm was hired that did not produce any information and resigned after over a month of investigations and local government personnel began an independent investigation that was also fruitless.

It was thereafter discovered that the Japanese customs and criminal police had confiscated her ticket from Tokyo, Japan to the United States and then obtained an air ticket back to the

Philippines that she was forced to use.

The stress of an active practice coupled with the stress of a missing loved one for over 27 days, who was finally discovered to be detained in a Japanese jail, having been handcuffed and weighted leg chained, hair involuntarily cut, forced interrogations for 72 hours without the right to have legal counsel or contact with family or friends, put on trial and released as not guilty but with all personal property and money retained to be returned in the future, that Appellant's Attorney is still attempting to have returned, through first contacting the Japanese Embassy in Tokyo, Japan and thereafter the Philippine Embassy in Japan affected Appellant's Attorney in many negative ways.

11. Appellant is a sole practitioner and has no full-time staff to help in the preparation of Appellant's Brief.

II. APPELLANT'S AMENDED MOTION TO ALLOW APPELLANT TO AMEND HIS DOCKETING STATEMENT BY INCLUDING A STATEMENT OF RELATED CASE

12. Appellant's Attorney used and filed the approved Illinois Supreme Court Docketing Statement (Civil) form DS-S 4603.2 but failed to add the required Related-case statement (RULES OF THE ILLINOIS APPELLATE COURT, SECOND DISTRICT October 4, 2022 Rule 113)
13. Appellant's Attorney believes that a full and complete understanding of the issues rulings and decisions cannot be properly presented to this Honorable Court without the underlying case and current pending related cases.
14. Appellant's Attorney affirmatively states that this error was inadvertent and that Appellant's case and this Honorable Courts complete understanding of this matter which began on June 28, 2011 and continues through the date of the filing

of this Motion requires the addition of documents from said related cases.

15. The related cases are as follows:

a) 2012LA000326 MCDONALD JULIE ESTATE OF VS POPOVICH THOMAS J. LAW OFFICES, ET AL CLOSED

b) 2012LA000178 DULBERG, PAUL VS GAGNON, DAVID, ET AL CLOSED

c) 2022L010905 Dulberg ET AL VS BAUDIN, KELLY N. , ET AL :

c1) Defendant ADR Systems of America , L.L.C. dismissed;

c2) the "Olsen Defendants" combined Motion to Dismiss pursuant to 735 ILCS 5/2-619.1 was granted on May 25, 2023 and a Rule 304(a) Appeal is pending 1-23-1142;

C3) the "Baudin Defendants" Motion to Dismiss was granted on Statute of Limitations grounds only on August 29, 2023;

c4) Defendant Allstate Property and Casualty Insurance Company Motion for Summary Judgment was granted on September 21, 2023;

d) In re: DULBERG, PAUL R. Debtor, UNITED STATES BANKRUPTCY COURT, NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION Case 14-83578 CLOSED

e) NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION Paul Dulberg v. Carolyn Colvin, No. 15C50219

III. APPELLANT'S AMENDED MOTION TO ORDER THE CLERK OF THE 22nd JUDICIAL CIRCUIT TO AMEND THE RECORD ON APPEAL TO INCLUDE ALL MISSING DOCUMENTS AND HYPERLINKS AT NO ADDITIONAL COST TO APPELLANT AND TO INCLUDE AN AFFIDAVIT OF COMPLETENESS & CERTIFICATION

16. As first stated in Appellant's Second Motion for Extension of Time to file Appellant's Brief, a major obstacle to preparing said Brief was the problems caused by the Record on Appeal being improperly prepared by the Clerk of the 22nd Judicial Circuit .

17. In Appellant's Second Motion for Extension of Time to file Appellant's Brief the discovered problems were exposed: Appellant requested the entire record be prepared, but Appellant's attorney has discovered missing Report of Proceedings; mismatched sections; documents with only one of the Defendants' names where it should be all; Memorandums of Law where the body of the motions should be; violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal (Revised- Effective March 1, 2022) regarding §1. Definitions (i) Hyperlink-… and so on. (Investigation Continues.) (Please see Appellant's Second Motion for Extension of Time to file Appellant's Brief Sections 9(a) and 9(b).

18. Appellant's attorney has diligently attempted to discover all the errors in the Record on Appeal but has concluded that he neither has the hours or resources to produce a complete rendering of said errors.

19. The Clerk of the 22 Judicial Circuit has the complete record at her disposal and the staff to properly prepare the requested complete Record on Appeal.

20. The Clerk of the 22 Judicial Circuit should be ordered to prepare the complete record with all Reports of Proceeding and all hyperlinks, all documents … that equates a complete Record on Appeal and to certify not only the Records submitted but a certification that states affirmatively that the entire file is includer or to list what has been destroyed or lost.

21. This amended Record on Appeal should be done at the Clerk's expense as the preparation of the Record on Appeal is one of her tasks and Appellant has already paid an extensive amount for

what she has already submitted.

IV. ALLOW APPELLANT TO REQUEST THE RECORD ON APPEAL FOR ALL RELATED CASES

22. Appellant believes that an ORDER from this Honorable Court would be viewed by other Clerks of Court in order to obtain their cooperation in submitting a Record on Appeal that would give this Honorable Court a complete picture of not only this case but all related cases also.

V. ALLOW APPELLANT TO FILE A BRIEF IN EXCESS OF THE PRESCRIBED PAGE LIMITS

23. Appellant reasonably believes that the current page limit will be inadequate to inform this Honorable Court of all the issues that support his position.

Wherefore, Plaintiff-Appellant prays that this Honorable Court recognize Plaintiff-Appellant's Attorney good faith and extensive efforts to comply with the extended briefing schedules, the problems caused by the Record on Appeal based on its page size and the errors by the Clerk of the 22nd Judicial Circuit in preparation of the Record on Appeal, grant Appellant a 90-day extension of time to file Appellant's Brief, allow Appellant to amend his Docketing Statement to include related cases, order the Clerk of the 22nd Judicial District to amend the Record on Appeal to include all missing documents and hyperlinks, at no additional cost to Appellant and to include an affidavit of completeness and the required certification, allow Appellant to Request the Record on Appeal for all related cases, file Appellant's Brief in excess of the prescribed page limits, and for any and all additional relief this Honorable Court deems equitable and just..

Dated: October 1, 2023

Respectfully submitted,

By: /s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico

PROOF OF DELIVERY

I am sending this Amended Motion for Extension of Time to File Appellant's Brief , Proposed Order and Notice of Filing to George K. Flynn and Michelle M. Blum , Karbal Cohen Economou Silk Dunne, LLC., 200 S Wacker Drive, Suite 2550, Chicago, Illinois 60606, Tel: (312) 431-3700, Fax: (312) 431-3670, gflyn@karballaw.com, mblum@karballaw.com by an approved electronic filing service provider (EFSP) on October 1, 2023 at 4:30 p.m.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement herein is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Dated: October 1, 2023

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

Gmail **Alphonse Talarico <alphonsetalarico@gmail.com>**

EXHIBIT A

Dulberg v. Popovich

1 message

George K. Flynn <gflynn@karballaw.com> Fri, Sep 29, 2023 at 11:28 AM
To: Alphonse Talarico <alphonsetalarico@gmail.com>
Cc: "Michelle M. Blum" <mblum@karballaw.com>

Dear Mr. Talarico:

Please let this confirm that I received your voicemail message on September 28, 2023, requesting certain relief, followed by our brief telephone discussion of the same day. Please be advised that I am authorized to agree to a final 21 day extension for the filing of Dulberg's brief on appeal. However, we object to the additional relief outlined in your voicemail message.

Please feel free to contact me if you have any questions regarding this matter.

Best regards,

George K. Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
200 S. Wacker Drive
Suite 2550
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

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Transaction ID: 2-23-0072
File Date: 10/2/2023 12:00 AM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

SC

No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,	) Appeal from the Circuit Court of the) 22nd Judicial Circuit, McHenry County,) Illinois
Plaintiff-Appellant	)
HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C.	)
Defendants-Appellees	))Honorable Joel D. Berg, Judge Presiding)Date of Notice of Appeal March 3, 2023)Date of Judgment February 1, 2023)Date of Post judgment Motion Order: None

.

NOTICE OF FILING THIRD AMENDED MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

TO: George K. Flynn and Michelle M. Blum
Karbal Cohen Economou Silk Dunne, LLC
200 S Wacker Drive, Suite 2550
Chicago, Illinois 60606
Tel: (312) 431-3700, Fax: (312) 431-3670
gflyn@karballaw.com
mblum@karballaw.com

PLEASE TAKE NOTICE that on October 1, 2023, the undersigned filed the NOTICE OF FILING THIRD AMENDED MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF of Plaintiff-Appellant Paul R. Dulberg with the Clerk of the Appellate Court Second District, Illinois, a copy is hereby served upon you.

CERTIFICATE OF SERVICE BY ELETRONIC DELIVERY

I, Alphonse Talarico, an attorney, on oath state that I served the foregoing:

NOTICE OF FILING AMENDED MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF upon counsel listed above by an approved electronic filing service provider (EFSP) on October 1, 2023 at 4:30 p.m.

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico

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E-FILED
Transaction ID: 2-23-0072
File Date: 11/21/2023 8:21 PM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

No.2-23-0072

SC

IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

PAUL R. DULBERG, Plaintiff-Appellant, **HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C.** Defendants-Appellees	Appeal from the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois **Relief Sought:** **RECONSIDER THIS HONORABLE COURT'S NOVEMBER 9, 2023 ORDER MADE AS A MISTAKE OF LAW** Honorable Joel D. Berg, Judge Presiding Date of Notice of Appeal March 3, 2023 Date of Judgment February 1, 2023, 2017 LA 000377 Date of Post judgment Motion Order: None Circuit Court 2017LA000377

MOTION TO RECONSIDER THIS HONORABLE COURT'S ORDER ENTERED ON NOVEMBER NINTH (9), 2023 AS A MISTAKE OF LAW

(CIVIL)

I. ON NOVEMBER 9, 2023 THIS HONORABLE COURT DENIED APPELLANTS' EMERGENCY MOTION AND FOURTH MOTION TO EXTEND TIME TO FILE APPELLANTS' BRIEF *"PURSUANT TO APPELLEES' RESPONSE"*

A) Appellants' **EMERGENCY MOTION AND FOURTH MOTION TO EXTEND TIME TO FILE APPELLANTS' BRIEF (AND) EMERGENCY MOTION TO CONDUCT AN AUDIT OF THE RECORD ON APPEAL TO DISCOVER CHANGED OR MISSING DOCUMENTS; SUPPLEMENT THE RECORD ON APPEAL AND, IF GRANTED, FOR 35 DAYS EXTENSION OF TIME AFTER THE TRIAL COURT CLERK HAS SUPPLEMENTED AND/OR CORRECTED THE RECORD ON APPEAL TO FILE APPELLANT'S BRIEF** is attached to this MOTION TO RECONSIDER as EXHIBIT 1.

B) Appellees' **DEFENDANTS/APPELLEES HANS MAST AND THE LAW**

OFFICES OF THOMAS J. POPOVICH, P.C.'S RESPONSE TO PLAINTIFF/ APPELLANT PAUL R. DULBERG'S EMERGENCY MOTION FOR 4TH EXTENSION TO FILE APPELLANT'S BRIEF, TO CONDUCT AN AUDIT OF THE RECORD ON APPEAL TO DISCOVER CHANGED OR MISSING DOCUMENTS, AND TO SUPPLEMENT THE RECORD ON APPEAL is attached to this MOTION TO RECONSIDER as EXHIBIT 2.

C) Order of the ILLINOIS APPELLATE COURT SECOND DISTRICT DATED NOVEMBER 9, 2023 and signed by Jeffrey H. Kaplan, Clerk of the Court is attached to this MOTION TO RECONSIDER as EXHIBIT 3.

II. ERRORS OF LAW BY APPELLEES AND ACCEPTED BY THIS HONORABLE COURT WITHOUT REPLY BY APPELLANT

ARGUMENT as stated by Appellees in their Response:

I. This Court should deny Dulberg's Motion as it does not present an emergency.

Appellants Response:

As has been consistent during the entirety of this case, Appellees, take on the role of not only Advocates but Judge (in this case Appellate Judge) and state that the First Extension based upon a death and the second Extension based upon a disappearance while traveling to the United States of America in Tokyo, Japan followed by a false Imprisonment without the right to counsel nor the right to contact anyone and retention of all assets and currency should be viewed, not as an incredibly stressful and emotional time on Appellant and Appellant's Counsel, but just as additional time to comply with procedural 2 requirements of this Appeal.

The Facts that Appellant, an Illinois fully disabled resident's lifelong friend and live in care taker was unexpectedly found dead in Appellant's home and the consequential stress and time requirements of arranging for a funeral and replacement care taker plus the subsequent disappearance and false imprisonment of Appellant's Attorney's Fiancée, in Japan, would not delay the investigation of missing and altered parts of the Record on Appeal consisting of , at

least:

2 Volume(s) of the Common Law Record, containing 2148 pages

1 Volume(s) of the Report of Proceedings, containing 512 pages

0 Volume(s) of the Exhibits, containing 0 pages.

Appellees, cavalierly declare and cite Ill. S. Ct. Rule 361(g) "Except in the most extreme and compelling circumstances, a motion for an extension of time will not be considered an emergency" to declare that Appellant's two Motions for Extension of Time that were denied were not emergencies.

Thus, Appellee declares: a death; a disappearance in a foreign country; a Record on Appeal of at least 2,660 pages with some missing, and some blatantly altered, as discussed within the Affidavit of Saira Pasha that was attached to the prior Emergency Motion as Exhibit E (see again attached herein as EXHIBIT E within EXHIBIT 1 attached), not sufficient to be categorized as an "Emergency"

Please note **that one of the issues raised in the Affidavit of Saira Pasha on page 4 and 5 number 17 Missing recordings of court proceedings from January 10, 2018 and February 27 2018** has been established as true as the trial court record, but not the Record on Appeal has been supplement sua sponte on November 9, 2023 (nearly 6 years later)

Please also note that the dates of the Records of Proceedings do not match the dates that the filed stamp date in the upper right hand corner state, that being November 9, 2023 and those dates do not match the Received Date on the bottom of each page, that being November 13, 2023 and finally those dates do not match the Accepted date of November 14, 2023 also on the bottom of each page. (Please see EXHIBITS 4 and 5 attached)

Unnumbered second argument in Appellees' Argument 1. Although not presented in numbered bold print, Appellees attempt to insert another different issue within their Argument I. when they "change horses in midstream" by falsely asserting that Appellant did not comply with the requirements of Ill. S. Ct. Rule 329.

Appellant's Response:

THE FOLLOWING "<u>MISTAKES IN THE LAW</u>" WERE ADVANCED BY APPELLEES AND ADOPTED BY THIS HONORABLE COURT AS EVIDENCED BY THE STATEMENT "Appellant's "emergency" motion is denied pursuant to appellees' response." (Please see Appellant's EXHIBIT 3, 2nd par. 1st sentence):

A) Appellees state "If there is any issues with the record on appeal, then Dulberg should have followed the procedures for supplementing the record in Ill. S. Ct. Rule 329. He failed to do so, as further discussed below." (Appellees thereafter continued this erroneous argument first inserted in **Unnumbered second argument in Appellees' Argument 1** with the following, **"III. The Court should again deny Dulberg's request for leave to supplement the record on appeal due to Dulberg's delay and failure to follow proper procedures."**

B) Ill. S. Ct. Rule 329 states:

Rule 329. Supplement to the Record on Appeal . The record on appeal shall be taken as true and correct unless shown to be otherwise and corrected in a manner permitted by this rule. Material omissions or inaccuracies or improper authentication may be corrected by stipulation of the parties or by the trial court, either before or after the record is transmitted to the reviewing court, *or by the reviewing court or a judge thereof.* [emphasis added] Any controversy as to whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by that court and the record made to conform to the truth. If the record is insufficient to present fully and fairly the questions involved, the requisite portions may be supplied at the cost of the appellant. If necessary, a supplement to the record may be certified and transmitted. The clerk of the circuit court shall prepare a certified supplement to the record which shall be filed in the reviewing court upon order issued pursuant to motion. Amended May 28, 1982, effective July 1, 1982; amended October 14, 2005, effective January 1, 2006; amended June 22, 2017, eff. July 1, 2017.

C) Ill. S. Ct. Rule 329 Committee Comments state:

Committee Comments (Revised May 1982) This rule is a comprehensive provision covering amendment of the record on appeal, correction of improper authentication, and the settling of any questions concerning whether the record conforms to the truth. It contains portions of former Rules 36(3) and (4). Under this sweeping provision, it will be possible to supply omissions, correct inaccuracies or improper authentication, or settle any controversy as to whether the record on appeal accurately discloses what occurred at the trial *by the procedure that will most appropriately solve the particular problem.* [emphasis added] In view of the liberal terms of this paragraph, the rather elaborate provisions of former Rule 36(4), requiring that a claim as to improper authentication be raised by motion before or at the time of the filing of the brief of the party making the claim, were eliminated as no longer necessary. Unless there is some real prejudice involved, there will be no incentive for claiming improper authentication. *Rule 329 was amended in 1982 to permit a single judge of the reviewing court to correct the record.* [emphasis added]

D) It is clear from a fair reading of Ill. S. Ct. Rule 329 and the Committee Comments that requesting the trial court judge or Appellees' Counsel to supplement the missing and altered documents is a futile, if not impossible act., (the reasons why will be elaborated upon below) and the Appellant complied with Ill. S. Ct Rule 329 and the accompanying Committee Comments by twice filing Motions to accomplish the necessary supplementations, and being denied based upon Appellants' erroneous Response forces Appellant to file this Motion To Reconsider because of a Mistake of law.

E) THE LAW NEVER REQUIRES THE DOING OF A USELESS THING

E1. Justice Robert D. McLaren, Appellate Court of Illinois, Second District in *PNC BANK, National Association, v. Jeremy T. Wilson and Michelle M. Wilson* 2017 Il App (2d) 151189, 74 N.E.3d 100, 107¶26 (2017) stated:

"The law does not require futile acts as prerequisites to the filing of legal proceedings. "[A] demand is not necessary where the circumstances indicate its futility. [Citations.] In order to excuse the requirement of a demand for the surrender of property, the evidence must show the demand would have been unavailing." First Illini Bank v Wittek Industries, Inc. , 261 Ill.App.3d 969, 970–71, 199 Ill.Dec. 709, 634 N.E.2d 762 (1994). In addition, "where it appears that a demand would have been of no avail, then none is required, for PNC Bank, Nat'l Ass'n v. Wilson, 2017 IL App (2d) 151189, 74 N.E.3d 100 (Ill. App. 2017) the law never requires the doing of a useless thing." Carroll v. Curry , 392 Ill.App.3d 511, 515, 332 Ill.Dec. 86, 912 N.E.2d 272 (2009). Further, the alleged failure did not prejudice Jeremy's ability to ameliorate a mortgage contract that he nullified by his voluntary act of discharge in bankruptcy without reaffirmation. Thus, although the regulation at issue requires proof of mailing, in this particular case this defense is unavailing as the discharge without reaffirmation would have rendered PNC Bank's efforts futile. There is neither purpose nor policy that would countenance a determination of prejudicial error."

E2. Justice Griffin, Appellate Court of Illinois, First District in *Sylva v. Baldwin Court Condominium Association, Inc.* 2018 Il App (1st) 170520, 106 N.E.3d 431, 436 ¶22 (2018) indicated a like thinking stating:

"It is one of the oldest and perhaps the wisest maxims of equity that the law will not require a person to do a useless act." *Rock Island Y.W.C.A. v. Bestor* , 48 Ill. App. 3d 761, 765, 6 Ill.Dec. 731, 363 N.E.2d 413 (1977) ; see also *PNC Bank National Ass'n v. Wilson*, 2017 IL App (2d) 151189, ¶ 25, 411 Ill.Dec. 791, 74 N.E.3d 100 (futile acts are usually excused)."

F) <u>REQUESTING SUPPLEMENTING THE RECORD ON APPEAL WITH MISSING DOCUMENTS, REPLACING ALTERED DOCUMENTS AND MAKING THE AUDIO RECORDING OF DEFENDANT HANS MAST'S DEPOSITION OBTAINED PURSUANT TO SUBPOENA WOULD BE</u>

A USELESS/FUTILE/IMPOSSIBLE ACT FOR THE FOLLOWING REASONS:

F1. The Trial Court Judge Thomas A Meyer has retired as of September 2023. (see EXHIBIT 6 attached)

F2. The Trial Court Judge Thomas A. Meyer has previously denied the supplementing of the record with the audio recording of the discovery deposition of Defendant Hans Mast received and certified by the certified Reporter pursuant to subpoena because Judge Meyer, without hearing the audio file, determined it does not add materially to his understanding of what transpired. (see again attached herein as EXHIBIT D page 5 line 11 through page 6 line 9 within EXHIBIT 1 attached.)

F3. The Trial Court Judge Thomas A. Meyer had at least on one occasion self-recused himself as a friend of Defendant Thomas J. Popovich in 12LA326, who has also appeared in the matter for Plaintiff-Appellant Paul Dulberg in the underlying case (12LA178). Thomas J. Popovich is the owner and sole stockholder of The Law Offices of Thomas J. Popovich, P.C. and supervisor of Mr. Mast, the named defendants and current Appellees in 17LA377. (see again attached herein as EXHIBIT A within EXHIBIT 1 attached and EXHIBIT 8 attached and ROP_Vol_1_of_1_230421_1628_8FF9DDF1.pdf pages R292 Line 14 through R300 Line 13)

F4. The Trial Court Judge Thomas A. Meyer did not self-recuse himself in the current matter (17LA377) although his stated friend Thomas J. Popovich's Law Firm is a named Defendant in this matter. Also, we offer as additional proof of Judge Thomas A. Meyers refusing to self recuse when his friend is a defendant. (see EXHIBIT 9)

F5. The Honorable Judge Joel D. Berg, who replaced Judge Thomas A. Meyer in this matter and at least one other matter, Christine M. Interrante v. Law Offices of Thomas J. Popovich, P.C. and Thomas J. Popovich, individually 18LA370, when the Honorable Thomas A. Meyer was transferred to traffic court at the end of 2022, refused to hear a Motion to Reconsider and sent it back to the Honorable Thomas A.

Meyer for hearing. (see EXHIBIT 7 attached.)

F6. The Honorable Joel D. Berg only heard one motion in 17LA377, that being a motion for summary judgment that ended the matter in the trial court.

F7. The Honorable Thomas A. Meyers was the trial court judge from inception in 2017 up to the time before the hearing of the Motion for Summary Judgment which ended the matter in the trial court.

F8. The Honorable Judge Joel D. Berg clearly indicated in 18LA370 that he will not entertain a Motion to Reconsider regarding a matter that he was not presented and argued before himself. (again see EXHIBIT 7 attached.)

F9. The Honorable Judge Joel D. Berg has also self recused in cases where Thomas Popovich was a defendant, only difference betweem Judge Berg and Judge Meyer is Judge Berg does not give any reason for recusal. (see GROUP EXHIBIT 10)

F10. The Appellees and their counsel have made it clear by objecting to all relevant request regarding supplementing and correcting the Record on Appeal that continuing to ask for such relief is a futile, useless activity. The specific objections can be made available upon this Courts request.

Therefore Appellant prays that this Honorable Appellate Court finds that the procedural steps under Ill. S.C. Rule 329 to get agreement from the Trial Court or Appellees and Appellees Counsel was and is a futile, useless and additionally an impossible thing and Appellants' Requests permitted under Ill. S. Ct Rule 329 as further explained under the Committee Comments for Ill.S.Ct. Rule 329 asking this Honorable Appellate Court to grant Appellants Motions to supplement and correct altered documents be reconsidered in light of all the above. Appellants further pray that after reviewing Appellant's Motion to Reconsider, this Honorable Appellate Court grant the requests previously requested in Appellants' prior denied Motions to supplement and correct the Record on Appeal.

Dated: November 21, 2023

Respectfully submitted,
By: /s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico

PROOF OF DELIVERY

I am sending this Motion to Reconsider, Proposed Order and Notice of Filing to George K. Flynn and Michelle M. Blum , Karbal Cohen Economou Silk Dunne, LLC., 200 S Wacker Drive, Suite 2550, Chicago, Illinois 60606, Tel:(312) 431-3700, Fax: (312) 431-3670, gflyn@karballaw.com, mblum@karballaw.com by an approved electronic filing service provider (EFSP) on November 21, 2023 at 11:59 p.m.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement herein is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Dated: November 21, 2023

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

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Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

No. 2-23-0072

SC

IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,	) Appeal from the Circuit Court of the) 22nd Judicial Circuit, McHenry County,) Illinois
Plaintiff-Appellant	)
HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C.	)
Defendants-Appellees	))Honorable Joel D. Berg, Judge Presiding)Date of Notice of Appeal March 3, 2023)Date of Judgment February 1, 2023)Date of Post judgment Motion Order: None

.

NOTICE OF FILING NOTICE OF MOTION TO RECONSIDER A MISTAKE OF LAW

TO: George K. Flynn and Michelle M. Blum
Karbal Cohen Economou Silk Dunne, LLC
200 S Wacker Drive, Suite 2550
Chicago, Illinois 60606
Tel: (312) 431-3700, Fax: (312) 431-3670
gflyn@karballaw.com
mblum@karballaw.com

PLEASE TAKE NOTICE that on November 21, 2023, the undersigned filed the NOTICE OF FILING NOTICE OF MOTION TO RECONSIDER A MISTAKE AT LAW with the Clerk of the Appellate Court Second District, Illinois, a copy is hereby served upon you.

CERTIFICATE OF SERVICE BY ELETRONIC DELIVERY

I, Alphonse Talarico, an attorney, on oath state that I served the foregoing:

NOTICE OF FILING NOTICE OF
MOTION TO RECONSIDER
MISTAKE OF LAW upon counsel
listed above by an approved electronic
filing service provider (EFSP) on
November 21, 2023 at 11:59 p.m.

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

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/s/ Alphonse A. Talarico

A8-1

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Transaction ID: 2-23-0072
File Date: 11/3/2023 7:49 PM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

SC

No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,	) Appeal from the Circuit Court of the) 22nd Judicial Circuit, McHenry County,) Illinois
Plaintiff-Appellant	) **Relief Sought: Appellant's Brief Due Date Extended** **) 35 Days to December 8, 2023; Appellant be allowed** **) to retain an auditor to review both the McHenry** **)Circuit Clerks systems and the Appellate Clerks** **)Systems for County Circuit Clerks systems for** **)changed or missing documents; Supplement the** **)Record on Appeal to include the known missing Report** **)of Proceedings;** **) Supplement the Record on Appeal to include the** **) subpoenaed recording of the Deposition of Defendant** **) Hans Mast and to include the original transcript of** **) the changed transcript of September 16, 2022**
HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C.	)
Defendants-Appellees	) Honorable Joel D. Berg, Judge Presiding) Date of Notice of Appeal March 3, 2023) Date of Judgment February 1, 2023, 2017 LA 000377) Date of Post judgment Motion Order: None) Circuit Court 2017LA000377

EMERGENCY MOTION

AND FOURTH MOTION TO EXTEND TIME TO FILE APPELLANT"S BRIEF

(CIVIL)

EMERGENCY MOTION TO CONDUCT AN AUDIT OF THE RECORD ON APPEAL TO DISCOVER CHANGED OR MISSING DOCUMENTS; SUPPLEMENT THE RECORD ON APPEAL AND, IF GRANTED, FOR 35 DAYS EXTENSION OF TIME AFTER THE TRIAL

COURT CLERK HAS SUPPLEMENTED AND/OR CORRECTED THE RECORD ON APPEAL TO FILE APPELLANT'S BRIEF

I. APPELLANT'S FOURTH MOTION FOR AN EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

1) On November 2, 2023, Plaintiffs Attorney communicated with Appellees' Attorney indicating the nature of this Motion, to which Appellees' Attorney indicating his objection to the Motion. (Ill. S. Ct. 361(a) and Local Rule Article 1 General Rules 102(b).

2) Appellant's Attorneys e-mailed a copy of this Motion to Appellees' Attorneys before filing it.

3) The number of days previously requested is 211, the number of days previously granted is 155, and the total number of days is 155. (Local rule 104 (a)(l))

4) The total number of days requested, and the total number of days granted to other parties are (0) none. (Local Rule 104(a)(2))

5) The number of days that will have elapsed from the date of filing of the Notice of Appeal to the date that the case will be ready for disposition is three hundred twenty-nine days. (Local Rule 104(a)(3), Local Rule 106(b) and Local Rule 108(a) & (b))

6) Appellant filed his Notice of Appeal on March 3, 2023.

7) The Record on Appeal was filed on April 24, 2023 and made available for download on April 25, 2023 at 8:48 AM. (Please

see Appellant Exhibit F attached)

7a. Common Law Volume 1 has a creation date of April 24, 2023 at 9:31 AM. Common Law Volume 2 has a creation date of April 24, 2023 at 9:28 AM. The Reports of proceedings has a creation date of April 25, 2023 at 806 AM. (Please see Exhibit G attached)

7b. Common Law Record Volume 1, Common Law Record Volume 2 and Reports of proceedings all have a submission date of April 24, 2023 from 10:00 Am to 10:03 AM. (Please see Appellant Exhibit H attached)

8) Appellant's Brief due date was first extended sixty days by this Honorable Court to July 31, 2023.

9) Appellant's Brief due date was thereafter extended a second time by this Honorable Court to September 29, 2023.

10) Appellant's Brief due date was extended a third time by this Honorable Court to November 3, 2023.

11) Twenty-One days is insufficient to prepare and file Appellant's Brief for the following reasons:

(a) The record on appeal consists of three volumes totaling 2,660 pages; Appellant requested the entire record be prepared, but Appellant's attorney has discovered missing Report of Proceedings, mismatched sections,

documents with only one of the Defendants' names where it should be all, Memorandums of Law where the body of the motions should be, violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal (Revised- Effective March 1, 2022) regarding §1. Definitions (i) Hyperlink... and so on. (Investigation Continues.)

(b) Appellant's attorney has made extensive efforts to have Appellant's Brief ready for filing by the November 3, 2023 considering his extremely heavy court schedule, with two active Appellate cases, two active Decedent's Estates, a First Judicial Law Division with nineteen named Defendants … and being a sole proprietor without full time staff and the following facts that relate to this matter.

II. APPELLANT's BASIS FOR AN EMERGENCY MOTION

1) Appellant has recently discovered that the Trial Court Judge for this case, 2017LA000377 from inception on November 28, 2017 to December 21, 2022 was a friend of Defendant The Law Offices of Thomas J Popovich, P.C.'s owner Thomas J. Popovich and said Judge had recused himself from at least one

case where Thomas J. Popovich was a named Defendant. (Please see Appellant's Exhibit A attached)

2) That the Trial Court Judge for this case, 2017LA000377 from inception on November 28, 2017 to December 21, 2022 was also the Judge at all times in 2012 LA 000178 where Appellant herein was represented by the Law Offices of Thomas A. Popovich P.C. and Thomas J. Popovich individually. (Please see Appellant's Exhibits B page 3 L22 to page 4 L5, C page 4L8-10) where the afore- mentioned Judge acknowledged this fact at least two separate times on the record.

3) That the Trial Court Judge refused a subpoenaed certified electronic thumb drive complete recording by the certified Shorthand Reporter of the deposition of Defendant Hans Mast which reflects the violations of Supreme Court rules and local rules during a hearing to strike the Deposition of Defendant Hans Mast. (Please see appellant's Exhibit D page 477 L21-24 to page 481 line 9)

4) Appellant has discovered missing Transcripts and a materially changed transcript to support Appellant's request for a professional audit trail be produced by an independent service and to supplement the questionable Record on Appeal. The Auditor's Report was finalized and submitted late in the day

yesterday, November 2, 2023 (and was the reason for the delay in filing and serving of this Emergency Motion).(Please see Appellant Exhibit E which is a sample test of changed and missing transcripts by an independent service.)

Wherefore, Plaintiff-Appellant prays that this Honorable Court recognize Plaintiff-Appellant's Attorney good faith and extensive efforts to comply with the extended briefing schedules, the problems caused by the Record on Appeal based on its page size and the errors by the Clerk of the 22nd Judicial Circuit in preparation of the Record on Appeal, grant Appellant a 35-day extension of time to file Appellant's Brief, allow Appellant to amend his Docketing Statement to include related cases, order the Clerk of the 22nd Judicial District to amend the Record on Appeal to include all missing documents and hyperlinks, allow Appellant to Request the Record on Appeal for all related cases, file and for any and all additional relief this Honorable Court deems equitable and just.

Dated: November 3, 2023

Respectfully submitted,

By: /s/ Alphonse A. Talarico ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico

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Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

PROOF OF DELIVERY

SC

I am sending this Motion for Extension of Time to File Appellant's Brief, Proposed Order and Notice of Filing to George K. Flynn and Michelle M. Blum , Karbal Cohen Economou Silk Dunne, LLC., 200 S Wacker Drive, Suite 2550, Chicago, Illinois 60606, Tel: (312) 431-3700, Fax: (312) 431-3670, gflyn@karballaw.com, mblum@karballaw.com by an approved electronic filing service provider (EFSP) on November 3, 2023 at 4:59 p.m.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement herein is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Dated: November 3, 2023

/s/ Alphonse A. Talarico ARDC
6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

EXHIBIT A

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McDonald
v.
Poborich

) Case No. 12LA326

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

FILED
OCT 19 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): friends with Defendant

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: _____

JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

Status on November 7, 2012 at 9:15am

☒ Assigned to the Civil Division, Courtroom 202

(Judge Michael J. Chmiel currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 10-19-12

Michael J. Sullivan, Chief Judge

Michael Holden
33 N. LaSalle St. Ste 2000
Chicago, IL 60602

Daniel Konicek
21 W. State St
Geneva, IL 60134

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on: 10-19-2012

** FILED ** Env: 17220244
McHenry County, Illinois
17LA000377
Date: 3/24/2022 10:51 AM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 3rd day of February, 2020, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE CLINTON LAW FIRM
BY: MS. JULIA C. WILLIAMS
On behalf of Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC
BY: MR. GEORGE K. FLYNN
On behalf of Defendants.

Received 03-24-2022 10:58 AM / Circuit Clerk Accepted on 03-24-2022 11:13 AM / Transaction #17220244 / Case #17LA000377
Purchased from re:SearchIL

THE COURT: Any other agreed, uncontested or sides?

MS. WILLIAMS: Good morning, Your Honor.

THE COURT: Good morning.

MS. WILLIAMS: Julia Williams. We're here on Dulberg vs. --

THE COURT: Okay. The Dulberg vs. Mast.

MS. WILLIAMS: Yes, that's correct. And I'm --

MR. FLYNN: Good morning, Your Honor.

MS. WILLIAMS: -- for plaintiff.

MR. FLYNN: George Flynn for defendants.

THE COURT: Okay. What are we doing?

MS. WILLIAMS: We're just going to set it out again for status on discovery. We are pretty well finished with written discovery, at least between the parties.

THE COURT: Really old for F1 written --

MS. WILLIAMS: Right. Here's our -- we're actually -- we should be done today. We had some 201(k) issues.

THE COURT: Okay.

MS. WILLIAMS: We are going to the law firm to look through their -- through their documents today. I believe everything has been produced, but we just

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want to verify -- there were some blank pages, and we just want to verify --

THE COURT: Okay.

MS. WILLIAMS: -- what those are.

So I think we're actually going to be fully completed with that today and looking to do -- getting ready to do deps, I think, is our next step --

THE COURT: How many are --

MS. WILLIAMS: -- for depositions.

THE COURT: How many F1 deps do you anticipate?

MS. WILLIAMS: Well, we'll have probably two. One from the firm and one -- defendant counsel and then defendant firm.

THE COURT: Okay.

MS. WILLIAMS: And then, obviously, the plaintiff. Now, whether we need more witness deps -- this is a legal malpractice case. Witness deps were taken in the underlying case. I don't know if we're going to need to take those a second time to --

THE COURT: I think I pre-tried the underlying case. I have a recollection of this, so -- but I'm not a hundred percent sure, so just throwing that

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out there...

MS. WILLIAMS: Okay.

MR. FLYNN: I think I did see Your Honor's name in connection with maybe one order in the case; but I don't see it as an issue.

THE COURT: Okay. I'll periodically throw it out there. But in any event, so if we come back in 60 days, do you think that gives you enough time to complete?

MR. FLYNN: I think it gives us enough time to complete the main F1 witnesses.

MS. WILLIAMS: At least the three parties.

MR. FLYNN: There were -- there were four -- four or five doctors deposed in the underlying case. And four other five other --

THE COURT: All right.

MR. FLYNN: -- (indiscernible). I don't know if we'll need to redo everybody, but I think we'll have a better idea after we take the party deps.

THE COURT: All right. Let's put it out 60 days. Can you make April 3rd, a Friday?

MS. WILLIAMS: Yes. Let me just double-check.

THE COURT: Okay.

MS. WILLIAMS: But I believe that's just fine.

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And that will be status completion of F1. That's -- yes.

THE COURT: That's just to tell me what we're supposed to be doing.

MS. WILLIAMS: Sure. So status completion of F1s on April 3rd, and we'll come back.

THE COURT: Okay.

MS. WILLIAMS: Thank you very much.

MR. FLYNN: Thanks, Judge.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, MAUREEN S. URBANSKI, an Official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Maureen S. Urbanski

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 10th day of May, 2018, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE GOOCH FIRM, by
MS. SABINA WALCZYK,
On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.

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THE COURT: Let's go to work on Dulberg.

MS. WALCZYK: Good morning, Your Honor.

THE COURT: Good morning.

MS. WALCZYK: Sabina Walczyk on behalf of Dulberg.

MR. FLYNN: Good morning. George Flynn on behalf of the Popovich firm and Hans Mast.

THE COURT: It is -- it is rare when I know both the plaintiff and the defendant ahead of time. Only through the courtroom, but still unusual.

I looked at -- I'm going to tell you what I'm thinking. And then if you choose to argue, you can to -- if you wish to convince me that I'm wrong; or we can go forward. Either is fine.

I felt that the 2-615 motion was appropriate because I felt that -- and I -- for a specific reason, not -- not perhaps all the reasons that were cited by the defendant. I felt that the complaint, when it talked about how -- I'm looking for the words, misled -- when it said that the attorneys misled -- lied and misled Mr. Dulberg, I felt that there was some specificity that was going to be required. Because they -- ultimately, these things are going to factor into the statute of

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limitations issue. And if you're going to say that it was a breach of his duty in lying or misleading, I think we need more particularity in the allegations. You can't just make a conclusory statement to that effect.

That's my perspective. What would you like -- I'll give you an opportunity -- opportunity to replead; but if you want to argue against my thinking, I'll listen.

MS. WALCZYK: Well, Your Honor, I -- I won't argue with the Court. If Your Honor would like some more specificity as to those certain terms, we can certainly replead and plead those a little bit more specifically to --

THE COURT: And with respect to the discovery rule issue --

MS. WALCZYK: Uh-huh.

THE COURT: -- since it's going to come up one way or another, although I think it's a question of fact, I would like to see it touched upon, because I'm not following the -- the fact that he got more from the arbitrator than had been initially suggested by his attorneys, isn't really telling me anything. So I need maybe a little bit more

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information to understand the relationship of the two things.

With respect to the issue of -- on the 2-619, I felt that in light of how I was going with the 2-615, I really couldn't rule on the -- the application of the discovery rule. And, ultimately, I saw that in the long run, it was going to be a question of fact, and I would probably need -- and I could only address that with some more facts than what's just contained in the complaint.

With respect to estoppel, I didn't agree -- and you can tell me why you think I'm wrong, but I didn't agree with the argument that you were making because it -- it, carried to its logical conclusion, I could mislead and lie to my client about the -- about the implications and why he should settle, and then once he agrees to it, then I'm -- I'm released from my breach of my duty.

So I don't think that it -- that that was the type of scenario involved when the courts were discussing the estoppel issue.

Do you have anything -- do you want to contest that?

MR. FLYNN: Not at this time, Your Honor. I --

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I've always learned that it's better to quit while you're ahead. And with -- without giving a roadmap to the plaintiff, I do think that having their best complaint on file benefits us all.

THE COURT: Yes.

MR. FLYNN: So going back to the 2-615 issues, again, a legal malpractice case, they've got to plead and prove, not only the legal malpractice, but the elements of the underlying case. And it seemed to me, and as we pointed out, that -- that all of the allegations were very conclusory. That they would have gotten more, they wouldn't have done this, that the -- that Hans Mast and the Popovich firm should have undertaken additional actions in the underlying case, but they don't say what those are. And I think that they -- they're required to if they believe that there was a breach of a duty that led to damages.

The high-low agreement, which is very confusing to me and to my client, frankly, because he's never seen it, and as I understand it, that's outside of the four corners --

THE COURT: It is outside, but it did lead to an area where I was also a little bit confused. And

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I -- and I think you touched on -- I'll ask you: Is the complaint having to do with the settlement with the McGuires, or does it somehow relate to the suit that continued with respect to Gagnon and the high-low agreement?

MS. WALCZYK: Well, I think it's a little bit of both, because it started with the suit against McGuires, which settled. And then it looks like there was a high-low agreement signed.

THE COURT: Okay.

MS. WALCZYK: And --

THE COURT: Was it signed by Mr. Mast?

MS. WALCZYK: Oh, I believe it was signed by Mr. Dulberg. I haven't seen it.

THE COURT: Okay.

MS. WALCZYK: However, we can attach it if -- if you want --

THE COURT: If -- if you are going to allege malpractice as a result of entering into the high-low agreement, yes, I would require you, then, to attach it and to make that a little more explicit.

MS. WALCZYK: Yes.

THE COURT: Because I -- I came away thinking

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that was not part of your complaint, but I wasn't a 100 percent sure.

Also, let's see -- yeah, I need to know with some specificity what facts were concealed and how he was misled. I had problems with, particularly, I had -- paragraphs 20 and 21 and felt that you should have included more in that. And I won't probably say more than that.

MS. WALCZYK: Uh-huh.

THE COURT: And I -- on the estoppel argument, as I've said, I don't think that it is clear that the signing of the release was something that could be assumed to be knowing and voluntary when the plaintiff is alleging that he was misled as to the ramifications of that. Excuse me. Let's see. Okay.

Any -- so I'm granting on the 2-615. I will grant you leave to refile or replead.

MS. WALCZYK: Okay.

THE COURT: And what else? Is there anything else that we need?

MR. FLYNN: Just as a housekeeping, again, depending on what theory you're going under, if it's related to the Gagnon settlement, and we may have

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more people coming to the party; but if not, then that's it.

THE COURT: Yeah. I mean, if you're going to draw that in, then I need it a little more explicit.

MS. WALCZYK: Okay.

THE COURT: And I got -- in fact -- I'm reading from my notes. I need facts on what was false, misleading and what -- what you mean by coercion.

MR. FLYNN: So the 615 is granted with leave to replead.

THE COURT: Yes.

MR. FLYNN: I wasn't clear, I guess, on whether there's an actual ruling on the 619 or --

THE COURT: 619, I'm denying because --

MR. FLYNN: Okay.

THE COURT: -- there's a question of fact --

MR. FLYNN: Okay.

THE COURT: -- at this stage.

And I think that even if they include additional facts in their complaint, I would still come back to it being a question of fact, because I -- there's going to be a lot more about their relationship than I think can be reflected in merely the complaint. I would -- so I mean, if you were to

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bring another 2-619, feel free.

MR. FLYNN: Sure.

THE COURT: But I would still think it's going to be a question of fact as to what is clear -- Dulberg's claims are with respect to how he was misled or facts were concealed.

MR. FLYNN: Okay.

THE COURT: Because it's going to depend on their interaction.

MR. FLYNN: And it is the -- the language of statute is "knew or reasonably should have been known." And, again, this -- he does have counsel that came in right after my clients got out. So, again, the Blue Water Partners case says you -- potentially, you can't bury your head in the sand.

THE COURT: No, you can't. But because I -- of the absence of information --

MR. FLYNN: Fair enough.

THE COURT: -- I was reluctant to go further. The statute of limitations, you might get a little bit farther, but I still might run into a fact question.

MR. FLYNN: Understood.

THE COURT: So how long do you need?

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MS. WALCZYK: If I could have 28 days, Your Honor.

THE COURT: Sure.

MS. WALCZYK: We have a trial coming up.

THE COURT: And to answer or otherwise plead?

MR. FLYNN: 28, please.

THE COURT: All right. That would -- excuse me. Why don't we come back in -- 60 days is July 9th. How about July 11th, a Wednesday? Or do you have -- it's all the same to me, so long as I am here.

MR. FLYNN: Let's see. I believe I'm going to be out of state that week.

THE COURT: Okay. When is it convenient for you to come here? She's here all the time, so I don't --

MR. FLYNN: The following week would be --

THE COURT: What day works for either of you the following week?

MS. WALCZYK: We may actually have a trial that week. That may or may not go; I'm not sure at this point. At least the first two days, if we could do towards the end of week, that would be great for us.

THE COURT: 20th?

MR. FLYNN: 20th works.

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MS. WALCZYK: That's perfect.

THE COURT: All right. We'll see you on July 20th.

MR. FLYNN: Thank you, Your Honor.

MS. WALCZYK: Thank you very much.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

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Maureen S. Urbanski

Certified Shorthand Reporter
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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 21st day of December, 2022, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by MR. ALPHONSE A. TALARICO (via Zoom),

On behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by MR. GEORGE K. FLYNN (via Zoom),

On behalf of the Defendants.

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THE COURT: For the record, this is on Dulberg versus Mast.

Plaintiff's counsel, if you could identify yourself.

MR. TALARICO: Yes, your Honor. My name is Alphonse Talarico.

THE COURT: And defendant.

MR. FLYNN: Good morning, your Honor. George Flynn for the defendants.

THE COURT: And for the record, I -- Mr. Dulberg is in attendance, and once again, I hope we're not being recorded. That being said, we'll move on to the motion.

Plaintiff, you have a motion.

MR. TALARICO: Yes, Judge. I'd like to -- we filed our motion -- we filed -- counsel filed a response, we filed a reply. We'd like to rely on that, with one additional presentation or request of the Court.

THE COURT: Okay. What is that?

MR. TALARICO: I'd like to offer an informal proof -- an offer of proof, which is the exact and -- and -- what is the best way -- the audio transmission of the deposition, in full, with all

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the parties, which was sent to us through a subpoena.

THE COURT: Okay. You mean from Mr. Mast's -- or Mast's -- deposition?

MR. TALARICO: Correct. Everything that -- that would help the Court understand all of these problems. Because you --

THE COURT: Well, we do have -- we have the transcript.

MR. TALARICO: Yes, your Honor, but the transcript is selective.

THE COURT: Okay. Mr. Flynn, comment.

MR. FLYNN: I would object, Judge. The plaintiff has already filed a second amended motion and response. He's had plenty of opportunity to bring this to the Court's attention.

THE COURT: Okay. Mr. Talarico, final word.

MR. TALARICO: Judge, this is for the aid to -- for the Court -- this Honorable Court to understand what's going on.

As to the second amended, I replied to that, that -- the only difference between the amended and the second amended, Judge, was the stamp on Exhibit 17 didn't show up, so I re-filed it. But

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it was filed timely. As soon as I realized the stamp didn't show up on Exhibit 17, I re-filed it with an emphasis on the Exhibit 17. Mr. Flynn received it on time with notification that it's Exhibit 17.

THE COURT: Well, that's not the issue, but the issue is --

MR. FLYNN: It's not. And just for the record, there was a typo in my response brief. I wasn't taking issue with the timing of the filing of the second amended, other than the fact that it's two years after the deposition.

THE COURT: But that -- that's a different --

MR. FLYNN: But --

THE COURT: That's a different issue.

MR. FLYNN: Exactly.

THE COURT: The first issue is whether or not to -- the Court will accept plaintiff's request to submit the audio of the deposition at issue of Mr. Mast that, I believe, was taken June 25th, 2020.

And, Mr. Talarico, anything else to say in support of that oral motion?

MR. TALARICO: No, Judge. That -- that's -- if you'll accept it, it's in the -- I believe

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Mr. Dulberg is in the courtroom, and if he may approach the bench, he will hand it to you.

THE COURT: No, he's on Zoom. In any event, I'm going to deny the -- oh, are you -- Come on up.

MR. SCOTT DULBERG: Do you mind if I just hand it here?

THE COURT: Well, no, you're going to come up. I'm not going to accept that.

Your name, sir?

MR. SCOTT DULBERG: Scott Dulberg.

THE COURT: Okay. And you're here to deliver a Zip drive of the audio; am I correct?

MR. SCOTT DULBERG: Yes.

THE COURT: All right. And I -- But I'm going to rule on plaintiff's motion. I'm not going to accept it. I'm not going to consider it for purposes of the hearing on this motion. So you can keep it, but thank you for -- for showing up and bringing it.

MR. SCOTT DULBERG: Thank you.

THE COURT: Because -- I'm not going to accept it because I don't think it adds, materially, to my understanding of what transpired. I've got the deposition transcript. I've read the parts that I

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believe are relevant. I've read the motions. I've heard this argument.

I don't think that the audio tran- -- the audio recording is going to assist me in any way, based upon my understanding of what the ultimate issue is on this motion.

So that will be denied, and we'll incorporate that into the motion -- or in the order. I'm sorry.

Moving on to the motion, this is plaintiff's motion to either re-depose or strike, or both, the deposition of Mr. Mast taken June 25th, 2020; am I correct?

MR. TALARICO: Yes, your Honor.

THE COURT: And, further, am I correct that the -- the reason for this is issues with respect to what's identified as Exhibit 12?

MR. TALARICO: No, your Honor. That's just one small part of it. The entire motion is based on Supreme Court rules and on -- or in effect at the time the deposition was taken.

THE COURT: No, no, no. Tell me the substance. Don't tell me what the rules are. Because my reading of your motion focused on Exhibit 12 and the

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failure -- or the alleged failure to produce it prior to the deposition or give an exhibit list.

So tell me, what is the reason why you want to re-depose Mr. Mast? Because I think that's ultimately your request.

MR. TALARICO: That's right. Judge, within our motion and our reply, we've indicated that it's not just Exhibit 12. Focusing on Exhibit 12 makes it too easy. The entire deposition -- the Internet went down almost the entire time. It's in the notes that I highlighted. It's in the transcript. They were not seeing Exhibits 1 through 15 at the same time. They weren't seeing them. They weren't being uploaded to the admin- -- the administer of -- of oath. 12 wasn't even part of it. It was added, I don't know, 14 days later.

THE COURT: But, ultimately --

MR. TALARICO: So we --

THE COURT: -- the exhibits were seen; am I correct?

MR. TALARICO: No. They were not seen.

THE COURT: None of the exhibits were seen?

MR. TALARICO: They were not seen in accordance with the rules, your Honor.

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THE COURT: That's -- see, you --
MR. TALARICO: The rules --
THE COURT: You throw those phrases in, in accordance with the rules.
Did the deponent see the exhibits, yes or no?
MR. TALARICO: No.
THE COURT: Mr. Flynn, comment.
MR. FLYNN: Judge, to say that the Internet was down for --
THE COURT: I don't want to go down there. Did the -- did Mr. Mast see the exhibits?
MR. FLYNN: My recollection and understanding is that Mr. Mast saw all of the exhibits. There may have been an issue with a portion of Exhibit 12; however, he was -- he was cross-examined at Page 49 through 52 regarding Exhibit 12, generally speaking, and the case law that was contained in his file.
The bottom line is, it doesn't add anything. He didn't recall the specific cases that he discussed with --
THE COURT: Did he see the exhibits? That's all I wanted to know.
MR. FLYNN: I don't know that he saw the full

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exhibit in its entirety.

THE COURT: Okay.

MR. FLYNN: It -- But it wasn't necessarily provided to him, so --

THE COURT: For purposes of this record, Exhibit 12 is copies of case law; am I correct?

MR. FLYNN: Generally speaking, correct.

THE COURT: Mr. Talarico.

MR. TALARICO: That's correct, Judge. But, again, we're not just focusing on Exhibit 12. We're focusing on all the exhibits that were supposedly shown to Mr. -- to Mr. Mast. He didn't see them. He didn't see them.

THE COURT: Okay.

MR. TALARICO: There was confusion as to what the numbers were.

THE COURT: Whose exhibits were they?

MR. TALARICO: They were the plaintiff's, but it was the defendant's equipment that caused the problem.

THE COURT: And the plaintiff conducted the deposition; am I correct?

MR. TALARICO: That is correct.

THE COURT: And the plaintiff was aware of

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any -- the plaintiff's attorney, at that time, was aware of any glitches or difficulties with respect to having the deponent view all of the exhibits; am I correct?

MR. TALARICO: That's correct, your Honor.

THE COURT: And the plaintiff (sic) who was representing Mr. Dulberg at the time, for whatever reason, did not raise an objection at the time or ever with respect to the manner in which the deposition proceeded.

MR. TALARICO: No, your Honor. (Indiscernible) she left it to me -- or to the following counsel. She said to Mr. Dulberg, Mr. Dulberg, whatever those objections are, your next counsel has to make them.

THE COURT: Okay. Well, that -- but the handling attorney at the time who represented Mr. Dulberg's interests proceeded with the deposition and did not give notice to anyone of any complaint with respect to the manner in which it was conducted; am I correct?

MR. TALARICO: You are correct.

THE COURT: Okay. What else do you want me to know?

MR. TALARICO: I want you to know, Judge, also,

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that not only does the objection have to take place at the time of the deposition itself. When the evidence is being brought -- when the evidence is being subject to admission, I can bring that -- I can raise that now and object to it.

THE COURT: Okay. But the -- the exhibits were always in control of the plaintiff's attorneys, and you're asking to penalize the defendant for what appears to be a -- an issue you have with the manner in which prior counsel conducted the deposition.

MR. TALARICO: No, your Honor. It's -- as far as the defendant, it's their electronic equipment that failed.

THE COURT: And there were no objections made at the time or subsequent, and this motion was brought approximately two and a half years after the deposition in question; am I correct?

MR. TALARICO: You are correct. But it's also within the time of the ruling. I can do this now.

THE COURT: You can file any motion you like, but I'm -- I'm going to deny your request. I don't think that there's any reasonable basis under which I can compel the defendant to appear for a second deposition because of these issues. It appears that

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prior counsel was satisfied with the -- her ability to conduct the deposition, and she was always in control of all of the exhibits, so I don't see a problem there.

If anybody should have been raising an objection about the problems, it should have been defendant, not -- not the plaintiff two and a half years after the deposition they proceeded with. So I'm going to deny the request.

Anything else that we need to do today?

MR. FLYNN: Judge, just that there was some additional relief requested in the latest reply brief filed, and that included a request that the Court take judicial notice of -- what's really an implication. I think this is on Page 17 of the response.

I would just request that that specific request for relief also be denied in connection with the motion.

THE COURT: Okay. Let me just call it up. I'm looking at Page 18. What is it?

MR. FLYNN: I believe it was on Page 17 of the response -- I'm sorry -- the reply brief that was

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just filed.

THE COURT: Okay. The notice of the adjudicative facts?

MR. FLYNN: Correct. I think it says in Paragraph 12(j), plaintiff requests that this Honorable Court take judicial notice of the adjudicative fact that the references to Restatement (Second) of Torts Section 318 impliedly references Tilschner versus Spangler.

THE COURT: That -- that's not really ultimately the purpose of this motion, and it's not contained in the prayer for relief. That strikes me as a new motion. Wasn't going to consider it, and so I'm -- to the extent that I have to rule on it, on an issue I don't even think that's in front of me appropriately --

MR. FLYNN: It's just relief that was in -- in this response that I didn't have any opportunity to address.

THE COURT: I will -- I will deny all aspects of plaintiff's motion.

MR. FLYNN: Okay.

THE COURT: I think that covers it.

Is there anything else?

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MR. FLYNN: Thank you. That's it.
THE COURT: Okay. We have a future date, don't we?
MR. FLYNN: We have a pending motion for summary judgment, and plaintiff's response is due, I think, next week.
THE COURT: Okay. All right.
MR. FLYNN: But I don't --
THE COURT: You're back February 1st, and I -- Mr. Flynn, could you draft the order and please get it in as early as possible.
MR. FLYNN: I will. And, Judge, we spoke last time about your continued handling of the case. Do you have any information to share in that regard?
THE COURT: Nope. Nope. I -- I'm in a different division and, um, I can't take cases with me.
MR. FLYNN: Okay.
THE COURT: That would be interesting, but no, I can't take them. I can't take them with me. Too many --
MR. FLYNN: Okay. So --
THE COURT: -- egos involved. Not -- I'm not

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referring to Judge Berg.

MR. FLYNN: Sure.

THE COURT: But there -- Yeah, there's too many hurdles to try --

MR. FLYNN: I understand. So the schedule stands?

THE COURT: The schedule stands. If you wish to have that addressed, you'll have to bring it in front of Judge Berg.

MR. FLYNN: Okay.

THE COURT: I will warn you, he's got a small claims call. I would -- I'm warned to avoid Thursdays and Fridays for hearing because those, apparently, are heavy days.

But you may find out the hard way. Who knows?

MR. FLYNN: Okay.

THE COURT: All right.

MR. FLYNN: Thank you very much, your Honor.

THE COURT: You can send in the order. I will sign it when I see it.

MR. FLYNN: Thank you.

THE COURT: All right. Thank you. Have a good

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day.

MR. FLYNN: You, too. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, KATHLEEN STROMBACH, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Kathleen Strombach
Kathleen Strombach
Official Court Reporter
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Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable JOEL D. BERG, Judge of said Court of McHenry County, Illinois, on the 1st day of February, 2023, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE TALARICO, by
MR. ALPHONSE TALARICO, (Via Zoom)
On behalf of the Plaintiff;
KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendant.

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THE COURT: You are here on Dulberg against Mast?

MR. FLYNN: I am, Judge.

THE COURT: I have the other side here on that as well. Well, no. I have Mr. Dulberg here. I have Mr. Talarico as well. Mr. Talarico, are you ready for a hearing if I call it early, sir? I'm sorry, sir, you are muted. I'm not --

MR. TALARICO: Yes, your Honor.

THE COURT: Good morning. Are you ready for hearing a couple minutes early, sir?

MR. TALARICO: Absolutely.

THE COURT: Thank you very much. This is Dulberg against Mast, et al. I have Mr. Talarico present via Zoom as is Mr. Dulberg. Counsel, would you please state your name?

MR. FLYNN: Thank you, your Honor, George Flynn on behalf of the defendants.

THE COURT: Thank you, Mr. Flynn. We are before the Court for a hearing on pending motions. The one most notable is the summary judgment. What else are we hearing this morning, gentlemen?

MR. FLYNN: That's all we have, as far as I know, Judge.

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THE COURT: Good. Because that's all I read.

MR. TALARICO: That's all I know, Judge.

THE COURT: Now I feel way better. It just said pending motions. All I could find was summary judgment. I read the motion. I read the response. I read the reply. I have read all the attachments, as they were relevant. It's your motion.

MR. FLYNN: Thank you, Judge. And I wasn't sure I -- with Judge Meyer's standing orders, with respect to courtesy copies, I wasn't sure if the Court had a chance to review the briefs, but since your Honor has indicated that you have --

THE COURT: I have read everything. It's all based on a two-year statute of limitations on a lawsuit over a chain saw.

MR. FLYNN: That's exactly right. So I will be brief. The only case cited by the plaintiff in its response with respect to the accrual of the injury was a Suburban Real Estate case which is a transactional legal malpractice case, not a litigated matter. I think the -- all of the cases we have cited and including the dicta in that Suburban Real Estate case indicates that the accrual date in a litigated matter is the date of

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settlement, judgment or dismissal.

Here, we had a January 14 settlement that was consummated. There was a good faith finding and dismissal at that time. Mast and Popovich continued to represent Mr. Dulberg for another year or so and prosecuting the case against the other defendant in the case.

Dulberg became disillusioned with Mast, admitted that he was looking for additional counsel -- or substitute counsel even as early as July of 2014. Ultimately, Mast and Popovich withdrew in March of 2015. The case proceeded against Gagnon. There was a mediation in December of 2016 at which time he indicates now that he first became aware of his legal malpractice case.

Mr. Dulberg had every opportunity in discovery through interrogatories, production requests, I took his deposition. I asked him over and over again in several different ways how he first became aware of his injury and that it was wrongfully caused. The only response he could give was that a lawyer told him that he had a case. He couldn't provide any specifics. He has a burden of proving the -- a late discovery. He cannot meet it.

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He will never be able to meet it.

THE COURT: Do we know, by the way, how did he come to me because the lawyer, if I recall, was Mr. Gooch. So he was represented by I believe Mr. Balke if I recall correctly followed by Mr. Baudin.

MR. FLYNN: That's correct.

THE COURT: Where did Mr. Gooch come into this? Who shipped him off to Mr. Gooch to even get opinion, do we know?

MR. FLYNN: One of those two lawyers, I think, recommended that he seek an opinion from a lawyer, generally speaking, that handles legal malpractice cases. Whether it was a direct referral, I don't know if the evidence shows that. I think Mr. Dulberg testified that I believe it was Mr. Baudin recommended that he see a legal malpractice attorney.

So Mr. Gooch met with him. Allegedly provided an opinion that there was a case without any reason and then almost a year later filed a lawsuit. Again, first Mr. Dulberg raised privilege when I asked him how -- how and what -- how you became aware of this legal malpractice case, the

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injury and the wrongful causation, he claimed privilege. Finally, that was waived or otherwise disposed of, and then, he admitted he couldn't -- I said the legal opinion Dulberg received from Gooch was verbal. Gooch simply stated you have a case here. You have a valid case. When asked did he tell you exactly what they did wrong in connection with the representation, Dulberg said he probably did. I'm not recalling it right now. I'm pulling a blank. There are no specifics.

So again, the burden is his to prove a later discovery. He's not able to do that. I'm happy to answer any questions the Court has, but again, I'll rest on the briefs.

THE COURT: Thank you very much. Mr. Talarico, sir?

MR. TALARICO: Yes, sir. I'm -- what would you like me to address first? I guess we could start with the fact that defendant didn't follow the local rules, and therefore, plaintiff could not properly respond. And the local rule says that if they do not follow the local rules, you can strike the motion or deny it.

All I'm asking is deny the motion based on

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the fact that they did not follow the local rules.

THE COURT: I respectfully decline to do so, sir. A written motion could have been filed expressly asking for that relief. A response was filed that addressed it. I've read the response. I understand your concerns that by not following the local rules, they may have made it more difficult for us to suss out what are the disputed issues of material fact and what aren't. But I've been able to pretty much get a grip on everything the way it's been filed.

MR. TALARICO: All right. Thank you, Judge. The second thing is, again, we didn't follow the rules that (indiscernible) we didn't respond -- we responded generally. So I would like that the ruling you just made to extend to our response too.

THE COURT: Of course it does.

MR. TALARICO: Thank you, sir. Okay. Then, the next issue is the Suburban case. Plaintiff -- defendant, I'm sorry, defendant seems to indicate -- well, he does indicate that the reason that Suburban doesn't apply is that there is a difference between a transactional case and a litigation case. Now, I read the Suburban case many, many times over and the

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Supreme Court does not distinguish that their ruling is for one type of case or the other. What their ruling is is that the statute of limitation and they construed the exact specific statute does not begin until there is a pec -- pecuniary loss.

Prior to that, Mr. Dulberg would have brought an action, he would have had no damages. So that -- what that does is because the general rule and which has been voiced in -- by the Illinois Supreme Court Justice Thomas in the Porter case is that when the Supreme Court construes a statute, that becomes part of the statute until the -- the -- I can't think of the word, legislation -- legislature decides to change it. So what we have is the prior cases cited by Mr. Dulberg are not effective because he's citing it to the rule and not to the particular case we are talking about. The Suburban case says no damages, the statute does not begin to run. And that is part of the statute. It hasn't been changed.

Now, as to the last thing, we have raised many affirmative -- I mean, I'm sorry, many issues of material fact that are in dispute. But most important -- the clearest ones, Judge, are the

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defendant's affirmative defenses. There are four affirmative defenses which -- which plaintiff has denied all four.

Now, there is a recent case, if you'll hold on just one second, and I'll find it, but the indication -- it's not that recent, but it's -- the indication is that -- this is West Suburban Mass Transit versus Consolidated Rail Corporation. It's 1-89-2916. If this was done the Appellate Court but it was by the -- the opinion was by Justice McMorrow, who of course became Supreme Court judge, that summary judgment is not appropriate when there is affirmative defenses in dispute.

I think that pretty much sums it all, Judge. We have got many material facts in dispute, including four affirmative defenses which were denied specifically by plaintiff.

THE COURT: Respectfully, sir, merely saying something is in dispute does not make it so though, does it?

MR. TALARICO: Judge, I'm saying that the answer filed was it was in dispute.

THE COURT: So by filing a response to their affirmative defense denying the affirmative defense,

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you're telling me that that in and of itself is sufficient to defeat summary judgment.

MR. TALARICO: Yes, I am.

THE COURT: What if your client --

MR. TALARICO: I --

THE COURT: What if your client at subsequent depositions testifies inconsistent with the answer?

MR. TALARICO: In the case that I cited, Judge, the burden is upon the person, in effect, in this case the defendant, to eliminate that dispute. The dispute exists as he did not resolve that dispute.

THE COURT: So when did the cause of action arise?

MR. TALARICO: December 12, 2016, I believe.

THE COURT: Why on that date?

MR. TALARICO: Because there was an arbitrary -- a mandatory arbitration hearing which I included the -- the findings that showed that the judge -- the retired judge in that case evaluated it at $660,000, and Mr. Dulberg was not able to obtain anything close to that.

THE COURT: And why not?

MR. TALARICO: Well, for two reasons, one, because he settled first improperly for $5,000 with

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the landowner, and the second case is because he was instructed improperly to -- to sign -- well, he actually claims he never signed the agreement, but that there was an agreement to do a binding arbitration limited to the policy amount of 300,000.

THE COURT: Who entered into that agreement?

MR. TALARICO: That is a question of fact. I don't know, but Dulberg says he did not sign it and never wanted to.

THE COURT: When was the agreement entered into?

MR. TALARICO: I don't have the exact date, Judge. A few months before that. I can only say that that was -- that was during the time that Mr. Dulberg was in bankruptcy, and that was also part of the Baudin's instruction.

THE COURT: So the agreement to limit recovery to 300,000 was signed well after the Popovich firm was no longer representing Mr. Dulberg on this matter?

MR. TALARICO: Yes, that's true.

THE COURT: So how is his change in strategy somehow extend -- so in other words, what you're saying -- well, I'm trying to wrap my head around this. You are saying that that agreement your

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client never wished to enter into, he didn't sign, Popovich didn't sign, Mr. Mast didn't sign. His actual third attorney signed it, Mr. Baudin, not even Mr. Balke. But because that was somehow signed and in effect, then the cause of action against Mast and Popovich for legal malpractice is extended out to the date of the final mediation hearing because of an agreement and limitation on damages at the mediation hearing over which they had zero control?

MR. TALARICO: What I am saying, Judge, is the analysis in the Suburban case, the damages -- prior to that, Mr. Dulberg had no actual damages, therefore, he couldn't bring an action. He had nothing to say that Mast cost him this much or this much or Popovich cost him this much because that would -- that would have been stricken for -- they had no damages, so he had no cause of action.

The damages arrive -- arose on the days that Mr. Dulberg found out through the binding arbitration that the case was worth so much more than what he's going to get, and therefore -- that -- that enumerates the damages.

THE COURT: But respectfully, Mr. Talarico, and please correct me if I'm wrong because this is where

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I'm getting the disconnect, the but-for portion of this analysis but for the high-low agreement limiting damages to the policy amount of $300,000, he would have had a judgment for the entire $660,000 if Tom Popovich and Hans Mast had never even existed.

MR. TALARICO: I'm not clear on what you are asking, Judge. Could you --

THE COURT: What I'm asking is isn't the failure to recover the $660,000 as opposed to 300,000 attributable to the high-low agreement that was entered into well over a year or if not two or more years after Popovich and Mast were out of the case?

MR. TALARICO: Well, Judge, I -- first of all, he didn't enter into it. He's claimed over and over that that's not his signature. It was forged. There is many issues about that in the bankruptcy.

THE COURT: But again, counsel -- but again, my point being I don't really care if he signed it or didn't sign it. My point being that it is that agreement that limited his damages, and that agreement was entered into way after Popovich and Mast withdrew from this case, right?

MR. TALARICO: That's right, but --

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THE COURT: He so would have got -- so he would have gotten all 660,000 had that agreement not been entered into.

MR. TALARICO: Judge, but at -- before the judge ruled in that binding mediation, he had no idea how much the case was worth. They had told him it was worth $5,000 and then some. That -- that date -- that's the date when he knows when there was a factual pecuniary damage. He knows the case is worth much more than they told him and he's got numbers behind it. Before that, he had nothing to plead.

THE COURT: Respectfully, the case is worth that much against Mr. Gagnon, not necessarily against Mr. Gagnon's -- I believe it was his parents, the two people that settled out of it. The $660,000 is a finding of liability against Mr. Gagnon, isn't it?

MR. TALARICO: Yes, it is.

THE COURT: So how is it a finding of liability against the two people that were settled with?

MR. TALARICO: Because those people were settled with instructions by Mr. Mast that they could not win any money against them. His instructions were that they -- they would get out on summary judgment,

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he would get nothing, take $5,000 as a gift. He was over and over that that -- that that argument was made between Mast and between Dulberg, and some of those documents are part of what we filed.

THE COURT: All right. Anything else, Mr. Talarico?

MR. TALARICO: Not at the moment, Judge. Thank you.

THE COURT: Thank you, sir. Final word, please.

MR. FLYNN: Thank you, Judge. Just briefly with respect to the pecuniary loss, the loss or the injury, which is the language used in the statute, was in January of 2014 when the case against the McGuires, Bill and Caroline McGuire. Caroline was Gagnon's mother. Bill McGuire was the stepfather. That case was foreclosed in January of 2014. No recovery could have been had other than the $5,000 at that point in time. That's when there was an injury.

The question -- the second prong of the analysis is when did he have a reasonable belief that the injury was wrongfully caused. Dulberg had every opportunity, he admitted that he had talked to hundreds of lawyers. He could have asked Balke, he

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could have asked Baudin. He didn't ask any of them, allegedly.

Under Illinois law, he has a duty to investigate if he thinks there is an issue. He had -- he became disillusioned with Mast in 2014. Mast withdrew in March of 2015. Again, the injury is January 2014.

THE COURT: Thank you very much.

MR. TALARICO: Judge, may I say one thing?

THE COURT: You may.

MR. TALARICO: Thank you. The Supreme Court case, the Suburban case makes it clear that being alerted to a problem or alerted to malpractice is not sufficient enough until -- they use the specific word alerted and say that is not sufficient. There has to be a pecuniary loss.

So whether he talked to a thousand attorneys and whether they all told him all different things, he's alerted but he had to face a loss. That's all, Judge. Thank you.

THE COURT: Thank you. He was clearly alerted. Let's cut to the chase. He was hesitant -- he was hesitant to ever even sign the settlement agreement to the point where it took him over two months to do

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it. He clearly had his doubts. He clearly had his lack of faith. He signed the settlement agreement anyway. A year later, the attorneys withdrew. He went to another attorney, still raised the issue. Went to another attorney, still raised the issue. Met with hundreds of attorneys. He was clearly alerted.

When did the pecuniary loss occur? Here is the amazing part, and this is what -- where the disconnect comes on this case and it's why I'm having so much trouble with it, I'm being urged that the pecuniary loss occurred when the decision was given on the binding mediation. But the reason I believe that's a disconnect is because -- for two reasons. The loss that occurred on the binding mediation that is being urged upon the Court is a loss of what appears to be $360,000. The difference between the $660,000 that the mediator indicated the -- were the appropriate measure of damages against Mr. Gagnon and the $300,000 insurance policy limit, that $360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that somebody entered into. We don't know who that

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somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge.

But didn't the pecuniary loss itself, in fact, occur if there was a cause of action to which you were alerted? The pecuniary loss occurred when he only got $5,000. I agree with defense counsel. Statute of limitations lapsed. Merely denying the statute of limitation without more in the depositions and the sworn testimony does not itself create an issue of material fact.

The motion for summary judgment is heard. It is most respectfully allowed. Thank you very much, gentlemen.

MR. FLYNN: Thank you.

THE COURT: Both of you, outstanding. Even though they didn't comply with local rules, I will say gentlemen, to both of you, outstanding pleadings. Very thorough, very well written. I had no issues going through them. I spent three days going through all of them repeatedly, and you both made my job -- well, I'm not going to say easy, but you certainly did your jobs. And I very much

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appreciate your time. Thank you, gentlemen.

MR. FLYNN: Thank you, Judge. And for what it's worth, I apologize for not doing numbered paragraphs on the statement of facts. I did follow that format with Judge Meyer in another summary judgment motion that was granted. This case was originally before Judge Meyer. So --

THE COURT: I take no offense. I take no offense by anybody. The pleadings were what they were, and I had no issue reading them. Thank you all very much for your time.

MR. TALARICO: Thank you, Judge.

THE COURT: Thank you, sir.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, JUDY CARLSON, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Judy A. Carlson

Certified Shorthand Reporter
License No. 084-003347

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AFFIDAVIT

Saira Pasha, being first duly sworn on oath, deposes and states as follows:

1. I am a licensed attorney in Illinois. I graduated from Chicago-Kent College of Law in 2012 and was admitted to the bar the same year. I have a Bachelor of Science degree in Operations and Information Management with an emphasis in information systems from Northern Illinois University. Since August 2020, I have worked as an independent consultant and testifying expert specializing in audit trail analysis, specifically in medical malpractice cases. I consult for and testify on behalf of both plaintiffs and defendants. A large portion of my work focuses on data integrity and completeness of production, such as obtaining prior versions of modified records and identifying, requesting, and obtaining data and records that were created but have not yet been produced. I have reviewed over 300 audit trails from more than 20 electronic medical record systems. The underlying concepts of audit trails for systems and the storage and retrieval of data from a database are essentially universal and apply to many kinds of systems, including court filing systems.

2. An audit trail is a timestamped report of actions performed by all users in a system, such as view, edit, add, delete, print, etc. In addition to audit trails, there are other reports and analytical tools that can be performed on record systems to conduct a comprehensive forensic analysis of electronically stored information.

3. I have been retained as a consultant by The Law Office of Alphonse A. Talarico for the purpose of evaluating file content discrepancies and missing file contents for a case under appellate review.

4. I reviewed the following materials for my analysis:

    - Transcript of court proceeding from 9/16/2022 titled “Dash Dash 09-16-2022 17LA377 Dulberg”
    - Transcript of court proceeding from 9/16/2022 titled “Dilatory Dilatory 09-16-2022 17LA377 Dulberg”
    - Emails to and from court reporters related to the transcripts listed above
    - Report titled “[Compare Report] Dash Dash 09-16-2022 17LA377 Dulberg”
    - Table of Contents of the Report of Proceedings filed on 4/24/2023 for the appellate case (2-23-0072) listing all Report of Proceedings in the file in chronological order
    - McHenry County Circuit Court’s Public Case Access website information for the underlying case (2017LA000377)

5. Based on my analysis of these materials, I conclude to a reasonable degree of professional certainty and recommend as follows:

- There are multiple substantive differences, including modifications and deletions, between two transcripts for the same court proceeding that took place on 9/16/2022. One of the edits is about a material issue: whether expert discovery was closed. To verify the accuracy of what was said at this proceeding, I recommend a forensic investigation, including but not limited to obtaining a copy of the original recording and obtaining an audit trail for the recording system itself. Based on what the audit trail from the audio recording system shows, a live forensic inspection of the system may be warranted.

- The Table of Contents for the Report of Proceedings for the appellate review that was filed on 4/24/2023 does not list all court proceeding recordings that were created in the underlying matter. It is also inconsistent with representations made on the McHenry County Circuit Court Public Case Access website. I recommend an audit trail of the appellate court's filing system(s) be produced to objectively determine which documents were uploaded to its system(s), when they were uploaded, the user(s) who uploaded the documents, and if applicable, which documents were removed from the appellate review file. Based on what the audit trails from the systems show, a live forensic inspection of the systems may be warranted.

- Because there are allegations of removing the existence of recordings from specific court proceedings from the public access website for the McHenry County Circuit, I recommend an audit and forensic investigation to obtain objective facts and the timeline of when data was added and then removed from the underlying case's record. I recommend obtaining the audit trails for McHenry County Circuit Court's filing system(s) and performing a live forensic inspection of the system if warranted by the audit trail data.

Discrepancies between two transcripts for the 9/16/2022 court proceeding

6. A court proceeding was held on 9/16/2022 in Judge Meyer's courtroom in the McHenry County Circuit Court courthouse for the underlying case (2017 L 000377).

7. The McHenry County Circuit Court courthouse uses technology that creates audio recordings of court proceedings which court reporters can access to create transcripts of those proceedings.

8. There are two distinct transcripts for this proceeding. The first transcript was emailed from a court reporter to Plaintiff on 9/26/2022 and is titled "Dash Dash 09-16-2022 17LA377 Dulberg." The second transcript was emailed from a different court reporter to Plaintiff on 9/27/2022 and is titled "Dilatory Dilatory 09-16-2022 17LA377 Dulberg." (The names of the files were presumably created to distinguish the transcripts).

9. There are multiple substantive differences between the two transcripts. Below is one example of a significant substantive difference in a statement made by defense counsel George Flynn about a material issue: expert discovery. The first transcript includes the phrase "You gave a ruling that expert discovery is completed" (page 5, lines 12-13)

So those (indiscernible) all relied on facts regarding the accident itself that would have taken, you know, additional five to ten pages of facts that are -- So we'd like to do that separately. In fact, we might wait until -- You gave a ruling that expert discovery is completed, but I'm going to (indiscernible) but I think (indiscernible).

10. The second transcript includes phrase "if and when expert discovery is completed" for the same page and line numbers:

So those (indiscernible) all relied on facts regarding the accident itself that would have taken, you know, additional five to ten pages of facts that are -- So we'd like to do that separately. In fact, we might wait until if and when expert discovery is completed, but -- I'm going to have some more thoughts, but I think we have plenty to chew on now.

11. These two statements are not only substantively different, they also do not sound alike when spoken aloud.

12. Another substantive difference between the two transcripts is the inclusion of the word "dilatory" in two sentences.

13. In the "Dash Dash 09-16-2022 17LA377 Dulberg" transcript (page 11, line 2) the court reporter uses "(indiscernible)", implying that the word stated by Mr. Flynn could not be understood. In the next line, there are hyphens at the end of "do" in Mr. Talarico's response, implying Mr. Talarico never said any word after "do."

```
just don't see what the issue is.  It seems as if
it's a (indiscernible) tactic to avoid --
    MR. TALARICO:  I don't do --
    THE COURT:  Hold on.  I can't rule on the motion
until I see it.  I can't rule -- I can't determine
```

14. In "Dilatory Dilatory 09-16-2022 17LA377 Dulberg," page 11, line 2, the transcription of defense counsel's statement by replacing the "(indiscernible)" with "dilatory " On the next line, plaintiff's Mr. Talarico's response is transcribed as "I don't to dilatory.." implying that the word was spoken, while the original transcript indicates no word was spoken nor was there an indiscernible sound.

```
I just don't see what the issue is.  It seems as if
it's a another dilatory tactic to avoid --
    MR. TALARICO:  I don't do dilatory --
    THE COURT:  Hold on.  I can't rule on the motion
until I see it.  I can't rule -- I can't determine
```

15. These are two examples of significant and substance differences between the two transcripts that warrant further investigation to confirm accuracy.

16. To verify the accuracy of both transcripts and determine what was actually said by the parties on 9/16/2022, I recommend obtaining the original recording of the proceeding from the McHenry County Circuit Court's audio recording system. I also recommend simultaneously obtaining an audit trail for the specific audio recording file at issue, from 9/16/2022 through present, to identify all parties who accessed the recording, when they accessed it, if any edits were made to the recording, and other objective data pertaining to the veracity of the recording.

Missing recordings of court proceedings from January and February 2018

17. The Table of Contents for the Report of Proceedings from the appellate case was filed on 4/24/2023. It lists all reports of proceedings from the underlying case included in chronological order beginning on 5/10/2018, as seen in the excerpt below:

Table of Contents 2-23-0072

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

DULBERG, PAUL
Plaintiff/Petitioner

v.

MAST, HANS ET AL
Defendant/Respondent

Reviewing Court No: 2-23-0072
Circuit Court/Agency No: 2017LA000377
Trial Judge/Hearing Officer: JOEL D BERG

E-FILED 2
Transaction ID: 2-23-0072
File Date: 4/24/2023 10:03 AM
Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

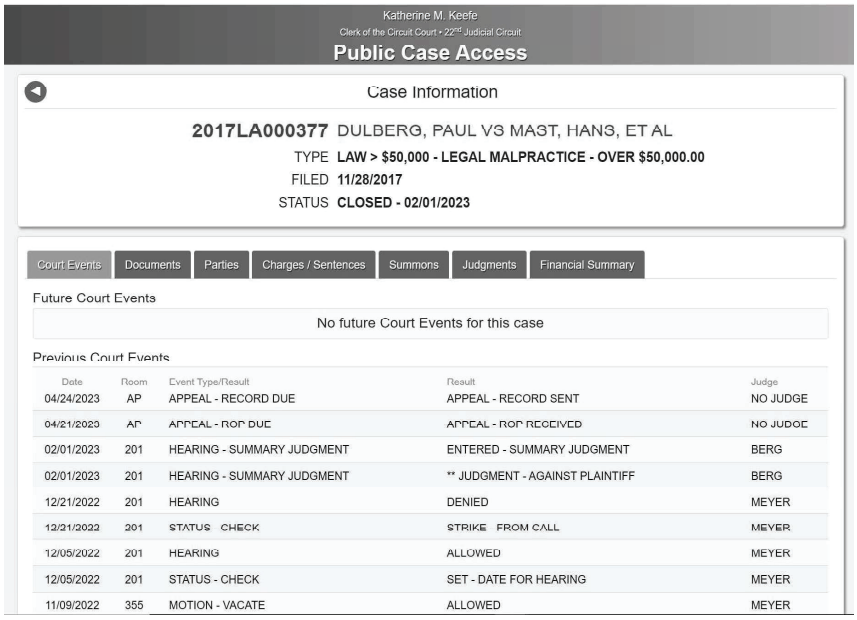
APPELLATE COURT, STATE OF ILLINOIS FIAT JUSTITIA JULY 1, 1877 SECOND DISTRICT

REPORT OF PROCEEDINGS - TABLE OF CONTENTS

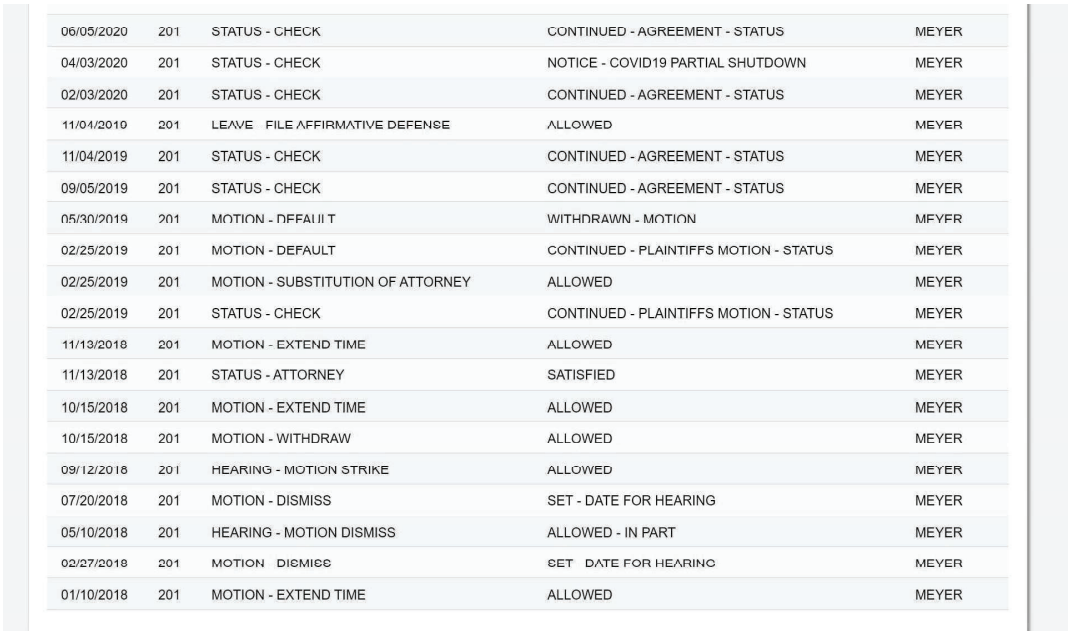
Page 1 of 2

Date of Proceeding	Title/Description	Page No.
05/10/2018	HEARING - MOTION DISMISS	R 3-R 14 (Volume 1)
07/20/2018	MOTDIM	R 15-R 18 (Volume 1)
09/12/2018	HEARING - MOTION STRIKE	R 19-R 28 (Volume 1)

18. The public case access website for the McHenry County Circuit Court allows users to search for court events and documents related to cases. For the underlying case at issue, the top of the "Court Events" tab looks like this:



19. Scrolling to the bottom of the same tab reveals the court events beginning from 1/10/2018.



06/05/2020	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
04/03/2020	201	STATUS - CHECK	NOTICE - COVID19 PARTIAL SHUTDOWN	MEYER
02/03/2020	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
11/04/2019	201	LEAVE FILE AFFIRMATIVE DEFENSE	ALLOWED	MEYER
11/04/2019	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
09/05/2019	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
05/30/2019	201	MOTION - DEFAULT	WITHDRAWN - MOTION	MEYER
02/25/2019	201	MOTION - DEFAULT	CONTINUED - PLAINTIFFS MOTION - STATUS	MEYER
02/25/2019	201	MOTION - SUBSTITUTION OF ATTORNEY	ALLOWED	MEYER
02/25/2019	201	STATUS - CHECK	CONTINUED - PLAINTIFFS MOTION - STATUS	MEYER
11/13/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER
11/13/2018	201	STATUS - ATTORNEY	SATISFIED	MEYER
10/15/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER
10/15/2018	201	MOTION - WITHDRAW	ALLOWED	MEYER
09/12/2018	201	HEARING - MOTION STRIKE	ALLOWED	MEYER
07/20/2018	201	MOTION - DISMISS	SET - DATE FOR HEARING	MEYER
05/10/2018	201	HEARING - MOTION DISMISS	ALLOWED - IN PART	MEYER
02/27/2018	201	MOTION DISMISS	SET DATE FOR HEARING	MEYER
01/10/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER

20. As seen in the screen shot above, there was a court event on 1/10/2018 during which a motion to extend time was granted and a court event on 2/27/2019 during which a motion to dismiss was set for hearing. The third court event listed took place on 5/10/2018.

21. The recordings from the first two court events in the underlying case were not included in the file contents for appellate review. I did perform a line-item check for evert court event; it is possible recordings for other events are also missing.

22. The 1/10/2018 court event was listed as "Motion – Extend Time." I reviewed the Table of Contents to determine if any recording for a "Motion- Extend Time" court event existed and found one for 3/15/2021. Therefore, there is no reason to conclude that the 1/10/2018 recording was not included in the file materials because that type of court event is not recorded.

02/10/2021	HEARING - MOTION COMPEL	R 101-R 124 (Volume 1)
03/15/2021	MOTION - EXTEND TIME	R 125-R 153 (Volume 1)
03/25/2021	HEARING - MOTION COMPEL	R 154-R 159 (Volume 1)

23. Plaintiff/Appellant alleges that the public record access system for McHenry County originally listed recordings for these two 2018 proceedings under the documents tab but were removed at a later date. Below is a screen shot of the top portion of the "Documents" tab for the underlying case. As the image below indicates, "Report – Proceedings" is a type of document included in the list.

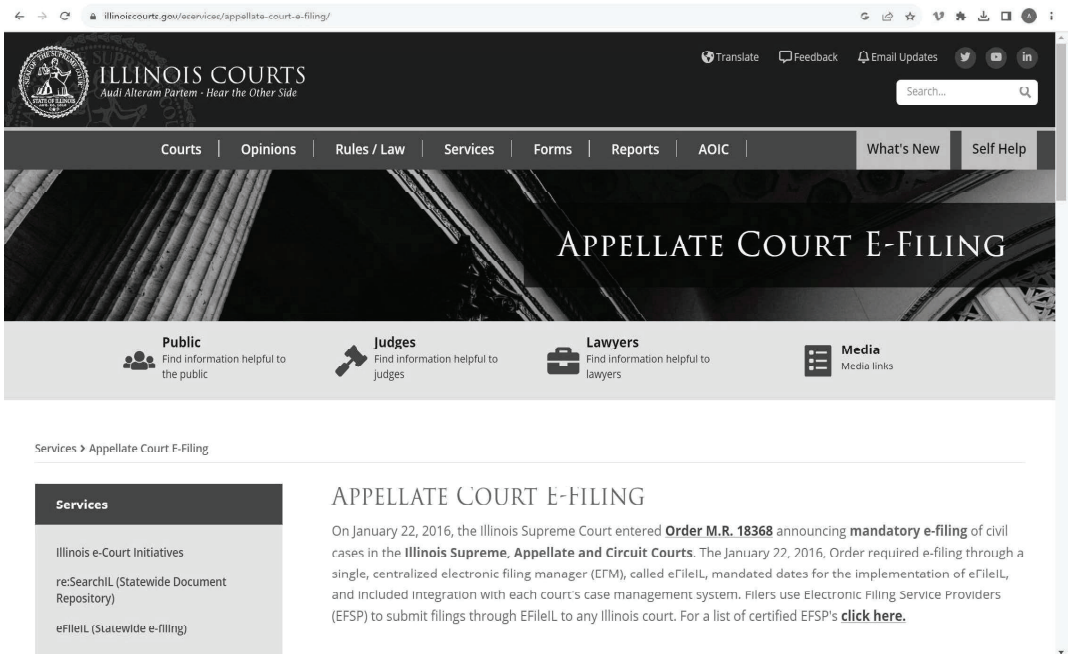


24. To objectively determine if the "Documents" tab of the McHenry County Circuit Court public portal ever included a listing of "Report – Proceedings" for the 1/10/2018 and 2/27/2018 court events, I recommend a forensic audit of the system(s) in which these data elements are stored and used to display information on the public access portal website.

25. To objectively determine if the recordings from the 1/10/2018 and 2/27/2018 court events were 1)ever part of the McHenry County Circuit Court file for the underlying, 2) were transmitted/uploaded to the appellate court filing system, and 3) were ever received or were part of the appellate court's filing system or file, audit trails from each of the respective systems must be generated and produced. Based on the data included in those reports, a live forensic inspection of the systems may be warranted. If audit trails from those systems are not produced, I recommend performing a live forensic inspection of the systems at issue.

26. To objectively determine if recordings were created for the 1/10/2018 and 2/27/2018 court events, an audit trail from the McHenry County Circuit Court audio recording system must be generated and produced. Based on the data contained in those reports, a live forensic audit of the audio recording system may be necessary.

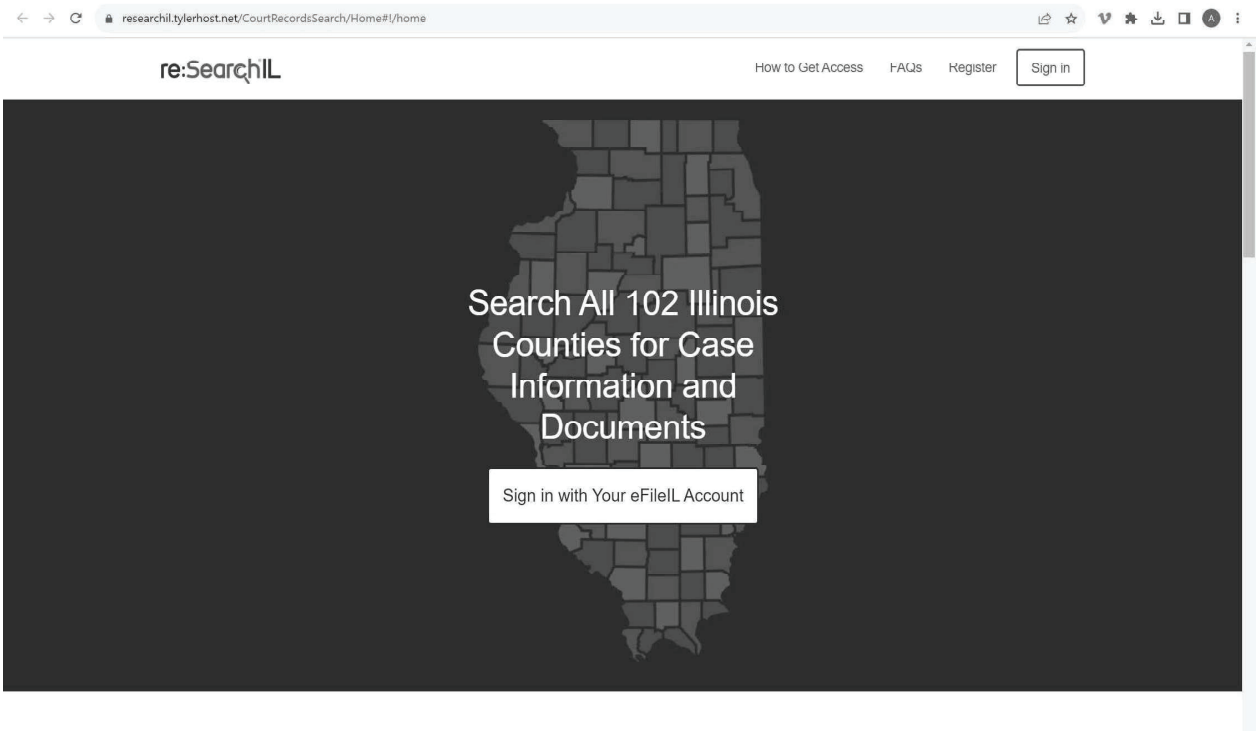
27. The website for Illinois's court systems makes reference to two distinct systems: one document repository system and efiling systems.



28. The website displays several options for efiling:



29. The document repository system link takes you to a separate system called re:SearchIL, managed by Tyler Technologies.



30. Based on my preliminary review of these websites and technologies, the systems used by both the appellate court and the circuit court in this case are capable of producing audit trails for regulatory and compliance reporting. These reports can also be used to verify the integrity of the records and data in this matter.

Under penalty of perjury, I certify the above statements are true and correct.

Saira Pasha

Exhibit F

From: **Alphonse Talarico** contact@lawofficeofalphonsetalarico.com
Subject: Fw: Appellate Court - 2nd District Case No. 2-23-0072: Record
Date: November 3, 2023 at 4:02 PM
To: Paul Dulberg pdulberg@icloud.com, Paul Dulberg Paul_Dulberg@comcast.net, T Kost tkost999@gmail.com

AT

From: DoNotReply-ILCourts@illinoiscourts.gov <DoNotReply-ILCourts@illinoiscourts.gov>
Sent: Tuesday, April 25, 2023 8:48 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Subject: Appellate Court - 2nd District Case No. 2-23-0072: Record

Record - Record on Appeal Filed has been filed by the Appellate Court - 2nd District in 2-23-0072.
This email was sent to contact@lawofficeofalphonsetalarico.com.

ILLINOIS APPELLATE COURT
SECOND DISTRICT

55 SYMPHONY WAY
ELGIN, IL 60120
(847) 695-3750

April 25, 2023

Alphonse A. Talarico
Law office of Alphonse Talarico
707 Skokie Boulevard, #600
Northbrook, IL 60062

RE: Dulberg, Paul R., v. Mast, Hans, et al.
Appeal No.: 2-23-0072
County: McHenry County
Trial Court No.: 17LA377

The electronic record on appeal in the above case has been filed. In most cases, you may access all sections of the electronic record at https://researchil.tylerhost.net. In any other case, a link to the appropriate section(s) of the electronic record will be e-mailed to you from no-reply@efilingmail.tylertech.cloud. (Please ensure that you are a service contact in Odyssey eFileIL.) The court hereby orders briefing due dates as follows:

Appellant's brief due:	05/30/2023
Appellee's brief due:	07/05/2023
Appellant's reply brief due: (Ill. S. Ct. Rs. 341, 342, 343)	07/18/2023

Jeffrey H. Kaplan
Clerk of the Court

cc: George Kenneth Flynn
Michelle Marie Blum

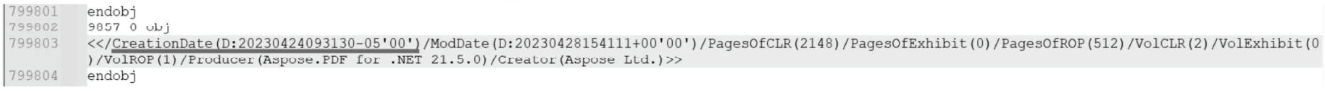
Exhibit G

Paul Dulberg <Paul_Dulberg@comcast.net>

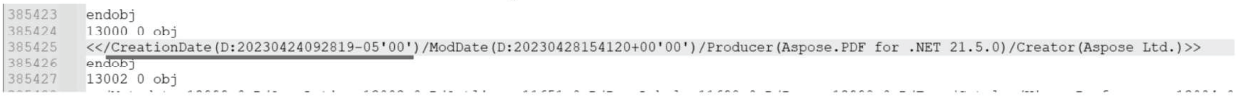
Fri 11/3/2023 4:51 PM

To:Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Common Law Record Vol 1 creation date pdf metadata:



Common Law Record Vol 2 creation date pdf metadata:



Reports of Proceedings creation date pdf metadata:

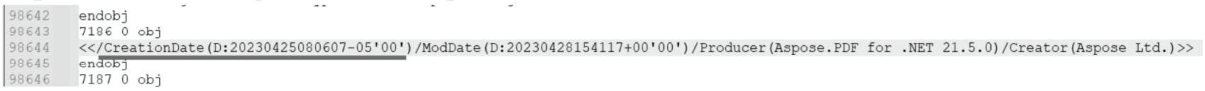


Exhibit H

Paul Dulberg <Paul_Dulberg@comcast.net>

Fri 11/3/2023 4:51 PM

To:Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

DOCUMENT	CREATION DATE	SUBMISSION DATE	
Common Law Record Volume 1	**April 24, 2023 at 9:31 AM**	ndent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:00 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **CERTIFICATION OF RECORD**	**SUBMITTED 29 MINUTES AFTER CREATED**
Common Law Record Volume 2	**April 24, 2023 at 9:28AM**	:/Respondent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:03 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **COMMON LAW RECORD - TABLE OF CONTENTS**	**SUBMITTED 35 MINUTES AFTER CREATED**
Report of Proceedings **(missing pages)**	**April 25, 2023 at 8:06AM**	Trial Judge/Hearing Officer: dant/Respondent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:03 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **REPORT OF PROCEEDINGS - TABLE OF CONTENTS**	**SUBMITTED 22 HOURS BEFORE CREATED**

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

DULBERG, PAUL
Plaintiff/Petitioner

v.

MAST, HANS ET AL
Defendant/Respondent

Reviewing Court No: 2-23-0072
Circuit Court/Agency No: 2017LA000377
Trial Judge/Hearing Officer: JOEL D BERG

E-FILED
Transaction ID: 2-23-0072
File Date: 4/24/2023 10:00 AM
Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

2



CERTIFICATION OF RECORD

The record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

2 Volume(s) of the Common Law Record, containing 2148 pages
1 Volume(s) of the Report of Proceedings, containing 512 pages
0 Volume(s) of the Exhibits, containing 0 pages

I hereby certify this record pursuant to Supreme Court Rule 324, this 21 DAY OF APRIL, 2023

Katherine M. Keefe

(Clerk of the Circuit Court or Administrative Agency)

KATHERINE M. KEEFE, CLERK OF THE 22nd JUDICIAL CIRCUIT COURT ©
WOODSTOCK, ILLINOIS 60098

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

DULBERG, PAUL
Plaintiff/Petitioner

v.

MAST, HANS ET AL
Defendant/Respondent

Reviewing Court No: 2-23-0072
Circuit Court/Agency No: 2017LA000377
Trial Judge/Hearing Officer: JOEL D BERG

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06/07/2018	COMPLAINT - AMENDED	C 135-C 158 (Volume 1)
06/07/2018	NOTICE - FILING	C 159 (Volume 1)

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07/13/2021	MOTION-PETITION - COMPEL	C 550-C 578 (Volume 1)
07/13/2021	NOTICE - MOTION	C 579-C 580 (Volume 1)
07/19/2021	ORDER	C 581 (Volume 1)
07/20/2021	NOTICE - FILING	C 582-C 583 (Volume 1)
07/20/2021	REQUEST	C 584-C 586 (Volume 1)
08/16/2021	NOTICE - SERVICE	C 587-C 588 (Volume 1)
08/25/2021	MOTION	C 589-C 609 (Volume 1)
08/25/2021	NOTICE - MOTION	C 610-C 611 (Volume 1)
09/03/2021	PROOF - SERVICE	C 612-C 613 (Volume 1)
09/03/2021	RESPONSE	C 614-C 616 (Volume 1)
09/07/2021	ORDER	C 617 (Volume 1)
09/23/2021	NOTICE - SERVICE	C 618-C 619 (Volume 1)
11/08/2021	ORDER	C 620 (Volume 1)
12/01/2021	MOTION-PETITION - COMPEL	C 621-C 656 (Volume 1)
12/01/2021	NOTICE - MOTION	C 657-C 659 (Volume 1)
12/06/2021	NOTICE - FILING	C 660-C 661 (Volume 1)
12/06/2021	RESPONSE	C 662-C 682 (Volume 1)
12/07/2021	ORDER	C 683 (Volume 1)
12/22/2021	PROOF - SERVICE	C 684-C 685 (Volume 1)
12/22/2021	REPLY - PLAINTIFFS	C 686-C 751 (Volume 1)
12/27/2021	MOTION - EXTEND TIME	C 752-C 781 (Volume 1)
12/27/2021	PROOF - SERVICE	C 782-C 783 (Volume 1)
12/28/2021	NOTICE - SERVICE	C 784-C 785 (Volume 1)
01/04/2022	ORDER	C 786 (Volume 1)
01/06/2022	PROOF - SERVICE	C 787-C 788 (Volume 1)
01/06/2022	REPLY - PLAINTIFFS	C 789-C 791 (Volume 1)
01/24/2022	ANSWER	C 792-C 794 (Volume 1)
01/24/2022	NOTICE - FILING	C 795-C 796 (Volume 1)
02/01/2022	NOTICE - SERVICE	C 797-C 798 (Volume 1)

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03/03/2022	NOTICE - SERVICE	C 800-C 801 (Volume 1)
03/24/2022	ORDER	C 802 (Volume 1)
04/05/2022	ORDER	C 803 (Volume 1)
04/19/2022	NOTICE - DEPOSITION	C 804-C 806 (Volume 1)
04/19/2022	PROOF - SERVICE	C 807-C 808 (Volume 1)
05/02/2022	ORDER	C 809-C 810 (Volume 1)
05/03/2022	ORDER	C 811 (Volume 1)
05/18/2022	PROOF OF SERVICE - DISCOVERY DOCUMENTS	C 812-C 813 (Volume 1)
05/23/2022	PROOF - SERVICE	C 814-C 821 (Volume 1)
06/03/2022	CHANGE - ADDRESS-NAME	C 822-C 823 (Volume 1)
06/10/2022	ORDER	C 824 (Volume 1)
06/16/2022	LETTER - FROM CIRCUIT CLERK	C 825-C 829 (Volume 1)
07/07/2022	NOTICE - DEPOSITION	C 830-C 832 (Volume 1)
07/07/2022	PROOF - SERVICE	C 833-C 834 (Volume 1)
07/07/2022	PROOF - SERVICE	C 835-C 836 (Volume 1)
07/11/2022	ORDER	C 837 (Volume 1)
08/08/2022	PROOF - SERVICE	C 838-C 841 (Volume 1)
08/08/2022	PROOF - SERVICE	C 842-C 845 (Volume 1)
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09/16/2022	MOTION - SUMMARY JUDGMENT	C 856 V2-C 1319 V2
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10/03/2022	SUBPOENA - DOCUMENTS, OBJECTS, TANGIBLE THINGS	C 1446 V2-C 1453 V2
10/03/2022	SUBPOENA - DOCUMENTS, OBJECTS, TANGIBLE THINGS	C 1454 V2-C 1461 V2
10/05/2022	PROOF - SERVICE	C 1462 V2-C 1463 V2
10/06/2022	MOTION-PETITION - COMPEL	C 1464 V2-C 1474 V2
10/06/2022	NOTICE - MOTION	C 1475 V2-C 1477 V2
10/12/2022	MOTION	C 1478 V2-C 1536 V2

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10/17/2022	ORDER	C 1540 V2
10/28/2022	MOTION-PETITION - VACATE	C 1541 V2-C 1597 V2
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10/31/2022	MOTION-PETITION - RULE TO SHOW CAUSE	C 1602 V2-C 1614 V2
10/31/2022	NOTICE - MOTION	C 1615 V2-C 1617 V2
10/31/2022	NOTICE - MOTION	C 1618 V2-C 1620 V2
11/02/2022	PROOF - SERVICE	C 1621 V2-C 1622 V2
11/04/2022	NOTICE - FILING	C 1623 V2-C 1624 V2
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11/29/2022	MOTION-PETITION - ENFORCE	C 1913 V2-C 1963 V2
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12/21/2022	ORDER	C 2056 V2
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03/03/2023	NOTICE - APPEAL	C 2139 V2-C 2144 V2
03/06/2023	PROOF - SERVICE	C 2145 V2-C 2146 V2
03/07/2023	LETTER - FROM CIRCUIT CLERK	C 2147 V2
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Charges

No charges associated with this case,

Judgments

No judgments associated with the case.

Future Scheduled Dates

04/21/2023	5:00 pm	AP	APPEAL - ROP DUE	NO JUDGE ASSIGNED
05/05/2023	5:00 pm	AP	APPEAL - RECORD DUE	NO JUDGE ASSIGNED

Related Cases

No related cases to this case.

Parties

APPELLANT	DULBERG, PAUL
ATTORNEY- APPELLANT	TALARICO, ALPHONSE A, LAW OFFICE OF
ATTORNEY FOR DEFENDANT	KARBAL COHEN ECONOMOU SILK & DUNNE
ATTORNEY FOR PLAINTIFF	TALARICO, ALPHONSE A, LAW OFFICE OF
DEFENDANT	MAST, HANS
DEFENDANT	POPOVICH PC, THOMAS J, LAW OFFICES OF
PREVIOUS ATTORNEY - DEFENDAI	CLAUSEN MILLER
PREVIOUS ATTORNEY - DEFENDAI	KARBAL COHEN ECONOMOU SILK & DUNNE LLC
PREVIOUS ATTORNEY - PLAINTIFF	CLINTON LAW FIRM
PREVIOUS ATTORNEY - PLAINTIFF	GOOCH FIRM
PLAINTIFF	DULBERG, PAUL

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		DCN:	

Papers Filed

11/28/2017	NEW CASE INFORMATION SHEET
11/28/2017	COMPLAINT
11/28/2017	CERTIFICATE - ATTORNEY
11/28/2017	AFFIDAVIT - SUPREME COURT RULE 222(B)
11/28/2017	DEMAND - JURY
12/14/2017	AFFIDAVIT - SERVICE
12/14/2017	AFFIDAVIT - SERVICE
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12/28/2017	MOTION - EXTEND TIME
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10/09/2018	MOTION - WITHDRAW
10/10/2018	NOTICE - MOTION
10/10/2018	MOTION - EXTEND TIME
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11/08/2018	NOTICE - FILING
11/08/2018	APPEARANCE
11/08/2018	NOTICE - FILING
11/08/2018	APPEARANCE
11/08/2018	NOTICE - MOTION
11/08/2018	MOTION - EXTEND TIME
11/13/2018	ORDER
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Case Number	Entitlement	Filing Date	Case Status
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02/25/2019	SUBSTITUTION - ATTORNEYS/ORDER
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03/11/2019	ANSWER AND AFFIRMATIVE DEFENSE
03/22/2019	PROOF OF SERVICE - DISCOVERY DOCUMENTS
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10/03/2019	MOTION - LEAVE TO FILE
10/03/2019	NOTICE - MOTION
11/04/2019	NOTICE - FILING
11/04/2019	DEFENSE - AFFIRMATIVE - AMENDED
11/04/2019	ORDER
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07/02/2020	PROOF OF SERVICE - DISCOVERY DOCUMENTS
08/18/2020	NOTICE - MOTION
08/18/2020	MOTION - WITHDRAW
09/10/2020	ORDER
09/17/2020	APPEARANCE - PRO SE
09/17/2020	PROOF - SERVICE
10/01/2020	MOTION - CONTINUE
10/05/2020	NOTICE - MOTION
10/05/2020	MOTION/PETITION - COMPEL
10/07/2020	ORDER
10/23/2020	APPEARANCE
10/23/2020	PROOF - SERVICE
10/27/2020	ORDER
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01/05/2021	PROOF - SERVICE
01/05/2021	RESPONSE
01/06/2021	ORDER
01/25/2021	REPORT - PROCEEDINGS
02/02/2021	NOTICE - FILING
02/02/2021	REPLY - DEFENDANTS
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03/08/2021	NOTICE - MOTION
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03/09/2021	NOTICE - FILING
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03/10/2021	NOTICE - SERVICE
03/15/2021	NOTICE - SERVICE
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04/06/2021	ORDER
04/23/2021	REPORT - PROCEEDINGS
06/01/2021	NOTICE - SERVICE
06/14/2021	ORDER
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07/13/2021	MOTION/PETITION - COMPEL
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09/23/2021	NOTICE - SERVICE
11/08/2021	ORDER
11/15/2021	REPORT - PROCEEDINGS
11/16/2021	REPORT - PROCEEDINGS
11/17/2021	REPORT - PROCEEDINGS
11/19/2021	REPORT - PROCEEDINGS
11/30/2021	REPORT - PROCEEDINGS
12/01/2021	NOTICE - MOTION
12/01/2021	MOTION/PETITION - COMPEL
12/06/2021	NOTICE - FILING
12/06/2021	RESPONSE
12/07/2021	ORDER
12/22/2021	PROOF - SERVICE
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12/27/2021	MOTION - EXTEND TIME
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01/04/2022	ORDER
01/06/2022	PROOF - SERVICE
01/06/2022	REPLY - PLAINTIFFS
01/10/2022	REPORT - PROCEEDINGS
01/24/2022	NOTICE - FILING
01/24/2022	ANSWER
02/01/2022	NOTICE - SERVICE
02/03/2022	ORDER
03/03/2022	NOTICE - SERVICE
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03/24/2022	REPORT - PROCEEDINGS
03/24/2022	REPORT - PROCEEDINGS
03/24/2022	REPORT - PROCEEDINGS
03/24/2022	REPORT - PROCEEDINGS
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04/08/2022	REPORT - PROCEEDINGS
04/19/2022	NOTICE - DEPOSITION
04/19/2022	PROOF - SERVICE
04/20/2022	REPORT - PROCEEDINGS
05/02/2022	ORDER
05/03/2022	ORDER
05/03/2022	REPORT - PROCEEDINGS
05/18/2022	PROOF OF SERVICE - DISCOVERY DOCUMENTS
05/23/2022	PROOF - SERVICE
06/03/2022	CHANGE - ADDRESS/NAME
06/10/2022	ORDER
06/15/2022	REPORT - PROCEEDINGS
06/16/2022	LETTER - FROM CIRCUIT CLERK
07/07/2022	NOTICE - DEPOSITION
07/07/2022	PROOF - SERVICE
07/07/2022	PROOF - SERVICE
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08/08/2022	PROOF - SERVICE
09/14/2022	PROOF - SERVICE
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09/16/2022	MOTION - SUMMARY JUDGMENT
09/19/2022	NOTICE - FILING
09/19/2022	OTHER
09/27/2022	REPORT - PROCEEDINGS
09/30/2022	NOTICE - FILING
10/03/2022	NOTICE - FILING
10/03/2022	SUBPOENA - DOCUMENTS, OBJECTS, TANGIBLE THINGS
10/03/2022	SUBPOENA - DOCUMENTS, OBJECTS, TANGIBLE THINGS
10/05/2022	PROOF - SERVICE
10/06/2022	NOTICE - MOTION
10/06/2022	MOTION/PETITION - COMPEL
10/12/2022	NOTICE - FILING
10/12/2022	MOTION
10/17/2022	ORDER
10/27/2022	REPORT - PROCEEDINGS
10/28/2022	NOTICE - MOTION
10/28/2022	MOTION/PETITION - VACATE
10/28/2022	NOTICE - FILING
10/31/2022	NOTICE - MOTION
10/31/2022	NOTICE - MOTION
10/31/2022	MOTION/PETITION - RULE TO SHOW CAUSE
11/02/2022	PROOF - SERVICE
11/04/2022	NOTICE - FILING
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11/21/2022	MOTION - AMENDED
11/23/2022	NOTICE - FILING - AMENDED
11/23/2022	MOTION
11/29/2022	NOTICE - MOTION
11/29/2022	MOTION/PETITION - ENFORCE
11/30/2022	NOTICE - FILING
11/30/2022	RESPONSE
12/06/2022	ORDER
12/07/2022	REPORT - PROCEEDINGS
12/19/2022	NOTICE - FILING
12/19/2022	REPLY - PLAINTIFFS
12/21/2022	ORDER
12/28/2022	REPORT - PROCEEDINGS
12/28/2022	NOTICE - FILING
12/28/2022	RESPONSE
01/19/2023	NOTICE - FILING
01/19/2023	REPLY - DEFENDANTS
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02/08/2023	REPORT - PROCEEDINGS
02/27/2023	REPORT - PROCEEDINGS
03/03/2023	NOTICE - APPEAL
03/06/2023	PROOF - SERVICE
03/07/2023	LETTER - FROM CIRCUIT CLERK
03/13/2023	REQUEST - PREPARATION OF RECORD ON APPEAL

Financial Journal Entries

Journal Type	Amount	Date	JrlTypeCode
JURY DEMAND-CIVIL CASE	$212.50	11/30/2017	JURYC
SUPREME COURT E-BUSINESS FEE	$9.00	11/30/2017	SCEBF
ACCESS TO JUSTICE FEE	$2.00	11/30/2017	ATJF
ARBITRATION FEES	$8.00	11/30/2017	ARBF
COUNTY-COURT SECURITY FUND	$20.00	11/30/2017	CSF
COUNTY-COURT FUND	$5.00	11/30/2017	CF
COUNTY-LAW LIBRARY FEE	$18.00	11/30/2017	LIB
COURT DOCUMENT STORAGE FEE	$15.00	11/30/2017	CDF
COURT AUTOMATION FEE	$15.00	11/30/2017	CAF
COUNTY-CIRCUIT CLERK FEE	$160.00	11/30/2017	COST
COUNTY-CIRCUIT CLERK FEE	$60.00	12/29/2017	COST
COURT AUTOMATION FEE	$15.00	12/29/2017	CAF
COURT DOCUMENT STORAGE FEE	$15.00	12/29/2017	CDF
COUNTY-LAW LIBRARY FEE	$18.00	12/29/2017	LIB
COUNTY-COURT SECURITY FUND	$20.00	12/29/2017	CSF
ARBITRATION FEES	$8.00	12/29/2017	ARBF
ACCESS TO JUSTICE FEE	$2.00	12/29/2017	ATJF
SUPREME COURT E-BUSINESS FEE	$9.00	12/29/2017	SCEBF
COPIES COST	$93.00	07/28/2020	COPY
COPIES COST	$17.00	02/21/2023	COPY
COPIES COST	$4.00	02/21/2023	COPY
APPEAL FEE	$707.75	03/13/2023	APPEAL

Court Events

Date	Location	Judge	Reporter

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01/10/2018 201 MEYER, THOMAS A
Reason: MOTION - EXTEND TIME
Result: ALLOWED

02/27/2018 201 MEYER, THOMAS A
Reason: MOTION - DISMISS
Result: SET - DATE FOR HEARING

05/10/2018 201 MEYER, THOMAS A
Reason: HEARING - MOTION DISMISS
Result: ALLOWED - IN PART

07/20/2018 201 MEYER, THOMAS A
Reason: MOTION - DISMISS
Result: SET - DATE FOR HEARING

09/12/2018 201 MEYER, THOMAS A
Reason: HEARING - MOTION STRIKE
Result: ALLOWED

10/15/2018 201 MEYER, THOMAS A
Reason: MOTION - EXTEND TIME
Result: ALLOWED

10/15/2018 201 MEYER, THOMAS A
Reason: MOTION - WITHDRAW
Result: ALLOWED

11/13/2018 201 MEYER, THOMAS A
Reason: MOTION - EXTEND TIME
Result: ALLOWED

11/13/2018 201 MEYER, THOMAS A
Reason: STATUS - ATTORNEY
Result: SATISFIED

02/25/2019 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - PLAINTIFFS MOTION - STATUS

02/25/2019 201 MEYER, THOMAS A
Reason: MOTION - DEFAULT
Result: CONTINUED - PLAINTIFFS MOTION - STATUS

02/25/2019 201 MEYER, THOMAS A
Reason: MOTION - SUBSTITUTION OF ATTORNEY
Result: ALLOWED

05/30/2019 201 MEYER, THOMAS A
Reason: MOTION - DEFAULT
Result: WITHDRAWN - MOTION

09/05/2019 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

11/04/2019 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

11/04/2019 201 MEYER, THOMAS A
Reason: LEAVE - FILE AFFIRMATIVE DEFENSE
Result: ALLOWED

02/03/2020 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

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04/03/2020 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: NOTICE - COVID19 PARTIAL SHUTDOWN

06/05/2020 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

09/10/2020 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

09/10/2020 201 MEYER, THOMAS A
Reason: MOTION - WITHDRAW
Result: ALLOWED

10/07/2020 201 MEYER, THOMAS A
Reason: MOTION - COMPEL
Result: CONTINUED - AGREEMENT - STATUS

10/07/2020 201 MEYER, THOMAS A
Reason: MOTION - CONTINUE
Result: ALLOWED

10/27/2020 201 MEYER, THOMAS A
Reason: MOTION - COMPEL
Result: CONTINUED - AGREEMENT

11/24/2020 201 MEYER, THOMAS A
Reason: MOTION - COMPEL
Result: SET - DATE FOR HEARING

02/10/2021 201 MEYER, THOMAS A
Reason: HEARING - MOTION COMPEL
Result: ALLOWED - IN PART

03/15/2021 201 MEYER, THOMAS A
Reason: MOTION - EXTEND TIME
Result: WITHDRAWN - MOTION

03/25/2021 201 MEYER, THOMAS A
Reason: HEARING - MOTION COMPEL
Result: CONTINUED - COURTS MOTION - STATUS

04/01/2021 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

04/01/2021 201 MEYER, THOMAS A
Reason: MOTION - COMPEL
Result: ALLOWED

06/14/2021 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - COURTS MOTION - STATUS

07/19/2021 201 MEYER, THOMAS A
Reason: MOTION - COMPEL
Result: WITHDRAWN - MOTION

09/07/2021 201 MEYER, THOMAS A
Reason: MOTION
Result: ALLOWED

11/08/2021 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

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DOCKET LISTING

Case Number	Entitlement	Filing Date	Case Status
2017LA000377	DULBERG, PAUL VS MAST, HANS, ET AL	11/28/2017 DCN:	CLOSED

12/07/2021 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: SET - DATE FOR HEARING

12/07/2021 201 MEYER, THOMAS A
Reason: MOTION - COMPEL
Result: SET - DATE FOR HEARING

01/04/2022 201 MEYER, THOMAS A
Reason: MOTION - EXTEND TIME
Result: ALLOWED

01/04/2022 201 MEYER, THOMAS A
Reason: HEARING - MOTION COMPEL
Result: DENIED

02/03/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

03/24/2022 355 MEYER, THOMAS A
Reason: MOTION - AMEND
Result: ALLOWED

04/05/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: SET - DATE FOR HEARING

04/27/2022 201 MEYER, THOMAS A
Reason: HEARING
Result: CONTINUED - ENTRY OF ORDER

05/03/2022 201 MEYER, THOMAS A
Reason: ENTRY - ORDER
Result: CONTINUED - COURTS MOTION - STATUS

06/10/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

07/11/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

09/16/2022 201 MEYER, THOMAS A
Reason: MOTION - SUMMARY JUDGMENT
Result: CONTINUED - AGREEMENT - STATUS

10/13/2022 201 MEYER, THOMAS A
Reason: MOTION - COMPEL
Result: ALLOWED

10/13/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: SET - DATE FOR HEARING

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DOCKET LISTING

Case Number	Entitlement	Filing Date	Case Status
2017LA000377	DULBERG, PAUL VS MAST, HANS, ET AL	11/28/2017 DCN:	CLOSED

11/04/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

11/04/2022 201 MEYER, THOMAS A
Reason: MOTION - VACATE
Result: ALLOWED

11/04/2022 201 MEYER, THOMAS A
Reason: MOTION - BAR
Result: LEAVE - FILE

11/04/2022 201 MEYER, THOMAS A
Reason: PETITION - RULE
Result: WITHDRAWN - PETITION

11/09/2022 355 MEYER, THOMAS A
Reason: MOTION - VACATE
Result: ALLOWED

11/09/2022 355 MEYER, THOMAS A
Reason: PETITION - RULE
Result: DENIED

12/05/2022 201 MEYER, THOMAS A
Reason: HEARING
Result: ALLOWED

12/05/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: SET - DATE FOR HEARING

12/21/2022 201 MEYER, THOMAS A
Reason: HEARING
Result: DENIED

12/21/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: STRIKE - FROM CALL

02/01/2023 201 BERG, JOEL D
Reason: HEARING - SUMMARY JUDGMENT
Result: ENTERED - SUMMARY JUDGMENT

02/01/2023 201 BERG, JOEL D
Reason: HEARING - SUMMARY JUDGMENT
Result: ** JUDGMENT - AGAINST PLAINTIFF

04/21/2023 AP NO JUDGE ASSIGNED
Reason: APPEAL - ROP DUE
Result:

05/05/2023 AP NO JUDGE ASSIGNED
Reason: APPEAL - RECORD DUE
Result:

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

X _____
Client

_____
Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT
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A

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COPY FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT B
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NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 9/18, 20 12, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ON
20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER
DEFAULT BEING ENTERED.

D

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
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ARDC No. 06203684

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Purchased from re:SearchIL

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
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www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT C
ALL-STATE LEGAL®

Waukegan Office
210 North Martin Luther King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation	
Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P/S	75,000.
L N L	75,000.

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

ALL-STATE LEGAL®

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendant.	)	No. 17LA000377

RULE 222 (b) AFFIDAVIT

Pursuant to Illinois Supreme Court Rule 222(b), counsel for the above-named Plaintiff certifies that plaintiff seeks money damages in excess of fifty thousand dollars ($50,000.00)

Thomas W. Gooch, III
Attorney for Plaintiff

THOMAS W. GOOCH, III
THE GOOCH FIRM
209 South Main Street
Wauconda, IL 60084
847-526-0110
gooch@goochfirm.com
ARDC: 3123355

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Page 1 of 1
C 37

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG
Plaintiff

vs.

HANS MAST & LAW OFC T. POPOVICH
Defendant

Case Number 17LA000377

CERTIFICATE OF ATTORNEY

I hereby certify that:

☑ There has been no previous voluntary or involuntary dismissal of the subject matter of this litigation.

☐ There has been a previous voluntary or involuntary dismissal of the subject matter of this litigation and at the time of the dismissal that case number _____ was assigned to The Honorable _____.

☐ There is no other litigation presently pending in this County involving the parties to and/or subject matter of this lawsuit.

☐ There is presently pending other litigation in this County involving the parties to or subject matter to this lawsuit and that case or cases is/are assigned case number(s) _____ which is/are assigned to The Honorable _____.

Name THOMAS W. GOOCH, III

Attorney for PLAINTIFF/PAUL DULBERG

Address 209 S. MAIN STREET

City, State Zip WAUCONDA, IL 60084

Phone 847-526-0110

Attorney for Complainant or Petitioner

CV-CRT4 (revised 12/01/06) **Pursuant to Administrative Order No. 85-7**

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG
Plaintiff

vs.

Case Number 17LA000377

HANS MAST &LAW OFC POPOVICH
Defendant

JURY DEMAND

The undersigned demands a jury trial, by a jury of twelve (12) persons.

Signature

Date November 28 20 17

Name THOMAS W. GOOCH, III

Attorney for PLAINTIFF/PAUL DULBERG

Address 209 S. MAIN STREET

City, State Zip WAUCONDA, IL 60084

Phone 847-526-0110

CV-JRD1 (Revised 12/01/06)

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UNITED STATES OF AMERICA

COUNTY OF MCHENRY

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

STATE OF ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

NEW CASE INFORMATION SHEET

1. **Case Type** LA - Law over $50,000.01

   Sub Case Type LALM - Law - Legal Malpractice - over $50,000.00 **Filing Fees $** _____

2. **Jury Demand** Yes **If yes, choose one** Six - Person Jury **Jury Fees $** _____
   (All Other Case Types - excluding Probate)

3. **Return Date/Time(if applicable)** _____ **(MM/DD/YYYY HH:MM)**

---

4. **First Named Plaintiff** (Individual) DULBERG, PAUL
   (Last Name, First Name, M.I., Suffix)

   Address 4606 HEYDEW COURT

   City MCHENRY **State** Illinois **Zip Code** 60051 **Phone** 847-526-0110

   Pro Se ☐

5. **Second Named Plaintiff** _____

   Address _____

   City _____ **State** _____ **Zip Code** _____ **Phone** _____

6. **Plaintiff's Attorney** GOOCH, THOMAS, W ,III **ARDC #** 3123355

   Firm Name THE GOOCH FIRM

   Address 209 SOUTH MAIN STREET

   City WAUCONDA **State** Illinois **Zip Code** 60084 **Phone** 847-526-0110

---

7. **First Named Defendant** (Individual) MAST, HANS
   (Last Name, First Name, M.I., Suffix)

   Address 3416 W. ELM STREET

   City MCHENRY **State** Illinois **Zip Code** 60050 **Phone** _____

   Summons Issued ? Y

8. **Second Named Defendant** (Company) THE LAW OFFICES OF THOMAS J POPOVICH PC

   Address 3416 W. ELM STREET

   City MCHENRY **State** Illinois **Zip Code** 60050 **Phone** _____

   Summons Issued ? Y

---

9. **List any additional Plaintiffs and/or Defendants on supplimental sheet, including all A.K.A.'s(Also Known as) D.B.A.'s (Doing Business As),F.K.A.'s (Formerly Known As) and N.K.A.'s (Now Known As)**

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AFFIDAVIT OF SERVICE

Case: 17LA000377	Court: Circuit Court	County: McHenry, IL	Job: 1840594
Plaintiff / Petitioner: Paul Dulberg		**Defendant / Respondent:** Hans Mast	17LA000377
Received by: Advantage Processing		**For:** Gooch firm	
To be served upon: Hans Mast			

I, James Elenz, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Katherine M. Keefe
Clerk of the Circuit Court
******Electronically Filed******
Transaction ID: 17111121393
17LA000377
12/14/2017
McHenry County, Illinois
22nd Judicial Circuit
****

Recipient Name / Address: Hans Mast, Company: 3416 W. Elm St, McHenry, IL 60050

Manner of Service: Personal/Individual, Nov 30, 2017, 1:55 pm CST

Documents: Summons

Additional Comments:
1) Successful Attempt: Nov 30, 2017, 1:55 pm CST at Company: 3416 W. Elm St, McHenry, IL 60050 received by Hans Mast. Age: 44-47; Ethnicity: Caucasian; Gender: Male; Weight: 165; Height: 5'8"; Hair: Brown;
Attorney at stated location identified himself as Hans Mast who was then served.

Jim Elenz 12-12-17

James Elenz IL Agency #117-001775 Date

Advantage Processing
126 E. Wing St 308
Arlington Hts, IL 60004
847-917-9578

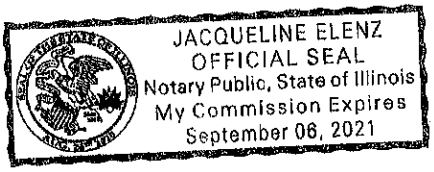
Subscribed and sworn to before me by the affiant who is personally known to me.

12-12-17 Jacqueline Elenz

Notary Public

12-12-17 9-6-2021

Date Commission Expires



Received 12-14-2017 10:34 AM / Circuit Clerk Accepted on 12-14-2017 01:04 PM / Transaction #17111121393 / Case #17LA000377
Purchased from re:SearchIL

AFFIDAVIT OF SERVICE

Case: 17LA00377	Court: Circuit Court	County: McHenry, IL	Job: 1840605
Plaintiff / Petitioner: Paul Dulberg		Defendant / Respondent: Law Offices of Thomas Popovich	17LA000377
Received by: Advantage Processing		For: Gooch Law Firm	
To be served upon: The Law Offices of Thomas Popovich			

I, James Elenz, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111121393
17LA000377
12/14/2017
McHenry County, Illinois
22nd Judicial Circuit
****

Recipient Name / Address: Hans Mast, Company: 3416 W Elm St, McHenry, IL 60050

Manner of Service: Business, Nov 30, 2017, 1:50 pm CST

Documents: Summons

Additional Comments:
1) Successful Attempt: Nov 30, 2017, 1:50 pm CST at Company: 3416 W Elm St, McHenry, IL 60050 received by Hans Mast. Age: 44-47; Ethnicity: Caucasian; Gender: Male; Weight: 165; Height: 5'8"; Hair: Brown;
Attorney Hans Mast, an employee of the Law Offices of Thomas Popovich, accepted service on behalf of the firm.

James Elenz IL Agency # 117-001775 — Date: 12-12-17

Advantage Processing
126 E. Wing St 308
Arlington Hts, IL 60004
847-917-9578

Subscribed and sworn to before me by the affiant who is personally known to me.

Notary Public — 12-12-17 — Date

Commission Expires: 9-6-2021

JACQUELINE ELENZ
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
September 06, 2021

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111124308
17LA000377
12/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

Paul Dulberg

vs.

Case Number 17 LA 000377

The Law Offices of Thomas J. Popovich

APPEARANCE

I HEREBY ENTER THE APPEARANCE OF

Defendants, Law Offices of Thomas J. Popovich, P.C. and Hans Mast

(Insert the name of the party for whom you are entering your appearance)

AND MY OWN AS

☑	REGULAR COUNSEL	☑	TRIAL COUNSEL
☐	SPECIAL & LIMITED APPEARANCE	☐	SUBSTITUTE COUNSEL
☐	PRO-SE	☐	COUNSEL IN FORCIBLE ENTRY
☐	ADDITIONAL COUNSEL	☐	APPELLATE COUNSEL
☐	GUARDIAN AD LITEM	☐	COURT APPOINTED COUNSEL

AND AS (HIS) (HER) (THEIR) COUNSEL IN THE ABOVE ENTITLED CASE.

SIGNED _____
(Signature of Attorney filing appearance)

Name George K. Flynn/Clausen Miller P.C. George K. Flynn
Printed Name

ARDC Number 6239349

Attorney for Defendants

Address 10 S. LaSalle Street, 16th Floor

City, State Zip Chicago, IL 60603

Phone 312-855-1010

CC-APP1 (Revised 12/01/06)

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111124308
17LA000377
12/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17LA000377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS' MOTION FOR EXTENSION OF TIME TO ANSWER OR OTHERWISE PLEAD

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., move this Honorable Court for an extension of time in which to answer or otherwise plead to Plaintiff's Complaint at Law for twenty-eight days, up to and including February 7, 2018.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
(312) 855-1010
Attorneys for Defendants
gflynn@clausen.com

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111124308
17LA000377
12/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17LA000377

NOTICE OF MOTION

TO: Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

On **January 10, 2018 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the **Honorable Judge Thomas A. Meyer**, or any Judge sitting in his stead in **Courtroom 201,** in the **McHenry County Government Center, 2200 N. Seminary Avenue, Woodstock, Illinois** and present **Defendants' Motion for Extension of Time to Answer or Otherwise Plead**, a copy of which is attached and served upon you herewith.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
312-855-1010
Attorneys for Defendants

1613324.1

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

PROOF OF DELIVERY

The undersigned states that she served a copy of the foregoing document to the attorneys of record noted above, at their respective addresses by email and U.S. Mail on December 28, 2017.

I certify that everything in the Proof of Delivery is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.



1613324.1

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#11
ORD

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury

FILED
McHenry County, Illinois
JAN 10 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court
VS

Dulberg Popovich

Date: 1-10-18 Plaintiff's Attorney _____ Defendant's Attorney George Flynn

ORDER

This matter coming to be heard on Law Office of Thomas J. Popovich P.C.'s and Hans Mast's motion for extension of time to answer or otherwise plead, it is hereby ordered:

1) Defendants' motion is granted.

2) Defendants to answer or otherwise plead by February 7, 2018.

3) Scheduling Conference set for February 27, 2018 at 9:00 a.m.

Prepared by: George Flynn
Attorney for: Popovich & Mast
Attorney Registration No.: 6239349 Judge: Edward M. Meyers

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111133930
17LA000377
02/07/2018
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17LA000377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS' COMBINED MOTION TO DISMISS

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, 735 ILCS 5/2-619(a)(5) and 735 ILCS 5/2-619.1, move to dismiss Plaintiff's Complaint, and state as follows:

1. The Plaintiff Paul Dulberg ("Dulberg") retained defendants The Law Offices of Thomas J. Popovich P.C. ("Popovich") to prosecute a personal injury claim on his behalf against his next door neighbors, Carolyn and Bill McGuire and their adult son (Dulberg's lifelong friend), David Gagnon ("Gagnon")). Hans Mast ("Mast") handled the case for the firm. This legal malpractice case arises out of that underlying personal injury case.

2. In Illinois, to establish a legal malpractice claim, a plaintiff must plead and prove the existence of an attorney client relationship; a duty arising from that relationship; a breach of that duty, the proximate causal relationship between the breach of duty and the damage sustained; and actual damages. *Glass v. Pitler*, 276 Ill. App. 3d 344, 349 (1st Dist. 1995).

3. The plaintiff in a legal malpractice claim must plead a case within the case. *Ignarski v. Norbut*, 271 Ill. App. 3d 522 (1995).

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4. Dulberg fails to allege requisite facts in support of each and every element of the "underlying" case or "case within the case" against the McGuires.

5. Dulberg's complaint must be dismissed pursuant to 735 ILCS 5/2-615.

6. Dulberg admits in ¶13 of his Complaint, that he agreed to a $5,000.00 settlement with the McGuires.

7. The doctrine of judicial estoppel provides that a party who assumes a particular position in a proceeding is estopped from assuming a contrary position in a subsequent proceeding. *Larson vs. O'Donnell*, 361 Ill. App. 3d 388, 398 (1st Dist. 2005), *rev'd on other grounds*. Dulberg is estopped from bringing this legal malpractice case because he expressly agreed to settle his case against the McGuires, and then continued to pursue his case against Gagnon. Dismissal is mandated under 735 ILCS 5/2-619(a)(9).

8. Dulberg has failed to file his legal malpractice complaint against Popovich and Mast within the two year statute of limitations for claims against attorneys. 735 ILCS 5/13-214.3 provides for a two year statute of limitations period which shall begin to run at "the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.

9. Here, the Plaintiff did not file his Legal Malpractice Complaint against Defendants until November 28, 2017, at least seven (7) months too late.

10. His claim must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(5).

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619(a)(5), and 735 ILCS 5/2-

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619.1, respectfully request this Honorable Court dismiss Plaintiff's Complaint with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
(312) 855-1010
Attorneys for Defendants
gflynn@clausen.com

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Page 3 of 4
C 50

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was caused to be served by Email and/or U.S. Mail by depositing same in the U.S. Mail at 10 S. LaSalle Street, Chicago, IL 60603, and properly addressed, with first class postage prepaid, on the 7th day of February, 2018, addressed to counsel of record as follows:

Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.



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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111133930
17LA000377
02/07/2018
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17LA000377

NOTICE OF MOTION

TO: Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

On **February 27, 2018 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the **Honorable Judge Thomas A. Meyer**, or any Judge sitting in his stead in **Courtroom 201,** in the **McHenry County Government Center, 2200 N. Seminary Avenue, Woodstock, Illinois** and present **Defendants' Combined Motion to Dismiss**, a copy of which is attached and served upon you herewith.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
312-855-1010
Attorneys for Defendants

1615981.1

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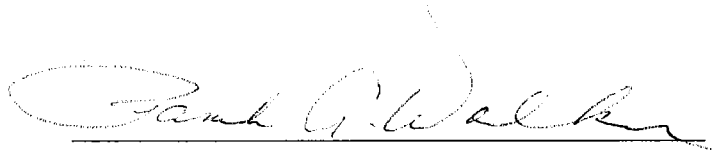
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was caused to be served by Email and/or U.S. Mail by depositing same in the U.S. Mail at 10 S. LaSalle Street, Chicago, IL 60603, and properly addressed, with first class postage prepaid, on the 7th day of February, 2018, addressed to counsel of record as follows:

Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.



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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111133930
17LA000377
02/07/2018
McHenry County, Illinois
22nd Judicial Circuit
****
Received Per Local Rule 1.19c

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17LA000377

MEMORANDUM IN SUPPORT OF DEFENDANTS' COMBINED MOTION TO DISMISS

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, 735 ILCS 5/2-619(a)(5) and 735 ILCS 5/2-619.1, submit this Memorandum in Support of Defendants' Combined Motion to Dismiss Plaintiff's Complaint with prejudice, and state as follows:

I. INTRODUCTION

The Plaintiff Paul Dulberg ("Dulberg") retained defendants The Law Offices of Thomas J. Popovich P.C. ("Popovich") to prosecute a personal injury claim on his behalf against his next door neighbors, Carolyn and Bill McGuire and their adult son (Dulberg's lifelong friend), David Gagnon ("Gagnon")). Hans Mast ("Mast") handled the case for the firm. Dulberg was on the McGuires' property, assisting Gagnon trim some tree branches with a chainsaw, when Dulberg's right arm was lacerated by the chainsaw. Dulberg agreed to a settlement with

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the McGuires. Thereafter, he and Mast reached an impasse. Mast and the firm withdrew, and successor counsel continued to prosecute the case against Gagnon.

Dulberg now has a case of "buyer's remorse," admitting that he agreed to accept the McGuires' settlement offer. He has not plead the requisite elements of a legal malpractice case against Popovich and Mast, or the requisite elements of the underlying case (the "case within the case"). Moreover, his agreement to settle the case with the McGuires, approved by the court along with a good faith finding of settlement, estops him from now taking a contrary position. Finally, his legal malpractice claim is barred by the applicable two-year statute of limitations.

II. STATEMENT OF FACTS

A. The Following Facts Can Be Gleaned From The Complaint (Exhibit 1) and Its Exhibits

On June 28, 2011, Dulberg was assisting David Gagnon in the cutting down of a tree on the property of Carolyn and Bill McGuire. (Exhibit 1, ¶ 6). Gagnon lost control of the chainsaw and caused personal injury to Dulberg. (Exhibit 1, ¶ 7). In May of 2012, Dulberg retained Popovich. (Exhibit 1, ¶8). On May 15, 2012, Mast filed a Complaint on behalf of Dulberg against Gagnon and McGuires in the Circuit Court of McHenry County, Illinois, Case No, 12 LA 178. (Exhibit 1, ¶ 9, and Exhibit 1B)[1]. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of $5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 1, ¶ 13 and Exhibit 1C). Defendants continued to represent Dulberg until March 2015. Dulberg retained successor counsel and proceeded to a binding mediation at which time he apparently executed a High-Low Agreement and received a mediation award (Exhibit 1, ¶ 16 and Exhibit 1D). After

[1] The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 1A, 1B, 1C and 1D.

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the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 1, ¶ 20).

B. Alleged Acts of Negligence

In Exhibit 1, ¶ 21, Dulberg alleges that Defendants failed to take actions as were necessary to fix liability against the property owners of the subject property (the McGuires), alleging that they employed Gagnon and sought the assistance of Dulberg. It is alleged that they failed to thoroughly investigate liability issues against the property owners, failed to conduct necessary discovery, failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property, and improperly urged Dulberg to accept a "non-sensical" settlement from the property owners. It is also alleged that Defendants concealed necessary facts from Dulberg preventing him from making an informed decision as to the McGuires and "coercing" him in signing a Release and Settlement Agreement.

III. DULBERG FAILS TO STATE A CLAIM FOR LEGAL MALPRACTICE UNDER 735 ILCS 5/2-615

A. Legal Standard

It is clearly established that Illinois is a fact pleading jurisdiction, requiring the plaintiff to present a legally and factually sufficient complaint. *Winfrey v. Chicago Park Dist.*, 274 Ill. App. 3d 939, 942 (1st Dist. 1995). A plaintiff must allege facts sufficient to bring his or her claim within the cause of action asserted. *Jackson vs. South Holland Dodge,* 197 Ill. 2d 39 (2001). To pass muster a complaint must state a cause of action in two ways: first, it must be legally sufficient -- it must set forth a legally recognized claim as its avenue of recovery, and

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second, the complaint must be factually sufficient -- it must plead facts, which bring the claim within a legally recognized cause of action as alleged. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308 (1981). Dismissal of a complaint is mandatory if one fails to meet both requirements. *Misselhorn v. Doyle*, 257 Ill. App. 3d 983, 985 (5th Dist. 1994). In ruling on a Section 2-615 motion, "only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered." *Mount Zion State Bank and Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 115 (1995).

In Illinois, to establish a legal malpractice claim, a plaintiff must plead and prove the existence of an attorney client relationship; a duty arising from that relationship; a breach of that duty, the proximate causal relationship between the breach of duty and the damage sustained; and actual damages. *Glass v. Pitler*, 276 Ill. App. 3d 344, 349 (1st Dist. 1995). The injuries resulting from legal malpractice are not personal injuries but pecuniary injuries to intangible property interests. *Glass* at 349. Damages must be incurred and are not presumed. *Glass* at 349. It is the plaintiff's burden to establish that "but for" the attorney's negligence, the client would not have suffered the damages alleged. *Glass* at 349. "The proximate cause element of legal malpractice claim requires that the plaintiff show that but for the attorney's malpractice, the client would have been successful in the undertaking the attorney was retained to perform. *Green v. Papa*, 2014 IL App. (5th) 1330029 (2014), quoting *Owens v. McDermott Will & Emery*, 316 Ill. App. 340 (2000), at 351. The plaintiff in a legal malpractice claim must plead a case within the case. *Ignarski v. Norbut*, 271 Ill. App. 3d 522 (1995).

B. Dulberg Fails to Plead Facts in Support of His Conclusory Allegations

Dulberg's pleading and theory of recovery is confusing. Presumably, since Dulberg retained successor counsel in the underlying case, he is only complaining here about the

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McGuires' underlying liability, and nothing with respect to case against David Gagnon (when an attorney is discharged and transfers a then viable matter to a successor attorney, the first lawyer cannot be held to have proximately caused the client's lost claim, see *Mitchell v. Shain, Fursel, and Burney, Ltd.*, 332 Ill. App 3d 618 (1st. Dist. 2002), and *Cedeno v. Gumbiner*, 347 Ill. App. 3d 169 (1st Dist. 2004)).

Setting aside the Estoppel and Statute of Limitations issues which will be discussed below, Dulberg's complaint for legal malpractice is rife with unsupported conclusory allegations. Dulberg fails to allege requisite facts in support of each and every element of the "underlying" case or "case within the case" against the McGuires. Simply put, Dulberg fails to plead any facts in support of his conclusions that there was some liability against the McGuires. In ¶ 21 of his complaint, Dulberg alleges negligence against Popovich and Mast, but fails to identify what actions should have been taken and were not. In ¶ 21 (a), Dulberg fails to identify what investigation and discovery should have been undertaken. In ¶¶ 21 (b) and (c), Dulberg fails to identify or discuss the law that "defendants failed to understand." In ¶ 21 (d), Dulberg fails to plead any facts about why the settlement with the McGuires was improper or "non-sensical."

Under Illinois fact pleading requirements, much more is needed. In a case of alleged professional liability, the plaintiff cannot simply allege in conclusory terms that the defendants were negligent, and that the Plaintiff could have proved up liability against the underlying defendants. He must allege why and how. Dulberg's complaint must be dismissed pursuant to 735 ILCS 5/2-615.

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IV. DULBERG'S SETTLEMENT WITH THE MCGUIRES AND THE DOCTRINE OF JUDICIAL ESTOPPEL BAR HIS LEGAL MALPRACTICE CLAIM

Dulberg admits in ¶13 of his Complaint, that he agreed to a $5,000.00 settlement with the McGuires. Attached to this Complaint, is an unsigned copy of the Settlement Agreement, Exhibit 1C.[2] Because Dulberg agreed to the settlement with the McGuires, waived and released all claims against them and their insurance carrier, and allowed the Court to enter an Order on a Good Faith Finding of Settlement (a joint tortfeasor Gagnon remained in the case), he is now estopped from taking a contrary position that the settlement was appropriate, fair, knowing and voluntary.[3]

The doctrine of judicial estoppel provides that a party who assumes a particular position in a proceeding is estopped from assuming a contrary position in a subsequent proceeding. *Larson vs. O'Donnell*, 361 Ill. App. 3d 388, 398 (1st Dist. 2005), *rev'd on other grounds*. In *Larson*, a plaintiff became unemployed during the pendency of his divorce. At settlement, he agreed to pay a specified dollar amount for child support and specified dollar amount for maintenance, based on the income he earned prior to his having become unemployed. *Larson* at 391. The parties and their attorneys appeared before the court to present the marital settlement agreement for approval at a "prove up". *Larson* at 392. At the prove up hearing, the plaintiff gave unequivocal testimony that he understood the terms and conditions of the agreement and acknowledged the amounts he was required to pay under the agreement. *Larson* at 392. After entry of the judgment for dissolution of marriage, the plaintiff began paying support based on a

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[2] It does not appear that Dulberg is denying the authenticity of the Settlement Agreement, despite the fact that his signature is not attached. Mast is in possession of a signed copy of the Settlement Agreement, which Dulberg executed on January 29, 2014.

[3] For the Court's convenience, attached as Exhibits 2 and 3 are the Motion for the Good Faith Finding and Court's Order granting the Good Faith Finding of Settlement. The Court may take judicial notice of its own court docket see *All Purpose Nursing Service v. Human Rights Com.*, 205 Ill. App. 3d 816, 823 (1st Dist. 1990). Notably, the McGuires also filed a counterclaim for contribution against Gagnon in the underlying case.

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percentage of his unemployment income rather than the amounts required by the judgement for dissolution. He was later held in contempt for failure to pay the amounts prescribed in the judgment of dissolution and attorney's fees were assessed against him in the divorce court. He sued his former attorneys for breach of fiduciary duty and legal malpractice. *Larson* at 393. The court held that the plaintiff in *Larson* was judicially estopped from attempting to create a question of fact regarding his "actual" understanding for purposes of summary judgment by later contradicting his previous position. *Larson* at 398.

Like Larson, Dulberg cannot now claim that he did not knowingly and voluntarily settle and release his claims against the McGuires. Moreover, Dulberg, like all adults, is "presumed to know the contents and meaning of the obligations he undertakes when he signs a written agreement." *Premier Elec. Const. Co. vs. Ragnar Benson, Inc.* 111 Ill. App. 3d 855, 865 (1st Dist. 1982). Accordingly, Dulberg is estopped from claiming that his agreement to settle the underlying case with the McGuires was not "knowing and voluntary," and he cannot claim that he was coerced. The final decision was his alone. Dulberg is estopped from now asserting a claim for legal malpractice against his former counsel. His Complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(9).

V. DULBERG'S CLAIM IS BARRED BY THE TWO YEAR STATUTE OF LIMITATIONS FOR CLAIMS AGAINST ATTORNEYS

Dulberg has failed to file his legal malpractice complaint against Popovich and Mast within the two year statute of limitations for claims against attorneys. 735 ILCS 5/13-214.3 provides for a two year statute of limitations period which shall begin to run at "the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought. *Ogle v. Hotto*, 273 Ill. App. 3d 313, 318 (5th Dist. 1995). 735 ILCS 5/13-214.3(b) reads as follows:

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> (b) An action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services or (ii) against a non-attorney employee arising out of an act or omission in the course of his or her employment by an attorney to assist the attorney in performing professional services must be commenced within two years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.

Dulberg's Complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(5) because on its face, his claims are untimely.

Dulberg admits in ¶ 14 of Exhibit 1 that Popovich's and Mast's representation ceased in March of 2015. Without some exception to the rule, a claim for legal malpractice would have been required to be filed by March 2017. Here, the Plaintiff did not file his Legal Malpractice Complaint against Defendants until November 28, 2017 (Exhibit 1), at least seven (7) months too late. Apparently realizing that his claims are untimely, Dulberg attempts to rely on the "discovery rule." He alleges in ¶ 20, without any factual support, that the information regarding the McGuires' liability as a property owner, was "false and misleading." As discussed above, Dulberg fails to allege any specific facts about any false and misleading information or other specifics as to Mast and Popovich's negligent conduct. Dulberg fails to plead facts in support of the case within the case, i.e. the McGuires' liability in the underlying cause of action. Dulberg alleges that he was advised to seek an independent opinion from an attorney handling legal malpractice matters on or about December 16, 2016, but provides no other explanation about why he was unaware of a claim until December 16, 2016. What happened after he signed the agreement on January 29, 2014?

While there was nothing preventing Dulberg at the time of the McGuire settlement from seeking a second opinion concerning the propriety or "sense" in settling, Illinois law requires a plaintiff relying on the discovery rule to plead facts in support of reliance on the discovery rule.

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In other words, the plaintiff must explain why he did not discover the cause of action until December 16, 2016. The plaintiff has the burden of proving the date of discovery. *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill.2d 72, 85 (1995). Moreover, under Illinois law, *actual knowledge* of the alleged malpractice is not a necessary condition to trigger the running of the statute of limitations. *SK Partners I, LP v. Metro Consultants, Inc.*, 408 Ill. App. 3d 127, 130 (1st Dist. 2011) ("under the discovery rule, a statute of limitations may run despite the lack of actual knowledge of negligent conduct") (emphasis in original)). A statute of limitations begins to run when the purportedly injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Bluewater Partners v. Mason*, 2012 IL App (1st 102165 at *p. 50).

Here, Dulberg fails to allege any facts to support a delay or tolling of the statute. He retained subsequent counsel after the defendants withdrew, and could have requested a legal opinion regarding the McGuires' liability then, why did he wait? His claim must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(5).

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V. CONCLUSION

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619(a)(5), and 735 ILCS 5/2-619.1, respectfully request this Honorable Court dismiss Plaintiff's Complaint with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

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Mr. Thomas W. Gooch, III
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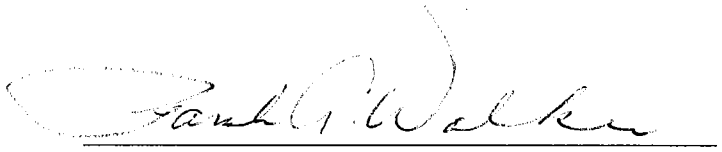

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EXHIBIT 1

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ___% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

X [signature]
Client

LAW OFFICES OF THOMAS J. POPOVICH

_____
Client

By: [signature]

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT
A
ALL-STATE LEGAL®

COPY
FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT B
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NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 204 ON 11-28-2012, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON 20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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The Law Offices of Thomas J. Popovich P.C.

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www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogo
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT C
ALL-STATE LEGAL®

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation	
Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
PLS	75,000.
LNL	75,000.

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

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EXHIBIT 2

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	Case No. 12 LA 178

FILED
JAN 13 2014
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

MOTION FOR GOOD FAITH FINDING AND FOR ORDER OF DISMISSAL WITH PREJUDICE BY DEFENDANTS BILL McGUIRE AND CAROLYN McGUIRE

Defendants, BILL McGUIRE (aka William McGuire) and CAROLYN McGUIRE (improperly named Caroline), by and through their attorneys, Cicero, France, Barch & Alexander, P.C., hereby move this Court to dismiss all claims against them with prejudice and further request this Court to find that the settlement set forth in this motion was made in good faith and within the meaning and contemplation of the Illinois Contribution Among Joint Tortfeasors Act, 740 ILCS 100/1, et seq. In support of their Motion, Defendants Bill McGuire and Carolyn McGuire state as follows:

1. On or about March 15, 2012, Plaintiff Paul Dulberg filed a multiple count complaint seeking damages for personal injuries he generally attributes to a chain saw incident that occurred on or about June 28, 2011, at and upon the premises owned by Defendants Bill McGuire and Carolyn McGuire, known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

2. Plaintiff generally alleges that Defendant David Gagnon injured him with a chain

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saw while working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire. Defendant David Gagnon denies any and all liability for Plaintiff Paul Dulberg's injuries. Defendants Bill McGuire and Carolyn McGuire also deny any and all liability for Plaintiff Paul Dulberg's injuries and further deny that Defendant David Gagnon was under their control and supervision and working or acting as their employee or agent at the time of the alleged chain saw incident.

3. On February 1, 2013, Defendants Bill McGuire and Carolyn McGuire filed a cross-claim for contribution against Defendant David Gagnon. The cross-claim for contribution seeks contribution from Defendant David Gagnon for injuries claimed by Plaintiff Paul Dulberg and is based upon the terms and provisions of the Illinois Contribution Among Joint Tortfeasors Act, 740 ILCS 100/1, et seq.

4. Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire have negotiated a settlement of all claims which Plaintiff brought or could have brought against Defendants Bill McGuire and Carolyn McGuire. The settlement was negotiated at arm's length over a substantial period of time, and with the advice of counsel on the part of both parties. There is no collusion or fraud on the part of any of the parties to the negotiation.

5. Pursuant to Section 100/2(c) of the Contribution Act, an alleged tortfeasor that settles with a claimant in good faith shall be discharged from liability for contribution to any other tortfeasors.

6. Defendants Bill McGuire and Carolyn McGuire deny and continue to deny liability to Plaintiff Paul Dulberg and further contest the nature and scope of the injuries Plaintiff Paul Dulberg attributes to the subject chain saw incident.

7. The lump-sum payment of $5,000.00 to Plaintiff Paul Dulberg by or on behalf of

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Defendants Bill McGuire and Carolyn McGuire constitutes adequate consideration for purposes of a good faith settlement under Section 100/2(c) of the Contribution Act.

8. Defendants Bill McGuire and Carolyn McGuire respectfully suggest that the settlement with Plaintiff Paul Dulberg is and was made in good faith within the meaning of the Illinois Contribution Among Joint Tortfeasors Act, 740 ILCS 100/2(c).

WHEREFORE, the Defendants, BILL McGUIRE and CAROLYN McGUIRE, respectfully pray for the Court as follows:

(1) For an Order declaring that the settlement between Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire was made and entered into in good faith within the meaning of the Illinois Contribution Among Joint Tortfeasors Act, 740 ILCS 100/1, et seq.;

(2) For an Order dismissing all civil complaints, cross-claims, counterclaims and contribution claims currently pending against Defendants Bill McGuire and Carolyn McGuire, and arising out of or otherwise connected to the injuries claimed by Plaintiff Paul Dulberg, with prejudice;

(3) For an Order declaring that any potential future claims against Defendants Bill McGuire and Carolyn McGuire, including, without limitation, claims for contribution arising out of or otherwise connected to the chain saw incident and injuries claimed by Plaintiff Paul Dulberg, are barred;

(4) For an Order declaring for purposes of Illinois Supreme Court Rule 304(a) that there is no just reason to delay enforcement or appeal of the Dismissal Order; and

(5) That this Court enter an order granting such further relief as this Court deems just.

CAROLYN MCGUIRE and BILL MCGUIRE, Defendants,
by their attorneys,
CICERO, FRANCE, BARCH & ALEXANDER, P.C.,

By _____
RONALD A. BARCH (6209572)

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon:

Attorney Perry A. Accardo
Law Office of M. Gerard Gregoire
200 N. LaSalle St., Ste 2650
Chicago, IL 60601-1092

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid, at Rockford, Illinois, at 5:00 o'clock p.m. on 1/9/14.

RBS

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

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EXHIBIT 3

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ORD

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	Case No. 12 LA 178

FILED
McHenry County, Illinois
JAN 2 2 2014

GOOD FAITH FINDING AND ORDER OF DISMISSAL

THIS CAUSE coming on to be heard on the Motion for Good Faith Finding and for Order of Dismissal with Prejudice filed by Defendants Bill McGuire and Carolyn McGuire, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That settlement between Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire (improperly named Caroline) constitutes a fair and reasonable and good faith settlement within the meaning of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 0.01 et seq.

2. That the good faith settlement shall henceforth constitute a bar to any and all claims that Plaintiff Paul Dulberg and Defendant David Gagnon and other known or unknown tortfeasors may have against Defendants Bill McGuire and Carolyn McGuire on account of or arising out of the injuries, if any, sustained by Plaintiff Paul Dulberg as a result of the alleged chain saw accident that occurred on June 28, 2011, whether by way of original action, third party claim, cross-claim, counterclaim, claim for contribution or otherwise.

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3. That Defendants Bill McGuire and Carolyn McGuire be and are hereby dismissed from the above-captioned lawsuit as party defendants and cross-claimants, with prejudice, and in bar of further suit.

4. That that there is no just reason to delay the enforcement or appeal of this good faith finding and order of dismissal.

DATED: _____

JUDGE Thomas A. Meyer

Prepared by:
Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHenry County, Illinois
FEB 27 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court

Circuit Clerk Use Only
✓ ORD
ORDJ
ORDDWP

Paul Dulberg
Plaintiff

vs

Popovich, et al.
Defendant

Case Number 17 LA 377

Agreed ORDER

☐ Plaintiff(s) appear in person/by attorney _____

☑ Defendant(s) appear in person/by attorney Flynn

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☐ This case is continued on Motion of ☐ Plaintiff; ☒ Defendant; ☐ By Agreement; ☐ Court; to Dismiss, May 10, 2018 at 10, 00 m. for hearing.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☑ **COURT FURTHER ORDERS:** Plaintiff to file Response to Motion to Dismiss in 28 days (March 27, 2018) Defendant to file Reply in 19 days (April 10, 2018) Defendant to deliver courtesy copies of all briefs by April 17, 2018

Date: 2-27-18

[signature]
Judge

CV-ORD13: Revised 10/01/08

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
******Electronically Filed******
Transaction ID: 17111147104
17LA000377
03/27/2018
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, Defendants.	)	No.: 17 LA 377

NOTICE OF FILING

TO: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

PLEASE TAKE NOTICE that on **March 27, 2018** I caused to be filed with the Clerk of the Circuit Court of McHenry County, Illinois the attached *Response to Defendant's Combined Motion to Dismiss.*

Thomas W. Gooch, III, Esq.

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that she served a copy of the foregoing to whom it is addressed via the McHenry County I2File Efile System and via email transmission to on March 27, 2018.

THE GOOCH FIRM
209 South Main Street
Wauconda, Illinois 60084
847 526 0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No.: 3123355

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111147104
17LA000377
03/27/2018
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,
Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,
Defendants.

No.: 17 LA 377

PLAINTIFF'S RESPONSE TO DEFENDANTS' COMBINED MOTION TO DISMISS

NOW COMES, your Plaintiff, PAUL DULBERG, (hereinafter referred to as "DULBERG") by and through his attorneys, THE GOOCH FIRM, and for his Response to Defendants' THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST (hereinafter collectively referred to as "POPOVICH" or "Defendants") Combined Motion to Dismiss states to the Court the following:

INTRODUCTION

Defendants brought this Combined Motion to Dismiss DULBERG's Complaint. (See Defendants' Memorandum in Support of Defendants' Combined Motion to Dismiss attached hereto without exhibits as Exhibit A.) In their Motion, Defendants argue that DULBERG failed to state a claim for legal malpractice, that DULBERG's claims are barred by judicial estoppel, and that the claims are time barred. However, after review of the facts in the Complaint, this Honorable Court will determine that DULBERG's Complaint is sufficient to survive this Motion to Dismiss.

STANDARD OF REVIEW FOR SECTION 2-615

1. A Motion to Dismiss pursuant to section 2-615 attacks the legal sufficiency of the Complaint by alleging defects on its face. *Weisblatt v. Colky*, 265 Ill.App.3d 622, 625, 637

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N.E.2d 1198, 1200 (1st Dist. 1994). Section 2–615 motions "raise but a single issue: whether, when taken as true, the facts alleged in the Complaint set forth a good and sufficient cause of action." *Visvardis v. Ferleger* 375 Ill.App.3d 719, 723, 873 N.E.2d 436, 440 (Ill.App.1 Dist. 2007), quoting *Scott Wetzel Services v. Regard,* 271 Ill.App.3d 478, 480, 208 Ill. Dec. 98, 648 N.E.2d 1020 (1995).

2. When the legal sufficiency of a Complaint is challenged by a section 2–615 Motion to Dismiss, all well-pleaded facts in the Complaint are taken as true and a reviewing court must determine whether the allegations of the Complaint, construed in a light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81, 806 N.E.2d 632, 634 (2004); *King v. First Capital Financial Services Corp.* 215 Ill.2d 1, 12, 828 N.E.2d 1155, 1161 (2005). A cause of action should not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved that will entitled the plaintiff to recover. *Zedella v. Gibson*, 165 Ill.2d 181, 185, 650 N.E.2d 1000 (1995).

STANDARD OF REVIEW FOR SECTION 2-619

3. A section 2-619 motion should be denied unless a Plaintiff cannot prove a set of facts that would entitle him to relief sought. *Safeway Ins. Co. v. Daddono*, 334 Ill. App 3d 215, 218 (1st Dist. 2002). A cause of action should not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved that will entitle the plaintiff to recover. *Zedella v. Gibson*, 165 Ill.2d 181, 185, 650 N.E.2d 1000 (1995).

4. The Court must view all the factual allegations in the light most favorable to the plaintiff. *Lloyd v. County of DuPage*, 303 Ill.App.3d 544, 688 707 N.E.2d 1252, 1258 (2d Dist. 1999). Also the court must construe the facts liberally in favor of the plaintiff. *Id.* In ruling on a

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2-619 motion, the court may consider pleadings, affidavits and depositions. *Weisblatt v. Colky,* 265 Ill.App.3d 622, 625, 637 N.E.2d 1198, 1200 (1st Dist. 1994). The purpose of a Motion to Dismiss under section 2–619 of the Code of Civil Procedure is to afford litigants a means to dispose of issues of law and easily proved issues of fact at the outset of a case, reserving disputed questions of fact for a jury trial. *Zedella,* at 185, 650 N.E.2d 1000.

ARGUMENT
(under 2-615)

I. Dulberg sufficiently states a cause of action for legal malpractice.

1. In his Complaint, DULBERG sufficiently set forth the necessary elements of legal malpractice. "To prevail on a legal malpractice claim, the plaintiff client must plead and prove that the defendant attorneys owed the client a duty of due care arising from the attorney-client relationship, that the defendants breached that duty, and that as a proximate result, the client suffered injury." *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.,* 216 Ill.2d 294, 306-307 (Ill. 2005).

2. First, when DULBERG agreed to retain POPOVICH and POPOVICH agreed to represent DULBERG, a duty of due care was established based on the attorney-client relationship between DULBERG and POPOVICH. (See Complaint attached hereto without exhibits as Exhibit B, ¶ 8-10.) Thereafter, POPOVICH owed DULBERG a duty of due care as his attorney and POPOVICH breached that duty.

3. DULBERG's malpractice action is proper because DULBERG properly established that due to POPOVICH's malpractice, the case was settled for an amount much lower than what DULBERG expected. "Attorney malpractice action should be allowed where it can be shown that the plaintiff had to settle for a lesser amount than she could reasonably expect without the malpractice." *Brooks v. Brennan*, 255 Ill.App. 3d 260, 270 (5th Dist., 1994).

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4. In his Complaint, DULBERG specifically alleges that he was essentially forced to settle his case for $5,000.00 against the McGuires and the Auto-Owners Insurance Company. (See Complaint attached hereto as Exhibit B, ¶13, 21(j).) Thereafter at the binding arbitration DULBERG's gross award of $660,000.00 was cut to only $300,000.00 due to a "high-low agreement" that was executed as part of the McGuire settlement. DULBERG further pleads that had the McGuires not been dismissed from the case, he would have recovered more. (See Complaint attached hereto as Exhibit B, ¶16, 22.)

5. DULBERG properly plead proximate cause and damages in his Complaint. (See Complaint attached hereto as Exhibit B, ¶21, 22.)

6. *Fox v. Seiden*, 382 Ill.App. 3d 288, 294 (1st Dist. 2008) is analogous to this case because the *Fox* Plaintiff similarly pled proximate cause and the Appellate Court held that this was sufficient, "the plaintiff alleged, 'But for [the law firm's] negligence and malfeasance, [Miriam] would not have had judgment entered against her for attorney's fees under the [Act].' We find the alleged facts, liberally construed, taken as true, and viewed in the light most favorable to the plaintiff, sufficiently plead the element of proximate cause." *Id.*, at 299.

7. Specifically, DULBERG properly established that "but for" the acts of the Defendants in urging DULBERG to release the McGuires, DULBERG suffered substantial damages. (See Complaint attached hereto as Exhibit B, ¶ 22.)

8. More importantly, the issues of proximate cause and damages must be determined by a jury or trier of fact after all proper evidence and testimony is presented at trial. Proximate cause is a **question of fact** to be decided by a jury. (internal citation omitted) (Emphasis added) *Hooper v. County of Cook*, 366 Ill.App.3d 1, 7 (1st Dist., 2006). "The determination of damages is a **question of fact** that is within the discretion of the jury and is

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entitled to substantial deference." (Emphasis added.) *Linhart v. Bridgeview Creek Development, Inc.*, 391 Ill.App.3d 630, 636 (1st Dist., 2009).

9. POPOVICH states in his Motion that DULBERG's pleading and theory is confusing. (See Defendants' Memorandum attached hereto as Exhibit A, pg.4). However, there is nothing confusing about the issues at hand. DULBERG clearly and sufficiently pled in his Complaint that the wrongful acts, i.e. POPOVICH urging settlement and release of the McGuires in the case caused DULBERG to lose out on over $300,000.00.

10. Defendants, in their Motion to Dismiss, are requiring of DULBERG to plead his entire case in a single Complaint.

11. "Plaintiff is not required to prove his case at this stage of the pleadings and the damages as alleged are sufficient to show he was damaged by Defendants' actions and cause of action for legal malpractice. *Fox v. Seiden*, *supra*, at 294; *Platson v. NSM America*, Inc., 322 Ill.App. 3d 138, 143 (2nd Dist., 2001) ('Cases are not to be tried at the pleadings stage, so a claimant need only show a possibility of recovery, not an absolute right to recover, to survive a 2-615 Motion.'). Here, DULBERG has shown at least a possibility of recovery based on the malpractice of POPOVICH, thus should survive Defendants' 2-615 Motion.

12. The allegations set forth by DULBERG are not conclusions and are sufficient to withstand a Section 2-615 dismissal. By looking at the Complaint, DULBERG has clearly set forth each of the elements of legal malpractice.

13. Further, because this instant case is filled with factual questions, dismissing the Complaint at this stage of the pleadings is improper and this Honorable Court should deny Defendants' Motion in order to allow the case to be fully and properly litigated.

(Under 2-619)

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II. Dulberg's claims are not barred by judicial estoppel.

14. Next, Defendants argue that DULBERG's claim is barred by judicial estoppel. (See Defendants' Memorandum attached hereto as Exhibit A, pg. 6). This is not factually accurate.

15. Judicial estoppel is an equitable doctrine evoked only at the Courts' discretion and designed to protect the integrity of the judicial system by preventing parties from taking inconsistent positions. *Seymour v. Collins*, 39 N.E. 3d 961 (Ill., 2015). The *Seymour* Court held five elements were required for judicial estoppel to apply; there must be two positions which are factually inconsistent in separate proceedings where there is an intent that the trier of fact accept as true all the allegations and the person who the doctrine is asserted against must have received a benefit. *Id.*

16. In this case, there have not been two factually inconsistent positions because DULBERG never held the position that he understood and was informed of all the terms of the settlement. The issue of whether Defendants properly informed DULBERG has never been dealt with in a previous proceeding.

17. Defendants argue that "like all adults" DULBERG is presumed to know the contents and meaning of the settlement agreement he signed. (See Defendants' Memorandum attached hereto as Exhibit A, pg. 7). However, the Defendants had a fiduciary duty to DULBERG to explain to him the contents of the settlement agreement and to explain the meaning of said agreement. That is part of the thrust of the malpractice, which of course is a factual question.

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18. In his Complaint, DULBERG alleges that MAST told DULBERG that "he had no choice but to execute a release" and that "there was no possibility of any liability" against the McGuires or the Insurance Company. (See Complaint attached hereto as Exhibit B, ¶ 13, 15.)

19. Based on these representations, DULBERG reluctantly signed the settlement agreement, as he had no choice and was relying on the representations of his attorneys.

20. Defendants argue that because the Court in the underlying case entered a good faith finding Order, Plaintiff should be judicially estopped. (See Defendants' Memorandum attached hereto as Exhibit A pg. 6). This is not the case. Although a good faith finding was entered in the underlying case, the Order did not contemplate whether there was any malpractice by the attorneys. The Court clearly did not know what the Defendants told or failed to tell DULBERG to urge him to sign the agreement. Therefore the good faith finding Order has no bearing on DULBERG's legal malpractice suit.

21. Defendants rely on the case of *Larson v. O'Donnell*, 361 Ill.App.3d 388 (1st Dist., 2005) in support of their argument that judicial estoppel is applicable, however this instant case is factually distinguishable from the *Larson* case, which was a divorce case.

22. The Court in *Larson*, *supra*, found that judicial estoppel applied to the Plaintiff's legal malpractice claims because at the dissolution prove up hearing, record clearly states that the Plaintiff testified that he understood all of the terms of the settlement, that knew when he signed the agreement that he had an obligation to pay a specific dollar amount in child support and maintenance. The *Larson* Court found that the Plaintiff was estopped from bringing the legal malpractice Complaint that alleged that he did not know the terms of the settlement. Larson even interrupted the divorce prove up to supply additional facts and information as to his correct

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income. *Larson v. O'Donnell, supra*, generally. Further, *Larson* has been distinguished and not followed. See *Wolfe v. Wolf*, 375 Ill.App.3d 702 (1st Dist., 2007).

23. In this case, there is no record of DULBERG specifically testifying to knowing exactly what the terms of the settlement agreement. Unlike the *Larson* Plaintiff, DULBERG is not claiming that he does not understand the $5,000.00 settlement, but instead, DULBERG was never informed by his attorneys that a "high-low" agreement would limit his recovery against the remaining Defendants. DULBERG was never informed by the Defendants how the terms of the settlement would affect the future of his case. More importantly, DULBERG was trusting his attorneys when signing the settlement agreement. At no time did DULBERG interject in any proceedings to state that he understood all of the terms of the settlement or provided additional facts as the *Larson* Plaintiff.

24. Based on Defendants' fiduciary duty, the Defendants had a duty to properly inform DULBERG of all of the risks of entering the settlement agreement. "The fiduciary duty owed by an attorney to a client encompasses the obligations of fidelity, honesty, and good faith." *Metrick v. Chatz,* 266 Ill.App.3d 649, 656 (1st Dist.,1994).

25. In the case of *Wolfe v. Wolf*, 375 Ill.App.3d 702 (1st Dist., 2007) the Defendant argued that the Plaintiff was judicially estopped from bringing a claim for legal malpractice when she testified that she understood and agreed to all the terms of the marital settlement agreement and subsequently filed a legal malpractice complaint alleging that she did not understand and agree to the marital settlement agreement. However the Court held that the Plaintiff was not judicially estopped from bringing her legal malpractice action because the testimony at the dissolution proceeding was based on negligent acts and misrepresentations made

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to the Plaintiff by the Defendant, and that she did not discover those negligent acts and misrepresentations until after the settlement agreement had been entered. *Id.*, generally.

26. This instant case is more factually similar to the *Wolfe* case than the *Larson* Case because DULBERG is not alleging that he misunderstood the obligations under the settlement agreement as in *Larson*, instead he is alleging that the negligence of POPOVICH did not permit DULBERG to make an informed decision about accepting the settlement, as in *Wolfe*. POPOVICH continuously represented to DULBERG that there was no possibility of any liability against the McGuires and/or the Insurance Company.

27. Therefore by following the Court in *Wolfe v. Wolf*, 375 Ill.App.3d 702 (1st Dist., 2007) this Honorable Court must find that DULBERG is not judicially estopped from bringing his claims against POPOVICH.

III. Dulberg's claims are not time barred.

28. Lastly in their Motion to Dismiss, Defendants argue that DULBERG's claims are barred by the statute of limitations. (See Defendants' Memorandum attached hereto as Exhibit A, pg. 7). This is incorrect because after review of the allegation of the Complaint this Court should find that the Complaint has been timely filed based on the discovery rule.

29. The discovery rule tolls the limitations period to the time the plaintiff knew or reasonably should have known of the injury. *Snyder v. Heidelberger,* 953 N.E.2d 415, 419 (Ill. 2011).

30. The Illinois Supreme Court held that the discovery rule applies to legal malpractice claims. *Jackson Jordan, Inc. v. Leydig, Voit & Mayer,* 158 Ill.2d 240, 249 (Ill. 1994). The Supreme Court has made this issue quite clear, finding as such and further finding the

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limitations period begins to run when a plaintiff knows or reasonably should know of his injury AND that the injury was wrongfully caused. (Emphasis added) *Id.*

31. The time at which a party has or should have the requisite knowledge under the discovery rule to maintain a cause of action is ordinarily a **question of fact.** (Emphasis added) *Jackson Jordan, Inc. v. Leydig, Voit & Mayer, at 250;* see also *Knox College v. Celotex Corp.*, 88 Ill.2d 407, 416-417 (Ill, 1981).

32. Due to the attorney client relationship with the Defendants, DULBERG is presumed unable to distinguish any misapplication or negligence by the Defendants, on his own. "The relationship between an attorney and the client is one in which the attorney is charged with a duty to act skillfully and diligently on the client's behalf. Given the duty, the client is presumed unable to discern any misapplication of legal expertise." *Goodman v. Harbor Market, Ltd.,* 278 Ill.App.3d 684, 659-690 (1st Dist., 1995).

33. There would be a constant destruction of the attorney-client relationship if clients were required to determine their attorney's malpractice at the exact time of incident. "If the client must ascertain malpractice at the moment of its incidence, the client must hire a second professional to observe the work of the first, an expensive and impractical duplication, clearly destructive of the confidential relationship between the practitioner and his client. Therefore, it is the realized injury to the client, not the attorney's misapplication of the expertise, which marks the point in time for measuring compliance with a statute of limitations period." (internal citations omitted) *Goodman v. Harbor Market, Ltd.,* 278 Ill.App.3d 684, 689-690 (1st Dist., 1995).

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34. DULBERG's Complaint was filed on November 28, 2017. The Complaint clearly sets forth when DULBERG became aware of the negligence of the Defendants as argued below. (See Complaint attached hereto as Exhibit B, ¶19, 20).

35. As pled in the Complaint, it was not until December 16, 2016 that DULBERG was informed by outside counsel that he may have a claim for legal malpractice:

> "19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.
>
> 20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016."
> (See Complaint attached hereto as Exhibit B, ¶19, 20).

36. DULBERG would have had until December 16, 2018 to bring his claims, or at the earliest by December 8, 2018, two years after DULBERG received the binding mediation award. Thus, the Complaint filed on November 28, 2017 is timely filed.

37. Defendants incorrectly pled that DULBERG did not provide any other explanation about why he was unaware of a claim until December 16, 2016. (See Defendants' Memorandum attached hereto as Exhibit A, pg. 8). This is incorrect because DULBERG's Complaint specifically alleges why DULBERG for the first time realized that the information Defendants gave DULBERG was false or misleading—after the mediation on December 8, 2016. (See Complaint attached hereto as Exhibit B, ¶19-20). DULBERG did not discover that the settlement with the McGuires would limit his recovery until the mediation award was entered and had no reason to believe he could not recover the full amount of his injuries.

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38. DULBERG's Complaint is also timely filed based on Defendants' fraudulent concealment. (See Complaint attached hereto as Exhibit B, ¶15, 19, 20, 21(g)(i)(j)).

39. Fraudulent concealment stops the running of the limitations period until the cause of action is discovered. *Henderson Square Condominium Ass'n v. LAB Townhomes, L.L.C.,* 2014 IL App (1st) 130764, ¶94 (1st Dist., 2014).

40. To state a claim of fraudulent concealment, a Plaintiff must allege that "the defendant concealed a material fact when he was under a duty to disclose that fact to plaintiff." (internal citation omitted) *DeLuna v. Burciaga*, 223 Ill.2d 49, 77 (Ill, 2006).

The *DeLuna* Court discussed certain situations where there is a duty to disclose a material fact. First, if plaintiff and defendant are in a fiduciary or confidential relationship, then defendant is under a duty to disclose all material facts. Second, a duty to disclose material facts may arise out of a situation where plaintiff places trust and confidence in defendant, thereby placing defendant in a position of influence and superiority over plaintiff. (internal citations omitted) *DeLuna v. Burciaga, supra.*

41. Moreover, Defendants' silence gives rise to DULBERG's claim for fraudulent concealment, because DULBERG trusted his attorneys. "Silence by a person in a position of trust concerning the facts giving rise to a cause of action amounts to fraudulent concealment." See *Doe v. Boy Scouts of America*, 66 N.E.3d 433, 456 (1st Dist., 2016),

42. DULBERG and Defendants were clearly in a fiduciary and confidential relationship: the attorney-client relationship. Defendants were under a duty to disclose all material facts and information to DULBERG. Defendants failed to do so.

43. "Whether an injured party justifiably relied upon defendants' words or silence depends on the surrounding circumstances and is a **question of fact** that is best left to the trier of

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fact." *(Emphasis added)* (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." *See* 735 ILCS 5/13-215.

45. DULBERG's Complaint states that DULBERG discovery the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

46. Therefore DULBERG would have until December 2021 to file his claims under fraudulent concealment. DULBERG filed his claims well within the five-year fraudulent concealment statute.

CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants' Combined Motion to Dismiss, and for all other relief this Honorable Court

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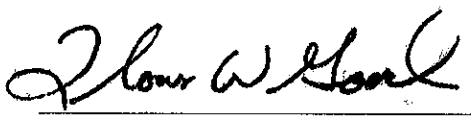
deems equitable and just. If this Court grants Defendants' Motion to Dismiss, PAUL DULBERG prays for a reasonable amount of time to file a First Amended Complaint.

Respectfully submitted by
THE GOOCH FIRM, on behalf of
PAUL DULBERG, Plaintiff,



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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111133930
17LA000377
02/07/2018
McHenry County, Illinois
22nd Judicial Circuit
****
Received Per Local Rule 1.19c

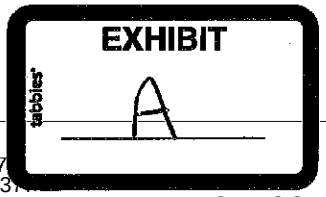
PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17LA000377

MEMORANDUM IN SUPPORT OF DEFENDANTS' COMBINED MOTION TO DISMISS

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, 735 ILCS 5/2-619(a)(5) and 735 ILCS 5/2-619.1, submit this Memorandum in Support of Defendants' Combined Motion to Dismiss Plaintiff's Complaint with prejudice, and state as follows:

I. INTRODUCTION

The Plaintiff Paul Dulberg ("Dulberg") retained defendants The Law Offices of Thomas J. Popovich P.C. ("Popovich") to prosecute a personal injury claim on his behalf against his next door neighbors, Carolyn and Bill McGuire and their adult son (Dulberg's lifelong friend), David Gagnon ("Gagnon")). Hans Mast ("Mast") handled the case for the firm. Dulberg was on the McGuires' property, assisting Gagnon trim some tree branches with a chainsaw, when Dulberg's right arm was lacerated by the chainsaw. Dulberg agreed to a settlement with



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the McGuires. Thereafter, he and Mast reached an impasse. Mast and the firm withdrew, and successor counsel continued to prosecute the case against Gagnon.

Dulberg now has a case of "buyer's remorse," admitting that he agreed to accept the McGuires' settlement offer. He has not plead the requisite elements of a legal malpractice case against Popovich and Mast, or the requisite elements of the underlying case (the "case within the case"). Moreover, his agreement to settle the case with the McGuires, approved by the court along with a good faith finding of settlement, estops him from now taking a contrary position. Finally, his legal malpractice claim is barred by the applicable two-year statute of limitations.

II. STATEMENT OF FACTS

A. The Following Facts Can Be Gleaned From The Complaint (Exhibit 1) and Its Exhibits

On June 28, 2011, Dulberg was assisting David Gagnon in the cutting down of a tree on the property of Carolyn and Bill McGuire. (Exhibit 1, ¶ 6). Gagnon lost control of the chainsaw and caused personal injury to Dulberg. (Exhibit 1, ¶ 7). In May of 2012, Dulberg retained Popovich. (Exhibit 1, ¶8). On May 15, 2012, Mast filed a Complaint on behalf of Dulberg against Gagnon and McGuires in the Circuit Court of McHenry County, Illinois, Case No, 12 LA 178. (Exhibit 1, ¶ 9, and Exhibit 1B)[1]. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of $5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 1, ¶ 13 and Exhibit 1C). Defendants continued to represent Dulberg until March 2015. Dulberg retained successor counsel and proceeded to a binding mediation at which time he apparently executed a High-Low Agreement and received a mediation award (Exhibit 1, ¶ 16 and Exhibit 1D). After

[1] The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 1A, 1B, 1C and 1D.

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the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 1, ¶ 20).

B. Alleged Acts of Negligence

In Exhibit 1, ¶ 21, Dulberg alleges that Defendants failed to take actions as were necessary to fix liability against the property owners of the subject property (the McGuires), alleging that they employed Gagnon and sought the assistance of Dulberg. It is alleged that they failed to thoroughly investigate liability issues against the property owners, failed to conduct necessary discovery, failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property, and improperly urged Dulberg to accept a "non-sensical" settlement from the property owners. It is also alleged that Defendants concealed necessary facts from Dulberg preventing him from making an informed decision as to the McGuires and "coercing" him in signing a Release and Settlement Agreement.

III. DULBERG FAILS TO STATE A CLAIM FOR LEGAL MALPRACTICE UNDER 735 ILCS 5/2-615

A. Legal Standard

It is clearly established that Illinois is a fact pleading jurisdiction, requiring the plaintiff to present a legally and factually sufficient complaint. *Winfrey v. Chicago Park Dist.*, 274 Ill. App. 3d 939, 942 (1st Dist. 1995). A plaintiff must allege facts sufficient to bring his or her claim within the cause of action asserted. *Jackson vs. South Holland Dodge,* 197 Ill. 2d 39 (2001). To pass muster a complaint must state a cause of action in two ways: first, it must be legally sufficient -- it must set forth a legally recognized claim as its avenue of recovery, and

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second, the complaint must be factually sufficient -- it must plead facts, which bring the claim within a legally recognized cause of action as alleged. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308 (1981). Dismissal of a complaint is mandatory if one fails to meet both requirements. *Misselhorn v. Doyle*, 257 Ill. App. 3d 983, 985 (5th Dist. 1994). In ruling on a Section 2-615 motion, "only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered." *Mount Zion State Bank and Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 115 (1995).

In Illinois, to establish a legal malpractice claim, a plaintiff must plead and prove the existence of an attorney client relationship; a duty arising from that relationship; a breach of that duty, the proximate causal relationship between the breach of duty and the damage sustained; and actual damages. *Glass v. Pitler*, 276 Ill. App. 3d 344, 349 (1st Dist. 1995). The injuries resulting from legal malpractice are not personal injuries but pecuniary injuries to intangible property interests. *Glass* at 349. Damages must be incurred and are not presumed. *Glass* at 349. It is the plaintiff's burden to establish that "but for" the attorney's negligence, the client would not have suffered the damages alleged. *Glass* at 349. "The proximate cause element of legal malpractice claim requires that the plaintiff show that but for the attorney's malpractice, the client would have been successful in the undertaking the attorney was retained to perform. *Green v. Papa*, 2014 IL App. (5th) 1330029 (2014), quoting *Owens v. McDermott Will & Emery*, 316 Ill. App. 340 (2000), at 351. The plaintiff in a legal malpractice claim must plead a case within the case. *Ignarski v. Norbut*, 271 Ill. App. 3d 522 (1995).

B. <u>Dulberg Fails to Plead Facts in Support of His Conclusory Allegations</u>

Dulberg's pleading and theory of recovery is confusing. Presumably, since Dulberg retained successor counsel in the underlying case, he is only complaining here about the

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McGuires' underlying liability, and nothing with respect to case against David Gagnon (when an attorney is discharged and transfers a then viable matter to a successor attorney, the first lawyer cannot be held to have proximately caused the client's lost claim, see *Mitchell v. Shain, Fursel, and Burney, Ltd.*, 332 Ill. App 3d 618 (1st. Dist. 2002), and *Cedeno v. Gumbiner*, 347 Ill. App. 3d 169 (1st Dist. 2004)).

Setting aside the Estoppel and Statute of Limitations issues which will be discussed below, Dulberg's complaint for legal malpractice is rife with unsupported conclusory allegations. Dulberg fails to allege requisite facts in support of each and every element of the "underlying" case or "case within the case" against the McGuires. Simply put, Dulberg fails to plead any facts in support of his conclusions that there was some liability against the McGuires. In ¶ 21 of his complaint, Dulberg alleges negligence against Popovich and Mast, but fails to identify what actions should have been taken and were not. In ¶ 21 (a), Dulberg fails to identify what investigation and discovery should have been undertaken. In ¶¶ 21 (b) and (c), Dulberg fails to identify or discuss the law that "defendants failed to understand." In ¶ 21 (d), Dulberg fails to plead any facts about why the settlement with the McGuires was improper or "non-sensical."

Under Illinois fact pleading requirements, much more is needed. In a case of alleged professional liability, the plaintiff cannot simply allege in conclusory terms that the defendants were negligent, and that the Plaintiff could have proved up liability against the underlying defendants. He must allege why and how. Dulberg's complaint must be dismissed pursuant to 735 ILCS 5/2-615.

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IV. DULBERG'S SETTLEMENT WITH THE MCGUIRES AND THE DOCTRINE OF JUDICIAL ESTOPPEL BAR HIS LEGAL MALPRACTICE CLAIM

Dulberg admits in ¶13 of his Complaint, that he agreed to a $5,000.00 settlement with the McGuires. Attached to this Complaint, is an unsigned copy of the Settlement Agreement, Exhibit 1C.[2] Because Dulberg agreed to the settlement with the McGuires, waived and released all claims against them and their insurance carrier, and allowed the Court to enter an Order on a Good Faith Finding of Settlement (a joint tortfeasor Gagnon remained in the case), he is now estopped from taking a contrary position that the settlement was appropriate, fair, knowing and voluntary.[3]

The doctrine of judicial estoppel provides that a party who assumes a particular position in a proceeding is estopped from assuming a contrary position in a subsequent proceeding. *Larson vs. O'Donnell*, 361 Ill. App. 3d 388, 398 (1st Dist. 2005), *rev'd on other grounds*. In *Larson*, a plaintiff became unemployed during the pendency of his divorce. At settlement, he agreed to pay a specified dollar amount for child support and specified dollar amount for maintenance, based on the income he earned prior to his having become unemployed. *Larson* at 391. The parties and their attorneys appeared before the court to present the marital settlement agreement for approval at a "prove up". *Larson* at 392. At the prove up hearing, the plaintiff gave unequivocal testimony that he understood the terms and conditions of the agreement and acknowledged the amounts he was required to pay under the agreement. *Larson* at 392. After entry of the judgment for dissolution of marriage, the plaintiff began paying support based on a

[2] It does not appear that Dulberg is denying the authenticity of the Settlement Agreement, despite the fact that his signature is not attached. Mast is in possession of a signed copy of the Settlement Agreement, which Dulberg executed on January 29, 2014.

[3] For the Court's convenience, attached as Exhibits 2 and 3 are the Motion for the Good Faith Finding and Court's Order granting the Good Faith Finding of Settlement. The Court may take judicial notice of its own court docket see *All Purpose Nursing Service v. Human Rights Com.*, 205 Ill. App. 3d 816, 823 (1st Dist. 1990). Notably, the McGuires also filed a counterclaim for contribution against Gagnon in the underlying case.

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percentage of his unemployment income rather than the amounts required by the judgement for dissolution. He was later held in contempt for failure to pay the amounts prescribed in the judgment of dissolution and attorney's fees were assessed against him in the divorce court. He sued his former attorneys for breach of fiduciary duty and legal malpractice. *Larson* at 393. The court held that the plaintiff in *Larson* was judicially estopped from attempting to create a question of fact regarding his "actual" understanding for purposes of summary judgment by later contradicting his previous position. *Larson* at 398.

Like Larson, Dulberg cannot now claim that he did not knowingly and voluntarily settle and release his claims against the McGuires. Moreover, Dulberg, like all adults, is "presumed to know the contents and meaning of the obligations he undertakes when he signs a written agreement." *Premier Elec. Const. Co. vs. Ragnar Benson, Inc.* 111 Ill. App. 3d 855, 865 (1st Dist. 1982). Accordingly, Dulberg is estopped from claiming that his agreement to settle the underlying case with the McGuires was not "knowing and voluntary," and he cannot claim that he was coerced. The final decision was his alone. Dulberg is estopped from now asserting a claim for legal malpractice against his former counsel. His Complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(9).

V. DULBERG'S CLAIM IS BARRED BY THE TWO YEAR STATUTE OF LIMITATIONS FOR CLAIMS AGAINST ATTORNEYS

Dulberg has failed to file his legal malpractice complaint against Popovich and Mast within the two year statute of limitations for claims against attorneys. 735 ILCS 5/13-214.3 provides for a two year statute of limitations period which shall begin to run at "the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought. *Ogle v. Hotto*, 273 Ill. App. 3d 313, 318 (5th Dist. 1995). 735 ILCS 5/13-214.3(b) reads as follows:

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> (b) An action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services or (ii) against a non-attorney employee arising out of an act or omission in the course of his or her employment by an attorney to assist the attorney in performing professional services must be commenced within two years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.

Dulberg's Complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(5) because on its face, his claims are untimely.

Dulberg admits in ¶ 14 of Exhibit 1 that Popovich's and Mast's representation ceased in March of 2015. Without some exception to the rule, a claim for legal malpractice would have been required to be filed by March 2017. Here, the Plaintiff did not file his Legal Malpractice Complaint against Defendants until November 28, 2017 (Exhibit 1), at least seven (7) months too late. Apparently realizing that his claims are untimely, Dulberg attempts to rely on the "discovery rule." He alleges in ¶ 20, without any factual support, that the information regarding the McGuires' liability as a property owner, was "false and misleading." As discussed above, Dulberg fails to allege any specific facts about any false and misleading information or other specifics as to Mast and Popovich's negligent conduct. Dulberg fails to plead facts in support of the case within the case, i.e. the McGuires' liability in the underlying cause of action. Dulberg alleges that he was advised to seek an independent opinion from an attorney handling legal malpractice matters on or about December 16, 2016, but provides no other explanation about why he was unaware of a claim until December 16, 2016. What happened after he signed the agreement on January 29, 2014?

While there was nothing preventing Dulberg at the time of the McGuire settlement from seeking a second opinion concerning the propriety or "sense" in settling, Illinois law requires a plaintiff relying on the discovery rule to plead facts in support of reliance on the discovery rule.

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In other words, the plaintiff must explain why he did not discover the cause of action until December 16, 2016. The plaintiff has the burden of proving the date of discovery. *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill.2d 72, 85 (1995). Moreover, under Illinois law, *actual knowledge* of the alleged malpractice is not a necessary condition to trigger the running of the statute of limitations. *SK Partners I, LP v. Metro Consultants, Inc.*, 408 Ill. App. 3d 127, 130 (1st Dist. 2011) ("under the discovery rule, a statute of limitations may run despite the lack of actual knowledge of negligent conduct") (emphasis in original)). A statute of limitations begins to run when the purportedly injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Bluewater Partners v. Mason*, 2012 IL App (1st 102165 at *p. 50).

Here, Dulberg fails to allege any facts to support a delay or tolling of the statute. He retained subsequent counsel after the defendants withdrew, and could have requested a legal opinion regarding the McGuires' liability then, why did he wait? His claim must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(5).

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V. CONCLUSION

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619(a)(5), and 735 ILCS 5/2-619.1, respectfully request this Honorable Court dismiss Plaintiff's Complaint with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

GEORGE K. FLYNN
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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT
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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gaguon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D.**

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

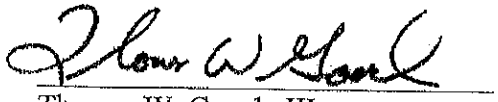
j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,



Thomas W. Gooch, III

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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111150626
17LA000377
04/10/2018
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17LA000377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS' REPLY IN SUPPORT OF COMBINED MOTION TO DISMISS

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, 735 ILCS 5/2-619(a)(5) and 735 ILCS 5/2-619.1, submit this Reply in Support of Defendants' Motion to Dismiss Plaintiff's Complaint at Law, and state as follows:

I. INTRODUCTION

One of the underpinnings of Dulberg's legal malpractice claim, is that a "high low agreement" he executed somehow caused him to settle his personal injury case for an amount lower than what he "expected." But Dulberg has failed to attach any such "high low agreement" to his complaint. He has also failed to identify the terms of the agreement in his complaint, and how the terms somehow affected his case. While in ¶ 3 of his Response he argues that the "high low agreement" was executed as part of the McGuire settlement, in view of Illinois Supreme Court Rule 137, he has not and cannot allege *in his complaint* that a "high low agreement" was executed as part of the McGuire settlement, or that Popovich or Mast had anything to do with it. In any case, the execution of a "high low agreement" by Dulberg in connection with the McGuire settlement makes little sense at the time, in view of Dulberg's later mediation and

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settlement with the co-defendant, David Gagnon. Dulberg's mention of the "high low" coupled with his failure to explain its terms or significance, renders it a legal world equivalent of a "MacGuffin."

Dulberg cannot allege that he was "forced" to settle his case with the McGuires for $5,000. He had every right to reject a settlement, or to retain new counsel. In fact, he alleges that Popovich withdrew over 21 months before the case was concluded (he retained successor counsel to handle the case). Moreover, he willingly agreed to a settlement with the McGuires while continuing to prosecute his case against Gagnon. He also fails to allege how he would have fared any better against the McGuires, "but for" Popovich's alleged malpractice, and fails to explain why he waited over 2 years after Popovich withdrew in order to sue the firm. For these reasons, Dulberg's complaint must be dismissed with prejudice.

II. DULBERG FAILS TO PLEAD FACTS IN SUPPORT OF EACH REQUISITE ELEMENT OF A LEGAL MALPRACTICE CLAIM

Dulberg fails to support any of his conclusions that Popovich and Mast committed legal malpractice with factual support. It is not sufficient under Illinois law that the elements of a cause of action simply be regurgitated. In a legal malpractice action, not only must the elements of the legal malpractice claim be supported with facts, so must the allegations of the underlying case. However, Dulberg only makes conclusory statements in ¶ 21 of his Complaint, that additional actions should have been taken in the underlying case. But Dulberg fails to identify what those actions should have been.

Dulberg alleges that he was forced to settle his case against the McGuires for $5,000.00. He does not allege in his Complaint whether the McGuires made a settlement offer, or whether Dulberg made a settlement demand. Did Mast forward a written settlement offer to Dulberg? Did he accept it and mail back an executed release? How was he pressured to settle? Dulberg

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also fails to explain the effect of a "high low agreement" that he allegedly executed. Dulberg attaches a page from a binding mediation award he allegedly received against David Gagnon, but he fails to attach the unexplained high low agreement. 735 ILCS 5/2-606, states in pertinent part:

> If a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein, unless the pleader attaches to his or her pleading an affidavit stating facts showing that the instrument is not accessible to him or her.

Dulberg fails to attach the high low agreement, or otherwise explain the terms of the agreement and its significance. He also fails to explain why he would enter a high low agreement with the McGuires 21 months prior to a mediation with Gagnon.

Because Dulberg fails to plead facts in support of each and every element of his legal malpractice claim and his underlying claim and how he would have prevailed "but for" the negligence of Popovich and Mast, his case must be dismissed pursuant to 735 ILCS 5/2-615.

III. DULBERG IS ESTOPPED FROM REPUDIATING HIS SETTLEMENT AGREEMENT

Dulberg asserts that he is not estopped from taking a position in this case that he did not understand the terms of his $5,000.00 settlement agreement with the McGuires. His attempt to distinguish *Larson v. O'Donnell*, 375 Ill. App. 3d 702 (1st Dist. 2007) fails. Dulberg argues that unlike *Larson*, here there is no record of Dulberg testifying to knowing exactly what the terms of the settlement agreement[sic][were]. (Response, p. 8). However, here there is no dispute that Dulberg knowingly executed the settlement release in favor of the McGuires. Moreover, in a case cited by Dulberg, *Seymour v. Collins*, 2015 IL 118432 the Illinois Supreme Court wrote that "a statement under oath was not among the requirements for judicial estoppel." *Seymour* at *P38.

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Dulberg also continues to argue in pages 8 and 9 of his Response that he was unable to make an informed decision about accepting settlement because he was never informed "by his attorneys that a "high low" agreement would limit his recovery against the remaining defendants." (Response, ¶¶ 23 and 26). As discussed above, Dulberg has not and cannot allege in his complaint that Popovich or Mast had any involvement with any such "high low" agreement. Accordingly, his argument that they failed to inform him of the effects of the agreement, and how it could limit his recovery against the remaining defendants, is not well plead and amounts to a "red herring". In fact, in ¶ 20 of his complaint, Dulberg sets forth the time frame of the execution of the "high low" agreement: "Following the execution of the mediation agreement with the "high low agreement" contained therein, and the final mediation award, Dulberg realized for the first time that the information MAST and POPOVICH had given Dulberg was false and misleading..." Which is it? Is he claiming that the "high low" was executed in 2015 prior to Popovich's and Mast's withdrawal, or at mediation (almost 2 years later in 2017)? Obviously Popovich and Mast could not have counseled Dulberg regarding a "high low" agreement he apparently executed 21 months after their attorney-client relationship ended. The allegations concerning the "high low" agreement are not well plead and are dispositive of Dulberg's claims under section 2-615 and 735 ILCS 5/2-619 (a)(9).

IV. DULBERG'S RELIANCE ON THE DISCOVERY RULE TO DELAY THE COMMENCEMENT OF THE STATUTE OF LIMITATIONS IS UNAVAILING

Dulberg confirms in his Response that he is attempting to rely on the discovery rule in order to toll the statute of limitations. He also relies on language from the case of *Goodman v. Harbor Market, Ltd.*, 278 Ill. App. 3d (1st Dist. 1995) for the proposition that he is "presumed unable to distinguish any misapplication or negligence by the Defendants, on his own [sic]." He also alleges that he was provided with a legal opinion after the December 16, 2016 mediation

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[with Gagnon] at which time he learned for the first time "that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake." (Response, p. 11). How was the information misleading?

Again, Dulberg fails to describe how the settlement and dismissal of the McGuires was a mistake. But more importantly, he does not allege what happened in the 21 months after defendants were discharged as his counsel. Under Illinois law, he cannot simply bury his head in the sand. There was nothing preventing Dulberg from inquiring about the McGuires' liability from his successor counsel, also a personal injury attorney. If he felt pressured into settling with the McGuires, why did he not seek a second opinion at the time of the settlement?

Dulberg has the burden of proving the date of discovery, and here he has failed to even allege sufficient facts to support a tolling of the limitations period. For that reason, his complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(5).

V. CONCLUSION

WHEREFORE, for the reasons stated in their Motion to Dismiss and Memorandum in Support, and as stated herein, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619(a)(5), and 735 ILCS

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5/2-619.1, respectfully request this Honorable Court dismiss Plaintiff's Complaint at Law with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was caused to be served by Email and/or U.S. Mail by depositing same in the U.S. Mail at 10 S. LaSalle Street, Chicago, IL 60603, and properly addressed, with first class postage prepaid, on the 10th day of April, 2018, addressed to counsel of record as follows:

Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.



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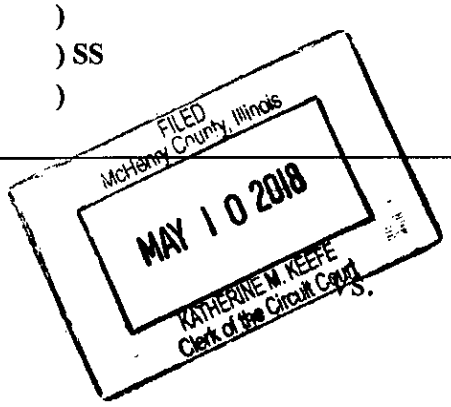
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT Ln. 6 ORD

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury



Dulberg vs. Mast, et al

Date: 5-10-18 Plaintiff's Attorney S. Walczyk Defendant's Attorney G Flynn

ORDER

This matter before the Court on hearing on Defendants' combined Motion to Dismiss, both parties present by counsel, the Court fully advised in the premises

It IS ORDERED:

1. Defendants' 2-615 motion to Dismiss is granted, and the 2-619 Motion is denied

2. Plaintiff granted 28 days (6/7/18) to file a First Amended Complaint

3. Defendants granted 28 days (7/5/18) thereafter to Answer or otherwise plead

4. Matter is set for status of pleadings on July 20, 2018 at 9:00 am in 201.

Prepared by: S. Walczyk / Gooch Firm
Attorney for: Dulberg
Attorney Registration No.: 6315819 Judge:

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111166062
17LA000377
06/07/2018
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendant.	)	No. 17 LA 377

FIRST AMENDED COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his First Amended Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the same area.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike and cut DULBERG's arm. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A.**

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants properly filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. Also MAST incorrectly informed DULBERG that the insurance policy limit for the Gagnon was only $100,000.00, when in reality the policy was $300,000.00.

14. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST began urging DULBERG to settle the matter against William McGuire and Caroline McGuire for $5,000.00.

15. On November 18, 2013, MAST wrote two emails to DULBERG urging DULBERG to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

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16. Similarly, on November 20, 2013 MAST emailed DULBERG urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.)**

17. On or around December 2013 or January 2014, MAST met with DULBERG and other family members and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told DULBERG that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

18. DULBERG, having no choice in the matter, reluctantly agreed with MAST to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit D**.

19. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled

20. After accepting the $5,000 settlement, DULBERG wrote MAST an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.)**

21. MAST and POPOVICH continued to represent DULBERG into 2015 and continuously assured him that his case was being handled properly.

22. On February 22, 2015, as to any chance of settling the remainder of his case against Gagnon MAST wrote to DULBERG that, "There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only

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alternative is to take the case to trial and I am not interested in doing that." (See Email attached as **Exhibit F.)**

23. MAST and POPOVICH represented DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship due to a claimed failure of communication. MAST and POPOVICH withdrew from the representation of DULBERG.

24. Thereafter, DULBERG retained other attorneys and proceeded to a Court ordered binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. However, due to the settlement with the McGuires, DULBERG was only able to collect $300,000.00 based upon the insurance policy available. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit G.**

25. The McGuires were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuires were well able to pay all, or a portion of the binding mediation award had they still remained parties.

26. DULBERG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

27. Until the time of the mediation award, DULBERG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuires would only complicate the case.

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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

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f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails. into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;

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n) Failed to retain a liability expert to prove DULBERG's damages;

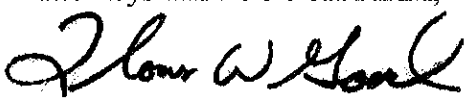
o) Were otherwise negligent in their representation of DULBERG.

32. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBERG to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

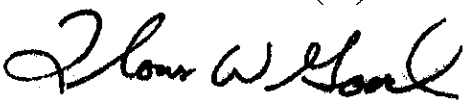
Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,



Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.



Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
tabbies
A

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COPY
MAY 16 2012
KATHERINE M. KELLER
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 9/25 20 22, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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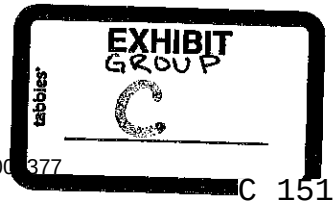
From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
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Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
tabbies
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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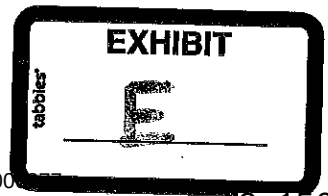
From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI



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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

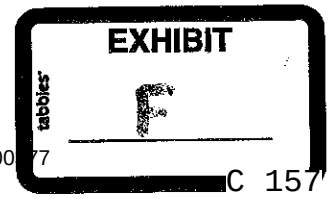
The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.



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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (If applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

EXHIBIT tabbies 6

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111166062
17LA000377
06/07/2018
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, Defendants.	))))))))	No.: 17 LA 377

NOTICE OF FILING

TO: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

PLEASE TAKE NOTICE that on **June 7, 2018** I caused to be filed with the Clerk of the Circuit Court of McHenry County, Illinois the attached *Plaintiff's First Amended Complaint at Law.*

Thomas W. Gooch, III

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that she served a copy of the foregoing to whom it is addressed via the McHenry County I2File Efile System and via email transmission to on June 7, 2018.

THE GOOCH FIRM
209 South Main Street
Wauconda, Illinois 60084
847 526 0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No.: 3123355

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Katherine M. Keefe
Clerk of the Circuit Court
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17LA000377
07/05/2018
McHenry County, Illinois
22nd Judicial Circuit
****

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17LA000377

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT AT LAW

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, submit this Memorandum in Support of Defendants' Motion to Dismiss Plaintiff's First Amended Complaint at Law with prejudice, and state as follows:

I. INTRODUCTION

The Plaintiff Paul Dulberg ("Dulberg") retained defendants The Law Offices of Thomas J. Popovich P.C. ("Popovich") to prosecute a personal injury claim on his behalf against his next door neighbors, Carolyn and Bill McGuire and their adult son (Dulberg's lifelong friend), David Gagnon ("Gagnon")). Hans Mast ("Mast") handled the case for the firm. Dulberg was on the McGuires' property, assisting Gagnon trim some tree branches with a chainsaw, when Dulberg's right arm was lacerated by the chainsaw. Dulberg agreed to a settlement with the McGuires. Thereafter, he and Mast reached an impasse. Mast and the firm withdrew, and successor counsel continued to prosecute the case against Gagnon.

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Dulberg now has a case of "buyer's remorse," admitting that he reluctantly agreed to accept the McGuires' settlement offer. He has attempted to state a claim against Popovich and Mast for legal malpractice. However, he has not plead the requisite elements of a legal malpractice case against Popovich and Mast, or the requisite elements of the underlying case (the "case within the case").

II. PROCEDURAL HISTORY

On November 28, 2017, Plaintiff filed his single count Complaint at Law for legal malpractice. Defendants moved to dismiss. On May 10, 2018, the Court granted Defendants' Motion to Dismiss pursuant to 735 ILCS 5/615 (see Order attached as Exhibit 1). During the hearing on Defendants' Motion to Dismiss, Judge Meyer ordered that the Plaintiff plead with more particularity and specificity regarding any allegations that he was misled. The Court also ordered the Plaintiff to provide more specificity and particularity with respect to any claims that information provided by Defendants to the Plaintiff was false and misleading. Plaintiff filed its First Amended Complaint at Law on June 7, 2018.

III. STATEMENT OF FACTS

A. The Following Facts Can Be Gleaned From The First Amended Complaint (Exhibit 2) and Its Exhibits

On June 28, 2011, Dulberg was assisting David Gagnon in the cutting down of a tree on the property of Carolyn and Bill McGuire. (Exhibit 2, ¶ 6). Gagnon lost control of the chainsaw and caused personal injury to Dulberg. (Exhibit 2, ¶ 7). In May of 2012, Dulberg retained Popovich. (Exhibit 2, ¶8). On May 15, 2012, Mast filed a Complaint on behalf of Dulberg against Gagnon and the McGuires in the Circuit Court of McHenry County, Illinois, Case No, 12

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LA 178. (Exhibit 2, ¶ 9, and Exhibit 2B)[1]. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of $5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 2, ¶ 18 and Exhibit 2D). Defendants continued to represent Dulberg until March 2015. (Exhibit 2, ¶ 21). Dulberg retained successor counsel and proceeded to a binding mediation and received a mediation award (Exhibit 2, ¶ 24 and Exhibit 2G). After the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 2, ¶ 28-29).

B. Alleged Acts of Negligence

Popovich's and Mast's alleged malpractice revolves around the settlement of the underlying case between Dulberg and McGuires. The allegations of a breach of the standard of care are all contained in ¶ 31, subsections a) through o) inclusive. Paragraph 31 states as follows:

> 31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:
>
> a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;
>
> b) Failed to thoroughly investigate liability issues against property owners of the subject property;

[1] The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 2A, 2B, 2C, 2D, 2E, 2F, and 2G.

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c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails, into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that [sic] had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;

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n) Failed to retain a liability expert to prove DULBERG's damages;

o) Were otherwise negligent in their representation of DULBERG.

IV. DULBERG FAILS TO STATE A CLAIM FOR LEGAL MALPRACTICE UNDER 735 ILCS 5/2-615

A. Legal Standard

It is clearly established that Illinois is a fact pleading jurisdiction, requiring the plaintiff to present a legally and factually sufficient complaint. *Winfrey v. Chicago Park Dist.*, 274 Ill. App. 3d 939, 942 (1st Dist. 1995). A plaintiff must allege facts sufficient to bring his or her claim within the cause of action asserted. *Jackson vs. South Holland Dodge,* 197 Ill. 2d 39 (2001). To pass muster a complaint must state a cause of action in two ways: first, it must be legally sufficient -- it must set forth a legally recognized claim as its avenue of recovery, and second, the complaint must be factually sufficient -- it must plead facts, which bring the claim within a legally recognized cause of action as alleged. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308 (1981). Dismissal of a complaint is mandatory if one fails to meet both requirements. *Misselhorn v. Doyle*, 257 Ill. App. 3d 983, 985 (5th Dist. 1994). In ruling on a Section 2-615 motion, "only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered." *Mount Zion State Bank and Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 115 (1995).

In Illinois, to establish a legal malpractice claim, a plaintiff must plead and prove the existence of an attorney client relationship; a duty arising from that relationship; a breach of that duty, the proximate causal relationship between the breach of duty and the damage sustained; and actual damages. *Glass v. Pitler*, 276 Ill. App. 3d 344, 349 (1st Dist. 1995). The injuries

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resulting from legal malpractice are not personal injuries but pecuniary injuries to intangible property interests. *Glass* at 349. Damages must be incurred and are not presumed. *Glass* at 349. It is the plaintiff's burden to establish that "but for" the attorney's negligence, the client would not have suffered the damages alleged. *Glass* at 349. "The proximate cause element of legal malpractice claim requires that the plaintiff show that but for the attorney's malpractice, the client would have been successful in the undertaking the attorney was retained to perform. *Green v. Papa*, 2014 IL App. (5th) 1330029 (2014), quoting *Owens v. McDermott Will & Emery*, 316 Ill. App. 340 (1st Dist. 2000), at 351. The plaintiff in a legal malpractice claim must plead a case within the case. *Ignarski v. Norbut*, 271 Ill. App. 3d 522 (1st Dist.1995).

B. Dulberg Fails to Plead Facts in Support of His Conclusory Allegations

Dulberg's second attempt at stating a claim fairs no better than his first. He still fails to plead with specificity and particularity as to how he was misled, or how any information provided to him was false and misleading. His allegations are pled in conclusory fashion throughout. He also fails to plead any facts concerning the McGuires' liability in the underlying case. His allegations concern the viability of a tort claim against property owners. Accordingly, he must plead facts in support of the property owners' [the McGuires] liability in the underlying case. Instead, Dulberg pleads only conclusions. More is necessary under Illinois law.

Dulberg has failed to follow the court's direction from the hearing on Defendant's Motion to Dismiss. The allegations of negligence contained in ¶ 31 fail to allege any facts in support of the conclusions. For example, what necessary discovery was not conducted? (¶ 31 (c)) What is the law pertaining to a property owner's duties and responsibilities? (¶ 31 (f)). How did defendants falsely advise Dulberg that the actions taken regarding the McGuires was proper? (¶ 31 (i)). What was concealed from Dulberg? (¶ 31 (k)). The bottom line is that Dulberg has yet to explain how the McGuires would have been found liable. The only thing that can be gleaned

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from the facts alleged in the Complaint and First Amended Complaint, is that Dulberg was injured on their property. He fails to explain how the McGuire's breached any duty to him, and how they would have been liable.

Additionally, Dulberg's allegations of coercion are not supported by his own pleadings. It is reasonably inferred from the pleadings that Dulberg had ample time to retain another attorney (in fact later he did). Exhibit E to his First Amended Complaint establishes that he deliberated over the decision to settle, and mailed a signed release back to Mast. So how was he coerced, when he alleges that he met with Mast, and then later mailed the executed release?

Moreover, his allegations regarding the failure to retain an expert are unsupported. He also fails to explain why his successor counsel did not retain an expert at the appropriate time if necessary. Lastly, Dulberg can never properly allege proximately caused damages regarding the allegation in ¶ 31 (e), that Gagnon's insurance coverage was $300,000 and not $100,000. In fact, Dulberg admits in ¶ 24 that he recovered $300,000 in available coverage from Gagnon. If Mast incorrectly reported the available coverage, it did not cause any damage, as Dulberg's successor counsel was apparently able to recover the full amount of available coverage against the individual who injured Dulberg with a chainsaw.

Under Illinois fact pleading requirements, much more is needed. In a case of alleged professional liability, the plaintiff cannot simply allege in conclusory terms that the defendants were negligent, and that the Plaintiff could have proved up liability against the underlying defendants. He must allege why and how. Dulberg has failed twice. His First Amended Complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-615.

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V. CONCLUSION

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615 respectfully request this Honorable Court dismiss Plaintiff's Complaint with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
(312) 855-1010
Attorneys for Defendants
gflynn@clausen.com

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was caused to be served by Email and/or U.S. Mail by depositing same in the U.S. Mail at 10 S. LaSalle Street, Chicago, IL 60603, and properly addressed, with first class postage prepaid, on the 5th day of July, 2018, addressed to counsel of record as follows:

Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

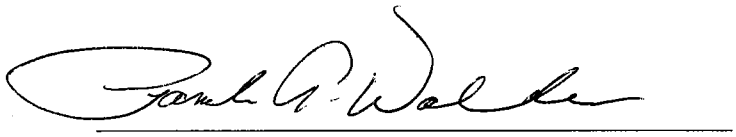

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EXHIBIT 1

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IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

FILED
McHenry County, Illinois
MAY 10 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury

Dulberg vs. Mast, et al

Date: 5-10-18 Plaintiff's Attorney S. Walczyk Defendant's Attorney G Flynn

ORDER

This matter before the Court on hearing on Defendants' combined Motion to Dismiss, both parties present by counsel, the Court fully advised in the premises

IT IS ORDERED:

1. Defendants' 2-615 motion to Dismiss is granted, and the 2-619 Motion is denied
2. Plaintiff granted 28 days (6/7/18) to file a First Amended Complaint
3. Defendants granted 28 days (7/5/18) thereafter to Answer or otherwise plead
4. Matter is set for status of pleadings on July 20, 2018 at 9:00 am in 201.

Prepared by: S. Walczyk / Cook Firm
Attorney for: Dulberg
Attorney Registration No.: 6315819 Judge:

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EXHIBIT 2

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111166062
17LA000377
06/07/2018
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG, Plaintiff,	)	
	)	No.: 17 LA 377
v.	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, Defendants.	)	

NOTICE OF FILING

TO: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

PLEASE TAKE NOTICE that on **June 7, 2018** I caused to be filed with the Clerk of the Circuit Court of McHenry County, Illinois the attached *Plaintiff's First Amended Complaint at Law.*

Thomas W. Gooch, III

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that she served a copy of the foregoing to whom it is addressed via the McHenry County I2File Efile System and via email transmission to on June 7, 2018.

THE GOOCH FIRM
209 South Main Street
Wauconda, Illinois 60084
847 526 0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No.: 3123355

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PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendant.	)	No. 17 LA 377

FIRST AMENDED COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his First Amended Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the same area.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike and cut DULBERG's arm. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants properly filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. Also MAST incorrectly informed DULBERG that the insurance policy limit for the Gagnon was only $100,000.00, when in reality the policy was $300,000.00.

14. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST began urging DULBERG to settle the matter against William McGuire and Caroline McGuire for $5,000.00.

15. On November 18, 2013, MAST wrote two emails to DULBERG urging DULBERG to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

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16. Similarly, on November 20, 2013 MAST emailed DULBERG urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

17. On or around December 2013 or January 2014, MAST met with DULBERG and other family members and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told DULBERG that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

18. DULBERG, having no choice in the matter, reluctantly agreed with MAST to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit D**.

19. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled

20. After accepting the $5,000 settlement, DULBERG wrote MAST an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

21. MAST and POPOVICH continued to represent DULBERG into 2015 and continuously assured him that his case was being handled properly.

22. On February 22, 2015, as to any chance of settling the remainder of his case against Gagnon MAST wrote to DULBERG that, "There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only

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alternative is to take the case to trial and I am not interested in doing that." (See Email attached as **Exhibit F.)**

23. MAST and POPOVICH represented DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship due to a claimed failure of communication. MAST and POPOVICH withdrew from the representation of DULBERG.

24. Thereafter, DULBERG retained other attorneys and proceeded to a Court ordered binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. However, due to the settlement with the McGuires, DULBERG was only able to collect $300,000.00 based upon the insurance policy available. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit G.**

25. The McGuires were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuires were well able to pay all, or a portion of the binding mediation award had they still remained parties.

26. DULBERG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

27. Until the time of the mediation award, DULBERG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuires would only complicate the case.

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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

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f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails. into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;

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n) Failed to retain a liability expert to prove DULBERG's damages;

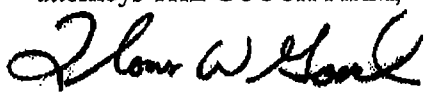
o) Were otherwise negligent in their representation of DULBERG.

32. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBERG to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

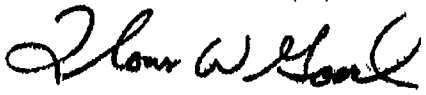
Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,



Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.



Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
tabbies
A

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COPY
FILED
MAY 15 2012
KATHERINE M. KEEPE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 204 ON 11-28-2012 AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON 20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
B

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and know that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>>
>> Sent from my iPhone
>>
>>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>>
>>> Only 5, That's not much at all.
>>> Is this a take it or leave it or do we have any other options?
>>>
>>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>>
>>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
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D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111174617 / Case #17LA000377
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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, It's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
> > ----- Original Message -----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
> > Subject: McGuire settlement
> > Here is a copy of the first page.
> > It has check boxes and one of the check boxes says;
> > I am not eligible to receive SSI or SSDI.
> > Another says;
> > I am not receiving SSI or SSDI.
> > As you know, I have applied for SSDI and SSI

EXHIBIT
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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

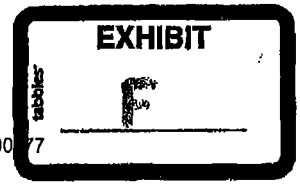
The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my IPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.



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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
PLS	75,000.
LNL	75,000.

The Honorable James P. Etchingham, (Ret.)

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111173529
17LA000377
07/05/2018
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17LA000377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS' MOTION TO DISMISS

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, move to dismiss Plaintiff's First Amended Complaint at Law, and state as follows:

1. The Plaintiff Paul Dulberg ("Dulberg") retained defendants The Law Offices of Thomas J. Popovich P.C. ("Popovich") to prosecute a personal injury claim on his behalf against his next door neighbors, Carolyn and Bill McGuire and their adult son (Dulberg's lifelong friend), David Gagnon ("Gagnon")). Hans Mast ("Mast") handled the case for the firm. This legal malpractice case arises out of that underlying personal injury case.

2. It is clearly established that Illinois is a fact pleading jurisdiction, requiring the plaintiff to present a legally and factually sufficient complaint. *Winfrey v. Chicago Park Dist.*, 274 Ill. App. 3d 939, 942 (1st Dist. 1995). A plaintiff must allege facts sufficient to bring his or her claim within the cause of action asserted. *Jackson vs. South Holland Dodge,* 197 Ill. 2d 39 (2001).

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3. In Illinois, to establish a legal malpractice claim, a plaintiff must plead and prove the existence of an attorney client relationship; a duty arising from that relationship; a breach of that duty, the proximate causal relationship between the breach of duty and the damage sustained; and actual damages. *Glass v. Pitler*, 276 Ill. App. 3d 344, 349 (1st Dist. 1995).

4. The plaintiff in a legal malpractice claim must plead a case within the case. *Ignarski v. Norbut*, 271 Ill. App. 3d 522 (1st Dist. 1995).

5. Dulberg fails to allege requisite facts in support of a legal malpractice claim, including each and every element of the "underlying" case or "case within the case" against the McGuires.

6. Dulberg's complaint must be dismissed pursuant to 735 ILCS 5/2-615.

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615, respectfully request this Honorable Court dismiss Plaintiff's First Amended Complaint at Law with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
(312) 855-1010
Attorneys for Defendants
gflynn@clausen.com

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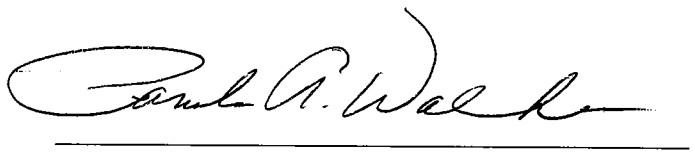
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was caused to be served by Email on the 5th day of July, 2018, addressed to counsel of record as follows:

Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.



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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111173529
17LA000377
07/05/2018
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG, Plaintiff,	)	
vs.	)	No. 17LA000377
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	

NOTICE OF MOTION

TO: Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

On **July 20, 2018 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the **Honorable Judge Thomas A. Meyer**, or any Judge sitting in his stead in **Courtroom 201,** in the **McHenry County Government Center, 2200 N. Seminary Avenue, Woodstock, Illinois** and present **Defendants' Motion to Dismiss and Memorandum in Support of Defendants' Motion to Dismiss First Amended Complaint at Law**, copies of which is attached and served upon you herewith.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
312-855-1010
Attorneys for Defendants

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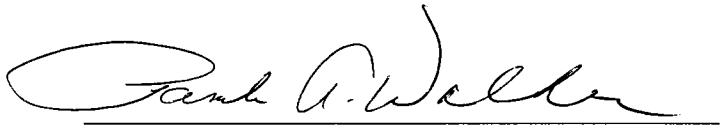
Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.



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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Dulberg
Plaintiff

vs

Law Offices of Thomas Popovich etal
Defendant

Circuit Clerk Use Only
✓ ORD
ORDJ
ORDDWP

Case Number 17 LA 377

ORDER

FILED
McHenry County, Illinois
JUL 20 2018
20
KATHERINE M. KEEFE
Clerk of the Circuit Court

☒ Plaintiff(s) appear in person/by attorney S. Walczyk

☒ Defendant(s) appear in person/by attorney G Flynn

☐ Summons not served; alias summons to issue; return date _____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☒ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to September 12, 2018 at 10:00, a m. for hearing on Motion to Dismiss First Amended Complaint.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☒ **COURT FURTHER ORDERS:**

- Plaintiff granted 28 days (8/17/18) to Respond.
- Defendants granted 14 days (8/31/18) to Reply.

Date: _____

Judge

CV-ORD13: Revised 10/01/08

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
******Electronically Filed******
Transaction ID: 17111184427
17LA000377
08/17/2018
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, Defendants.	)	No.: 17 LA 377

NOTICE OF FILING

TO: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

PLEASE TAKE NOTICE that on **August 17, 2018** I caused to be filed with the Clerk of the Circuit Court of McHenry County, Illinois the attached, *Plaintiff's Response to Defendant's Motion to Dismiss First Amended Complaint at Law*.

Thomas W. Gooch, III, Esq.

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that she served a copy of the foregoing to whom it is addressed via the McHenry County I2File Efile System and via email on August 17, 2018.

THE GOOCH FIRM
209 South Main Street
Wauconda, Illinois 60084
847 526 0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No.: 3123355

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111184427
17LA000377
08/17/2018
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG, Plaintiff,	)	
	)	No.: 17 LA 377
v.	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT AT LAW

NOW COMES, your Plaintiff, PAUL DULBERG, (hereinafter referred to as "DULBERG") by and through his attorneys, THE GOOCH FIRM, and for his Response to Defendants' THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST (hereinafter collectively referred to as "Defendants") Motion to Dismiss states to the Court the following:

INTRODUCTION

Defendants brought their Motion to Dismiss First Amended Complaint at Law, pursuant to Section 2-615. (See Defendants' Memorandum in Support of Defendants' Motion to Dismiss attached hereto without exhibits as **Exhibit A**.) In their Motion, Defendants argue that DULBERG failed to state a claim for legal malpractice. However, after review of the facts in the Complaint, this Honorable Court will determine that DULBERG's First Amended Complaint is sufficient to survive this Motion to Dismiss.

STANDARD OF REVIEW FOR SECTION 2-615

1. A Motion to Dismiss pursuant to section 2-615 attacks the legal sufficiency of the Complaint by alleging defects on its face. *Weisblatt v. Colky*, 265 Ill.App.3d 622, 625 (1st Dist. 1994). Section 2–615 motions "raise but a single issue: whether, when taken as true, the facts

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alleged in the Complaint set forth a good and sufficient cause of action." *Visvardis v. Ferleger* 375 Ill.App.3d 719, 723 (1st Dist. 2007), quoting *Scott Wetzel Services v. Regard,* 271 Ill.App.3d 478, 480, 208 Ill. Dec. 98, 648 N.E.2d 1020 (1995).

2. When the legal sufficiency of a Complaint is challenged by a section 2–615 Motion to Dismiss, all well-pleaded facts in the Complaint are taken as true and a reviewing court must determine whether the allegations of the Complaint, construed in a light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004); *King v. First Capital Financial Services Corp*. 215 Ill.2d 1, 12 (2005). A cause of action should not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved that will entitled the plaintiff to recover. *Zedella v. Gibson*, 165 Ill.2d 181, 185 (1995).

ARGUMENT
(under 2-615)

I. Dulberg sufficiently states a cause of action for legal malpractice against the Defendants.

1. In his First Amended Complaint, DULBERG sufficiently set forth the necessary elements of legal malpractice. "To prevail on a legal malpractice claim, the plaintiff client must plead and prove that the defendant attorneys owed the client a duty of due care arising from the attorney-client relationship, that the defendants breached that duty, and that as a proximate result, the client suffered injury." *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.,* 216 Ill.2d 294, 306-307 (Ill., 2005).

2. In the Motion to Dismiss, Defendants allege that DULBERG has not pled necessary facts. For example, Defendants argue that DULBERG did not plead enough facts as to what necessary discovery was not conducted under paragraph 31(c) of the First Amended Complaint (See Motion to Dismiss attached as **Exhibit A**, pg. 6) This is not true.

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3. In that same paragraph, DULBERG gives an example of what type of discovery was necessary, i.e. hiring a liability expert. (See First Amended Complaint, **Exhibit B**, ¶31(c).)

4. Had Defendants conducted expert discovery in DULBERG's case, the expert would have opined as to the liability of both Gagnon and the McGuires. DULBERG's allegations that an expert should have been hired by MAST is proper because had MAST hired an expert prior to releasing the McGuires, the expert could have opined as to their liability which would have resulted in the McGuires staying in the case and DULBERG being able to obtain a much higher mediation award. Further, this opinion should have been made prior to settling with the McGuires in order to determine whether $5,000.00 was a reasonable amount.

5. In their Motion, Defendants question why DULBERG's subsequent counsel did not retain an expert. (See Motion to Dismiss attached as **Exhibit A**, pg. 7) In fact, DULBERG and his subsequent counsel *did* retain an expert for the mediation and were successful in the mediation due to the expert's opinion as to liability. (See First Amended Complaint, **Exhibit B**, ¶24, 29.) Thus this issue in Defendants' Motion is moot.

6. DULBERG also discussed necessary discovery regarding insurance policies of Gagnon and McGuires. MAST failed to conduct discovery to obtain these insurance policies. This is evidenced in the First Amended Complaint where DULBERG pled that MAST advised him that Gagnon's insurance policy limit was only $100,000.00, when in reality it was later discovered that the limit was $300,000.00. (See First Amended Complaint, **Exhibit B**, ¶13, 22.) This shows that MAST did not have the sufficient discovery as to Gagnon's insurance policy.

7. Defendants' next issue with the First Amended Complaint is that DULBERG did not specify the law pertaining to a property owner's duties and responsibilities that MAST

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should have been familiar with while representing DULBERG. (See Motion to Dismiss attached as **Exhibit A**, pg. 6.)

8. The law that MAST should have understood under paragraph 31(f) of the First Amended Complaint is premises liability and the liabilities of the parties involved in the underlying case. "Under the Premises Liability Act, the duty owed by a premises owner or occupier to an invitee or a licensee is that of 'reasonable care under the circumstances regarding the state of the premises or acts done or omitted on them.'" (internal citation omitted) *Rhodes v. Illinois Cent. Gulf R.R.,* 172 Ill.2d 213, 228 (Ill., 1996).

9. In this case, DULBERG was an invitee of the McGuires. "An invitee is defined as one who enters the premises of another with the owner's or occupier's express or implied consent for the mutual benefit of himself and the owner, or for a purpose connected with the business in which the owner is engaged." *Rhodes v. Illinois Cent. Gulf R.R., supra*. The McGuires had a duty of reasonable care to DULBERG as an invitee because DULBERG was on their property for their benefit, to cut down a tree. (See First Amended Complaint, **Exhibit B**, ¶6.)

10. MAST's failure to become familiar with this law or chainsaw ownership liability, resulted in him coercing and pressuring DULBERG to accept a paltry settlement of $5,000.00 with the McGuries, when in fact their liability was much more, as presented by the expert during the mediation. Based on this law, MAST would have seen that McGuires as homeowners did in fact owe a duty to DULBERG.

11. Also, had MAST reviewed the law on premises liability, he could have considered the law as to ultrahazardous circumstances and the strict liability of the homeowners. "Illinois has recognized strict liability principally in two instances:" * * * "(2) when a defendant engages

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in ultrahazardous or abnormally dangerous activity as determined by the courts, giving particular consideration, *inter alia,* to the appropriateness of the activity to the place where it is maintained, in light of the character of the place and its surroundings." (internal citations omitted) *Miller v. Civil Constructors, Inc.,* 272 Ill.App.3d 263, 266 (2nd Dist., 1995). MAST should have considered strict liability as to the McGuires prior to advising DULBERG to settle.

12. Throughout the First Amended Complaint, DULBERG lists different ways (via email and in person communication) that Defendants falsely advised DULBERG that releasing the McGuires from liability was the proper course to take. (See First Amended Complaint, **Exhibit B**, ¶15-21.)

13. Also, MAST emailed and verbally told DULBERG that if he did not agree to the $5,000.00 settlement with the McGuires, he would get nothing. (See First Amended Complaint, **Exhibit B**, ¶15-21.)

14. Overall, DULBERG has pled with enough specificity what MAST and/or the Defendants did improperly to breach the standard of care.

15. As to the specific allegations relating to Defendants' concealment of facts to DULBERG, paragraph 31(k) of the First Amended Complaint, DULBERG stated what was concealed from him by the Defendants. Defendants concealed from DULBERG the actual policy limits from the McGuires and Gagnon, concealed facts relating to the explanation of liability law and what type of duty the McGuires owed to DULBERG, concealed that retaining an expert witness prior to accepting settlement would have been beneficial to DULBERG's case, and concealed the fact that Defendants were handling everything properly when this was not the truth.

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16. The facts pled regarding concealment are sufficiently pled in DULBERG's First Amended Complaint and must be taken as true in a Section 2-615 Motion.

17. Next, Defendants argue without any authority that DULBERG was not coerced because he had time to deliberate over the decision to settle. (See Motion to Dismiss attached as **Exhibit A**, pg. 7.) This is not true.

18. DULBERG's exhibits to the First Amended Complaint as well as the pleading itself demonstrate how MAST coerced DULBERG into the settlement with the McGuires.

19. DULBERG pled that MAST essentially gave him two options: to take the $5,000.00 settlement or get nothing. DULBERG was coerced into this decision because he was unaware of any other option and forced to take the only available option.

20. On multiple occasions, MAST told DULBERG, via email, to accept the settlement otherwise the McGuires will get out of the case for free. (See First Amended Complaint, **Exhibit B**, ¶15, 16.)

21. DULBERG also pled that MAST verbally told him that he had no choice but to execute a release of the McGuires and accept the $5,000.00. (See First Amended Complaint, **Exhibit B**, ¶17.)

22. Defendants also argue that Exhibit E to the First Amended Complaint shows that DULBERG had time to deliberate over the decision and thus could not have been coerced. (See Motion to Dismiss attached as **Exhibit A**, pg. 7.) This is not true.

23. Exhibit E to the First Amended Complaint is an email from DULBERG to MAST stating that the release was signed and put in the mail. Exhibit E further shows DULBERG's continued hesitation over the $5,000.00 settlement however, based on the information that

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MAST had told him, DULBERG said that he "trusted his judgment". See Exhibit E to the First Amended Complaint.

24. "Coercion" and "duress" have essentially the same meaning: overpowering another's free will by imposition, oppression, or undue influence. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 341 Ill.App.3d 438, 446 (4th Dist., 2003). MAST continuous verbal and written threats to accept the settlement or get nothing resulted in DULBERG thinking (based on what his attorney was telling him) that he had no other choice but to accept this small settlement.

25. More importantly, whether DULBERG was coerced or acted willingly is a question of fact. *Schwartz v. Schwartz*, 29 Ill.App. 516, 527 (4th Dist., 1889).

26. The pleading and exhibit show that DULBERG made the decision to settle after meeting with MAST in person, and MAST telling him that he had no choice but to accept the settlement. DULBERG acted quickly to accept the settlement based on the information that MAST told him that if he would not accept it, the offer would be withdrawn and the McGuires would be successful on a summary judgment motion.

27. Simply because Exhibit E states that the release was mailed weeks later, does not mean that DULBERG was not coerced into accepting the settlement based on the information that he was given by his attorney whom he trusted.

28. In any event, the issue of coercion must be left to the trier of fact to decide after all evidence is obtained and at this point, determining a factual question on a Motion to Dismiss would be inappropriate.

29. Last Defendants raise the issue of proximate cause as to MAST's improper determination of Gagnon's insurance coverage limit being $300,000.00 and not $100,000.00.

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(See Motion to Dismiss attached as **Exhibit A**, pg. 7.) As argued above, this allegation supports DULBERG's argument that MAST did not conduct the proper discovery, as evidenced by the incorrect policy limit. Had MAST not breached the standard of care and had he conducted proper discovery, DULBERG would have had the correct policy amount for Gagnon, and would have the insurance policy for the McGuires in order to make an informed decision as to settlement.

30. In DULBERG's case, he was forced to settle for an amount less than he would have reasonably received. After mediation, DULBERG was allowed only to recover to the extent of Gagnon's policy limits. (See First Amended Complaint, **Exhibit B**, ¶24, 27, 29.) Had MAST not allowed the release of the McGuires, DULBERG could have reasonably been able to collect the remainder of the mediation award against the McGuires. "Attorney malpractice action should be allowed where it can be shown that the plaintiff had to settle for a lesser amount than she could reasonably expect without the malpractice." *Brooks v. Brennan*, 255 Ill.App. 3d 260, 270 (5th Dist., 1994). Thus, DULBERG properly brought a malpractice against the Defendants.

31. The allegations set forth as to the legal malpractice by DULBERG in his First Amended Complaint are not conclusions and when taken as true, are sufficient to withstand a Section 2-615 dismissal.

32. DULBERG has proven that the actions and inactions of the Defendants have caused DULBERG damages. (See First Amended Complaint, **Exhibit B**, ¶31, 32.) Any dispute as to the proximate cause and damages must be left to the jury as it is a factual question. The issues of proximate cause and damages must be determined by a jury or trier of fact after all proper evidence and testimony is presented at trial. Proximate cause is a **question of fact** to be decided by a jury. (internal citation omitted) (Emphasis added) *Hooper v. County of Cook*, 366 Ill.App.3d 1, 7 (1st Dist., 2006). "The determination of damages is a **question of fact** that is

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within the discretion of the jury and is entitled to substantial deference." (Emphasis added.) *Linhart v. Bridgeview Creek Development, Inc.*, 391 Ill.App.3d 630, 636 (1st Dist., 2009).

33. Defendants in their Motion to Dismiss are requiring of DULBERG to plead his entire case in a single Complaint. "Plaintiff is not required to prove his case at this stage of the pleadings and the damages as alleged are sufficient to show he was damaged by Defendants' actions and cause of action for legal malpractice. *Fox v. Seiden*, *supra*, at 294; *Platson v. NSM America*, Inc., 322 Ill.App. 3d 138, 143 (2nd Dist., 2001) ('Cases are not to be tried at the pleadings stage, so a claimant need only show a possibility of recovery, not an absolute right to recover, to survive a 2-615 Motion.'). Here, DULBERG has shown at least a possibility of recovery based on the malpractice of Defendants, thus should survive Defendants' 2-615 Motion.

34. Accordingly, this Honorable Court should deny Defendants' Motion in order to allow the case to be fully and properly litigated.

CONCLUSION

After review of the allegations in the First Amended Complaint and taking the allegations as true, this Honorable Court must find that DULBERG has properly stated and pled a claim for legal malpractice. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a Second Amended Complaint to include any other facts this Court deems appropriate.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies Defendants' Motion to Dismiss and for all other relief this Honorable Court deems equitable and just. If this Court grants Defendants' Motion to Dismiss, PAUL DULBERG prays for a reasonable amount of time to file a Second Amended Complaint.

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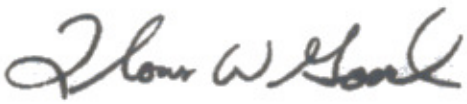
Respectfully submitted by
THE GOOCH FIRM, on behalf of
PAUL DULBERG, Plaintiff,



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Katherine M. Keefe
Clerk of the Circuit Court
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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17LA000377

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT AT LAW

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, submit this Memorandum in Support of Defendants' Motion to Dismiss Plaintiff's First Amended Complaint at Law with prejudice, and state as follows:

I. INTRODUCTION

The Plaintiff Paul Dulberg ("Dulberg") retained defendants The Law Offices of Thomas J. Popovich P.C. ("Popovich") to prosecute a personal injury claim on his behalf against his next door neighbors, Carolyn and Bill McGuire and their adult son (Dulberg's lifelong friend), David Gagnon ("Gagnon")). Hans Mast ("Mast") handled the case for the firm. Dulberg was on the McGuires' property, assisting Gagnon trim some tree branches with a chainsaw, when Dulberg's right arm was lacerated by the chainsaw. Dulberg agreed to a settlement with the McGuires. Thereafter, he and Mast reached an impasse. Mast and the firm withdrew, and successor counsel continued to prosecute the case against Gagnon.



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Dulberg now has a case of "buyer's remorse," admitting that he reluctantly agreed to accept the McGuires' settlement offer. He has attempted to state a claim against Popovich and Mast for legal malpractice. However, he has not plead the requisite elements of a legal malpractice case against Popovich and Mast, or the requisite elements of the underlying case (the "case within the case").

II. PROCEDURAL HISTORY

On November 28, 2017, Plaintiff filed his single count Complaint at Law for legal malpractice. Defendants moved to dismiss. On May 10, 2018, the Court granted Defendants' Motion to Dismiss pursuant to 735 ILCS 5/615 (see Order attached as Exhibit 1). During the hearing on Defendants' Motion to Dismiss, Judge Meyer ordered that the Plaintiff plead with more particularity and specificity regarding any allegations that he was misled. The Court also ordered the Plaintiff to provide more specificity and particularity with respect to any claims that information provided by Defendants to the Plaintiff was false and misleading. Plaintiff filed its First Amended Complaint at Law on June 7, 2018.

III. STATEMENT OF FACTS

A. The Following Facts Can Be Gleaned From The First Amended Complaint (Exhibit 2) and Its Exhibits

On June 28, 2011, Dulberg was assisting David Gagnon in the cutting down of a tree on the property of Carolyn and Bill McGuire. (Exhibit 2, ¶ 6). Gagnon lost control of the chainsaw and caused personal injury to Dulberg. (Exhibit 2, ¶ 7). In May of 2012, Dulberg retained Popovich. (Exhibit 2, ¶8). On May 15, 2012, Mast filed a Complaint on behalf of Dulberg against Gagnon and the McGuires in the Circuit Court of McHenry County, Illinois, Case No, 12

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LA 178. (Exhibit 2, ¶ 9, and Exhibit 2B)[1]. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of $5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 2, ¶ 18 and Exhibit 2D). Defendants continued to represent Dulberg until March 2015. (Exhibit 2, ¶ 21). Dulberg retained successor counsel and proceeded to a binding mediation and received a mediation award (Exhibit 2, ¶ 24 and Exhibit 2G). After the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 2, ¶ 28-29).

B. Alleged Acts of Negligence

Popovich's and Mast's alleged malpractice revolves around the settlement of the underlying case between Dulberg and McGuires. The allegations of a breach of the standard of care are all contained in ¶ 31, subsections a) through o) inclusive. Paragraph 31 states as follows:

> 31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:
>
> a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;
>
> b) Failed to thoroughly investigate liability issues against property owners of the subject property;

[1] The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 2A, 2B, 2C, 2D, 2E, 2F, and 2G.

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c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails, into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that [sic] had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;

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n) Failed to retain a liability expert to prove DULBERG's damages;

o) Were otherwise negligent in their representation of DULBERG.

IV. DULBERG FAILS TO STATE A CLAIM FOR LEGAL MALPRACTICE UNDER 735 ILCS 5/2-615

A. Legal Standard

It is clearly established that Illinois is a fact pleading jurisdiction, requiring the plaintiff to present a legally and factually sufficient complaint. *Winfrey v. Chicago Park Dist.*, 274 Ill. App. 3d 939, 942 (1st Dist. 1995). A plaintiff must allege facts sufficient to bring his or her claim within the cause of action asserted. *Jackson vs. South Holland Dodge,* 197 Ill. 2d 39 (2001). To pass muster a complaint must state a cause of action in two ways: first, it must be legally sufficient -- it must set forth a legally recognized claim as its avenue of recovery, and second, the complaint must be factually sufficient -- it must plead facts, which bring the claim within a legally recognized cause of action as alleged. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308 (1981). Dismissal of a complaint is mandatory if one fails to meet both requirements. *Misselhorn v. Doyle*, 257 Ill. App. 3d 983, 985 (5th Dist. 1994). In ruling on a Section 2-615 motion, "only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered." *Mount Zion State Bank and Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 115 (1995).

In Illinois, to establish a legal malpractice claim, a plaintiff must plead and prove the existence of an attorney client relationship; a duty arising from that relationship; a breach of that duty, the proximate causal relationship between the breach of duty and the damage sustained; and actual damages. *Glass v. Pitler*, 276 Ill. App. 3d 344, 349 (1st Dist. 1995). The injuries

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resulting from legal malpractice are not personal injuries but pecuniary injuries to intangible property interests. *Glass* at 349. Damages must be incurred and are not presumed. *Glass* at 349. It is the plaintiff's burden to establish that "but for" the attorney's negligence, the client would not have suffered the damages alleged. *Glass* at 349. "The proximate cause element of legal malpractice claim requires that the plaintiff show that but for the attorney's malpractice, the client would have been successful in the undertaking the attorney was retained to perform. *Green v. Papa*, 2014 IL App. (5th) 1330029 (2014), quoting *Owens v. McDermott Will & Emery*, 316 Ill. App. 340 (1st Dist. 2000), at 351. The plaintiff in a legal malpractice claim must plead a case within the case. *Ignarski v. Norbut*, 271 Ill. App. 3d 522 (1st Dist.1995).

B. Dulberg Fails to Plead Facts in Support of His Conclusory Allegations

Dulberg's second attempt at stating a claim fairs no better than his first. He still fails to plead with specificity and particularity as to how he was misled, or how any information provided to him was false and misleading. His allegations are pled in conclusory fashion throughout. He also fails to plead any facts concerning the McGuires' liability in the underlying case. His allegations concern the viability of a tort claim against property owners. Accordingly, he must plead facts in support of the property owners' [the McGuires] liability in the underlying case. Instead, Dulberg pleads only conclusions. More is necessary under Illinois law.

Dulberg has failed to follow the court's direction from the hearing on Defendant's Motion to Dismiss. The allegations of negligence contained in ¶ 31 fail to allege any facts in support of the conclusions. For example, what necessary discovery was not conducted? (¶ 31 (c)) What is the law pertaining to a property owner's duties and responsibilities? (¶ 31 (f)). How did defendants falsely advise Dulberg that the actions taken regarding the McGuires was proper? (¶ 31 (i)). What was concealed from Dulberg? (¶ 31 (k)). The bottom line is that Dulberg has yet to explain how the McGuires would have been found liable. The only thing that can be gleaned

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from the facts alleged in the Complaint and First Amended Complaint, is that Dulberg was injured on their property. He fails to explain how the McGuire's breached any duty to him, and how they would have been liable.

Additionally, Dulberg's allegations of coercion are not supported by his own pleadings. It is reasonably inferred from the pleadings that Dulberg had ample time to retain another attorney (in fact later he did). Exhibit E to his First Amended Complaint establishes that he deliberated over the decision to settle, and mailed a signed release back to Mast. So how was he coerced, when he alleges that he met with Mast, and then later mailed the executed release?

Moreover, his allegations regarding the failure to retain an expert are unsupported. He also fails to explain why his successor counsel did not retain an expert at the appropriate time if necessary. Lastly, Dulberg can never properly allege proximately caused damages regarding the allegation in ¶ 31 (e), that Gagnon's insurance coverage was $300,000 and not $100,000. In fact, Dulberg admits in ¶ 24 that he recovered $300,000 in available coverage from Gagnon. If Mast incorrectly reported the available coverage, it did not cause any damage, as Dulberg's successor counsel was apparently able to recover the full amount of available coverage against the individual who injured Dulberg with a chainsaw.

Under Illinois fact pleading requirements, much more is needed. In a case of alleged professional liability, the plaintiff cannot simply allege in conclusory terms that the defendants were negligent, and that the Plaintiff could have proved up liability against the underlying defendants. He must allege why and how. Dulberg has failed twice. His First Amended Complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-615.

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V. CONCLUSION

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615 respectfully request this Honorable Court dismiss Plaintiff's Complaint with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendant.	)	

FIRST AMENDED COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his First Amended Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.



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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the same area.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike and cut DULBERG's arm. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants properly filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. Also MAST incorrectly informed DULBERG that the insurance policy limit for the Gagnon was only $100,000.00, when in reality the policy was $300,000.00.

14. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST began urging DULBERG to settle the matter against William McGuire and Caroline McGuire for $5,000.00.

15. On November 18, 2013, MAST wrote two emails to DULBERG urging DULBERG to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

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16. Similarly, on November 20, 2013 MAST emailed DULBERG urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.)**

17. On or around December 2013 or January 2014, MAST met with DULBERG and other family members and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told DULBERG that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

18. DULBERG, having no choice in the matter, reluctantly agreed with MAST to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit D**.

19. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled

20. After accepting the $5,000 settlement, DULBERG wrote MAST an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.)**

21. MAST and POPOVICH continued to represent DULBERG into 2015 and continuously assured him that his case was being handled properly.

22. On February 22, 2015, as to any chance of settling the remainder of his case against Gagnon MAST wrote to DULBERG that, "There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only

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alternative is to take the case to trial and I am not interested in doing that." (See Email attached as **Exhibit F.**)

23. MAST and POPOVICH represented DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship due to a claimed failure of communication. MAST and POPOVICH withdrew from the representation of DULBERG.

24. Thereafter, DULBERG retained other attorneys and proceeded to a Court ordered binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. However, due to the settlement with the McGuires, DULBERG was only able to collect $300,000.00 based upon the insurance policy available. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit G**.

25. The McGuires were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuires were well able to pay all, or a portion of the binding mediation award had they still remained parties.

26. DULBERG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

27. Until the time of the mediation award, DULBERG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuires would only complicate the case.

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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

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f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails. into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;

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n) Failed to retain a liability expert to prove DULBERG's damages;

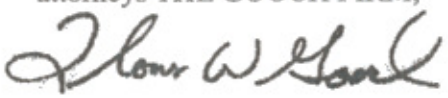
o) Were otherwise negligent in their representation of DULBERG.

32. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBERG to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

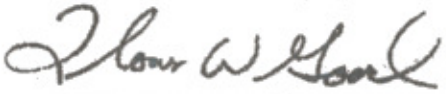
Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,



Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.



Thomas W. Gooch, III

Thomas W. Gooch, III
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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~40~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
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KATHERINE M. KEEPE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count 1

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 204 ON 11-28-2012, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON 20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 13 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
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C 237

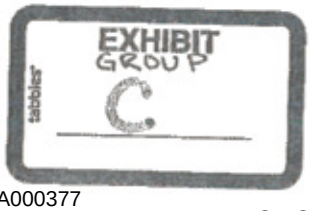
From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kokiak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
tabbies
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117[illegible] Case #17LA000377

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
> > ----- Original Message -----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
> > Subject: McGuire settlement
> > Here is a copy of the first page.
> > It has check boxes and one of the check boxes says;
> > I am not eligible to receive SSI or SSDI.
> > Another says;
> > I am not receiving SSI or SSDI.
> > As you know, I have applied for SSDI and SSI



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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case,..

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P/S	75,000.
L/N/L	75,000.

The Honorable James P. Etchingham, (Ret.)

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** FILED ** Env: 2042006
McHenry County, Illinois
17LA000377
Date: 8/30/2018 4:14 PM
Katherine M. Keefe
Clerk of the Circuit Court

27 9517 00 7

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17LA000377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT AT LAW

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, submit this Reply in Support of Defendants' Motion to Dismiss Plaintiff's First Amended Complaint at Law with prejudice, and state as follows:

I. INTRODUCTION

Dulberg's Response misses the point, and adds facts and theories that are not contained in his pleading. He now asserts that Mast failed to become familiar with the law of "chainsaw ownership liability" (Res. p. 4, ¶10), and that Mast "could have considered" the law as to ultrahazardous circumstances and the strict liability of the homeowners. But these facts and theories are not plead, and cannot be inferred from his First Amended Complaint. Moreover, what potential theories of recovery "could have been considered" [by a lawyer being sued for malpractice] is not the standard. Dulberg must ultimately demonstrate that he would have prevailed against the landowners in the case within the case. Instead, Dulberg fails to plead, or

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now argue, facts and law that would have imposed liability upon a homeowner for an accident which occurred when their adult son and his buddy were trimming a tree in the backyard. There is no allegation that the McGuire's were supervising the work, or that they owed some duty to supervise. Dulberg does not allege what they did wrong, only that they were liable.

II. DULBERG FAILS TO ADDRESS PROXIMATE CAUSE-THAT HE WOULD HAVE PREVAILED BUT FOR MALPRACTICE

A fundamental omission from Dulberg's pleading and his argument, is that he has not plead (and will be unable to establish), that he would have prevailed in the underlying case against the landowners. The cases upon which he relies do not support his contentions.

A. Negligence

Dulberg's pleading still relies only on conclusions about the potential liability of the landowners, and not facts or law. The case upon which he relies for the proposition that the landowners would have been liable to him (had he not settled with them) is unavailing, and simply sets out elements of premises liability law in Illinois. Dulberg cites *Rhodes v. Illinois Cent. Gulf R.R.* 172 Ill. 2d, 213, 228 (1996) to inform the court that the "duty owed by a premises owner or occupier to an invitee or a licensee is that of "reasonable care under the circumstances regarding the state of the premises or acts done or omitted on them." But he fails to plead facts here about how the McGuire's breached any duty to him, or how they did not use reasonable care under the circumstances when Dulberg volunteered to assist their adult son in trimming a tree. What did they do wrong?

Notably, Rhodes involved an alleged wrongful death of an intoxicated trespasser on the property of the defendant railroad. A Chicago police officer found the deceased laying on a bench on the defendant's property. The police took him to the hospital where he eventually died. The plaintiff's estate was awarded a significant verdict at trial by the jury. The Illinois Supreme

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Court reversed and remanded, ordering a new trial with instructions consistent with its holdings (and instructing the jury to determine whether the decedent was a trespasser or invitee). The case is simply not on point.

B. Strict Liability

For the first time, Dulberg raises in his Response (p. 4, ¶11) an allegation that "had MAST reviewed the law on premises liability, he could have considered the law as to ultrahazardous circumstances and the strict liability of the homeowners." He then cites to a case, apparently to reference one element of strict liability analysis (vis a vis landowners). But *Miller v. Civil Constructors, Inc.* 272 Ill. App. 3d 263, 266 (2nd Dist. 1995) is not helpful to him. In *Miller*, the plaintiff appealed the dismissal of his strict liability claim against a construction company and a city, after he was hit by a stray bullet which ricocheted during the course of firearm target practice at a nearby gravel pit. The appellate court affirmed the dismissal. "Under the circumstances presented, we hold as a matter of law that the discharge of firearms is not an ultrahazardous activity which would support plaintiff's strict liability claims." *(Miller* at *265). Dulberg fails to analyze Miller and explain how it is applicable here, which it is not.

One attorney may handle a case differently from another attorney, but these differences do not amount to a breach of the standard of care. In a legal malpractice case in Illinois, more is needed than a suggestion that an attorney "could have considered" a particular theory, and did not. A legal malpractice plaintiff must plead and prove that he would have been successful in the undertaking. Here, Dulberg must plead that he would have been successful in prosecuting a strict liability case. The fact is, he cannot support the factual or legal assertion that backyard chainsaw tree-trimming is a strict liability proposition. Moreover, his bare allegations that a liability expert should have been retained, as a red herring. There is no factual allegation as to why such an expert mattered.

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III. DULBERG FALLS SHORT IN ALLEGING THAT HE WAS MISLED

Dulberg fails to specify how he was misled. Even if Mast made a mistake about the McGuire's insurance coverage, it made no difference, and there is no damage. Dulberg cannot explain why $300,000 versus $100,000 in coverage made any difference, when he settled for $5000. Had the he settled for $99,999.99, his argument for damages may be colorable. In any event, he alleges no facts in support of the allegation that facts were "concealed." His other allegations that Mast concealed facts, include a quantum leap, now arguing in the Response at p. 5, ¶15, that Mast concealed facts relating to the explanation of liability law and what type of duty the McGuires's owed. This is absurd, given that Dulberg still has not alleged what the duty was, how it was breached, or in laymen's terms—what the McGuire's did wrong.

IV. CONCLUSION

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615 respectfully request this Honorable Court dismiss Plaintiff's Complaint First Amended Complaint at Law with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
(312) 855-1010
Attorneys for Defendants
gflynn@clausen.com

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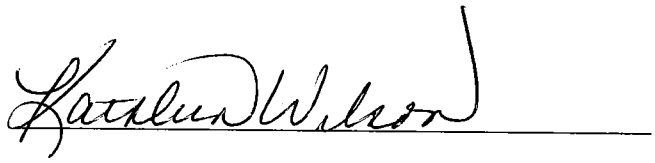
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was caused to be served through the McHenry County I2File Efile System and by email on the 31st day of August, 2018, addressed to counsel of record as follows:

Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.



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IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17 LA 377
☑ Jury ☐ Non-Jury

Dulberg

vs.

Popovich + Most

FILED
McHenry County, Illinois
SEP 12 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date: 9-12-18 Plaintiff's Attorney Sabina Walczyk Defendant's Attorney George Flynn

ORDER

This matter coming to be heard on Defendants' Motion to Dismiss Plaintiff's First Amended Complaint, it is hereby ordered:

1) Defendants' motion is granted as more fully described on the record and below.

2) Paragraphs ~~31~~ 31(b), (c), (f), (g), (h), (i), (k), (l), (m), (n), and (o) are stricken as conclusions or being redundant.

3) Plaintiff is granted leave to replead by October 10, 2018. Defendants' to file a responsive pleading by November 7, 2018.

4) Status hearing on November 13, 2018 at 9:00 a.m.

Prepared by: George Flynn
Attorney for: Defendants
Attorney Registration No.: 6239349 Judge:

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** FILED ** Env: 2483569
McHenry County, Illinois
17LA000377
Date: 10/9/2018 3:14 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendant.	)	

MOTION TO WITHDRAW

NOW COMES Thomas W. Gooch, III and THE GOOCH FIRM as and for their Motion to Withdraw their Appearance on behalf of Plaintiff, PAUL DULBERG, and in support of the Motion as aforesaid, state to the Court the following:

1) That serious and substantial differences in the handling of this case have arisen between the client and the undersigned.

2) That there has been a complete and irretrievable breakdown in the attorney-client relationship, communications and the handling of this matter, making further representation of the Plaintiff impossible under these circumstances.

3) That Plaintiff should be given 21 days or longer to retain new counsel or to file a *pro se* appearance, and until such time as he has retained new counsel or filed his *pro se* appearance, all notices should be sent to:

Mr. Paul Dulberg
4606 Heydew Ct.
McHenry, IL 60051

Received 10-10-2018 08:41 AM / Circuit Clerk Accepted on 10-10-2018 03:12 PM / Transaction #2483569 / Case #17LA000377
Purchased from re:SearchIL

WHEREFORE your movant prays this Honorable Court grant THE GOOCH FIRM and Thomas W. Gooch, III leave to withdraw their appearance on behalf of Plaintiff, PAUL DULBERG, *instanter*, and for any other relief deemed equitable and just.

Respectfully submitted by, by
THE GOOCH FIRM,

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

Received 10-10-2018 08:41 AM / Circuit Clerk Accepted on 10-10-2018 03:12 PM / Transaction #2483569 / Case #17LA000377
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** FILED ** Env: 2464567
McHenry County, Illinois
17LA000377
Date: 10/9/2018 12:00 AM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
Plaintiff,	)	Case No.: 2017 LA 377
v.	)	
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

NOTICE OF FILING

To: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

PLEASE TAKE NOTICE that on **October 8 2018** we filed with the Clerk of the Circuit Court of McHenry County, Illinois, the attached: *Proof of Service of Discovery Documents to Defendants.*

Thomas W. Gooch, III
Thomas W. Gooch, III

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that she served a copy of the foregoing to whom it is addressed via McHenry County E-file system and email from Wauconda, Illinois on October 8, 2018.

Thomas W. Gooch, III
Thomas W. Gooch, III

THE GOOCH FIRM
209 S, Main Street
Wauconda, Illinois 60084
847 526 0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No. 3123355

Received 10-10-2018 08:12 AM / Circuit Clerk Accepted on 10-10-2018 03:08 PM / Transaction #2464567 / Case #17LA000377

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** FILED ** Env: 2483569
McHenry County, Illinois
17LA000377
Date: 10/9/2018 3:14 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	)	
	)	No.: 17 LA 377
v.	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, Defendants.	)	

NOTICE OF MOTION

TO: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

Please take notice that on **October 15, 2018 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before **The Honorable Judge Meyer** in **Room 201**, or any judge sitting in his stead, in the courtroom usually occupied by him in the McHenry County Courthouse, Woodstock, Illinois, and then and there present**, Motion to Withdraw.**

/s/Thomas W. Gooch, III
Thomas W. Gooch, III

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that he served a copy of the foregoing to whom it is addressed via email and Odyssey E-filing system from Wauconda, Illinois on October 9, 2018, before 5:00 p.m.

/s/Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 South Main Street
Wauconda, Illinois 60084
847-526-0110
ARDC No. 3123355
gooch@goochfirm.com
office@goochfirm.com

Received 10-10-2018 08:41 AM / Circuit Clerk Accepted on 10-10-2018 03:12 PM / Transaction #2483569 / Case #17LA000377

Purchased from re:SearchIL

** FILED ** Env: 2464522
McHenry County, Illinois
17LA000377
Date: 10/9/2018 12:00 AM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	)	Case No.: 2017 LA 377
v.	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
Defendants.	)	

PROOF OF SERVICE OF DISCOVERY DOCUMENTS

To: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

I HEREBY CERTIFY THE FOLLOWING DOCUMENTS WERE SERVED TO THE ABOVE NAMED:

1) Plaintiff's First Request for Production of Documents to Defendants;

2) Plaintiff's First Set of Interrogatories to Defendants; and

3) Plaintiff's 213(f) (1)(2) & (3) Interrogatories to Defendants.

Via McHenry County E-file system and email from Wauconda, Illinois before 5:00 p.m. on October 8, 2018.

Thomas W. Gooch, III
Thomas W. Gooch, III

THE GOOCH FIRM
209 S, Main Street
Wauconda, Illinois 60084
847 526 0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No. 3123355

Received 10-10-2018 08:09 AM / Circuit Clerk Accepted on 10-10-2018 03:08 PM / Transaction #2464522 / Case #17LA000377

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** FILED ** Env: 2493504
McHenry County, Illinois
17LA000377
Date: 10/10/2018 11:24 AM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	)	
	)	No.: 17 LA 377
v.	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, Defendants.	)	

MOTION FOR ADDITIONAL TIME TO FILE A SECOND AMENDED COMPLAINT

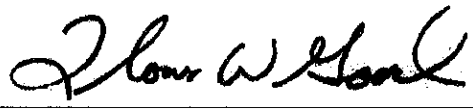
NOW COMES, your Plaintiff, PAUL DULBERG, (hereinafter referred to as "DULBERG") by and through his attorneys, THE GOOCH FIRM, and for his Motion states to the Court the following:

1. That on September 12, 2018 this Honorable Court granted Plaintiff until October 10, 2018 to file his Second Amended Complaint.
2. That recently, there has been a break down of communication between Plaintiff and his attorneys.
3. THE GOOCH FIRM, is concurrently filing a Motion to Withdraw their appearance on behalf of Plaintiff, PAUL DULBERG.
4. Plaintiff will need additional time to file his Second Amended Complaint, after the twenty-one (21) days to hire new counsel expires.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court grants Plaintiff additional time to file his Second Amended Complaint, after retaining new counsel or filing his *pro se* appearance, and for all other relief this Honorable Court deems equitable and just.

Received 10-10-2018 02:43 PM / Circuit Clerk Accepted on 10-10-2018 03:13 PM / Transaction #2493504 / Case #17LA000377
Purchased from re:SearchIL

Respectfully submitted by
THE GOOCH FIRM, on behalf of
PAUL DULBERG, Plaintiff,



Thomas W. Gooch, III

THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
gooch@goochfirm.com
office@goochfirm.com
ARDC: 3123355

Received 10-10-2018 02:43 PM / Circuit Clerk Accepted on 10-10-2018 03:13 PM / Transaction #2493504 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 2493504
McHenry County, Illinois
17LA000377
Date: 10/10/2018 11:24 AM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	)	
	)	No.: 17 LA 377
v.	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, Defendants.	)	

NOTICE OF MOTION

TO: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

Please take notice that on **October 15, 2018 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before **The Honorable Judge Meyer** in **Room 201**, or any judge sitting in his stead, in the courtroom usually occupied by him in the McHenry County Courthouse, Woodstock, Illinois, and then and there present, **Motion for Additional Time to File a Second Amended Complaint.**

/s/Thomas W. Gooch, III
Thomas W. Gooch, III

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that he served a copy of the foregoing to whom it is addressed via email and Odyssey E-filing system from Wauconda, Illinois on October 9, 2018, before 5:00 p.m.

/s/Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 South Main Street
Wauconda, Illinois 60084
847-526-0110
ARDC No. 3123355
gooch@goochfirm.com
office@goochfirm.com

Received 10-10-2018 02:43 PM / Circuit Clerk Accepted on 10-10-2018 03:13 PM / Transaction #2493504 / Case #17LA000377

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#10 oed

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury

Dulberg vs. Mast

FILED
McHenry County, Illinois
OCT 15 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date: 10/15/18 Plaintiff's Attorney S. Walczyk Defendant's Attorney G. Flynn

ORDER

Matter before the Court on Plaintiff's Motion for Extension of Time and Motion to Withdraw

Plaintiff appearing in open court, the Court fully advised in the premises

IT IS ORDERED:

1.) Plaintiff's Motion for Extension of Time is granted and entered and continued. Thomas W Gooch + The Gooch Firm granted leave to withdraw Appearance.

2.) Plaintiff granted 21 days to file his appearance or retain new counsel

3) All further notices to be sent to:

Mr. Paul Dulberg
4606 Hayden Ct
McHenry, IL 60051

4) Status of attorney/pleadings set for November 13, 2018 at 9:00 am

Prepared by: SWalczyk
Attorney for: P Dulberg
Attorney Registration No.: 6315819 Judge: [signature]

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** FILED ** Env: 2840654
McHenry County, Illinois
17LA000377
Date: 11/8/2018 3:19 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY

Paul Dulberg

vs.
The Law Offices of Thomas Popovich, et al.

Case Number 17 LA 377

APPEARANCE

I HEREBY ENTER THE APPEARANCE OF
Paul Dulberg
(Insert the name of the party for whom you are entering your appearance)

AND MY OWN AS

- [x] REGULAR COUNSEL
- [ ] TRIAL COUNSEL
- [ ] SPECIAL & LIMITED APPEARANCE
- [ ] SUBSTITUTE COUNSEL
- [ ] PRO-SE
- [ ] COUNSEL IN FORCIBLE ENTRY
- [ ] ADDITIONAL COUNSEL
- [ ] APPELLATE COUNSEL
- [ ] GUARDIAN AD LITEM
- [ ] COURT APPOINTED COUNSEL

AND AS (HIS) (~~HER~~) (~~THEIR~~) COUNSEL IN THE ABOVE ENTITLED CASE.

SIGNED /s/ Edward X. Clinton, Jr.
(Signature of Attorney filing appearance)

Name The Clinton Law Firm
Edward X. Clinton, Jr.
Printed Name
ARDC Number 6206773
Attorney for Plaintiff
Address 111 W Washington, Ste. 1437
City, State Zip Chicago, IL 60602
Phone 312.357.1515
Email ed@clintonlaw.net

CC-APP1 (Revised 07-01-2018)

Received 11-08-2018 04:03 PM / Circuit Clerk Accepted on 11-08-2018 04:21 PM / Transaction #2840654 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 2840882
McHenry County, Illinois
17LA000377
Date: 11/8/2018 3:22 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY

Paul Dulberg

vs.
The Law Offices of Thomas Popovich, et al.

Case Number 17 LA 377

APPEARANCE

I HEREBY ENTER THE APPEARANCE OF
Paul Dulberg
(Insert the name of the party for whom you are entering your appearance)

AND MY OWN AS

- [x] REGULAR COUNSEL
- [ ] TRIAL COUNSEL
- [ ] SPECIAL & LIMITED APPEARANCE
- [ ] SUBSTITUTE COUNSEL
- [ ] PRO-SE
- [ ] COUNSEL IN FORCIBLE ENTRY
- [ ] ADDITIONAL COUNSEL
- [ ] APPELLATE COUNSEL
- [ ] GUARDIAN AD LITEM
- [ ] COURT APPOINTED COUNSEL

AND AS (HIS) (~~HER) (THEIR~~) COUNSEL IN THE ABOVE ENTITLED CASE.

SIGNED /s/ Julia C. Williams
(Signature of Attorney filing appearance)

Name The Clinton Law Firm
Julia C. Williams
Printed Name
ARDC Number 6296386
Attorney for Plaintiff
Address 111 W Washington, Ste. 1437
City, State Zip Chicago, IL 60602
Phone 312.357.1515
Email juliawilliams@clintonlaw.net

CC-APP1 (Revised 07-01-2018)

Purchased from re:SearchIL

** FILED ** Env: 2840968
McHenry County, Illinois
17LA000377
Date: 11/8/2018 3:25 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF,	)	
v.	)	Case No. 17 LA 377
THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	)	

MOTION FOR EXTENSION OF TIME

Plaintiff Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, respectfully request that this Court grant an extension of time for Plaintiff to file his amended pleading. In support of this Motion, Plaintiff states as follows:

1. On or about September 12, 2018, Plaintiff's First Amended Complaint was stricken in part and Plaintiff was granted to October 10, 2018 to replead.

2. On October 15, 2018, Plaintiff's counsel withdrew and Plaintiff was granted time to obtain new counsel.

3. Recently, Plaintiff obtained The Clinton Law Firm to represent him in this case.

4. On November 8, 2018, The Clinton Law Firm filed its appearance.

5. Plaintiff respectfully requests 28 days for counsel to review the file and prepare an amended pleading.

6. Plaintiff brings this motion in good faith, without intention of harassment or delay.

WHEREFORE, Plaintiff respectfully requests 28 days (December 6, 2018) to file his amended pleading and for such further relief that this Court find equitable and just.

Received 11-08-2018 04:10 PM / Circuit Clerk Accepted on 11-08-2018 04:26 PM / Transaction #2840968 / Case #17LA000377

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Respectfully Submitted,
By: /s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

Received 11-08-2018 04:10 PM / Circuit Clerk Accepted on 11-08-2018 04:26 PM / Transaction #2840968 / Case #17LA000377
Page 2 of 2
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** FILED ** Env: 2840654
McHenry County, Illinois
17LA000377
Date: 11/8/2018 3:19 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF, v. THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	))))))))	Case No. 17 LA 377

NOTICE OF FILING

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on November 8, 2018, the undersigned caused the appearance of Julia C. Williams and Edward X. Clinton, Jr. of The Clinton Law Firm, LLC to be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Julia C. Williams
Julia C. Williams

Received 11-08-2018 04:03 PM / Circuit Clerk Accepted on 11-08-2018 04:21 PM / Transaction #2840654 / Case #17LA000377

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** FILED ** Env: 2840882
McHenry County, Illinois
17LA000377
Date: 11/8/2018 3:22 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF, v. THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	))))))))	Case No. 17 LA 377

NOTICE OF FILING

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on November 8, 2018, the undersigned caused the appearance of Julia C. Williams and Edward X. Clinton, Jr. of The Clinton Law Firm, LLC to be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Julia C. Williams
Julia C. Williams

Received 11-08-2018 04:09 PM / Circuit Clerk Accepted on 11-08-2018 04:22 PM / Transaction #2840882 / Case #17LA000377

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** FILED ** Env: 2840968
McHenry County, Illinois
17LA000377
Date: 11/8/2018 3:25 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF, v. THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	))))))))	Case No. 17 LA 377

NOTICE OF MOTION

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on November 13, 2018 at 9:00 am, or as soon thereafter as counsel may be herd, we shall appear before the Honorable Judge Thomas A. Meyer, or any Judge sitting in his stead in Courtroom 201, in the McHenry County Government Center, 2200 N. Seminary Avenue, Woodstock, Illinois, and present Plaintiff's Motion for Extension of Time to File Amended Complaint, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Julia C. Williams
Julia C. Williams

Received 11-08-2018 04:10 PM / Circuit Clerk Accepted on 11-08-2018 04:26 PM / Transaction #2840968 / Case #17LA000377

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IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

ORD

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

FILED
McHenry County, Illinois
NOV 13 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court

GEN. NO. 17 LA 377
☒ Jury ☐ Non-Jury

Paul Dulberg

vs. 17 LA

The Law Offices of Thomas Popovich, et al.

Date: 11-13-2018 Plaintiff's Attorney Clinton Law / J. Williams Defendant's Attorney Clausen Miller George Flynn

ORDER

This matter is coming to be heard on agreed order and status, It IS HEREBY ORDERED:

1. Plaintiff is granted to December 6, 2018 to file an Amended Complaint.

2. Defendants are granted to January 11, 2019 to answer or otherwise plead.

3. This matter is set for status on pleading and written discovery on February 25, 2019 at 9:00AM in Courtroom 201.

Prepared by: Julia Williams / The Clinton Law
Attorney for: Plaintiff
Attorney Registration No.: 6279638
juliawilliams@clintonlaw.net

Judge:

Purchased from re:SearchIL

** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendant.	)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377
Purchased from re:SearchIL

4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377
Purchased from re:SearchIL

15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377
Purchased from re:SearchIL

27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

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44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

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53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing

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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

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Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
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A

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COPY FILED
MAY 15 2012
KATHERINE M. KEEFE,
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 17LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 9/18, 20 22, AT 2 AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ___ ON ___
20___ AT ___ AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER
DEFAULT BEING ENTERED.

EXHIBIT
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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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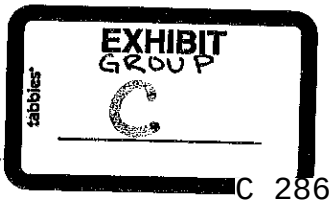
From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
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Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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Page 17 of 19
Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377
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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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Page 18 of 19
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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI

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Purchased from re:SearchIL

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

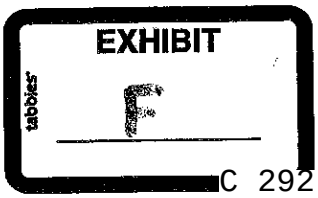
The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.



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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (If applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

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Page 19 of 19
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McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF, v. THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	))))))))	Case No. 17 LA 377

NOTICE OF FILING

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on December 6, 2018, the undersigned caused the enclosed Second Amended Complaint to be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, a non-attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Mary Winch
Mary Winch

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377

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** FILED ** Env: 3962018
McHenry County, Illinois
17LA000377
Date: 2/19/2019 12:00 AM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendant.	)	

MOTION FOR DEFAULT JUDGEMENT

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, respectfully requests that this Court enter a default judgment against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"). In support of this Motion, Plaintiff states as follows:

1. Plaintiff filed his amended complaint on December 6, 2018.
2. Defendants were granted to January 11, 2019 to file their responsive pleading. (Exh. A, Order of November 13, 2018)
3. The parties agreed to a brief extension for Defendants' to file a responsive pleading.
4. To date, Defendants have not filed any response to the Amended Complaint.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order of default against Defendants, set the matter for prove-up on damages and entry of monetary judgment, and for such further relief that this Court deems just and equitable.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

Received 02-19-2019 02:09 PM / Circuit Clerk Accepted on 02-19-2019 02:14 PM / Transaction #3962018 / Case #17LA000377

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/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

Received 02-19-2019 02:09 PM / Circuit Clerk Accepted on 02-19-2019 02:14 PM / Transaction #3962018 / Case #17LA000377

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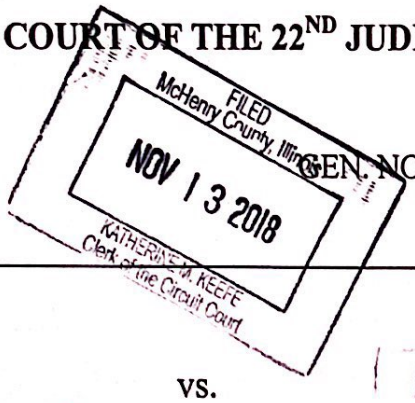
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

FILED
McHenry County, Illinois
NOV 13 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court



STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17 LA 377

☒ Jury ☐ Non-Jury

Paul Dalberg

vs.

17 LA

The Law Offices of [illegible]
[illegible]

Date: 11-13-2018 Plaintiff's Attorney Clinton Law / J. Williams Defendant's Attorney [illegible]

ORDER

This matter is coming to be heard on agreed order and status, it is HEREBY ORDERED:

1. Plaintiff is granted to December 6, 2018 to file an Amended Complaint.

2. Defendants are granted to January 11, 2019 to answer or otherwise plead.

3. This matter is set for status on pleading and written discovery on February 25, 2019 at 9:00 AM in Courtroom 201.

Prepared by: Julia Williams / The Clinton Law

Attorney for: Plaintiff

Attorney Registration No.: 6296036 Judge: [signature]

[illegible]

Exhibit A

** FILED ** Env: 3962018
McHenry County, Illinois
17LA000377
Date: 2/19/2019 12:00 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF, v. THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	))))))))	Case No. 17 LA 377

NOTICE OF FILING

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on February 25, 2019 at 9:00 a.m., I will appear before the Honorable Judge Thomas A. Meyer, or any judge sitting in that Judge's stead, in Courtroom 201 of the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, 2200 N. Seminary Ave., Woodstock, IL 60098, and present the enclosed Motion for Default Judgment, a copy of which is attached.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Julia C. Williams
Julia C. Williams

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Page 1 of 1
C 298

** FILED ** Env: 4006301
McHenry County, Illinois
17LA000377
Date: 2/21/2019 11:15 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOI

Paul Dulberg,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 000377
	)	Jury Demand
The Law Offices of Thomas J. Popovich, P.C., And Hans Mast,	)	(Court Room 201)
	)	
	)	
Defendants.	)	

MOTION TO WITHDRAW
AND TO SUBSTITUTE COUNSEL

Defendants THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST and Karbal Cohen Economou Silk & Dunne, LLC, respectfully move this Court to grant Clausen Miller, P.C. leave to withdraw, and Karbal Cohen Economou Silk & Dunne, LLC leave to substitute its appearance as counsel of record for THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST. In support of this motion, movants state:

1. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST have requested that the law firm of Karbal Cohen Economou Silk & Dunne, LLC represent their interests in this matter.

2. A Substitution of Attorneys signed by Clausen Miller, P.C. and Karbal Cohen, Economou Silk & Dunne, LLC is attached as Exhibit A.

3. Granting of this motion will not delay discovery or trial in this matter.

WHEREFORE, movants respectfully request this Court to grant Clausen Miller, P.C. leave to withdraw, and Karbal, Cohen, Economou Silk & Dunne, LLC leave to substitute its appearance

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as counsel of record for THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST.

Respectfully submitted,

KARBAL, COHEN, ECONOMOU SILK & DUNNE, LLC

By: /s/ George K. Flynn

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Paul Dulberg, Plaintiff, v. The Law Offices of Thomas J. Popovich, P.C., And Hans Mast, Defendants.	)	Case No. 17 LA 000377 Jury Demand (Court Room 201)

STIPULATION FOR SUBSTITUTION OF COUNSEL

It is hereby stipulated that Clausen Miller P.C. hereby withdraws its appearance on behalf of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST in this action and Karbal, Cohen, Economou Silk & Dunne, LLC hereby enters its appearance on behalf of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST. All future notices and communications should be sent to Karbal, Cohen, Economou Silk & Dunne, LLC as follows:

George K. Flynn
Karbal, Cohen, Economou Silk & Dunne, LLC
150 South Wacker Drive, 17th Floor
Chicago, IL 60606
(312) 431-3700
Fax: (312) 431-3670
gflynn@karballaw.com

CLAUSEN MILLER, P.C.

By: _____
Brian J. Riordan
10 South LaSalle Street
Chicago, IL 60603
Tel. 312-855-1010
Fax: 312-606-7777
Email: briordan@clausen.com

KARBAL, COHEN, ECONOMOU SILK & DUNNE, LLC

By: _____
George K. Flynn
150 South Wacker Drive
17th Floor
Chicago, Illinois 60606
Tel.: 312-431-3700
Fax: 312-431-3670
Email: gflynn@karballaw.com

EXHIBIT
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ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOI

Paul Dulberg,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 000377
	)	Jury Demand
The Law Offices of Thomas J. Popovich, P.C.,	)	(Court Room 201)
And Hans Mast,	)	
	)	
Defendants.	)	

ORDER

THIS CAUSE coming to be heard on DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST's Motion for Substitution of Attorneys, due notice having been given, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED:

1) The Appearance of Clausen Miller, P.C. on behalf of DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST is withdrawn; and

2) The Appearance of the Karbal Cohen Economou Silk & Dunne, LLC is entered on behalf of DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST.

Atty No. **George K. Flynn (ARDC #6239349)**
Name: **Karbal, Cohen, Economou, Silk & Dunne, LLC**
Attorney for: **Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast**
Address: **150 S. Wacker Drive, Suite 1700**
City: **Chicago, IL 60606**
Telephone: **(312) 431-3700**

....., 2019

ENTER:

.....
Judge **Judge's No.**

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

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McHenry County, Illinois
17LA000377
Date: 2/21/2019 11:15 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOI

Paul Dulberg,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 000377
	)	Jury Demand
The Law Offices of Thomas J. Popovich, P.C.,	)	(Court Room 201)
And Hans Mast,	)	
	)	
Defendants.	)	

NOTICE OF MOTION

TO: All Attorneys of Record (See Attached Service List)

PLEASE TAKE NOTICE that on the **25th day of February 2019 at 9:00 a.m.** or as soon thereafter as this motion may be heard, we shall appear before the Honorable Judge Thomas A. Meyer or any Judge sitting in his place or stead, in Room 201, at McHenry County Government Center, 2200 N. Seminary Avenue (Route 47), Woodstock, IL 60098, and shall then and there present DEFENDANTS' MOTION FOR SUBSTITUTION OF COUNSEL, a copy of which was previously served upon you.

Dated this 21st day of February 2019 in Chicago, Illinois.

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700, Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this notice by e-mailing a copy to each party to whom it is directed on February 21, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 02-21-2019 02:12 PM / Circuit Clerk Accepted on 02-21-2019 02:26 PM / Transaction #4006301 / Case #17LA000377

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SERVICE LIST

Plaintiff's Attorney	
Edward X. Clinton, Jr. Julia C. Williams The Clinton Law Firm 111 W. Washington Street, Suite 1437 Chicago, IL 60602 312-357-1515 ed@clintonlaw.net juliawilliams@clintonlaw.net	

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#8

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Paul Dulberg
Plaintiff

vs

Law Offices of Thomas Poporich
Defendant

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Case Number 17 LA 377

FILED
McHenry County, Illinois
FEB 25 2019
KATHERINE M. KEEFE
Clerk of the Circuit Court

ORDER

☐ Plaintiff(s) appear in person/by attorney _____

☐ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.

☒ Defendant(s) shall file an answer or other pleading within 14 days of today's date.

☒ This case is continued on Motion of ☒ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to May 30, 20 19 at 9:00 ☒ A m. for status (Motion for Default).

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☒ **COURT FURTHER ORDERS:** All parties to issue written discovery within 21 days and - March 18, 2019.
Case continued to May 30, 2019 at 9:00 AM for status on discovery

Date: _____

Judge

CV-ORD13: Revised 10/01/08

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ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOI

FILED
McHenry County, Illinois
FEB 25 2019
KATHERINE M. KEEFE
Clerk of the Circuit Court

Paul Dulberg,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 000377
	)	Jury Demand
The Law Offices of Thomas J. Popovich, P.C.,	)	(Court Room 201)
And Hans Mast,	)	
	)	
Defendants.	)	

ORDER

THIS CAUSE coming to be heard on DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST's Motion for Substitution of Attorneys, due notice having been given, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED:

1) The Appearance of Clausen Miller, P.C. on behalf of DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST is withdrawn; and

2) The Appearance of the Karbal Cohen Economou Silk & Dunne, LLC is entered on behalf of DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST.

Atty No. George K. Flynn (ARDC #6239349)
Name: Karbal, Cohen, Economou, Silk & Dunne, LLC
Attorney for: Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast
Address: 150 S. Wacker Drive, Suite 1700
City: Chicago, IL 60606
Telephone: (312) 431-3700

....., 2019

ENTER:

.....
Judge Judge's No.

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

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** FILED ** Env: 4230960
McHenry County, Illinois
17LA000377
Date: 3/11/2019 12:12 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT AT LAW

Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and KARBAL, COHEN, ECONOMOU, SILK, & DUNNE, LLC, for their Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law, state as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

ANSWER: Defendants admit the allegations contained in Paragraph 1.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

ANSWER: Defendants admit the allegations contained in Paragraph 2.

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3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

ANSWER: Defendants admit only that Mast was an associate of The Law Offices of Thomas Popovich, P.C., and admit that he is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

ANSWER: Defendants deny the allegations contained in Paragraph 4.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

ANSWER: Defendants admit the allegations contained in Paragraph 5.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") [sic] (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

ANSWER: Defendants deny the allegations contained in Paragraph 6.

7. Dulberg lives in the next neighborhood over from the McGuire family.

ANSWER: Defendants admit the allegations contained in Paragraph 7.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

ANSWER: Defendants admit the allegations contained in Paragraph 8.

9. David Gagon [sic] is Caroline's son and William's stepson.

ANSWER: Defendants admit the allegations contained in Paragraph 9.

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10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

ANSWER: Defendants deny the allegations contained in Paragraph 13.

14. Caroline supervised Gagnon's and William's actions.

ANSWER: Defendants deny the allegations contained in Paragraph 14.

15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

ANSWER: Defendants deny the allegations contained in Paragraph 15.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

ANSWER: Defendants deny the allegations contained in Paragraph 16.

17. Caroline, William, and Gagnon all knew or show [sic] have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17.

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18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

ANSWER: Paragraph 19 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 19.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

ANSWER: Paragraph 20 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 20.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

ANSWER: Paragraph 22 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 22.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23.

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24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a [sic] trained in operating the chainsaw.

ANSWER: Defendants deny the allegations contained in Paragraph 24.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26.

27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

ANSWER: Defendants deny the allegations contained in Paragraph 29.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

ANSWER: Defendants deny the allegations contained in Paragraph 30.

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31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.

ANSWER: Defendants admit only that in May 2012, Dulberg hired Popovich to represent him in prosecuting his claims against Gagnon and the McGuires.

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B**.

ANSWER: Defendants admit only that Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. Defendants deny the remainder of the allegations contained in Paragraph 32.

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

ANSWER: Defendants admit only that Popovich entered into an attorney client relationship with Dulberg. Defendants deny the remainder of the allegations contained in Paragraph 33.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

ANSWER: Paragraph 34 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 34.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

ANSWER: Defendants admit the allegations contained in Paragraph 35.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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ANSWER: Defendants admit only that the allegations made in the complaint stand for themselves. Defendants deny the remainder of the allegations contained in Paragraph 37.

38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

ANSWER: Defendants deny the allegations contained in Paragraph 38.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

ANSWER: Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 39.

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

ANSWER: Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 40.

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them [sic] there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

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ANSWER: **Defendants admit that on or around December 2013 or January 2014 Mast met with Dulberg, but deny that Mast told Dulberg he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.**

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

ANSWER: **Defendants deny the allegations contained in Paragraph 42.**

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

ANSWER: **Defendants deny the allegations contained in Paragraph 43.**

44. Based upon Mast's erroneously [sic] advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

ANSWER: **Defendants deny the allegations contained in Paragraph 44.**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

ANSWER: **Defendants admit only that if information regarding Gagnon's insurance policy being limited to $100,000 was provided, it was gleaned from communications with defense counsel.**

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

ANSWER: **Defendants admit the allegations contained in Paragraph 46.**

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47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

ANSWER: Defendants deny the allegations contained in Paragraph 47.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

ANSWER: Defendants admit only that Dulberg authored emails contained in Group Exhibit E. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 48.

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

ANSWER: Defendants admit only that Popovich continued to represent Dulberg into 2015, and that Mast was the primary handling attorney. Defendants deny the remainder of the allegations contained in Paragraph 49.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

ANSWER: Defendants deny the allegations contained in Paragraph 51.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52.

53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

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ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

ANSWER: Defendants deny the allegations contained in Paragraph 55.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

ANSWER: Defendants deny the allegations contained in Paragraph 56.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

ANSWER: Defendants deny the allegations contained in Paragraph 57.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

(a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

(b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

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(c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance company would pay close to that;

(d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

(e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability [sic] pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the [sic] all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

(f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

ANSWER: Defendants deny the allegations contained in Paragraph 58 and subparagraphs (a) through (f) inclusive.

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

ANSWER: Defendants deny the allegations contained in Paragraph 59.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, respectfully request that this Court grant judgment in their favor, and against Plaintiff, and for any further relief that this Court deems fair and proper.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE: CONTRIBUTORY NEGLIGENCE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that any damages awarded to Plaintiff, be reduced by Plaintiff's proximate share of liability or, if such share is more than 50%, be barred in its entirety.

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SECOND AFFIRMATIVE DEFENSE – STATUTE OF LIMITATIONS

1. In Plaintiff's Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiff v. David Gagnon, et al., Defendants*, Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

4. Accordingly, this matter is time-barred.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that Plaintiff be completely barred from recovery under the statute of limitations.

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AFFIRMATIVE DEFENSES

THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause of Dulberg's damages.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that judgment be entered on their behalf and against Plaintiff, Dulberg.

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
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Attorneys for Defendants
gflynn@karballaw.com

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Dahlberg

AFFIDAVIT OF INSUFFICIENT KNOWLEDGE

Hans Mast, after being duly sworn, deposes and says that he has read the foregoing **Defendant's Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law**; and has reviewed the Answer; and that the answers and allegations of insufficient knowledge contained within the Answer filed on behalf of Defendants, are true and correct to the best of his knowledge and belief.

Hans Mast

Subscribed and sworn to before me
this 1st day of March 2019.

Notary Public

JOANN MORRISON PAXTON
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
October 04, 2022

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AFFIDAVIT OF INSUFFICIENT KNOWLEDGE

Thomas J. Popovich, after being duly sworn, deposes and says that he has read the foregoing **Defendant's Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law**; and has reviewed the Answer; and that the answers and allegations of insufficient knowledge contained within the Answer filed on behalf of Defendants, are true and correct to the best of his knowledge and belief.

The Law Offices of Thomas J. Popovich, P.C.

By: Thomas J. Popovich
Thomas J. Popovich

Subscribed and sworn to before me
this _____ day of January, 2019.

_____
Notary Public

1635984.1

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served electronically via the Clerk's Office e-filing system and by emailing a copy to counsel of record on the 11th day of March 2019 before the hour of 5:00 p.m. as follows:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
ed@clintonlaw.net
juliawilliams@clintonlaw.net

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

/s/ Linda Walters

Linda Walters

Received 03-11-2019 01:20 PM / Circuit Clerk Accepted on 03-11-2019 01:22 PM / Transaction #4230960 / Case #17LA000377
Page 17 of 17
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** FILED ** Env: 4230960
McHenry County, Illinois
17LA000377
Date: 3/11/2019 12:12 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: All Attorneys of Record (See Attached Service List)

PLEASE TAKE NOTICE that, on the 11th day of March 2019, we filed DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT AT LAW, with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 11th day of March 2019.

George K. Flynn
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700, Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com
Firm No. 38100

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed on March 11, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 03-11-2019 01:20 PM / Circuit Clerk Accepted on 03-11-2019 01:22 PM / Transaction #4230960 / Case #17LA000377

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SERVICE LIST

Plaintiff's Attorney	
Edward X. Clinton, Jr. Julia C. Williams The Clinton Law Firm 111 W. Washington Street, Suite 1437 Chicago, IL 60602 312-357-1515 ed@clintonlaw.net juliawilliams@clintonlaw.net	

Received 03-11-2019 01:20 PM / Circuit Clerk Accepted on 03-11-2019 01:22 PM / Transaction #4230960 / Case #17LA000377
Page 2 of 2
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** FILED ** Env: 4403805
McHenry County, Illinois
17LA000377
Date: 3/22/2019 11:57 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17 LA 377

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on the 22nd day of March 2019 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:

- Requests for Production to Plaintiff;
- Interrogatories to Plaintiff;
- Rule 213(f)(1)(2) and (3) Interrogatories to Plaintiff;
- Rule 237 Notice to Produce; and

Defendant Hans Mast's

- Interrogatories to Plaintiff

copies of which are attached hereto and herewith served upon you.

Dated this 22nd day of March 2019 in Chicago, Illinois.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: /s/ *George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed on March 22, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing DEFENDANT'S NOTICE OF SERVICE OF DISCOVERY DOCUMENTS was served upon:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
312-357-1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

by email on March 22, 2019.

/s/ *George K. Flynn*
One of their Attorneys

Received 03-22-2019 01:47 PM / Circuit Clerk Accepted on 03-22-2019 03:11 PM / Transaction #4403805 / Case #17LA000377
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SERVICE LIST

Plaintiff's Attorney Edward X. Clinton, Jr. Julia C. Williams The Clinton Law Firm 111 W. Washington Street, Suite 1437 Chicago, IL 60602 312-357-1515 ed@clintonlaw.net juliawilliams@clintonlaw.net	

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** FILED ** Env: 4610589
McHenry County, Illinois
17LA000377
Date: 4/8/2019 3:52 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
	)	
Defendants.	)	

PAUL DULBERG'S ANSWERS TO DEFENDANTS' AFFIRMATIIVE DEFENSES

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, answers Paul Dulberg's Affirmative Defenses as follows:

AFFIRMATIVE DEFENSES
FIRST AFFIRMATIVE DEFENSE: CONTRIBUTION NEGLIGENCE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiffs own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

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3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

SECOND AFFIRMATIVE DEFENSE
STATUTE OF LIMITATIONS

1. In Plaintiffs Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiffv. David Gagnon, et al., Defendants,* Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2, subparts a-d.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

4. Accordingly, this matter is time-barred.

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ANSWER: Plaintiff denies the allegations of this Paragraph #4.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

AFFIRMATIVE DEFENSES
THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause ofDulberg's damages.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

Respectfully submitted,

By: /s/ Julia C. Williams

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 Washington Street, Suite 2400
Chicago, IL 6002
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

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** FILED ** Env: 4610589
McHenry County, Illinois
17LA000377
Date: 4/8/2019 3:52 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF, v. THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	))))))))	Case No. 17 LA 377

NOTICE OF FILING

TO: George Flynn
Karbal Cohen Economou Silk Dunne LLC
150 S. Wacker Dr., Ste. 1700
Chicago, IL 60606
gflynn@karballaw.com

PLEASE TAKE NOTICE that on April 8, 2019, the undersigned caused the enclosed Plaintiff's Answer to Defendants' Affirmative Defenses to be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Julia C. Williams
Julia C. Williams

Received 04-08-2019 04:13 PM / Circuit Clerk Accepted on 04-09-2019 11:58 AM / Transaction #4610589 / Case #17LA000377

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** FILED ** Env: 5214049
McHenry County, Illinois
17LA000377
Date: 5/29/2019 11:00 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17 LA 377

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on the 29th day of May 2019 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:
- Response to Plaintiff's First Set of Document Requests;
- Answer to Plaintiff's First Set of Interrogatories to Defendants;

Defendant Hans Mast's:
- Response to Plaintiff's First Set of Document Requests;
- Answer to Plaintiff's First Set of Interrogatories to Defendants; and

Defendant The Law Offices of Thomas J. Popovich, P.C.'s and Hans Mast's:
- Answer to Plaintiff's Rule 213(f) Interrogatories to Defendants

copies of which are attached hereto and herewith served upon you.

Dated this 29th day of May 2019 in Chicago, Illinois.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: /s/ *George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed on May 29, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 05-30-2019 10:13 AM / Circuit Clerk Accepted on 05-30-2019 12:22 PM / Transaction #5214049 / Case #17LA000377

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SERVICE LIST

Plaintiff's Attorney	
Edward X. Clinton, Jr. Julia C. Williams The Clinton Law Firm 111 W. Washington Street, Suite 1437 Chicago, IL 60602 312-357-1515 ed@clintonlaw.net juliawilliams@clintonlaw.net Marywinch@clintonlaw.net	

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Page 2 of 2
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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
McHenry County, Illinois
MAY 30 2019
KATHERINE M. KEEFE
Clerk of the Circuit Court

Paul Dulberg
Plaintiff

vs

Law Offices of Thomas Popovich
Defendant

Case Number 17 LA 377

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

ORDER

☐ Plaintiff(s) appear in person/by attorney _____

☐ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☒ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☒ By Agreement; ☐ Court; to September 5, 20 19 at 9:00, A m. for Status.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☒ **COURT FURTHER ORDERS:** Status on written and f(l) discovery. Plaintiff's motion for default is withdrawn as moot.

Date: _____

Judge

CV-ORD13: Revised 10/01/08

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IN THE CIRCU COURT OF THE TWENTY-SECOND JU CIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Paul Dulberg
Plaintiff

vs

Law Offices of Thomas Poporich PC et al.
Defendant

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Case Number 17 LA 377

FILED
McHenry County, Illinois
SEP - 5 2019
KATHERINE M. KEEFE
Clerk of the Circuit Court

ORDER

☐ Plaintiff(s) appear in person/by attorney _____

☐ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ .m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☒ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☑ By Agreement; ☐ Court; to 11/7, 2019 at 9:00 A m. for Status.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☒ **COURT FURTHER ORDERS:** Status on written discovery and f(l) discovery

Date: _____

Judge

CV-ORD13: Revised 10/01/08

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** FILED ** Env: 6822850
McHenry County, Illinois
17LA000377
Date: 10/3/2019 2:04 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

MOTION FOR LEAVE TO FILE AFFIRMATIVE DEFENSE

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast pursuant to 735 ILCS 5/2-613 and 735 ILCS 5/2-616, move for leave to file their Amended Affirmative Defense to Plaintiff's Second Amended Complaint, and in support state as follows:

1) This is a legal malpractice action. Defendants filed their Answer and Affirmative Defenses on March 12, 2019. Written discovery has been exchanged. No depositions have proceeded.

2) 735 ILCS 5/2-616 allows the amendment of pleadings at any time before final judgment on just and reasonable terms.

3) The filing of defendant's amended affirmative defenses will cause no unfair surprise, prejudice or unreasonable delay in the case.

WHEREFORE, Defendants, respectfully request that this Court grant them leave to file their Amended Affirmative Defense to Plaintiff's Second Amended Complaint (proposed

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Purchased from re:SearchIL

pleading attached as Exhibit A), and grant any and all further relief that this Court deems just and appropriate.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

Received 10-03-2019 02:53 PM / Circuit Clerk Accepted on 10-03-2019 02:55 PM / Transaction #6822850 / Case #17LA000377
Purchased from re:SearchIL

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast plead the following amended affirmative defense in the alternative and without prejudice to Defendants' earlier denials and contentions:

FOURTH AFFIRMATIVE DEFENSE
(Judgmental Immunity/Lawyer's Judgement Rule)

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

EXHIBIT A

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(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. Alternatively, this suit is barred by the attorney judgment rule. Errors in attorney judgment do not constitute negligence. *Goldstein*, 154 Ill. App. 3d at 599-601; *O'Brien & Assocs., P.C. v. Tim Thompson, Inc.*, 274 Ill. App. 3d 472, 479-480 (2nd Dist. 1995). Legal advice provided in areas "where there are no sure and definite answers" or where "future courses of action [cannot be determined] by precise mathematical equations" are areas where the attorney is afforded discretion in the exercise of judgment. *Goldstein*, 154 Ill. App. 3d at 600 (citation omitted). The fact that an unfavorable result is obtained in one of these scenarios does not suggest that any standard of care was breached. *Id.* Further, if the client must speculate as to how it would have been better off, there is no actionable harm. *O'Brien*, 274 Ill. App. 3d at 479-80.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that judgment be entered on their behalf and against Plaintiff, Dulberg.

Respectfully submitted,

/s/ *George K. Flynn*

Received 10-03-2019 02:53 PM / Circuit Clerk Accepted on 10-03-2019 02:55 PM / Transaction #6822850 / Case #17LA000377
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GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
ARDC No. 6239349
Attorneys for Defendants
gflynn@karballaw.com

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Page 5 of 5
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C 341

** FILED ** Env: 6822850
McHenry County, Illinois
17LA000377
Date: 10/3/2019 2:04 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOI

Paul Dulberg,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 000377
	)	Jury Demand
The Law Offices of Thomas J. Popovich, P.C.,	)	(Court Room 201)
And Hans Mast,	)	
	)	
Defendants.	)	

NOTICE OF MOTION

TO: All Attorneys of Record (See Attached Service List)

PLEASE TAKE NOTICE that on the **4th day of November 2019 at 9:00 a.m.** or as soon thereafter as this motion may be heard, we shall appear before the Honorable Judge Thomas A. Meyer or any Judge sitting in his place or stead, in Room 201, at McHenry County Government Center, 2200 N. Seminary Avenue (Route 47), Woodstock, IL 60098, and shall then and there present DEFENDANTS' MOTION FOR LEAVE TO FILE AMENDED AFFIRMATIVE DEFENSE, a copy of is attached hereto and herewith served upon you.

Dated this 3rd day of October 2019 in Chicago, Illinois.

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700, Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this notice by e-mailing a copy to each party to whom it is directed on October 3, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 10-03-2019 02:53 PM / Circuit Clerk Accepted on 10-03-2019 02:55 PM / Transaction #6822850 / Case #17LA000377

Purchased from re:SearchIL

SERVICE LIST

Plaintiff's Attorney	
Edward X. Clinton, Jr. Julia C. Williams The Clinton Law Firm 111 W. Washington Street, Suite 1437 Chicago, IL 60602 312-357-1515 ed@clintonlaw.net juliawilliams@clintonlaw.net Marywinch@clintonlaw.net	

Received 10-03-2019 02:53 PM / Circuit Clerk Accepted on 10-03-2019 02:55 PM / Transaction #6822850 / Case #17LA000377

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** FILED ** Env: 7222883
McHenry County, Illinois
17LA000377
Date: 11/4/2019 1:37 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast plead the following amended affirmative defense in the alternative and without prejudice to Defendants' earlier denials and contentions:

FOURTH AFFIRMATIVE DEFENSE
(Judgmental Immunity/Lawyer's Judgement Rule)

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

Received 11-04-2019 03:49 PM / Circuit Clerk Accepted on 11-05-2019 09:03 AM / Transaction #7222883 / Case #17LA000377
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(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. Alternatively, this suit is barred by the attorney judgment rule. Errors in attorney judgment do not constitute negligence. *Goldstein*, 154 Ill. App. 3d at 599-601; *O'Brien & Assocs., P.C. v. Tim Thompson, Inc.*, 274 Ill. App. 3d 472, 479-480 (2nd Dist. 1995). Legal advice provided in areas "where there are no sure and definite answers" or where "future courses of action [cannot be determined] by precise mathematical equations" are areas where the attorney is afforded discretion in the exercise of judgment. *Goldstein*, 154 Ill. App. 3d at 600 (citation omitted). The fact that an unfavorable result is obtained in one of these scenarios does not suggest that any standard of care was breached. *Id.* Further, if the client must speculate as to how it would have been better off, there is no actionable harm. *O'Brien*, 274 Ill. App. 3d at 479-80.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that judgment be entered on their behalf and against Plaintiff, Dulberg.

Respectfully submitted,

/s/ *George K. Flynn*

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Purchased from re:SearchIL

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
ARDC No. 6239349
Attorneys for Defendants
gflynn@karballaw.com

Received 11-04-2019 03:49 PM / Circuit Clerk Accepted on 11-05-2019 09:03 AM / Transaction #7222883 / Case #17LA000377
Page 3 of 3
Purchased from re:SearchIL
C 346

** FILED ** Env: 7222883
McHenry County, Illinois
17LA000377
Date: 11/4/2019 1:37 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: All Attorneys of Record (See Attached Service List)

PLEASE TAKE NOTICE that, on the 4th day of November 2019, we filed DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES, with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 4th day of November 2019.

George K. Flynn
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700, Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com
Firm No. 38100

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed on November 4, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 11-04-2019 03:49 PM / Circuit Clerk Accepted on 11-05-2019 09:03 AM / Transaction #7222883 / Case #17LA000377
Purchased from re:SearchIL

SERVICE LIST

Plaintiff's Attorney

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
312-357-1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

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Page 2 of 2
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C 348

#5

IN THE CIR(IT COURT OF THE 22ND JUI IAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17LA377
☒ Jury ☐ Non-Jury

Oulsey

vs.

Popovich

FILED
McHenry County, Illinois
NOV - 4 2019
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date: 11-4-19 Plaintiff's Attorney Julia Williams Defendant's Attorney George Flynn

ORDER

This matter coming to be heard for status, it is ordered:

1) Popovich is granted leave to file an affirmative defense (amended).

2) status or discovery on Feb. 3, 2020 at 9:00 a.m. and status on f(1) discovery.

Prepared by: George Flynn
Attorney for: Popovich
Attorney Registration No.: 6239399 Judge:

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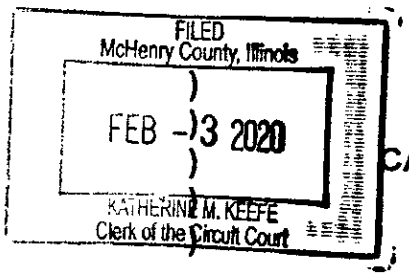
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Dulberg
v.
Mast et al.



CASE NO. 17 LA 377

CASE MANAGEMENT ORDER

This case being heard for Case Management Conference, pursuant to Supreme Court Rule 218, the parties have been notified and the Court being fully advised, IT IS HEREBY ORDERED: (Mark applicable box(s) below)

☐ 1. That any and all Cross, Counter, and Third-Party Complaints shall be filed not later than _____, _____.

☐ 2. That Plaintiff(s) shall disclose the identity of all Supreme Court Rule 213(g) opinion witnesses, together with their business address and opinions, not later than _____ _____.

☐ 3. That Defendant(s) shall disclose the identity of all Supreme Court Rule 213(g) opinion witnesses, together with their business address and opinions, not later than _____.

☐ 4. That Cross-Defendants, Counter Defendants, and Third Party Defendants shall disclose the identity of all Supreme Court Rule 213(g) opinion witnesses, together with their business address and opinions, not later than _____.

☐ 5. That all discovery shall be completed not later than _____.

☒ 6. The Case Management Conference is continued to 4.3.2020 at 9:00 AM.

~~☐~~ 7. That a Settlement Conference/Pre-Trial is set for _____ at _____M.

☐ 8. That the final Pre-Trial Conference is set for _____ at _____M. at which time each party shall tender a statement of the case, a list of witnesses who may be called at trial indicating their relationship to the case, their occupation and the city and state of their residence and/or employment, all motions in limine; a list of all marked exhibits to be offered at trial and the original exhibits themselves, a list of all evidence depositions to be offered at trial and a list of all objections to be ruled on by the court, and all proposed jury instructions.

☐ 9. That this cause is set for Jury/Bench Trial on _____ _____ at _____ M.

☐ 10. All dispositive motions must be filed and set for hearing no later than 60 days before the date that the case has been set for trial and be in compliance with Local Rules of Practice, in particular Rules 2.01, 2.02 and 2.04.

☒ 11. Status of completion of f(1) depositions

ENTERED: _____ 20___ ENTER _____
JUDGE

PREPARED BY: Julia Williams/The Clinton Law Firm
ATTORNEY FOR: P
A.R.D.C. REGISTRATION NO. 6294306

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IN THE CIR IT COURT OF THE 22ND JU IAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17 L A 377
☑ Jury ☐ Non-Jury

Dulberg

vs.

Popovich

FILED
McHenry County, Illinois
JUN - 5 2020
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date: 6/5/20 Plaintiff's Attorney Julia Williams Defendant's Attorney George Flynn

ORDER

This matter coming to be heard for status, it is ordered:

1) Matter is set for status on f(1) depositions on September 10, 2020 at 9:00 a.m.

Prepared by: George Flynn
Attorney for: Popovich
Attorney Registration No.: 6239349 Judge:

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** FILED ** Env: 9649054
McHenry County, Illinois
17LA000377
Date: 7/2/2020 9:30 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17 LA 377

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

PLEASE TAKE NOTICE that on the 2nd day of July 2020 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:

- **Supplemental Requests for Production to Plaintiff;**

a copy of which is attached hereto and herewith served upon you.

Dated this 2nd day of July 2020.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: /s/ *George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

Received 07-02-2020 11:02 AM / Circuit Clerk Accepted on 07-02-2020 11:07 AM / Transaction #9649054 / Case #17LA000377

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing DEFENDANT'S NOTICE OF SERVICE OF DISCOVERY DOCUMENT was served upon:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
312-357-1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

by email on July 2, 2020.

/s/ *George K. Flynn*
One of their Attorneys

Received 07-02-2020 11:02 AM / Circuit Clerk Accepted on 07-02-2020 11:07 AM / Transaction #9649054 / Case #17LA000377
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** FILED ** Env: 10141495
McHenry County, Illinois
17LA000377
Date: 8/18/2020 1:35 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

MOTION TO WITHDRAW AS COUNSEL FOR PLAINTIFF PAUL DULBERG

The Clinton Law Firm, LLC, ("The Clinton Law Firm") as attorneys for Plaintiff Paul Dulberg, respectfully request that this Court grants it leave to withdraw as counsel. In support of this Motion, The Clinton Law Firm states as follows:

1. Edward Clinton Jr. and Julia Williams of The Clinton Law Firm filed appearances for Paul Dulberg on November 8, 2018.

2. Since that time, The Clinton Law Firm has diligently prosecuted the case on behalf of Mr. Dulberg.

3. Due to irreconcilable differences, The Clinton Law Firm cannot continue to represent Plaintiff Paul Dulberg and it is in the best interests of all parties that The Clinton Law Firm withdraws.

4. Pursuant to Rule 13 of the Illinois Supreme Court Rules and Local Rule 1.4(b), a copy of the Notice of Motion and this Motion for Leave to Withdraw will be served by Certified mail, returned receipt requested, by First Class U.S. Mail, to Dulberg at his last known address and by email.

6. The last known address for Dulberg is 4606 Hayden Court, McHenry, IL 60051.

Received 08-18-2020 01:44 PM / Circuit Clerk Accepted on 08-18-2020 01:55 PM / Transaction #10141495 / Case #17LA000377
Purchased from re:SearchIL

7. Dulberg is advised and notified that to insure notice of any action in the above-referenced matter, he should, within 21 days after entry of the order of withdrawal, retain other counsel and/or file with the Clerk of the Court her supplementary appearance stating an address at which service of notices or other papers may be had upon her.

7. This Court should grant The Clinton Law Firm, LLC leave to withdraw its appearance as attorneys for Dulberg.

WHEREFORE, Clinton respectfully requests this Honorable Court as follows:

A. The Clinton Law Firm, LLC be granted leave to withdraw as attorneys for Dulberg; and

B. For such other and further relief as this Court deems just and equitable.

Respectfully Submitted,

By: /s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm, LLC
111 W Washington Street
Suite 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

Received 08-18-2020 01:44 PM / Circuit Clerk Accepted on 08-18-2020 01:55 PM / Transaction #10141495 / Case #17LA000377

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** FILED ** Env: 10141495
McHenry County, Illinois
17LA000377
Date: 8/18/2020 1:35 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

NOTICE OF MOTION

TO: Attached service list

PLEASE TAKE NOTICE that on September 10, 2020 at 8:45a.m., or as soon thereafter as I may be heard, I will appear before the Honorable Judge Thomas A. Meyer, or any judge sitting in that Judge's stead, in Courtroom 201 of the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, 2200 N. Seminary Ave., Woodstock, IL 60098, and present the enclosed Motion to Withdraw, a copy of which is attached.

Please further note that the undersigned intends to appear via Zoom per the instructions available on the McHenry County Circuit Court Clerk Website:
Meeting ID: 272-959-8070
Password: No password required

****Upon the Court granting The Clinton Law Firm, LLC leave to withdraw as attorney for Plaintiff, Paul Dulberg, he should retain other counsel therein or file with the Clerk of the Court, within 21 days after entry of the Order of Withdrawal, his appearance stating therein an address at which service of Notices or other papers may be had upon him.**

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

Received 08-18-2020 01:44 PM / Circuit Clerk Accepted on 08-18-2020 01:55 PM / Transaction #10141495 / Case #17LA000377

Purchased from re:SearchIL

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109I, the undersigned, on oath, certifies that on August 18, 2020, she caused a copy of the above and foregoing Notice of Motion and Motion to Withdraw to be served upon all persons to whom directed as outlined above.

/s/ Julia C. Williams
Julia C. Williams

Service List:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051.
Via US Mail and Certified Mail

George Flynn
Attorney for Defendants
Karbal Cohen Economou Silk Dunne LLC
150 S. Wacker Dr., Ste. 1700
Chicago, IL 60606
gflynn@karballaw.com
Via Odysssey eFile IL filing system

Received 08-18-2020 01:44 PM / Circuit Clerk Accepted on 08-18-2020 01:55 PM / Transaction #10141495 / Case #17LA000377

Purchased from re:SearchIL

IN THE CIRC IT COURT OF THE 22ND JUI IAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

FILED
McHenry County, Illinois
SEP 10 2020
KATHERINE M. KEEFE
Clerk of the Circuit Court

GEN. NO. 17 LA 377
☒ Jury ☐ Non-Jury

Pulbers

VS.

Popovich

Date: 9-10-20 Plaintiff's Attorney Julia Williams Defendant's Attorney George Flynn

ORDER

This matter coming to be heard on the Clinton Law firms motion to Withdraw as counsel for Plaintiff, it is ordered:

1) The Clinton Law Firms Motion to Withdraw is granted.

2) Plaintiff Paul Dulbers must file an appearance with 21 days, or an attorney must appear on his behalf with 21 days.

3) Status on October 7, 2020 at ~~9:00 a.m.~~ 8:45 AM (AM)

Prepared by: George Flynn
Attorney for: Popovich
Attorney Registration No.: 6239349 Judge:

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** FILED ** Env: 10481328
McHenry County, Illinois
17LA000377
Date: 9/17/2020 11:01 AM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts

STATE OF ILLINOIS, CIRCUIT COURT

McHenry **COUNTY**

APPEARANCE
Pro Se

For Court Use Only

Instructions

Directly above, enter the name of the county where the case was filed.

Enter the name of the person or company that filed this case as Plaintiff/Petitioner.

Enter the name of the Defendant/Respondent.

Enter the Case Number given by the Circuit Clerk.

Paul Dulberg
Plaintiff / Petitioner *(First, middle, last name or Company)*

v.

THE LAW OFFICES OF THOMAS J.) POPOVICH, P.C., and HANS MAST,
Defendant / Respondent *(First, middle, last name)*

17LA000377
Case Number

In **1**, enter your full name.

In **2**, check only one box to ask for a trial with only a judge or a trial with a judge and jury.

You do not have a right to a jury trial in every case.

1. I, Paul Dulberg **enter my appearance in this case.**
First Middle Last

2. I would like a trial with:

☐ a judge

☑ a judge and jury

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address and telephone number.

I certify that everything above is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS5/1-109.

/s/ Paul Dulberg
Your Signature

4606 Hayden Ct.
Street Address

Paul Dulberg
Your Name

McHenry, IL. 60051
City, State, ZIP

847-497-4250
Telephone

GETTING COURT DOCUMENTS BY EMAIL: If you agree to receive court documents by email, check the box below and enter your email address. You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information or notice of court dates. Other parties may still send you court documents by mail.

☑ I agree to receive court documents at this email address during my entire case.

Paul_Dulberg@comcast.net
Email

Received 09-17-2020 11:05 AM / Circuit Clerk Accepted on 09-17-2020 02:15 PM / Transaction #10481328 / Case #17LA000377
Purchased from re:SearchIL
Page 1 of 3

Enter the Case Number given by the Circuit Clerk: 17LA000377

PROOF OF DELIVERY

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

1. I sent this document:

   a. To:

   Name: George Flynn
   First *Middle* *Last*

   Address: 150 S. Wacker Drive, Suite 1700, Chicago, IL 60606
   Street, Apt # *City* *State* *ZIP*

   Email address: gflynn@karballaw.com

   b. By:
   - ☐ Personal hand delivery
   - ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

     Address of Post Office or Mailbox
   - ☐ Third-party commercial carrier, with delivery paid for at:

     Name (for example, FedEx or UPS) and office address
   - ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
   - ☑ Email *(not through an EFM or EFSP)*
   - ☐ Mail from a prison or jail at:

     Name of prison or jail

In **c**, fill in the date and time that you sent the document.

   c. On: 09/17/2020
   Date

   At: 12:00 ☐ a.m. ☑ p.m.
   Time

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

2. I sent this document:

   a. To:

   Name:
   First *Middle* *Last*

   Address:
   Street, Apt # *City* *State* *ZIP*

   Email address:

   b. By:
   - ☐ Personal hand delivery
   - ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

     Address of Post Office or Mailbox
   - ☐ Third-party commercial carrier, with delivery paid for at:

     Name (for example, FedEx or UPS) and office address
   - ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
   - ☐ Email *(not through an EFM or EFSP)*
   - ☐ Mail from a prison or jail at:

     Name of prison or jail

Received 09-17-2020 11:05 AM / Circuit Clerk Accepted on 09-17-2020 02:15 PM / Transaction #10481328 / Case #17LA000377
Page 2 of 3
Purchased from re:SearchIL
C 360

c. On: _____
Date

At: _____ ☐ a.m. ☐ p.m.
Time

In **3**, if you sent the document to more than 2 parties or lawyers, fill in **a**, **b**, and **c**. Otherwise leave **3** blank.

3. I sent this document:

a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:
☐ Personal hand delivery
☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

_____
Address of Post Office or Mailbox

☐ Third-party commercial carrier, with delivery paid for at:

_____
Name (for example, FedEx or UPS) and office address

☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
☐ Email *(not through an EFM or EFSP)*
☐ Mail from a prison or jail at:

_____
Name of prison or jail

If you sent your document to more than 3 parties or lawyers, check the box and file *Additional Proof of Delivery* with this form.

c. On: _____
Date

At: _____ ☐ a.m. ☐ p.m.
Time

☑ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the Proof of Delivery is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Paul Dulberg
Your Signature

Paul Dulberg
Print Your Name

847-497-4250
Telephone

4606 Hayden Ct.
Street Address

McHenry, IL. 60051
City, State, ZIP

Received 09-17-2020 11:05 AM / Circuit Clerk Accepted on 09-17-2020 02:15 PM / Transaction #10481328 / Case #17LA000377
Page 3 of 3
Purchased from re:SearchIL

** FILED ** Env: 10481649
McHenry County, Illinois
17LA000377
Date: 9/17/2020 11:12 AM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts

STATE OF ILLINOIS, CIRCUIT COURT McHenry COUNTY	PROOF OF DELIVERY	For Court Use Only

Instructions	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person or company that filed this case as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name or Company)*
Enter the name of the Defendant/Respondent.	v. THE LAW OFFICES OF THOMAS J.) POPOVICH, P.C., and HANS MAST, **Defendant / Respondent** *(First, middle, last name)*
Enter the Case Number given by the Circuit Clerk.	17LA000377 **Case Number**

In **1**, enter the name of the court document you are sending to the other parties in the court case (*e.g.,* a Court Order or Answer).

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

In **c**, fill in the date and time that you sent the document.

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

1. I am sending the following court document: APPEARANCE Pro Se

a. To:

Name: George Flynn
First Middle Last

Address: 150 S. Wacker Drive, Suite 1700, Chicago, IL 60606
Street, Apt # City State ZIP

Email address: gflynn@karballaw.com

b. By:
- ☐ Personal hand delivery
- ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

  Address of Post Office or Mailbox
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Date

At: 12:00 ☐ a.m. ☑ p.m.
Time

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Date

At: _____ ☐ a.m. ☐ p.m.
Time

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I certify that everything in the *Proof of Delivery* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Paul Dulberg
Your Signature

Paul Dulberg
Print Your Name

847-497-4250
Telephone

4606 Hayden Ct.
Street Address

McHenry, IL. 60051
City, State, ZIP

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** FILED ** Env: 10637725
McHenry County, Illinois
17LA000377
Date: 10/1/2020 10:43 AM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts

STATE OF ILLINOIS, CIRCUIT COURT MCHENRY COUNTY	MOTION TO CONTINUE OR EXTEND TIME	For Court Use Only

Instructions ▼	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person who started the lawsuit as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name)*
Enter the name of the person being sued as Defendant/Respondent.	v. POPOVICH PC, THOMAS J, LAW OFFICES OF and Hans Mast **Defendant / Respondent** *(First, middle, last name)*
Enter the Case Number given by the Circuit Clerk.	17LA000377 **Case Number**

In **1**, check if you are the Plaintiff/Petitioner or Defendant/Respondent.

1. ***Motion*** **by:** ☒ Plaintiff/Petitioner ☐ Defendant/Respondent

In **2**, check the box if you are asking the court to continue (reschedule) a court date that has already been scheduled.

☐ **2.** I am asking the court **to continue (reschedule)** a court date that has already been scheduled.

In **2a**, check the reason for the court date you are asking the court to continue (reschedule).

a. Reason for court date: ☐ Motion ☐ Trial ☐ Status ☐ Other

In **2b**, enter the date and time of the court date you are asking the court to continue (reschedule).

b. Date: _____ at _____ ☐ a.m ☐ p.m.

In **2c**, explain why you need to continue (reschedule) the court date.

c. I need a continuance because:

In **3**, check the box if you are asking for more time to do something (e.g. file an *Answer*).

☒ **3.** I am asking the court **for more time** to do something.

In **3a**, explain what you are asking for more time to do.

a. I need more time to: Find new Counsel
which has a deadline of: October 7, 2020
Date

In **3b**, enter the date you are asking the judge to give you until.

b. I need until: October 28, 2020
Date

In **3c**, explain why you need more time.

c. I need more time because: I need to hire new counsel.

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Enter the Case Number given by the Circuit Clerk: 17LA000377

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If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete current address and telephone number.

I certify that everything in the *Motion To Continue Or Extend Time* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Paul Dulberg
Your Signature

4606 HAYDEN COURT
Street Address

Paul Dulberg
Print Your Name

MCHENRY, IL 60051
City, State, ZIP

(847) 497-4250
Telephone

PROOF OF DELIVERY

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

1. I sent this document:

   a. To:
   Name: George Flynn
   First Middle Last
   Address: 150 S. Wacker Drive Suite 1700, Chicago, IL 60606
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   Name of prison or jail

In **c**, fill in the date and time that you sent the document.

   c. On: October 1, 2020
   Date
   At: 12:00 ☐ a.m. ☒ p.m.
   Time

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

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c. On: October 1, 2020
Date
At: 12:00 ☐ a.m. ☒ p.m.
Time

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Street, Apt # *City* *State* *ZIP*
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At: ☐ a.m. ☐ p.m.
Time

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If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

I certify that everything in the Proof of Delivery is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Paul Dulberg
Your Signature

Paul Dulberg
Print Your Name

(847) 497-4250
Telephone

4606 HAYDEN COURT
Street Address

MCHENRY, IL 60051
City, State, ZIP

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This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

STATE OF ILLINOIS, CIRCUIT COURT MCHENRY COUNTY	ORDER GRANTING/DENYING MOTION TO CONTINUE OR EXTEND TIME	*For Court Use Only*

Instructions ▼	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person who started the lawsuit as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name)*
Enter the name of the person being sued as Defendant/Respondent.	v. POPOVICH PC, THOMAS J, LAW OFFICES OF and Hans Mast **Defendant / Respondent** *(First, middle, last name)*
Enter the Case Number given by the Circuit Clerk.	17LA000377 **Case Number**

In **1,** check if you are the Plaintiff/Petitioner or Defendant/Respondent.

In **2**, enter the date you filed the *Motion to Continue or Extend Time.*

In **3**, enter what you are asking the court for with the *Motion to Continue or Extend Time.*

1. ***Motion*** **by:** ☒ Plaintiff/Petitioner ☐ Defendant/Respondent

2. Date *Motion* Filed: October 1, 2020

3. ***Motion*** **to:** ☐ Continue (reschedule) a court date
☒ Extend time

DO NOT complete the rest of the form. The judge will complete it.

People in court ☐ Plaintiff/Petitioner ☐ Plaintiff Attorney ☐ Defendant/Respondent
☐ Defendant Attorney ☐ Other: _____

The *Motion to Continue or Extend Time* is: ☐ **GRANTED**

☐ Court date is continued to: _____ Time: _____ a.m./p.m
Date

☐ Time for _____ is extended to: _____
Date

The *Motion to Continue or Extend Time* is: ☐ **DENIED**

DO NOT complete this section. The judge will sign and date here.

ENTERED:

_____ _____
Judge *Date*

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This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit courts.

STATE OF ILLINOIS, CIRCUIT COURT MCHENRY COUNTY	NOTICE OF COURT DATE FOR MOTION	*For Court Use Only*

Instructions ▼		
Directly above, enter the name of the county where the case was filed.		
Enter the name of the person who started the lawsuit as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name)*	
Enter the name of the person being sued as Defendant/Respondent.	v. POPOVICH PC, THOMAS J, LAW OFFICES OF and Hans Mast **Defendant / Respondent** *(First, middle, last name)*	
Enter the Case Number given by the Circuit Clerk.		17LA000377 **Case Number**

In **1a**, enter the date and time of your hearing.

The Circuit Clerk will give you the date and time of the hearing when you file your *Motion*.

In **1b**, also enter the address of the court and court room number for the hearing.

1. Hearing Information

The reasons for this hearing are listed in the attached papers called *Motion*.

The hearing for the *Motion* I filed is scheduled for:

a. Date: _____ , 20 _____ Time: _____ ☐ a.m. ☐ p.m.

b. Address: McHenry County Courthouse, 2200 North Seminary Ave., Room 352, Woodstock, IL 60098
Street *City* *State* *ZIP*

Courtroom: _____

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the *Notice of Court Date for Motion* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Paul Dulberg
Your Signature

Paul Dulberg
Print Your Name

Enter your complete current address and telephone number.

4606 HAYDEN COURT
Street Address

MCHENRY, IL 60051
City, State, ZIP

(847) 497-4250
Telephone

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Enter the Case Number given by the Circuit Clerk: 17LA000377

PROOF OF DELIVERY

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   Email address: gflynn@karballaw.com

   b. By:
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     Name of prison or jail

In **c**, fill in the date and time that you sent the document.

   c. On: October 1, 2020
   Date

   At: 12:00 ☐ a.m. ☒ p.m.
   Time

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

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/s/ Paul Dulberg
Your Signature

Paul Dulberg
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McHenry County, Illinois
17LA000377
Date: 10/5/2020 3:27 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast ("Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, for their motion to compel Plaintiff to answer written discovery, state as follows:

1) On November 28, 2017, Plaintiff Paul Dulberg ("Dulberg") filed a complaint for legal malpractice against Defendants, more than two years after Defendants withdrew their appearance for Dulberg in his personal injury action against Defendant David Gagnon in *Dulberg v. Gagnon*, Case No. 12 LA 178 in the Circuit Court of McHenry County, Illinois (the underlying complaint), which arose out of a chainsaw accident.

2) At the time of the original filing in the instant matter, Plaintiff was represented by the Gooch Law Firm, and the complaint against Popovich was signed by Thomas W. Gooch, III. (Complaint, Ex. A)

3) In ¶20 of Exhibit A, Dulberg invoked the "discovery rule" in an attempt to toll the two year statute of limitations for legal malpractice claims under 735 ILCS 5/13-214.3. He alleged that Mast and Popovich had provided Dulberg false and misleading information in

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connection with his settlement in the premises liability case with Gagnon's co-defendants, Bill and Carolyn McGuire in the premises liability case, and that Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016.

4) The Gooch firm withdrew from representing Dulberg in the instant case, and the Clinton Law Firm substituted as his counsel, with attorney Julia Williams as the primary handling attorney.

5) On December 6, 2018, Dulberg filed his second amended complaint in this case (Ex., B) filed by the Clinton Law Firm. As compared to Exhibit A, Dulberg's allegations regarding the "discovery" on his cause action against Popovich are slightly different. In ¶¶ 56 and 57 of his second amended complaint, Dulberg alleges that he did not learn that false and misleading information had been provided to him until the mediation in December 2016 based on the expert opinions that Dulberg retained for the mediation.

6) Dulberg gave a discovery deposition in this case on February 19, 2020 (Ex. C). Dulberg was questioned about the "discovery" of his cause of action against Popovich and his law firm beginning on page 106 of his deposition (See also, page 108 where plaintiff Dulberg testified that his attorney at the time, Randy Boudin had told him to seek an independent opinion from an attorney that handles malpractice matters, and that Dulberg received that opinion on or about December 16, 2016 from Thomas Gooch.) Dulberg again confirmed that Gooch provided him with the legal opinion on December 16, at page 112 of his deposition. See also, pp. 113 and 114.

7) At Dulberg's deposition, Ms. Williams asserted the attorney-client privilege on behalf of her client relative to Gooch's advice in December 2016, but over the objection allowed

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Dulberg to testify concerning the substantive the discussions. The substantive testimony was sparse and vague. At p. 126 of his deposition, Dulberg agreed that his discussion with any malpractice lawyer in December 2016 is responsive to interrogatory no. 1 from Hans Mast (Ex. D). At p. 127 of his deposition, Dulberg responded to the following question:

Q: How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?

A: Yes.

Q: That's what you've alleged here in this complaint.

A: Yes.

8) On July 2, Popovich served supplemental production requests aimed at Dulberg's discovery of the malpractice as alleged in December of 2016, including the following production requests. (Ex. E)

9) On July 30, 2020, Julia Williams, then Dulberg's counsel requested 28 days to respond to Popovich's supplemental request for production. Counsel for Popovich agreed, but then received notice of the Clinton Law Firm's motion to withdraw on August 18, 2020.

10) On September 10, 2020, this Honorable Court granted the Clinton Law firm's motion to withdraw as Dulberg's counsel. Dulberg currently has a *pro se* appearance filed on his own behalf.

11) The attorney-client privilege exists to encourage and promote full and frank consultation between a client and legal advisor by removing the fear of compelled disclosure of information. *Waste Management, Inc. v. International Surplus Lines Ins. Co*., 144 Ill. 2d 178, 190 (1991); *Daily v. Greensfelder, Hemker & Gale, P.C.*, 2018 IL App (5th) 150384, ¶1122-23. However, it is not unconditional, and it is the privilege, not the duty to disclose, that is the exception. Id. Illinois adheres to a strong policy of encouraging disclosure, with an eye toward

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ascertaining that the truth which is essential to the proper disposition of a lawsuit. *Center Partners, Ltd. v. Growth Head GP, LLC*, 2012 IL 113107, ¶ 35; Daily, 2018 IL App (5th) 150384 at ¶ 23. Accordingly, "the privilege ought to be strictly confined within its narrowest possible limits." *Waste Management, Inc.*, 144 Ill. 2d at 190; Daily, 2018 IL App (5th) 150384, ¶ 23.

While the Illinois Supreme Court has not had occasion to find an "at issue" exception to the attorney-client privilege, it has clearly recognized that such an exception exists where the client voluntarily injects into a case either a factual or legal issue, the truthful resolution of which requires examination of confidential communications. *Center Partners, Ltd.*, 2012 IL 113107 at ¶ 35; Daily, 2018 IL App (5th) 150384 at Irri 24-25. The Illinois Supreme Court in *Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc.* illustrated that the test in determining whether the exception exists is whether or not the communications in question are necessary to resolve the truthfulness of a factual or legal issue that was introduced by the client holding the privilege. 189 Ill. 2d 579 (2000). Furthermore, when a plaintiff places at issue in a case the extent to which multiple attorneys representing it proximately caused its alleged damages, all communications between the plaintiff and its attorneys are discoverable "to truthfully resolve the factual and legal issues necessary to adjudicate the causation element of plaintiff's claims." *Daily*, 2018 IL App (5th) 150384 at ¶¶31- 32 (finding that the "at-issue" exception applied because "there is an issue of whether [plaintiffs' attorneys] contributed to the cause . . . and the relative contribution of each to the plaintiffs' damages").

12) In *Lama v. Preskill*, 353 Ill. App. 3d 300 (2nd Dist. 2004), the Plaintiff's husband met with an attorney 4 days after her medical procedure (in March 1999) that was the subject of a medical malpractice claim. The claim was untimely filed, and the doctor sought production of

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C 375

records relative to the husband's meeting with the attorney. The patient asserted that production would violate the attorney-client privilege. The court affirmed the trial court's finding that the privilege was waived when she voluntarily injected the statute of limitations issue into her case, alleging she did not discover her medical malpractice claim until June 1999. This case is on point and binding.

13) At pages 133-142 of his deposition, Dulberg admitted that he communicated in writing with Gooch regarding Popovich's breaches of the standard of care, and the bases for same.

14) Based on all of the above, Dulberg has placed the discovery of his malpractice claim "at issue" and must produce any and all communications which form the basis for his "discovery" of his malpractice claims, and the bases for his argument that the 2 year statute of limitations should be tolled.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court grant their motion to compel Plaintiff to answer written discovery and produce requested documents and that Plaintiff be required to answer the outstanding written discovery and produce all documents requested in Exhibit D within 14 days of the presentation of this motion, deny any and all objections to said production, including any objection based on the attorney-client privilege, and for any and all further relief this Court deems just and appropriate.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

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C 376

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377
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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT A

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT

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COPY
MAY 15 2012
KATHERINE M. KEEFE, McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT B
ALL-STATE LEGAL®

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 204 ON 11-28 20 12, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON 20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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The Law Offices of Thomas J. Popovich P.C.

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Telephone: 815.344.3797
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www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kohiak

Mark J. Vogg
James P. Tutaj
Robert J. Lumbek
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT C
ALL-STATE LEGAL®

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.S	75,000.
L N L	25,000.

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

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** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendant.	)	No. 17 LA 377

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT B

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4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

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15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

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27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.)**

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

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44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

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53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing

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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

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Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
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STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 204 ON 11-28-2012, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____ 20__, AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
B

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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C 412

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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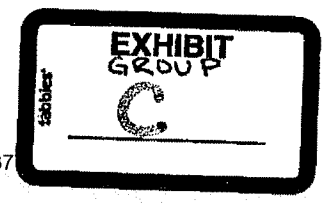
From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>>
>> Sent from my iPhone
>>
>>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>>
>>> Only 5, That's not much at all.
>>> Is this a take it or leave it or do we have any other options?
>>>
>>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>>
>>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kohnak

Mark J. Vogg
James P. Tutaj
Robert J. Lumbier
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
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D

Waukegan Office:
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.



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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (If applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

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Pamela Walker

From: McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
Sent: Monday, December 10, 2018 1:37 PM
To: George K. Flynn; Pamela Walker
Subject: 17LA000377 - 2 Documents Filed

17LA000377

DULBERG, PAUL VS MAST, HANS, ET AL

Doc Type	**COAA**
Description	**COMPLAINT - AMENDED**
Date Filed	**12/6/2018**
Image Link	View Document Image

Doc Type	**NOTF**
Description	**NOTICE - FILING**
Date Filed	**12/6/2018**
Image Link	View Document Image

NOTE: E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

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IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

The deposition of PAUL DULBERG, called for examination, taken pursuant to the provisions of the Code of Civil Procedure and the rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Realtime Reporter of said state, at 150 South Wacker Drive, Chicago, Illinois, February 19, 2020, at the approximate hour of 1:00 p.m.

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PRESENT:
THE CLINTON LAW FIRM,
111 West Washington Street, Suite 1437,
Chicago, Illinois 60602,
312-357-1515, by:
MS. JULIA C. WILLIAMS,
juliawilliams@clintonlaw.net,
appeared on behalf of the Plaintiff;

KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC,
150 South Wacker Drive, Suite 1700,
Chicago, Illinois 60606,
312-431-3700, by:
MR. GEORGE K. FLYNN,
gflynn@karballaw.com,
appeared on behalf of the Defendants.

REPORTED BY: Karen Pileggi, CSR, RPR, RMR, CRR,
CSR License No. 84-3404

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(WHEREUPON, the witness was duly sworn.)

PAUL DULBERG,

called as the plaintiff herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FLYNN:

Q. Let the record reflect that this is the discovery deposition of Paul Dulberg taken by agreement of the parties and pursuant to notice.

This deposition is being taken pursuant to the Rules of the Illinois Supreme Court, the Illinois Code of Civil Procedure and any applicable local rules in McHenry County.

Sir, could you state your name and spell your last name for the record.

A. Palm Dulberg, D-u-l-b-e-r-g.

Q. What is your address?

A. 4606 Hayden Court, McHenry, Illinois 60051.

Q. How long have you lived there?

A. Forty-nine years.

Q. Who do you live there with now?

A. Mike McArtor.

Page 4

Q. Did your mother live there at some point throughout the history of this case?

A. Yes.

Q. I'm just going to go over a few rules for the deposition. I know you've testified at least one time in a deposition before because you testified in the underlying personal injury case, correct?

A. Correct.

Q. Have you testified in any other depositions before?

A. No.

Q. I'll just remind you of a few rules that I'm sure you were aware of back then when you gave your deposition.

The court reporter is here to take down everything that you and I say. She can only take down one at a time so I'd ask that before you answer a question, let me finish the entire question. Okay?

A. Yes.

Q. I'll try to do the same. I'll try to let you respond before I ask a follow-up question.

You just nodded your head. That's

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another good point to make. She can't take down nods of the head, shrugs of the shoulders or other hand gestures. Your answers need to be verbal.

From time to time we forget those rules and I may just point to the court reporter as a reminder, if that's okay.

A. Yes.

Q. If you need to take a break at any time, feel free to stop me. I just ask that it's not while a question is pending that has not been answered. Fair enough?

A. I'll try to do that.

Q. If you've answered a question, I will assume you understood it. Okay?

A. Yes.

Q. I was asking you about your mother. She lived at the house during the pendency of the underlying case?

A. Yes.

Q. Is she still alive?

A. Yes.

MS. WILLIAMS: Can we define "underlying case"?

BY MR. FLYNN:

Q. The underlying case is a personal injury

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case that you filed against Bill and Caroline McGuire and David Gagnon.

A. That sounds correct.

Q. We'll get into the dates of the filing a little bit later. We'll call that, generally, the underlying case.

Your mother lived at the house at that time?

A. Yes.

Q. Did she own the house?

A. No.

Q. Do you own the house currently?

A. Yes.

Q. Does anyone else own the house?

A. No.

Q. How long have you owned it?

A. I think I first purchased it off my parents in '97, '98, something like that.

Q. Did you hire a lawyer in connection with that transaction?

A. No.

Q. Were your parents represented by a lawyer?

A. No.

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Q. The building, as I understand it, is a duplex; is that right?

A. No.

Q. Were there two apartments in the building at one time?

A. No.

Q. Was there a point in time where you and your mother lived in one half of the house and Mike McArtor lived in the other half?

A. Yes.

Q. How was that arrangement with respect to the location of the living spaces, if you can describe it?

A. It has a walkout basement. He had the downstairs with an exit out the back. We had the upstairs with an exit out the front.

Q. Have you ever been convicted of a crime of fraud, dishonesty or deceit?

A. No.

Q. Besides the hiring of the Popovich firm in connection with the underlying personal injury case, up to that point in time had you ever had an occasion to hire a lawyer?

A. I did during a traffic accident, and I

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don't remember the year.

Q. Were you injured in about 2002? Does that sound right?

A. Roughly.

Q. Who did you hire?

A. I might get the name wrong because it's been a long time. I think it was Weiss and Michling and something else. It was a lawyer right outside the courthouse in Woodstock.

Q. A McHenry County lawyer?

A. Yeah.

Q. It was a personal injury case?

A. Yeah. It was a car accident.

Q. Did you file a lawsuit in that case?

A. I don't think we needed to.

Q. You just filed an insurance claim?

A. They did, yes.

Q. You settled it?

A. Yes.

Q. Any other occasions to hire a lawyer between that time and the time you hired the Popovich firm?

A. May I consult for a minute because I'm not sure how to answer that.

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Q. Why don't you just tell me why you can't answer it.
A. Because I've hired lawyers, but they were for the company that I had. That's different.
Q. I'm asking general questions about any interaction you've had with hiring lawyers. Any experience you've had with hiring lawyers.
A. I had a corporate lawyer. My mom and dad hired a lawyer for me when I was a kid. It was something. And myself, just the corporate lawyer, the car accident lawyer and the Popovich firm.
Q. Have you ever been married?
A. No.
Q. So you never hired a divorce lawyer. Good. How old are you now?
A. Forty-nine.
Q. The underlying case arose out of an injury that occurred on June 28, 2011, correct?
A. That sounds correct.
Q. How old were you at that time?
A. Forty-one.
Q. Besides the underlying lawsuit against the McGuires and Mr. Gagnon, had you ever filed any other lawsuit up until that point in time?

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A. No.
Q. Have you filed any lawsuits since that time besides the lawsuit against Popovich and Mast?
A. No.
Q. Do you have any military experience?
A. Yes.
Q. Please tell me about that.
A. Army National Guard. Illinois Army National Guard.
Q. How long have you been in the National Guard?
A. I'm not currently in it.
Q. When were you, from when to when?
A. I may not get the year correct. '88 or '89 to '92 or '93, somewhere in there.
Q. What was your highest rank when you were discharged from the National Guard?
A. When I was discharged?
Q. Correct.
A. I don't know. I've gotten moved up and moved down. I don't know where I ended up.
Q. How was it that you were discharged?
A. Less than honorable.
Q. What was the cause?

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A. I missed morning call, roll call. If you're not there, you're AWOL.
Q. Absent without leave?
A. Yes.
Q. What is the highest level of education that you've attained?
A. I do not have a degree. Two years of college.
Q. You graduated from high school?
A. Yes.
Q. Was that in Johnsburg in 1988?
A. Yes.
Q. Did you know Mr. Gagnon from Johnsburg High School?
A. Not from high school but just after high school.
Q. Just coincidentally you attended the same high school?
A. He was three years older than I was. I didn't know who he was until after high school.
Q. You had some education after high school but did not receive a degree, correct?
A. Correct.
Q. Where did you study?

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A. I had a couple classes at McHenry County College and McMurray College.
Q. What did you study?
A. The first two years. The basics.
Q. General studies?
A. Yeah. I did a criminal justice course. I did a macro/microeconomics. I did psychology, sociology. The normal stuff.
Q. How did you meet David Gagnon?
A. Through a mutual friend.
Q. When was that?
A. I want to say, roughly, 1990.
Q. Was your home located somewhere fairly close to his parents' home or his mom and stepdad's home?
A. Two streets away.
Q. That's where you were injured on June 28, 2011, was at David Gagnon's mom's house and his stepdad's house?
A. Yes.
Q. And their name is McGuire?
A. Yes.
Q. Generally speaking, you were injured assisting David with a chainsaw trying to cut down a

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tree?
A. He was cutting a branch.
Q. Cutting branches off a tree, correct?
A. Cutting up the branches after they were off the tree.
Q. Could you tell me a little bit about your work history. Do you have any licenses or certifications?
A. I'm certified to run printing presses. Or at least I was.
Q. You worked for Sharp Printing, Inc. from '91 to 2011; is that right?
A. Ninety-one? No. I would say 1999.
Q. Did you own that corporation?
A. Yes. Well, partner. I was a partner. I didn't own like...
Q. It was an Illinois corporation?
A. Yes.
Q. Were you –
A. A stockholder.
Q. Let me just finish my question so she can take us down.
You were a stockholder in Sharp Printing, Inc.?

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A. Yes.
Q. Who else were the stockholders?
A. Mike McArtor and Scott Dulberg and at that time it was Herbert Dulberg.
Q. What does that mean? Do you mean Scott's name was Herbert?
A. No. Scott Dulberg was an owner and Herbert Dulberg was an owner. Three different Dulbergs: me, my brother, my dad.
Q. And Mike McArtor?
A. Yes.
Q. There were four owners at what time?
A. Until my dad died and then it went to three.
Q. Was that business incorporated?
A. Yes.
Q. Did a lawyer assist the corporation with setting up the corporation?
A. Yes.
Q. When did that happen?
A. 1999.
Q. Did you hire the lawyer yourself?
A. All three of us did. All four of us. Sorry.

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Q. What was the name of that attorney?
A. McAndrews, and I don't remember the rest of it. It was McAndrews in McHenry. I can get you the rest of that information.
Q. They are based in Crystal Lake, Illinois?
A. It used to be in McHenry when we did that.
Q. Patrick McAndrews, he was also identified as the registered agent of that corporation?
A. Yes.
Q. It was voluntarily dissolved on April 8, 2011; is that right?
A. That's what the Secretary of State's Office has, yes.
Q. Is that your understanding as well?
A. I was corrected. My partners – I was corrected. It was actually after the accident. How it got to end up with that date, I'm not sure.
Q. What was corrected, exactly?
A. Well, do you want me to -- Mike read my deposition and he said, "You got that wrong." I said, "What do you mean?" because I answered it twice in that deposition.
I was thinking that Juskie happened

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before the accident. Sharp Printing wasn't actually dissolved until after the accident when we decided to sell off the equipment and end it all. That's the honest truth.
Q. I will represent to you that the Illinois Secretary of State's Website as of today shows that the company was involuntarily dissolved on April 8, 2011. So it's your testimony that that is not true?
A. I don't know how they come up with that.
Q. Why don't we break it down and start with why the corporation was involuntarily dissolved. Do you know that?
A. Involuntarily? I don't know. It may be that I was late on paying the corporate licensing thing, which we just pay a fine and did it. We didn't renew it because we decided to end it.
We had a ten-year thing, I think, on it. I may be wrong. I've got to go back and look at the records.
Q. Is it possible that the corporation was actually involuntarily dissolved by the Illinois Secretary of State on April 8, 2011?
A. Sure.
Q. Did Sharp Printing, Inc. file corporate

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tax returns while it was a going concern?
A. We had a problem the couple of years before the accident because I was not up in Illinois and I usually did that with the lawyer and the accountant and things got screwed up while I was taking care of a loved one who was dying down in Florida.
Q. Did the corporation ever file tax returns?
A. Oh, yes.
Q. When did they file?
A. Quarterly and annually.
Q. Until what year?
A. Roughly somewhere in 2008. I was missing things because I was not here. I know we missed a few.
Q. I believe you testified in your underlying deposition that Sharp Printing, Inc. was not dissolved as a result of your June 28, 2011 chainsaw accident, correct?
A. Yes, I did. I stood corrected by my partners.
Q. So is it your testimony that the corporation was dissolved because of your personal

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injury?
A. I don't know how to answer that without going back and looking at records.
Q. Was the company winding down up until about the time you were hurt?
A. The company books got screwed up when I was down in Florida and I was back up in Illinois in 2010 getting back on my feet and I was going to pick things back up, get everything paid up, the fines and everything.
Q. Who were you taking care of in Florida?
A. My grandmother.
Q. You were gone from when until when?
A. I want to say from the mid to end of 2007 until somewhere in the beginning of 2010.
Q. Was anyone running Sharp Printing during that period of time?
A. Mike McArtor.
Q. Did Sharp Printing have any customers for that three-year period?
A. Yes, they did.
Q. How many?
A. I'm not sure, without looking at the books.

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Q. Can you estimate what the yearly revenues were for Sharp Printing in the year 2007?
A. In 2007? I'd have to look at the books, to be honest with you.
Q. Was it more than $5,000?
A. Yes.
Q. Was it more than $100,000?
A. No.
Q. Was it more than $20,000?
A. Yes.
Q. Same line of questioning with respect to 2008. Do you know what the revenues were for Sharp Printing in '08?
A. Are you asking me what we reported or what we made and put into accounts for equipment?
Q. I'm asking you about revenues.
A. Total sales?
Q. Total revenues.
A. In two thousand...?
Q. 2008.
A. I'd have to go back and look.
Q. Can you estimate what they were?
A. No, because I wasn't there.
Q. Do you know how many customers the

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company had in 2008?
A. We had a few, I know that. I don't know how many. Mike was handling it and it got messed up.
Q. What types of customers did Sharp Printing have in 2007 and 2008?
A. What kind of customers?
Q. Right. What did you do?
A. We printed on t-shirts. We printed on CDs. We printed on anything that wasn't wet. We printed on glass, all different stuff.
Q. Were there any full-time employees of Sharp Printing in '07 and '08?
A. In '07 and '08, no.
Q. Just the owners?
A. Just the owners.
Q. Did all the owners operate the business?
A. Yes.
Q. Including your brother?
A. Yes.
Q. What were the yearly revenues of Sharp Printing in 2009?
A. I don't know.
Q. What about 2010, do you know?

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A. No.
Q. When did Sharp Printing start selling its equipment?
A. I put up the ad in August. I think August. I might be off by a month or two. August of 2011.
Q. Did you sell any equipment prior to August 2011?
A. No.
Q. What type of equipment did Sharp Printing, Inc. have or own?
A. Mostly textile screen printing equipment, but we had other screen printing stuff too. Paper.
Q. Where was the equipment located?
A. My home.
Q. Did you require a license to conduct this business out of your home?
A. We had what was called a temporary – we're in a rural area so we didn't have to have that.
Q. In any event, you didn't have a license, correct?
A. We had a license to do business there, yes.

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Q. In that location?
A. Yes.
Q. Did customers ever come to the shop?
A. Yes.
Q. Do you recall how many customers the business had in 2010?
A. Not in 2010.
Q. Was it more than five?
A. Yes.
Q. Was it more than 100?
A. It might be around that. I don't know, specifically.
Q. In 2010 you may have had 100 customers that you did t-shirt screen prints for?
A. Possibly. I'm not saying that is the number, but it's possible.
Q. Did Sharp Printing have any customers in 2011?
A. Mike was finishing up one customer's thing in the spring of 2011, yes. We don't – I'll give you -- we don't typically get much work between January 1st and the first warm days of Spring. We sell t-shirts and not a lot of people buy during that period. They just don't.

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Q. You did not earn a salary from Sharp Printing, correct?
A. No.
Q. You did not earn an hourly wage, correct?
A. No.
Q. I think your interrogatory answers indicate you didn't take a profit or a draw, correct?
A. Correct.
Q. How much, if any, money did you earn from Sharp Printing in 2011?
A. Can I ask how to define that? In 2011 I didn't pull any.
Q. Did you earn any income whatsoever from Sharp Printing in 2010?
A. I don't think so.
Q. You were down in Florida for '07 to 2010?
A. Sometime in early 2010, yes.
Q. Did you earn any income from Sharp Printing from 2007 to 2010?
A. No.
Q. Were you working in Florida?
A. No.
Q. Is it fair to say you were unemployed

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from 2007 to 2010?
A. Yes. I was not officially collecting unemployment.
Q. You weren't an employee of any business or working for any individual, correct?
A. I did do some work for Mark. I did some traveling back and forth from Florida to Illinois back and forth during that time. When I was up here, I did do some work for Juskie Printing. Not much, though.
Q. What is Juskie Printing?
A. Juskie Printing is another one that I had listed as an employer in the underlying case.
Q. What are they?
A. Another print broker.
Q. Where are they located?
A. I don't know the exact address, but it's off of Chicago Avenue off of 355 going south.
MS. WILLIAMS: I think he's asking what city.
BY THE WITNESS:
A. I don't know how the cities break up down there.
BY MR. FLYNN:
Q. Somewhere in the western suburbs of

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Chicago?
A. Yes.
Q. How long did you have a relationship with Juskie Printing?
A. Since the early 2000s.
Q. What type of printing did Juskie do?
A. Offset, mostly.
Q. What does that mean?
A. Prints on paper.
Q. Did you have a set schedule at any time working for Juskie?
A. I don't know what you mean by "a set schedule."
Q. Did you have a particular number of hours per week?
A. No. The jobs I got were project based.
Q. How many projects did you have from 2007 to 2011 for Juskie?
A. Probably a few hundred quick little things, yeah. At least.
Q. Do you know what you earned from working at Juskie in 2007?
A. Not without looking at the returns, I don't know offhand.

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Q. How often were you in the Chicago area in 2007?
A. I didn't leave here until, I want to say, August or September of '07.
Q. And then thereafter?
A. I was not back that year.
Q. You didn't work for Juskie in 2008, correct?
A. I might have done some stuff.
Q. You're not sure?
A. I'd have to go back and look.
Q. Were you in Florida?
A. Part of the time, yeah.
Q. How often did you come back and forth between --
A. About every three months I tried to get back up here.
Q. For how long?
A. Sometimes a few weeks. Sometimes a month.
Q. Did you come back and work or did you take care of other things?
A. If I'd let Mark know I was back, "I've got something for you or I don't."

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Q. Who is Mark?
A. Mark owns Juskie Printing.
Q. I think your interrogatory answers indicated from 1999 through 2006 you were employed in a barter situation; is that right?
A. With Mark, yes.
Q. What does that mean, exactly?
A. Well, he would owe me money and he would give me printing equipment instead of cash.
Q. He owed you money for working for him?
A. Well, he owed both Sharp Printing and me, personally, money. They are two different things. But he would just pay by saying, hey, I've got this or I've got this paper cutter or this or that. It was a barter.
Q. So you worked for him from 1999 to 2006 but did not earn any income in the traditional sense?
A. No money changed hands.
Q. He gave you things to pay you for projects?
A. Correct.
Q. You gave a deposition in the underlying case on January 24, 2013. Does that sound right?

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A. If it says it on there, yes.
Q. You took an oath that day?
A. Yes.
Q. You told the truth?
A. I tried to, to the best of my knowledge, on that day, yes.
Q. You told the truth in response to all of the questions that day, correct?
A. I tried to, yes.
Q. You testified you were last employed prior to the accident in May of 2011?
A. That would be with Juskie, yes.
Q. It's accurate --
A. Actually, I wasn't employed. I was a 1099 so I was self-employment.
Q. When in May did you stop working for Juskie, whether it be as an employee or an independent contractor?
A. I believe it was the end of May.
Q. Then from the beginning of June until your accident on June 28, 2011, you were not employed; is that an accurate statement?
A. Correct.
Q. You were not even acting as an

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independent contractor for any business from that period of time, correct?
A. Not during that month, no.
Q. Your deposition testimony from 2013 is typed up on 175 pages. I don't intend to go back over each of those details.
A. Okay.
Q. It's fair to say you were injured, your arm was injured on June 28, 2011, correct?
A. Correct.
Q. Which arm was that?
A. My right arm.
Q. As a result of the injury, you hired the Popovich law firm to explore a recovery in the case?
A. I hired them to represent me, yes.
Q. You hired them to represent you and file a lawsuit against David Gagnon who was operating the chainsaw that injured you, correct?
A. He was one of them, yes.
Q. I'm asking you if you hired him to --
listen to the question, please.
David Gagnon was operating the chainsaw, correct?
A. Correct.

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Q. No one else was operating the chainsaw?
A. Correct.
Q. You also hired Popovich to sue Bill and Caroline McGuire, correct?
A. Correct.
Q. They were the land owners where your accident occurred?
A. They did own the land, yes.
Q. The accident occurred at their house, correct?
A. Correct.
Q. This was in the backyard, so to speak?
A. Yes.
Q. Hans Mast was the primary handling attorney at the Popovich firm for your case?
A. That's who I met with, yes.
Q. Did any other lawyer communicate with you while Popovich was handling your case?
A. The lady who sat in on my deposition. Ms. Freeman I think it is. I'm not sure about that.
Q. Generally speaking, Hans Mast, though, was the primary handling attorney?
A. Yes.
Q. Before you hired the Popovich firm in May

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of 2012, is that the correct time period?
A. I don't think so. I don't think they filed it until then, but I might be wrong. I'd have to go back and look.
Q. Was there a retainer agreement executed in May 2012?
A. I don't think I paid a retainer.
Q. Did you execute an attorney engagement agreement in May 2012?
A. I believe it was much earlier than that.
Q. You only executed one engagement letter or engagement agreement with Popovich, correct?
A. Yeah.
Q. Before you executed or came to an arrangement with Popovich, had you talked to any other lawyers about investigating --
A. One.
Q. Let me finish the question.
-- investigating or filing the lawsuit?
A. Yes.
Q. Who was that?
A. I went back to the same firm that handled the car accident for me years earlier.
Q. What was the name of that firm?

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A. They changed names when I went back there. It was Weiss -- I have to go back through paperwork and get you the actual name.
Q. They are known as a personal injury firm; is that right?
A. Yes.
Q. Why did you not hire them to take your case?
A. The man who handled my case previously with the car accident was no longer with the firm and they said go find somebody else.
Q. I'm not sure what one has to do with the other.
A. I don't either. I just said okay and I went and found somebody else.
Q. Did you meet with an attorney at that firm?
A. Yes.
Q. Did you tell them what happened with your incident?
A. Yes.
Q. They told you that they did not want to take the case; is that right?
A. Yes.

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Q. They declined the case?
A. They declined the case.
Q. Did they tell you why they declined the case?
A. No.
Q. You next went to the Popovich firm?
A. Yes.
Q. They took the case?
A. Yes.
Q. They, ultimately, filed a lawsuit against Gagnon and the McGuires on May 15, 2012; is that right?
A. Yes.
Q. You reviewed the lawsuit and approved it, correct?
A. I didn't -- I never got anything to review.
Q. Did you ever read the lawsuit?
A. No. I was never given any paperwork.
Q. Back to the incorporation of Sharp. What interaction did you have with corporate lawyers when they were first retained?
A. McAndrews?
Q. Correct.

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A. What relationship?
Q. What experience did you have with McAndrews when you first retained them?
A. He was good.
Q. How often did you meet with him or speak to him?
A. Once a year.
Q. Did he file corporate returns or other documents for the company?
A. No. I had to file them. He just made sure they were all done right, I believe.
Q. Have you ever had occasion to hire a criminal lawyer?
A. I did in 1990. My mom and dad had to hire one. Not me.
Q. Did you hire a criminal lawyer for your mom and dad?
A. No. They hired one for me.
Q. Who was that?
A. Give me a second. You're digging back far in my memory. Driscoll was the last name.
Q. This was a McHenry County-based criminal lawyer?
A. No. Des Plaines.

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Q. What was the general nature of the reason for the need for a lawyer?
A. Drug possession.
Q. Were you convicted of it?
A. Yes. I pled guilty.
Q. That was a Cook County case, then?
A. No. It was a McHenry County case.
Q. The lawyer was in Des Plaines, though?
A. Yes.
Q. But he represented you in McHenry County in criminal court?
A. Yes.
Q. Throughout the case you met with the lawyer?
A. A few times.
Q. While Popovich represented you in the underlying personal injury case, did you ever communicate with any other lawyers about your case?
A. At the end, yes.
Q. Popovich withdrew sometime in March 2015?
A. Correct.
Q. And Brad Balke entered his appearance on March 19, 2015. Does that sound correct?
A. That is correct.

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Q. Popovich also withdrew that day, right?
A. I don't know if it was on the same day. I'd have to look at the paperwork.
Q. Besides Mr. Balke, had you talked to any other lawyers towards the end of the relationship with Popovich?
A. Yes.
Q. How many?
A. Hundreds.
Q. Hundreds of lawyers?
A. I'm not kidding. Yes.
Q. Did you ask those lawyers to take your case?
A. I asked them to review it.
Q. Did any of them take the case?
A. No.
Q. They all reviewed it, though?
A. Yes. Most took the time to review it.
Q. Did any of them tell you why they didn't want to take the case?
A. There were different reasons I got from various. Some people just didn't get back to me and some people wrote me letters. I think I gave you some of those. But I got various reasons back from

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attorneys.
Q. I don't recall seeing any lawyers, but I would ask you to search for those.
MS. WILLIAMS: We'll search for those. I'll make a note.
BY MR. FLYNN:
Q. As you sit here, do you recall the basis for any attorney declining to take your personal injury case over from Popovich?
A. Say that again.
Q. As you sit here today, do you recall any of the reasons why any attorney declined to take your personal injury case over from the Popovich firm?
A. Yes.
Q. What were those reasons?
A. I remember a few. One I was looking at local lawyers in McHenry County and I was told like -- I can name them. My sister was married to him.
Anyway, I was told if Tom Popovich says you don't have a case, you don't have a case and we're not even going to look at it. That I got a lot of it.

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Q. That's one reason. Any others?
A. That I got locally a lot of. As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that.
Q. Who said that?
A. Sal Ferris.
Q. When did you speak to Sal Ferris?
A. I don't know the exact date.
Q. When did he –
A. He wasn't the only one.
Q. When did he say that to you, that you just described?
A. He said it in a letter and he said it on the phone and he sent me an e-mail, I think. I don't remember the ways that he contacted me. I'd have to go back and look.
MS. WILLIAMS: We'll find it.
BY MR. FLYNN:
Q. Besides Sal Ferris, can you recall any other attorney, specifically, that told you they wouldn't take the case because of your settlement with the McGuires?

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A. Yes.
Q. Who was that?
A. There was at least three firms downtown here right near the Daley Center that I came down to see and I don't remember their names, but they -- I got the same thing out of all three of them.
Q. Did any of the lawyers give you any other reason for declining your case?
A. Mostly it was because they knew Popovich or it was the McGuire settlement.
Q. Did any lawyer tell you that they didn't want to take your case because there was questionable liability against David Gagnon?
A. No.
Q. Did any lawyer tell you that there was questionable liability against the property owners, the McGuires?
A. No.
Q. We're jumping ahead, but did you have different lawyers that handled a binding arbitration or binding mediation for you in the underlying case?
A. Yes.
Q. Their name was Baudin?
A. Yes.

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Q. Why did Brad Balke not handle the binding arbitration?
A. I fired him.
Q. When did you fire Brad Balke?
A. I'd have to look at the dates. I'm not sure, exactly.
Q. Why did you fire him?
A. Because he forced me to undergo the exact mediation at the McHenry County court in front of Judge Meyer that Hans Mast set up that I specifically said no to.
Q. When was this mediation?
A. I'd have to look at the dates again.
Q. Was it a pretrial conference?
A. Yes.
Q. You actually attended this pretrial conference?
A. Yes, I did.
Q. What happened?
A. I said no.
Q. You said no about what?
A. They offered an amount of money and I said no.
Q. The defendants offered an amount of

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money?
A. Yes.
Q. Was this before or after the McGuires settled out of the case?
A. They were settled.
Q. So there was an offer of settlement from David Gagnon or his insurer?
A. Yes.
Q. Do you recall what that amount of money was?
A. $50,000.
Q. You refused the offer?
A. Yes.
Q. Why did that cause you to fire Brad Balke?
A. He wouldn't take it any further than that and he agreed to when I hired him. He agreed that that was not going to be the end of it and then he changed his tune, and I said, you know what -- and the other thing was, I finally got through to the Baudins who I wanted to take the case because they had helped my family -- his dad helped my family many eons earlier.
Q. Did you ever talk to Brad Balke about the

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liability or lack of liability by the McGuires, the property owners in the case?
A. I don't think so. We were on the Gagnon case.
Q. You didn't discuss the McGuires?
A. There may have been a word or something, but that's not what he was there for.
Q. He never gave you an opinion one way or the other whether the settlement was appropriate?
A. I don't believe Brad did, no. Like I said -- I don't think he did.
Q. At some point after your accident did you hire the Daley Disability Law Firm?
A. Yes.
Q. Was that for --
A. I didn't hire.
Q. I know you're anticipating what I'm saying.
A. I was trying to correct myself. I did not hire.
Q. Either way, let me try to get out my question before you raise any kind of response, just so she can take down --
A. Count before I answer.

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Q. That's a good idea.
Did you ever retain the Daley Disability Law Firm?
A. NO.
Q. Did you have any relationship with Daley Disability --
A. Yes.
Q. -- Law? Let me finish it before you answer. I know you're anticipating what you think I'm going to say, but it might not come out the way you think. Either way, she can't take down both of us talking over each other.
What relationship did you ever have with the Daley Disability Law Firm?
A. They stepped in as a substitute counsel for the law firm that I did hire.
Q. You originally hired some other law firm to represent you in connection with social security disability?
A. Yes.
Q. What was the name of that original law --
A. The lady's ladies name was Margaret Bradshaw.
Q. You terminated your relationship with her

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one way or another?
A. No.
Q. Why did Daley Disability Law substitute in for her?
A. I was told by -- I have to go back and look at the communications exactly how it happened, but I was told that, basically, they are going to be taking over the hearing part of it. I don't know why. I don't know whether they sub out work. I don't know how it works.
Q. Would it be fair to say that you first retained Ms. Bradshaw in 2012 sometime?
A. I'd have to go back and look.
Q. Is that approximately when you applied for social security?
A. It sounds like it.
Q. The Daley Disability Law Firm came in sometime in 2012 as well?
A. I don't know exactly when. I don't know.
Q. Would it be 2012 or 2013?
A. I know that they were there and -- I know that something had to be signed when we went in for the hearings. Margaret Bradshaw had to sign something for the judge allowing Daley Disability to

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represent me at the hearings. I don't know when exactly they got involved. That's behind the scenes. I didn't have anything to do with that.
Q. Did you file for bankruptcy while your personal injury case was pending?
A. Yes.
Q. When did you file for bankruptcy?
A. I'd have to look at the paperwork again, but I don't believe that was until, I want to say, about eight or nine months, but I'm guessing, after the McGuire settlement.
MS. WILLIAMS: The question was what month and year.
BY THE WITNESS:
A. I don't know exactly. I'd have to go back and look at the paperwork.
BY MR. FLYNN:
Q. Did you hire a lawyer to represent you in a bankruptcy?
A. Yes.
Q. Who was that lawyer?
A. David Stretch.
MS. WILLIAMS: If it helps, we can stipulate to the date the bankruptcy was filed.

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MR. FLYNN: That's fine. I think we've got some e-mails that may reflect when it was. I just wondered if he knew offhand.
MS. WILLIAMS: I can stipulate, at least, that it was 2014.
BY MR. FLYNN:
Q. You filed for bankruptcy while the Popovich firm was still representing you --
A. Yes.
Q. -- in the underlying case, correct?
A. Yes.
Q. Sometimes I'll still pause in my question so if you could please pause before you answer.
In the underlying case you answered written discovery; is that true?
A. I believe so.
Q. Then you later testified at your deposition January 24, 2013, correct?
A. If that's the date, yes.
Q. Ultimately, David Gagnon was also deposed, true?
A. Yes.
Q. Were you present for his deposition?
A. No.

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Q. Did Caroline McGuire give a deposition in that case?
A. I believe so, yes.
Q. Were you present for that dep?
A. No.
Q. What about Bill McGuire's deposition?
A. I was not present.
Q. Did you e-mail back and forth with Hans Mast a fair amount during the Popovich firm's representation of you?
A. By "fair amount," what do you mean?
Q. Did you regularly e-mail with Hans Mast?
A. Yes.
Q. Those e-mail communications have all been produced in this case?
A. Yes.
Q. On to the exhibits. This will be 1.
(WHEREUPON, a certain document was marked Exhibit No. 1, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Let me show you what's been marked as Exhibit 1. These are one set of your Answers to Interrogatories in our case, the current legal

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malpractice case you filed against the Popovich firm and Hans Mast.
Do you recognize this document?
A. Yes.
Q. We've been providing you with various copies of the signature page in the case that's been back and forth between me and your counsel.
I don't, frankly, know if this verification that's attached is the one that went with this document, but I'll just ask you, for the record, if these are your answers, that's your signature, and that this verification is accurate?
A. That is my signature on there, yes.
Q. What was the e-mail address you used in the communication with Hans Mast?
A. Primarily it was pdulberg@comcast.net.
Q. His address was hansmast@comcast.net?
A. And he switched it to at&t.net.
Q. Did you use some other e-mail address as well?
A. I may have accidentally e-mailed him a couple of times from a Yahoo account.
Q. In answering discovery in our case, the legal malpractice case, did you search through both

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of those e-mail accounts of yours?
A. I no longer have the Yahoo account.
Q. Did you search through the Comcast account?
A. Yes.
Q. Did you search for PDFs or attachments to those e-mails that you produced?
A. Everything that I got, I turned over. I had converted the e-mails to PDFs because Comcast started purging the e-mails after so many years, so I turned them all into PDFs.
MS. WILLIAMS: The question was what did you search in your in box.
BY THE WITNESS:
A. What did I search?
BY MR. FLYNN:
Q. Let me ask you a different question. You produced e-mails in this case?
A. Yes.
Q. You turned e-mails into PDFs and sent them to your lawyer; is that right?
A. Yes.
Q. Some of the e-mails I reviewed have an icon that indicates there was a PDF or some other

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attachment to the e-mail. Do you understand that?
A. Yes.
Q. Did you produce the attachments to each of the e-mails in this case?
A. We went through that. I produced the attachments that I still had.
Q. There were some that were not available, correct?
A. Yeah. When I looked at them, 99 percent of them were already part of some other document that we turned over. I think 100 percent of them.
Q. At some point in time while Hans was handling your case, did he start to communicate with you relative to his analysis of the McGuires' liability in the case?
A. Yes.
Q. Did he start to generally advise you that he didn't believe that there was a strong case for liability against the McGuires?
A. Yes.
Q. Is it fair to say that Hans' opinion was that the McGuires did not have liability in the case because they did not control the work that David Gagnon was doing?

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A. Yes.
Q. That's generally a fair summary of Hans' opinion?
A. Not quite exactly those words, but yeah.
Q. The McGuires' liability as property owners was questionable because based on Hans' analysis of the evidence, they did not control the work or the manner of work of David Gagnon on the date of the accident; is that a fair summary?
A. Depends on which time he said that.
Q. Did he say things like that over and over again?
A. He did say things like that, yes.
Q. Again, I don't want to go over the facts you already testified to with regards to the date of the accident. At some point in time was William McGuire swimming in the swimming pool?
A. Yes.
Q. Was that an above ground pool or --
A. Above ground.
Q. Was there a fair amount of time during the day that Mr. McGuire was inside the house watching television?
A. Maybe -- he went inside the house for

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probably about 45 minutes before the accident happened. I don't know that he was watching television.
MR. FLYNN: Let's mark the next exhibit as 2.
(WHEREUPON, a certain document was marked Exhibit No. 2, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 2, which is an e-mail chain including e-mails from November 18, 2013, are these e-mails between you and Hans Mast?
A. It looks like it, yes.
Q. I think the time stamps on these e-mails go from the bottom, which would be page 2, to the top of the first page, correct?
A. It's backwards, yes.
Q. In the original e-mail at 1:28 p.m., did Hans Mast relay to you a $5,000 settlement offer from the McGuires?
A. Which -- where are you at?
Q. We're on Exhibit 2, which is also labeled as Bates label POP 181. At the bottom of the page, does Hans relay to you a settlement offer for

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$5,000?
A. Yes.
Q. He was telling you that the McGuires' attorney offered to settle the case for $5,000?
A. Yes.
Q. Did you have an understanding that that was a settlement just for the McGuires, not including David Gagnon?
A. Yes.
Q. In the e-mail Hans says, quote, "As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now."
Is that an accurate reading?
A. Of that sentence, yes.
Q. Is it fair to say that he suggested that you take the $5,000 but didn't force you to take it?
A. It says, "So my suggestion is..."
Q. Then did you respond to the e-mail?
A. Yes.
Q. Hans replied again at 8:07 p.m. that same day, right?
A. Yes.

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Q. He said, "Paul, whether you like it or not, they don't have a legal liability for your injury because they were not directing the work."
Is that right?
A. Part of it, yes.
Q. Was my prior summary of Hans' legal analysis a fair summary in view of these e-mails and his opinion that he relayed to you?
A. I think it went further than this, and other things, but yes.
Q. As far as these e-mails, I've accurately --
A. This e-mail, yes.
Q. What else did he tell you about the McGuires and why he didn't think they would be found liable in the case?
A. I'm pulling out of memory because I can't quote which document it's off of.
Q. That's what we're here for.
A. I can only give you the gist.
Q. I'll ask you for the exact language, but if you don't have it –
A. At one point he defined what an independent contractor is for me and he said that

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David was an independent contractor and that the McGuires weren't liable because they had hired somebody outside even though it's their own son, he's an adult, outside to do the work and that they weren't responsible.
Q. By the way, how old was David at the time that this accident occurred?
A. I'm adding. If I was 41 -- I don't know what his birthday is, but I'm assuming he would be 44, 45.
Q. Is it fair to say that there were two 40-plus-year-olds, a 41- and a 44-year-old trimming trees with a chainsaw in David's parent's backyard that day, correct?
A. I was not using it. There was one 44-year-old using a chainsaw.
Q. You, the 41-year-old was holding some branches for him?
A. Yes. Just before the accident, yes.
Q. Up until this point in time when Hans is providing this legal analysis to you, you had a fair number of occasions to interact with lawyers, as we've discussed today, correct?
A. At this point, the only lawyer that I

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interacted with was the first one.
Q. I'm talking about in your lifetime. You had a corporate lawyer, you had a criminal lawyer, another personal injury lawyer –
A. I didn't hire –
Q. Let me finish. You had experience with lawyers representing you up to this point in time?
A. Yes.
Q. Did you have an understanding that lawyers evaluate cases differently?
A. Yes.
Q. And judges evaluate cases differently?
A. Sure. That's fair.
Q. Would it be fair to say that some laws in our country are clearer and some are open to interpretation?
A. I think all of them are.
MS. WILLIAMS: Objection. Calls for speculation.
If you understand the question, you can answer it.
BY MR. FLYNN:
Q. Would you say, for example, that the tax code is a little more clearcut than common law

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that's created by cases and case precedent?
A. I'm not real familiar with tax law. I have accountants for that.
Q. How about an easier question. The stop sign means that you stop, and if you go through it, it's pretty clear that you're liable for a traffic violation?
A. I'll agree with that.
Q. The legal liability for a property owner in Illinois might be a little more complicated; is that a fair statement?
A. I don't know.
Q. Would it be fair to say, in your opinion or your knowledge of the law, the property owner isn't necessarily liable because somebody is injured on their property?
A. Are you talking about what I know now or what I knew back when this was?
Q. At any time.
A. What I know now is in the circumstances that we were in, they were very liable.
Q. I'm just asking if -- just because somebody is injured on a property owner's property, they are not necessarily liable, correct? Other

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factors are required too.
MS. WILLIAMS: I'm going to object for -- he's not an expert and can't testify to legal analysis.
BY MR. FLYNN:
Q. As you sit here today, do you know whether a premises liability case involves multiple factors to prove liability against the property owner?
A. I don't know. I'd say that's fair. You're asking the wrong person for that.
Q. It was Hans' opinion that the McGuires did not control the work based on the evidence, correct?
A. In my opinion?
Q. That's not what I'm asking.
Was it Hans' opinion --
A. I can't --
Q. Let me just finish.
Did Hans tell you that it was his opinion that the McGuires were not liable because they did not control the work?
A. He said that right there, yes.
Q. Do you believe that he truly felt that way? That was his legal opinion?

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A. Do you want the Monday morning quarterbacking version or at the time?
Q. I'm asking if at that time you felt that he truly believed that the McGuires did not have liability?
A. At the time I trusted him, yes. I hired him to represent me, and yeah.
Q. You believed that he was relying his honest legal opinion to you at that time?
A. Yes.
Q. Including on November 18, 2013?
A. Yes.
Q. You did not accept the settlement offer of $5,000 that he relayed to you on that day, correct?
A. Correct.
Q. Did you ultimately meet with Hans to discuss the settlement offer?
A. I think it was the day before this, but I'm not sure. It was either the day before or the day after.
MS. WILLIAMS: I think the question was, did you meet with him, at all, not the date.

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BY THE WITNESS:
A. Yes.
MR. FLYNN: Can we mark this as Exhibit 3, please.
(WHEREUPON, a certain document was marked Exhibit No. 3, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 3. Do you recognize this memorandum?
A. Yes.
Q. You may have seen it from the document production that we made in this case. This is a memorandum drafted by Hans Mast, which purportedly memorializes a meeting that he had with you on November 20, 2013.
Does this refresh your memory as to when you met with him or if you met with him?
A. If he took the memorandum on the same day, then sure.
Q. In the memo Hans says, "I met with Paul and his friend."
Do you see that?
A. Yes.

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Q. Did you meet with Hans and some third person –
A. Yes.
Q. -- at or about this time regarding the case?
A. Yes.
Q. Who was that friend?
A. Tom Kost.
Q. Who is Tom Kost?
A. My brother.
Q. Not that it matters necessarily for privilege purposes, but can you tell me how Tom Kost is your brother?
A. We have the same mom.
Q. He was with you and observed the meeting between you and Hans?
A. Yes.
Q. The $5,000 settlement offer was discussed, correct?
A. Yes.
Q. At that time did Hans, again, relay his opinion as to the questionable liability about the McGuires -- strike that.
Did he relay to you his opinion about the

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questionable nature of the McGuires' liability?
A. At the meeting with Tom, yes.
Q. He advised you they maintain they were not directing Dave's work. That was the McGuires' position, correct?
A. I don't know that he stayed on that at that meeting. At different times he gave different reasons.
Q. The next line says, "Paul maintains the McGuires controlled everything that Dave was doing."
Is that an accurate reflection of your opinion?
A. Yes.
Q. As you sit here today, do you know if that statement is consistent with your own deposition testimony from the underlying case?
A. Yes.
Q. We'll come back to that. Did you tell Hans that you wanted to read the depositions of the McGuires and David Gagnon's depositions?
A. Say that again.
Q. Did you tell Paul that you wanted to read the depositions of the McGuires and Dave Gagnon's depositions?

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A. Did I tell Paul?
Q. I'm sorry. Did you tell Hans that?
A. That I wanted to read the McGuires and David Gagnon's depositions?
Q. Yes.
A. Yes, I did.
Q. What was the purpose of your wanting to review those depositions?
A. Hans had told me that what they said in their depositions meant that they had no liability.
Q. You wanted to review the testimony to determine whether you wanted to consider the $5,000 settlement offer; is that correct?
A. Right.
Q. Did you do that?
A. Eventually, yes.
Q. Before you accepted the offer?
A. I think so.
Q. So sometime after this meeting on November 20, 2013 and before you accepted the settlement offer on January 29, 2014, did you review those three deposition transcripts?
A. I'll correct you. I did not accept the offer on January 20th. I signed a release on

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January 29th.
Q. Fair point. Did you read the depositions between those two dates, November 20, 2013 and January 29, 2014?
A. Yes.
Q. Those are --
A. I believe I asked him -- I don't know -- it may be a little earlier because I don't know that I asked him before or after the meeting. I don't remember. I'd have to go back in the e-mails to give the date.
Q. Some point in time between those two dates you read the deps?
A. I may have asked for them before. I don't know without seeing the e-mail. It was, roughly, in the last quarter of that year, yes. Or the first month. I don't remember the first time that I asked to read them. I don't remember off the top of my head.
Q. At any point in time did you ever grant Hans authority to make a settlement demand in the case?
A. No.
MR. FLYNN: Mark this as Exhibit 4.

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(WHEREUPON, a certain document was marked Exhibit No. 4, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. Showing you what's been marked as Exhibit 4. This is a copy of the original complaint in this instant case. It reflects a filing date of November 28, 2017.

Is this your original legal malpractice complaint against the Popovich firm and Hans Mast?

A. I believe so.

Q. Did you review and approve the allegations in this complaint?

A. For the most part. I wanted to reword some things, but the lawyer, they do their thing.

Q. At the time you were represented by the Gooch firm is when you filed this lawsuit, correct?

A. Yes.

Q. Directing your attention back to Exhibit 1, if you still have it. If you could turn to page 10.

The answer to Interrogatory No. 24 indicates that on November 4, 2013, Mast was granted authority to investigate a settlement but a specific

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dollar amount was never provided. Do you see that?

A. He was verbally granted authority to investigate, yes.

Q. Who did you want him to investigate a settlement with?

A. The McGuires.

Q. Just the McGuires or the McGuires and --

A. He wanted to do it. I didn't. I said, "If you want to look at that, go ahead."

Q. Did you grant him authority to investigate a settlement with David Gagnon as well?

A. I don't know if I did or not, off the top of my head, but that would have been much later.

Q. Eventually did you tell Hans that you would agree to accept the $5,000 settlement offer from the McGuires?

A. Eventually did I tell him that?

Q. Yes.

A. Yes.

Q. When did you tell him that?

A. I want to say just before Christmas in December of 2013.

Q. There's no doubt in your mind that you relayed your acceptance of the $5,000 settlement

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offer to Hans Mast before Christmas Day, which would be December 25, 2013?

A. Right.

Q. Then did Hans mail to you a settlement release by letter dated January 24, 2014?

A. I'd like to see the letter, but yeah, I believe so.

Q. I believe it's –

A. I believe he had to mail it a couple times because I didn't get it.

MR. FLYNN: Let's mark Exhibit 5.

(WHEREUPON, a certain document was marked Exhibit No. 5, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. Showing you what's been marked as Exhibit 5. I'll represent to you that this is a copy of the second amended complaint that you filed in this case by your new lawyers, your current lawyers. If I could direct your attention to Exhibit D attached to this Exhibit 5.

Is Exhibit D a January 24, 2014 cover letter from Hans Mast to you enclosing the general release and settlement agreement from defense

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counsel for Caroline and Bill McGuire?

A. That's what it says.

Q. In the letter did he ask you to -- it looks like it might be a typo. It says, "Please release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience."

A. Right, but I believe it was just a release – it was all tied into one.

Q. This letter is unsigned. Did you receive the letter unsigned?

A. Did I receive this unsigned?

Q. Yes.

A. Yes.

Q. Have you ever seen a signed copy of this letter?

A. No.

Q. If I could direct your attention to the next page of Exhibit D. Is that page 1 of the general release and settlement agreement?

A. Exhibit D?

Q. Correct.

MS. WILLIAMS: Turn the page.

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BY MR. FLYNN:
Q. Is this what you received attached to the cover letter?
A. I don't think so. Let me see. Yes, this looks like it because it's got these things I remember.
Q. When did you receive this letter and the attachment?
A. I would say I wrote back on January 29th and I probably got it that day, signed it and sent it back.
Q. The copy of the release is also unsigned. It's attached as exhibit -- part of Exhibit D to your second amended complaint.
Do you see the signature lines and the notary signature here that's missing?
A. Yes.
Q. Is this the document that you signed and sent back to Hans Mast?
A. The document that I signed had my signature.
Q. I'm asking if this is the same document that you signed and sent back to him?
A. Yes.

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Q. Right now we don't have a signed copy. I don't know that I've seen one in the case.
MS. WILLIAMS: Can we go off the record for a second?
MR. FLYNN: Sure.
(WHEREUPON, discussion was had off the record.)
BY MR. FLYNN:
Q. Is there any doubt, in your mind, that Exhibit D is the letter and attachment that you received from Hans Mast?
A. No. I believe that this is it.
Q. You signed some copy of this release and sent it back to Hans on January 29; is that correct?
A. Yes.
Q. You accepted the settlement offer prior to Christmas and presumably defense counsel or Hans drafted the settlement release and then Hans mailed it to you, correct?
A. Yes.
Q. At any point in time from December 25th until you received this settlement release, did you contact any lawyer to discuss whether it would be appropriate to let the McGuires out for 5,000?

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A. I believe I contacted Hans again.
Q. Besides Hans, did you talk to anyone else?
A. No.
Q. Was there anything preventing you from seeking a second opinion from some other lawyer at that time?
A. No.
Q. Directing your attention to Exhibit E attached to the second amended complaint, the second amended complaint, again, being Exhibit 5. Is this an e-mail from you to Hans on January 29, 2014?
A. This is the e-mail chain between me and Hans, yes.
Q. Down below at the bottom of the page, January 29 at 10:51 a.m., it appears that you were questioning Hans regarding some of the language in the release, including social security disability check boxes. Do you see that?
A. Yes.
Q. Hans responded to you and then at the top of the page here at 1:59 p.m. it says, "Okay, it's signed and in the mail."
A. Correct.

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Q. What did you mean by that?
A. I signed it and mailed it.
Q. Did you -- where did you mail it from?
A. My home.
Q. How did you do that?
A. Put a stamp on the envelope and put it in the mailbox, put the flag up and waited for the mailman.
Q. Is the mailbox attached to your home or is it --
A. It's out on the street.
Q. You walked down there and you put the mail -- the envelope in the mailbox, put the flag up and --
A. That is correct.
Q. Your understanding of signing that release and sending it back to your lawyer was that you would agree to take the $5,000 settlement, correct?
A. Yes.
Q. Hans didn't deliver the letter to you personally. He mailed it to you, correct?
A. He mailed it to me?
Q. He mailed it to you.

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A. Correct. U.S. mail.
Q. Do you recall an allegation in your complaint or amended complaint or second amended complaint in this case alleging that you were pressured or alleging undue influence by Hans in urging you to accept the $5,000 settlement from the McGuires?
A. Yes.
Q. How is it, as you sit here today, can you tell me how Hans unduly influenced you to accept the $5,000 settlement offer?
A. I don't know what Hans was thinking. How did I feel influenced?
Q. Unduly influenced.
Let me put it this way. He didn't put a gun to your head?
A. No.
Q. He suggested that you take the settlement?
A. Correct.
Q. He didn't force you to take the settlement?
A. Correct.
Q. It was your decision?

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A. Correct.
Q. You signed it and you sent it back to him in the mail?
A. Yes.
Q. Aside from your e-mails with Hans on January 29, did you call him that day?
A. I believe so.
Q. Did you also discuss whether it was appropriate to accept the McGuires' $5,000 settlement offer at that time?
A. Yes.
Q. You deliberated on it and decided to take it, correct?
A. There wasn't much -- it was take it or get nothing.
Q. You had the opportunity to deliberate on it, correct?
A. For that day, yeah.
Q. You had reviewed the transcripts of the McGuire depositions and David Gagnon's depositions in order to provide you with some information in order to determine whether to accept the settlement offer, correct?
A. I believe I did try to read those, yes.

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Q. Did you call Hans or e-mail him and question him with respect to the evidence, the testimony contained in those deposition transcripts?
A. Yes.
Q. What did you say to him and what did he say to you?
A. There were many conversations over the phone and I'm sure some through e-mails.
Q. He continued to tell you that it was his opinion that the liability on the McGuires is questionable because they did not control David Gagnon's work that day, correct?
A. It depends on which time. Sometimes he said because they didn't tell them how to squeeze the trigger. It depends which time you are talking about.
Q. Again, there was nothing preventing you from seeking a second opinion from some other lawyer at the time you signed the settlement release and sent it back to Hans, correct?
A. From the time I received it, signed it and sent it back?
Q. Right.
A. No. It was a matter of hours. I got it

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that morning.
Q. You decided to mail it that day, right?
A. He needed it. He said now or you're not going to get anything.
Q. There was nothing preventing you from seeking the advice of another attorney at that time?
A. At that time it was time. It was now or nothing.
Q. You were in the comfort of your own house when you received the letter, correct?
A. Yes.
Q. You had the ability to go find another lawyer and ask them to discuss the case at that time. You had done it hundreds of times earlier -- strike that.
After the settlement with the McGuires, you continued to prosecute the case against Gagnon, correct?
A. Yes.
Q. Did you have an understanding as to what, if any, insurance coverage he had?
A. Yes.
Q. How much was that?
A. What time frame are you talking about?

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Q. What was your initial understanding as to the limits on David Gagnon's insurance coverage?
A. Hans Mast told me he had $100,000.
Q. Was that in an e-mail?
A. There were -- not initially, no, but later on he reiterated that in e-mails, yes.
Q. Did you, ultimately, learn that there was some additional amount of coverage with respect to Gagnon's policy?
A. Long after Hans Mast was gone, not part of the case.
Q. How much was the coverage?
A. The Allstate coverage, I believe, was 300,000.
Q. We'll talk about the settlement later, but did you ultimately settle the case again Gagnon for 300,000?
A. I believe it went to binding mediation.
Q. Was there an award of $300,000 based on a high/low agreement?
A. Yes.
Q. Is it fair to say that if Hans made a mistake about the $100,000 in coverage, that that was corrected and there was never any harm done as a

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result of his –
A. No.
Q. Explain to me how you were harmed by the representation that there was $100,000 in coverage.
A. You want me to explain?
Q. Yes.
A. Had I known the value of the case, I would have not filed for bankruptcy.
Q. Explain to me why one has something to do with the other.
A. Is my family and me going to dump money into a black hole that we can't recover or is there a light at the end of the tunnel where I can pay them back.
Q. At the time that you filed for bankruptcy, had any settlement offer been made from David Gagnon or his lawyers to you?
A. At the time of when?
Q. When you filed for bankruptcy.
A. I don't think so. I'd have to check the dates, but I don't think so.
Q. As the case was progressing against David Gagnon, were your doctors deposed?
A. As the case progressed with David Gagnon,

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I believe they were deposed. I don't remember. I'd have to look at the dates.
Q. Discovery continued on in the case?
A. I believe one doctor was deposed after the McGuire settlement. I'm not sure, though.
Q. Did Hans continue to represent you for some period of time?
A. Yes.
MR. FLYNN: I'll have you mark this as Exhibit 6.
(WHEREUPON, a certain document was marked Exhibit No. 6, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 6. Do you recognize this e-mail chain?
A. Yes.
Q. This is from September 23, 2014. If we go from the bottom up, it appears that Hans said to you that he wanted to give you the option of finding other counsel at this point if you really want to take the case to trial, which I think ultimately will be necessary. Correct?
A. Are we at "before I proceed" or "that's

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the very reason"?
Q. "That's the very reason."
Is it fair to say he was suggesting you find another counsel in the case at that point?
A. Yes.
Q. He also said, "I just do not believe strongly that defense counsel will offer much in the way of settlement."
Do you see that?
A. Yes.
Q. That's his opinion regardless of what he believed the coverage limits to be; is that a fair statement?
A. Yes.
Q. You responded to him, he responded to you and then you wrote an e-mail to him at 8:25 p.m. that night?
A. Okay.
Q. Do you see that? Did you say, "First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw"?
A. Yes.
Q. Did you start to look for other lawyers to help you in your case against Gagnon at that

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point in time?
A. I believe I did, that summer. This is fall, September.
Q. You had already started looking for new lawyers?
A. I believe that Hans had told me to start looking for a new lawyer in April of that year.
Q. Did he say why?
A. We'd have to read his thing. He says why.
Q. Do you recall why he said that to you?
A. He did not feel that the case was provable against David. He did not feel the value of the case was worth it. He did not feel -- actually, this is 2014. The dates are rough.
Q. He thought the case against David was difficult, correct?
A. Yes.
Q. Have you ever described the case as a he said, she said with respect to the facts of the accident?
A. He described that to me many times.
Q. Have you also --
A. And I used that back, yes.

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Q. Have you ever described this case as a he said, she said case?
A. I may have. I don't know.
Q. It is your word against David Gagnon's as to what happened and whose fault it was that day?
A. That's what Hans explained to me as what the problem was.
Q. Did you ever describe the accident as a he said, she said?
A. I don't think I called David a "she said" or me a "she said." I don't know. Right here I do.
Q. What do you say there?
A. I said, "I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw."
Q. He was denying that he even cut you, correct?
A. No, he never denied that.
Q. What was your reason for writing this sentence in that way?
A. Because Hans said that he believed David over me.
Q. With respect to what fact at issue?
A. His deposition versus mine. He said that I didn't make a good witness.

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Q. With respect to what points?
A. All of it. He was dumping me and he was coming up with his own excuses.
Q. You and David were the only ones that witnessed this accident?
A. Correct.
Q. Based on your understanding of how the evidence came out in the case, would you agree that there were differences with respect to the version of events?
A. Oh, yeah.
Q. There were differences between what he said happened and what you said happened?
A. Oh, definitely.
Q. Would it be fair to say, then, it would be up to the trier of fact, whether it be a judge or a jury, to determine who they believed?
MS. WILLIAMS: Objection. Calls for a legal conclusion.
You can answer, if you understand.
BY THE WITNESS:
A. I believe it would be up to a judge or jury, sure.

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BY MR. FLYNN:
Q. At the bottom of Exhibit 7 you say, "Bottom line Hans... do the best you can with what you got."
I'm sorry. I didn't mark this one yet. My apologies.
(WHEREUPON, a certain document was marked Exhibit No. 7, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 7. Is this an e-mail chain between you and Hans?
A. I don't think it's a chain. I think it's one.
Q. Point is well taken. It's you writing to Hans?
A. Yes.
Q. At the bottom it sounds like you had been in the hospital with a migraine and then you wrote, "Bottom line, Hans... do the best you can with what you got."
A. Yes.
Q. What did you mean by that?

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A. He wanted to settle, and I can tell you right now this letter was written after a very traumatic experience and -- let me read it and refresh myself. I'm melting down in this letter.
Q. You said after a traumatic experience. Are you referring to the bankruptcy filing from that day?
A. That, in combination with migraines, yes.
Q. David Stretch was your lawyer that filed bankruptcy for you?
A. Yes.
Q. Did you meet with Mr. Stretch and discuss the bankruptcy process before you hired him?
A. Yes.
Q. How long did you meet with him?
A. I think I asked about it. I don't know. It may have been a couple of months or a couple weeks before it got filed. I wanted to learn about it.
Q. Did you, ultimately, list the case against David Gagnon as an asset in your bankrupt filing?
A. Yes, I did.
Q. Is that why the bankruptcy trustee became

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involved with the binding mediation?
A. Yes.
Q. Did you ever meet the bankruptcy trustee?
A. Yes. The first one.
Q. What was the name of that person?
A. The first one was Heeg was her last name. H-e-e-g, I think.
Q. Again, we established that Brad Balke became your lawyer in the case on March 19, 2015, correct?
A. Yes.
Q. Is it fair to say that your relationship with Hans Mast was deteriorating over the fall and beginning of the winter of 2015?
A. I would say it had been deteriorating long before that. You can see from the last exhibit I'm melting down and it was already started deteriorating.
Q. By the time you drafted Exhibit 7, had you talked to other lawyers about taking your case?
A. I have to go back and look, but probably. If he told me to look at other lawyers in April before this, yes.
Q. How many lawyers would you say you talked

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to between April and the time you drafted this e-mail on September 26?
A. I couldn't count that high, probably.
Q. Quite a few?
A. Yeah.
Q. Did any of them take your case?
A. No.
MR. FLYNN: Mark this as Exhibit 8.
(WHEREUPON, a certain document was marked Exhibit No. 8, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 8. Is this an e-mail from you to Hans Mast?
A. Yes. It's an e-mail chain, yes.
Q. On February 22, 2015 at 7:42 p.m. you wrote to Hans, correct?
A. Yes.
Q. Halfway down in that e-mail message you said, quote, "Now I'm left wondering... how hard it is to sue an attorney?"
A. That is true.
Q. You wrote that?
A. Yes.

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Q. The next line you wrote, "And yes, I am and have been looking for someone who will take this case..."
A. That is not in reference to suing the attorney. That was in reference to the Gagnon case.
Q. What did the reference to suing an attorney mean?
A. That was me being angry.
Q. With Hans?
A. Yes. I was seeing red.
Q. You're suggesting that you may sue him?
A. Yeah. I didn't know that I could. I'm wondering about it.
Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?
A. Yes.
Q. You, ultimately, sued him for legal malpractice, right?
A. Yes.
Q. Is that what you had in mind when you wrote this?
A. No. This was about dropping Gagnon. The malpractice is about dropping the McGuires.

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Q. This --
A. We're talking -- this is 2015.
Q. In this 2015 e-mail you are suggesting to Hans that you may sue him because of the McGuire settlement; is that right?
A. No.
Q. Then what is it that you're saying to him?
A. That if he damaged the Gagnon case, I didn't know if he did or didn't, and I'm threatening because I'm angry. You can see, again, I'm melting down here. These are emotional outbursts, I guess.
Q. Moving up the page a little bit also on February 22, 2015 at 8:14 p.m., you say, "To be honest, you took this case knowing it was my word versus his."
A. Yes.
Q. He said, he said, right?
A. Yes.
Q. Is that a fair characterization of the case, your word against David's?
A. That's how Hans kept describing it. That's the way I put it back to him, yes.
Q. You didn't correct him or dispute his

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characterization, did you?
A. No. I used his characterization.
Q. You agreed with it?
A. He said – how did it go? We had conversations between these e-mails on the phone. Then we would hang up and I would get angry and type it in an e-mail, type whatever it was that bothered me so he had it.
Q. Let me ask another question, if that's okay.
Did you ever correct Hans if he called this a he said, he said case? Did you ever say it's more than that?
A. Do I ever say it's more than that?
Q. Did you ever correct him? If he said it's a he said, he said case, did you say no, that's not right?
A. He said there's no witnesses. I said, "I'm a witness."
Q. You're one of the hes. It's your word against David Gagnon's, as you said in this e-mail?
A. Yes.
MR. FLYNN: If I could have you mark that as Exhibit 9.

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(WHEREUPON, a certain document was marked Exhibit No. 9, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Exhibit 9, is that Brad Balke's substitute appearance that was filed on March 19, 2015 in the case against Gagnon?
A. It looks like it, yes.
Q. Back to Exhibit 5, which is the second amended complaint. If I could direct your attention to Exhibit F. This appears to be a more complete copy of another e-mail we just talked about. Is Exhibit F more of the February 22, 2015 e-mail chain?
A. I'm not sure if that's separate or the same. Oh, it looks like it.
Q. At 7:20 p.m. Hans wrote to you and said, "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case."
Right?
A. Yes.
Q. He says, "I've been telling you over a year now the problems with the case and you just

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don't see them."
Correct?
A. That's what it says.
Q. Obviously, a difference of opinion, right?
A. Yes. Are you talking about difference of opinion as to the value or difference of opinion of the problems within the case?
Q. Let's go on. He says, "You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear, it is not. My guess is that seven out of ten times you will lose the case outright. That means zero. That's why I've been trying to convince you to agree to a settlement. You clearly do not want to."
Did I accurately read that?
A. Just that part of that paragraph, yes.
Q. So Hans is telling you that in his opinion your case against Gagnon you're going to lose it seven out of ten times, correct?
A. In this one, yes.
Q. He's acknowledging that you may have a

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chance.
A. I think later on he says nine out of ten.
Q. In this e-mail he says seven out of ten you will lose.
A. Yes.
Q. He's recognizing three times out of ten you may win, right?
A. I don't know what Hans is thinking.
Q. Is that what he said?
A. He says seven out of ten times you lose.
Q. You understood that there are risks in taking the case to trial that you could lose?
A. There are unforeseen risks, yes.
Q. There are always risks, period, in taking a case to trial?
A. Yes.
Q. Before you hired Brad Balke and after Hans told you he couldn't represent you, did you talk to any other lawyers about taking your case?
A. Yes.
Q. How many?
A. I can't tell you. A lot.
Q. Did any of them tell you that they wouldn't take the case because they didn't think you

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could prevail against Gagnon?
A. No.
Q. Not one?
A. No.
Q. What are the names of any of the lawyers you talked to about taking your case over from Popovich?
A. I can't tell you without looking at documents who it was and what date it was, what it was between these two.
Q. I don't think documents I produced would help you in that regard.
I'll just ask you based on your memory the names of any lawyers you met with from the time Hans wrote this February 22 e-mail --
A. I believe –
Q. Let me finish.
A. I believe –
MS. WILLIAMS: He has not finished his question.
THE WITNESS: Sorry.
BY MR. FLYNN:
Q. From the time that Hans wrote this February 22 e-mail and the time that Brad Balke

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enters an appearance on March 19. Just the name of any lawyer you --
A. I believe that Sal Ferris that I was talking about was one of the lawyers that I talked to.
Q. You're not sure? You believe that he was?
A. In between this time and this time?
Q. Yes.
A. I believe it's right around then.
Q. What type of law practice does Sal Ferris have?
A. I believe personal injury.
Q. Did you ever talk to him about taking your case before that date?
A. Before the date of this e-mail?
Q. Yes.
A. I'd have to look at it.
Q. He wasn't one of the original attorneys that you spoke with at the beginning of the case?
A. No.
Q. Fair to say once Balke entered his appearance on March 19, 2015 that Mast and Popovich were no longer your attorneys, correct?

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A. When Balke enters his appearance?
Q. Yes.
A. I would believe that, yes.
Q. They were terminated and Balke stepped in?
A. Yes.
Q. Can you tell me how the binding mediation which proceeded on December 8, 2015 evolved and came to be.
A. I was ordered into it from a bankruptcy court.
Q. Why is that?
A. I believe that the trustee put a motion up. I don't know who did it. I assume it was the trustee and the court ordered that it be put into binding mediation.
Q. Did you appear at the mediation?
A. Yes.
Q. Do you recall the name of the mediator?
A. Not off the top of my head, no.
Q. One of the exhibits to your second amended complaint indicates it was retired Judge James Etchingham.
A. That sounds familiar.

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Q. Do you recall how long the mediation lasted?
A. All day.
Q. Do you know if the parties submitted mediation briefs or statements to the judge?
A. I believe both sides submitted a whole bunch of things.
Q. The Boudins represented you in this mediation?
A. Yes.
Q. Because you had fired Balke by this point?
A. Oh, yes.
Q. Directing your attention, again, to Exhibit 5, the second amended complaint and Exhibit G. Exhibit G is, apparently, a memorialization of the mediation award. Do you see that?
A. It's how the judge decided to break it down, yes.
Q. Do you see that there's an award for future medical expenses of $200,000?
A. Yes.
Q. Since that date of December 8, 2015, have you received any medical treatment relative to your

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injuries --
A. Yes.
Q. Let me finish. Strike the question.
Since that date, December 8, 2015, have you received any medical treatment for your injuries incurred on January 28, 2011?
A. You're asking since the date of the binding mediation?
Q. That's right.
A. Yes.
Q. What medical treatment have you received?
A. I do an ongoing with the neurologist for the dystonia.
Q. That's in your right arm?
A. Yes.
Q. Have you calculated the medical bills that you've incurred since that day?
A. No, I have not.
Q. Are they anywhere near $200,000?
A. It depends if you calculate with or without insurance. I know what I pay, but then I have to pay for the insurance that pays for that.
Q. How much have you paid out of pocket since that date for medical treatment on your arm?

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A. I don't know, offhand.
Q. Was there any doctor that opined that you would require $200,000 in future medical expenses?
A. I believe so.
Q. Who was that?
A. I believe that was Dr. Patel. I don't know that she said $200,000. She was the doctor that was handling it at the time.
Q. Did you discuss your injury with the mediator at the mediation?
A. He did ask me a few questions.
Q. How much time did you spend with him?
A. On and off. He would come in and ask me questions and then go away and then come in and would ask me questions and then go away.
I don't remember which one was the mediator, which one was the Allstate adjuster, which one was the -- I don't remember.
Q. You're not sure which one was the mediator?
A. They came in and they said they are going to ask you some questions and I answered them.
Q. As you sit here today, you don't know how much face time you had with the mediator that day?

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A. I don't remember the face of which one is which.
Q. Did the issue of lost wages ever come up?
A. At the mediation with me?
Q. Yes.
A. I don't remember.
Q. Did you ever make a claim of lost wages of $250,000?
A. I may have.
Q. Do you know what that was based on?
A. Yeah.
Q. What is that based on?
A. Past and future.
Q. What past wages had you ever earned that could lead to an award of $250,000?
A. To me, that's not a very high number. I think I asked for more than that. It would be an average over a certain number of years plus benefits and that's all lost.
Q. Would it be fair to say that your income would be accurately reflected in the tax returns you've produced in this case, so I don't want to ask you about each one of them?
A. I would say my personal income, yeah.

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Q. Have you filed personal tax returns since 2015?
A. Tried.
Q. I didn't ask you if you tried.
A. No. They won't let me. They said I don't make enough anymore.
MR. FLYNN: I believe the next exhibit is 10.
(WHEREUPON, a certain document was marked Exhibit No. 10, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what's been marked as Exhibit 10. This is a six-page binding mediation agreement. The copy I have is unsigned.
Do you recognize this as the mediation agreement that governed your December 8, 2016 mediation?
A. Yes.
Q. If I could direct your attention to -- first, let me ask you.
Do you know why the bankruptcy trustee or the bankruptcy court ordered binding mediation as opposed to nonbinding?
A. I have no idea.

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Q. On page 4, section F, subsection B -- I'm sorry, 1B. It says, "The parties agree that for this mediation the minimum award to Paul Dulberg will be $50,000. Also, the maximum award to Paul Dulberg will be $300,000."
Do you see that?
A. Yes.
Q. Do you know why the parties agreed to this high/low agreement?
A. No.
Q. Do you recall alleging in your original complaint against Popovich that there was a high/low agreement?
A. There is. There was.
MS. WILLIAMS: Can you repeat the question, please.
(WHEREUPON, the record was read by the reporter as requested.)
BY THE WITNESS:
A. I don't know. I'd have to read it.
MS. WILLIAMS: I asked her to read it. And you had answered it previously.
BY MR. FLYNN:
Q. Directing your attention back to

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Exhibit 4, which is the original complaint in this case. Page 4, paragraph 16.
A. Okay.
Q. There's a sentence that begins with, "Unfortunately, a high/low agreement had been executed by Dulberg reducing the maximum account he could recover to $300,000 based upon the insurance policy available."
Do you see that?
A. Yes.
Q. It's not your position or testimony that Popovich had anything to do with the high/low agreement?
A. That was a mistake in there. No.
Q. You would agree that Popovich had nothing to do with the high/low agreement?
A. I believe that events that unfolded the way they did was due to Hans Mast's initial assessment of the value of the case.
Q. Let me ask it a different way.
Did Popovich have any idea that this high/low agreement existed when it was entered into?
A. I don't know.
Q. Do you have any reason to believe that he

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did?
A. I don't know. I don't know how much the Boudins were in contact with them because they worked together. I don't know.
Q. What do you mean, "they worked together"?
A. They worked together on all different cases. That's a small county out there.
Q. Did you ever write to Hans and accuse Popovich of having a conflict of interest because he may have gone to high school with David Gagnon?
A. I did learn that.
Q. Do you believe the fact that someone went to high school with another person may give rise to a conflict of interest in a lawsuit?
A. I was shooting in the dark and guessing why they didn't see this as a viable case.
Q. Do you think that was appropriate to send to your lawyer at the time?
A. When you're wondering why they are doing what they are doing and you learn that and they were pretty much in the same class and they all knew each other and it's a small town, let me ask you, are you friends with the guy I'm suing? That's an appropriate question.

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Q. You didn't say that. You asked if they went to school together.
A. Correct.
Q. Popovich did not enter into this high/low agreement on your behalf, correct?
A. Popovich, no.
Q. When I say "Popovich," I mean generally the Popovich firm and your lawyers.
A. This was years later. No.
Q. They had nothing to do with it, right?
A. I wouldn't say anything to do with it.
Q. Withdrawn.
Who drafted this high/low agreement that's contained in the mediation agreement?
A. I'm not sure who drafted it.
Q. Would it have been either the mediator, the bankruptcy trustee, your lawyers or the defense attorneys?
A. I assume that this would have been an agreement of all of them.
Q. You don't think Popovich had anything to do with drafting this high/low agreement, do you?
A. I don't know that he did or didn't.
Q. Do you have any reason to believe that he

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did?
A. At this point, no.
Q. Continuing on in Exhibit 4. Directing your attention to the bottom of page 4, paragraph 10.
A. Exhibit 4. Say it again.
Q. The bottom of page 4, paragraph 20. This is your complaint against Popovich and Mast.
A. This has been amended since then.
Q. I understand. Paragraph 20 reads, "Following the execution of the mediation agreement with the high/low agreement contained therein and the final mediation award, Dulberg realized for the first time that the information Mast and Popovich had given Dulberg was false and misleading and that, in fact, the dismissal of the McGuires was a serious and substantial mistake."
Do you see that?
A. Yes.
Q. Can you tell me, as you sit here today, what false and misleading information did Mast and Popovich give you?
A. That I realized on the day of the -- following the execution of the mediation agreement?

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Q. Correct.
A. The liability of the McGuires.
Q. What was false about it?
A. What made them liable and what didn't.
Q. What is it you learned to dispute what you were told?
A. I learned from a reliability expert that had the report there that day that the McGuires provided the tools which made Gagnon an agent of the McGuires. He was working at their behest.
Q. Who was this liability expert?
A. What's his name?
Q. He's a doctor?
A. Yes.
Q. Continue on with that paragraph. "Following mediation, Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016."
Do you see that allegation?
A. Yeah.
Q. Who advised you to seek an independent opinion from an attorney handling legal malpractice matters?

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A. I believe that was Boudin.
Q. You believe that or you know that?
A. I know that.
Q. You alleged it in this complaint so it's important that we know who that was.
A. Yes, that was Boudin.
Q. Boudin told you to seek an independent opinion from an attorney that handles malpractice matters?
A. Yes.
Q. It says you received that opinion on or about December 16, 2016.
A. Yes.
Q. That's separate and apart from any opinion you may have received from a liability expert, a doctor, an expert on chainsaws?
A. Yes.
Q. Who was the lawyer that you received a legal opinion from on December 16, 2016?
A. I believe that would be Thomas Gooch.
Q. The drafter of this complaint?
A. I'd have to look at the dates because I think -- December 8th was the mediation; is that right?

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Q. Correct.
A. So the 16th would sound about right to be meeting with Gooch, but I can get that date.
Q. You met with Gooch –
A. Soon, within weeks. It was quick.
Q. Now that the door has been opened, you fired Gooch in this case, correct?
A. Yes.
Q. He drafted this complaint and he's also the one that gave you an opinion about legal malpractice liability on the part of my clients?
A. Yes.
Q. What is it that he told you on December 16, 2016?
MS. WILLIAMS: Objection. I don't think we've waived that privilege, but – can we go off the record for a second?
MR. FLYNN: I don't want to go off the record. I've asked this interrogatory in about five different ways and it hasn't been answered appropriately.
The allegation was made in the complaint. That's why I drafted the interrogatory the way I did. I don't think that there's been a square

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answer to it. This is clear that you're talking about a legal opinion.
BY THE WITNESS:
Q. Is this the same wording as we have in the current complaint?
BY MR. FLYNN:
Q. It's not exactly.
A. What would this be valid for, then?
Q. You've raised a response to a statute of limitations defense in this case and placed your knowledge of the malpractice and the date of incurring of an injury at issue.
Because your discovery of malpractice has been placed at issue, it's our position that you've waived privilege anyhow with respect to this conversation on December 16, 2016.
A. I'm not sure --
MS. WILLIAMS: There's not a question pending. I'm going to make a standing objection as to privilege with Gooch.
If we can agree that that objection will stand, we can go through this line of questioning and then if we need to later, have a judge determine whether or not that line of questioning is

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admissible. Are you agreeable to that?
MR. FLYNN: I'm agreeable to continuing on for a few minutes. I want to explore. I'll try to lay foundation for -- to confirm this wasn't anyone else, for starters. Why don't we continue on and if you need to raise it again, we can talk.
MS. WILLIAMS: Otherwise, I'm just going to raise it to every single question you ask. I just don't want to have to continue to make the objection as to -- if questions are asked about advice given by a legal malpractice attorney, I'm going to raise an objection as to that.
MR. FLYNN: Okay. But this is why we had the 201K conferences, multiple 201K conferences. It was made clear, to me, that there was a waiver with respect to subsequent counsel.
MS. WILLIAMS: Tom Gooch isn't subsequent counsel.
MR. FLYNN: The allegation has been made in this complaint and apparently this is subsequent counsel subsequent to my client's representation.
MS. WILLIAMS: It is a different case. It's not subsequent counsel in the underlying case. It's a new case.

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MR. FLYNN: We'll get to the interrogatory in a few minutes. I'll pull that out.
BY MR. FLYNN:
Q. Let me ask you. Is there any other attorney besides Mr. Gooch that gave you an opinion that's referenced here on December 16?
A. No one that isn't privileged.
Q. Could it have been anyone else?
A. No.
Q. So Gooch is the only person that's being referenced here in this allegation that's in your complaint that's a public record?
I'm not asking you right now what the opinion is. I'm going to do that later. I'm asking you who gave it to you. It's not anyone besides Mr. Gooch, correct?
A. Yes. It was Thomas Gooch.
Q. He drafted the very complaint that that allegation is contained in?
A. Yes.
Q. Dr. Landford was the liability expert that you referenced earlier, correct?
A. Yes.
Q. Back to the allegation that Gooch and --

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that Popovich and Mast provided you false and misleading information. That information was simply their legal opinion on the McGuires' liability; isn't that correct?
A. No. There was nothing simple about that. That's a very complex series of things that go all the way back to before the McGuire settlement.
Q. They didn't lie to you, did they?
A. It depends on how you define lie.
Q. How do you define lie?
A. If you know better and you say something else, that's a lie. Omission is a lie.
Q. Did they provide you with anything other than a legal opinion as to the McGuires' liability?
A. Yes. They provided me with case laws. They provided me with all different stuff. Yes.
Q. Whatever the advice that was given to you on December 16, 2016, you felt that you were mislead by Popovich and Mast at that point in time, correct?
A. At that point in time it was confirmed to me that I had a valid case against Popovich.
Q. You had a valid malpractice case against Popovich?
A. Yes. I did not know before that.

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Q. As of December 16, 2016?
A. Yes.
Q. Why is it that you didn't file that lawsuit until nearly a year later on November 28, 2017?
A. I believe because Thomas Gooch had some health issues and then his wife had some health issues. It took a while.
(WHEREUPON, a certain document was marked Exhibit No. 11, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what has been marked as Exhibit 11. This is one set of your supplemental Answers to Interrogatories.
First, I'll ask you if that is your verification and signature at the end?
A. That is my signature.
Q. Again, I don't know if that verification was attached to this original document. It may have been. But there's been some confusion with respect to these verification pages. This is your signature and you answered these interrogatories, correct?
A. Yeah.

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Q. So this is a valid verification page with respect to this discovery document; is that a fair statement?
A. This is supplemental to original answers.
Q. That's your signature and you agree these are your answers?
A. I've reviewed them and we went over them and yes, I agree.
Q. And they are accurate?
A. As accurate as we can be.
Q. If I could direct your attention to Interrogatory No. 26. Do you see that?
A. Okay. Yes, I see it.
Q. This is similar to what we just talked about a few minutes ago. I'll read the interrogatory to you. "Identify and describe the false and misleading information Mast and Popovich provided to you and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake as alleged in paragraph 56 of your second amended complaint."
Do you see your supplemental answer here?

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A. I see it, yes.
Q. You reference the mediation award and then you state, quote, "At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning."
A. I do.
Q. Can you explain what that means because I don't quite understand it.
A. Hans Mast assured me – I want to go back to 2013, the Fall between October and the signature of the final release for the McGuires.
He assured me that, he said -- at that time he didn't tell me what anybody's policies were. He assured me that if we let the McGuires out of the case, Gagnon has enough insurance, you're going to get everything from him, so it doesn't matter that you're carrying the McGuires in the case.
Q. The next interrogatory is 27. "Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint including the identity of the expert, any opinions and any other information

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provided by the expert which caused you to learn in the summer of 2016 and became reasonably aware that Mast and Popovich did not properly represent you."

What does the summer of 2016 have to do with your discovery of malpractice?

A. Technically, I was sent Dr. Landford's report -- I might be off a little by a couple months here, but I think in July of that year. And I read it, but I didn't -- you don't catch everything the first time you read it.

It was not until later that I caught the part of the report that was brought to the attention -- it caught my eye when I was sitting there and reading it.

Q. You didn't read any of this interrogatory or the original interrogatory as requesting legal opinions that you had alleged that gave you notice that there was a malpractice claim against Mast and Popovich?

A. Excuse me?

MR. FLYNN: Can you read that back.

(WHEREUPON, the record was read by the reporter as requested.)

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BY THE WITNESS:

A. The way she said it, I don't understand.

BY MR. FLYNN:

Q. I'll rephrase it.

We've known about this allegation in the original complaint since it was filed. You received some legal opinion in 2016. That's why you didn't know you had a malpractice case against Mast and Popovich.

We asked you in discovery answers a couple different ways what those legal opinions are. You didn't read 26 and 27 as requesting information about legal opinions?

A. I don't know that an expert witness would be considered a legal opinion. Wouldn't that be more like an attorney?

Q. I'll ask you again. Why is it that you first became aware of a legal malpractice matter against Mast and Popovich on or about December 16, 2016?

A. December 16th I was talking to a legal malpractice attorney.

Q. You were told that there was a case against --

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A. A valid case, yes.

Q. -- Mast and Popovich?

A. Yes.

Q. Why is it you didn't know about this valid case prior to that date?

A. Because I hadn't talked to anybody that was a lawyer that specialized in that area.

Q. Whatever it is that he said to you gave you the basis for believing you had a valid case against Mast and Popovich?

A. Very much so, yes.

Q. You're withholding that information from me right now, as we sit here. You won't tell me what that expert said, correct?

MS. WILLIAMS: Repeat the question.

(WHEREUPON, the record was read by the reporter as requested.)

MS. WILLIAMS: I'm asserting attorney-client privilege on behalf of my client for Gooch's advice on December -- in December of 2016.

However, because I want to move forward with this deposition, if he can answer the question, I believe we should go ahead and move forward and have him answer the question.

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I'll assert the privilege with the understanding that this may have to be briefed later.

MR. FLYNN: To be stricken later?

MS. WILLIAMS: Right.

MR. FLYNN: The substance of the answer he can put on the record. You're just saying you may move to strike it later?

MS. WILLIAMS: Right. I want to maintain the privilege with the objection, but I don't want to have to call the judge right now. I don't think it's something we should have to call the judge about right now.

MR. FLYNN: Just for the record, I believe it's been placed at issue by virtue of the first amended complaint. The responses to the statute of limitation defenses that were raised in very dispositive motions before Gooch withdrew from the case, the gist of that is the discovery rule has been raised and, therefore, it's our position that the date of discovery has been placed at issue and, accordingly, any legal opinions that were provided to this plaintiff have been exposed and that we're entitled to know what those are.

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MS. WILLIAMS: Can I also note one more thing?
MR. FLYNN: Sure.
MS. WILLIAMS: In the supplemental -- in the request it specifically refers to paragraph 57 of the second amended complaint, which is different.
MR. FLYNN: It is different. I'll acknowledge that. I believe that the prior original interrogatories asked for any opinions relative to the discovery of the malpractice. I could be wrong. There was a reason I asked this and that's why I believe that's what it was about.
MS. WILLIAMS: So --
MR. FLYNN: That particular one I agree with you is not phrased as calling for --
MS. WILLIAMS: Right. That's the question that was asked. We answered the question that was asked, which that particular paragraph does not refer to a legal expert. It just merely -- I'll read it out loud. "It was not until the mediation in December of 2016 based on the expert's opinion that Dulberg retain for mediation that Dulberg became reasonably aware."
I just want it clear that he did answer the question that was asked. I understand your line

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of questioning and we'll agree to move forward.
MR. FLYNN: I believe there were other discovery requests that did point to that and I think we can take a break here and I can find them fairly quickly because I think we're getting close to the end anyway.
MS. WILLIAMS: Okay.
BY MR. FLYNN:
Q. Did you ever receive any money from the mediation award?
A. No. I received money from the bankruptcy itself. It was a surplus bankruptcy.
Q. There was a $300,000 award given in the mediation.
A. That did not go to me. That went to bankruptcy.
Q. It was collected on your behalf and paid to the bankruptcy trustee, correct?
A. Correct.
Q. All $300,000?
A. I don't know that because I think -- I don't know how exactly it works. I heard attorneys have a lien that's special. I don't know how they break it up. I assume it goes to the trustee.

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Q. The Boudins weren't working for free. They got something out of it, right?
A. Yes.
Q. The trustee took the remainder and paid off some of your creditors, correct?
A. Correct. All of them.
Q. But the award was paid to the trustee on your behalf?
A. I believe so. I don't know how it worked.
Q. How much was the surplus after your creditors were paid?
A. After just the creditors?
Q. How much did you get?
A. How much did I get?
Q. Yes.
A. A third.
Q. I'm asking how much money did you get?
A. A third of the award.
Q. Dollars. How much money did you get?
A. Roughly a hundred.
Q. $100,000?
A. I don't know the exact number. It's roughly a hundred.

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Q. Was there a check that was issued to you?
A. By the trustee, yes.
Q. Did you cash it?
A. Yes.
Q. At what bank?
A. McHenry Bank & Trust.
Q. Do you still have an account there?
A. Yes.
Q. Do you have a copy of the canceled check?
A. I'm sure the bank has a photo thing.
Q. You can request a copy of the check, correct?
A. I could. I could see if they got it.
Q. I would ask you to do that. If you have any other documentation relative to the payouts that were made by the bankruptcy trustee on your behalf, we are requesting that information.
MR. FLYNN: Why don't we take a break and I'm going to look for one document and then we're just about done here.
(WHEREUPON, a recess was had.)
MR. FLYNN: Mark these as the next two.

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(WHEREUPON, a certain document was marked Exhibit No. 12, for identification, as of 02/19/2020.)
(WHEREUPON, a certain document was marked Exhibit No. 13, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm going to show you what I've marked as Exhibits 12 and 13. Twelve are your answers to Hans Mast's interrogatories. Thirteen is your responses to Popovich's request for production.
Interrogatory No. 1 from Mast asks, "Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach."
Do you understand that?
A. Yes.
Q. So how is it they committed malpractice?
A. May I see it?
Q. I'm going to show it to you in a second. I only have one copy.
This is basically, how did you first become aware that they committed malpractice?

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That's the essence of that interrogatory.
Here is your response. I can show that to you. It doesn't reflect any discussion with any malpractice lawyer in December of 2016.
Tell me --
A. Let me read it again. We're talking about No. 1 on this?
Q. Correct.
A. Okay.
Q. You understand it?
A. Yes.
Q. Would you agree that the legal opinion you received on December 16, 2016 is responsive to that interrogatory, whatever it is that you were told?
A. Yes.
Q. You didn't identify this December 16, 2016 discussion in the answer to that interrogatory, correct?
A. Say that again.
Q. Your discussion with Mr. Gooch on December 16, 2016, that's referenced in your original complaint, you didn't respond and identify it in this answer to the interrogatory, correct?

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A. This asks for every way Popovich or Mast breached the duty of care. It didn't ask for Gooch's opinion.
Q. How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?
A. Yes.
Q. That's what you've alleged here in this complaint.
A. Yes.
Q. Here I'm asking you, each and every way that they ever breached a duty of care to you. I covered the waterfront. You didn't answer --
A. On the McGuire case it was between October 2013 and January 2014. Yes. There's a multitude of things and that's why I listed a range.
Q. I'm asking when you became aware of it, in that interrogatory. Do you see that?
A. I became aware of that when Thomas Gooch read them and said there's a problem here.
Q. That's not the way you answered the interrogatory, correct?
A. I answered the first part. I did not answer after the comma and the and.

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Q. There's no objection and indication that any information is being withheld, correct?
A. Excuse me?
Q. There's no objection and an indication that you're withholding --
A. I was not withholding.
Q. I'll show you Exhibit 13. It asks -- Exhibit 13 are the production requests to you. Number 8 asks for you to produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created and the date the recipient received the document.
The answer is, "The plaintiff is only withholding attorney-client communication between his successor counsel."
Is that your answer to the production request and did I accurately read No. 8?
A. May I consult with her for a minute?
Q. Sure.
THE WITNESS: Can we go off the record?
MS. WILLIAMS: If you can answer the question, answer the question first.

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BY THE WITNESS:
A. It's been a while since I've done this, so I'm not sure who the successor counsel is. Is it her or is it the Boudins or Balke?
BY MR. FLYNN:
Q. I think successor counsel, we can both agree, the successor counsel in the underlying case which would be Balke and then Boudin.
You didn't identify any documents withheld other than documents between you and successor counsel, correct?
THE WITNESS: I believe we waived those, didn't we, for Balke and Boudin?
MS. WILLIAMS: For Balke and Boudin we can represent that we waived those.
BY MR. FLYNN:
Q. Let me ask a different question.
Did Gooch communicate with you in writing relative to his opinion that you had a legal malpractice case against Mast and Popovich?
A. In writing?
Q. Yes.
A. I suppose the agreement between us that he would represent me because I had the case is a

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document in writing.
Q. Did he tell you -- strike that.
The discussion that you reference in the complaint, paragraph 20 of December 16, 2016, was that a face-to-face communication with Gooch?
A. What number is that?
Q. Exhibit 4, paragraph 20. The legal opinion you received, was it verbal, was it written?
A. I believe it was verbal.
Q. Now, I'm going to ask you what he said. There was an objection and that will be addressed by the Court later. Please tell me what Gooch told you.
A. He read what I brought him, looked through some things, and I don't remember if it was the same day that we talked to him or he took a day or two. I don't remember. He got back to me and he said, "You have a case here. You have a valid case."
Q. Did he say why?
A. On the basis of what I brought to him. Yes.
Q. Specifics, though. I don't want to talk about generalities. Did he tell you what Mast and

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Popovich did wrong and how it injured you?
A. How it injured me? Yeah.
Q. The first part of my question was, did he tell you exactly what they did wrong in connection with your -- their representation of you?
A. He probably did. I'm not recalling it right now. I'm pulling a blank.
The parts of the conversation I'm remembering, and for some reason I'm not pulling it. We've been at this a while and this is a long thing. Yes, he said based on what he saw, he saw reason for malpractice.
Q. You don't remember any details, as you sit here? Did you discuss the liability of property owners in Illinois?
A. Well, if they were just property owners in the case, that would be one thing, but they weren't just property owners.
Q. That wasn't my question. I'm asking if you discussed it?
A. Certainly.
Q. You and Gooch discussed the liability of the McGuires in the case?
A. Yes.

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Q. What did you say to him and what did he say to you?
A. I showed him the expert opinion.
Q. The chainsaw expert?
A. Yes.
Q. Did you show him any deposition transcripts?
A. Yes.
Q. Which ones?
A. All of them.
Q. And he read them before you talked?
A. I don't remember. Like I said, it may have been a few days between our initial meeting and bringing the whole file that I had and trying to get what the Boudins had and letting him go through it. I don't remember how long that took.
Q. How did you transmit the documents to him –
A. My brother carried them.
Q. Let me finish.
How did you transmit the documents to Mr. Gooch, including the deposition transcripts?
A. I believe we brought him a box.
Q. So you physically handed the documents to

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him?
A. I didn't physically hand them. My brother did.
Q. Did you communicate with Mr. Gooch by e-mail, at all, leading up to this meeting?
A. No.
Q. Did he ever write you any letters?
A. An e-mail or regular mail or what are you talking about?
Q. Any letters whatsoever.
A. Throughout the course of his representation, yes.
Q. What about in December of 2016?
A. I believe we started communicating in December, yes.
Q. But in writing?
A. In e-mails, sure.
Q. Did he discuss –
A. We may have. I'm not -- whenever we started -- whenever he started sending me things and going back and forth, I don't remember the exact date, but it was right after he started representing me, sure, we exchanged e-mails and started, yes.
Q. When did Gooch begin representing you?

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A. The day that he agreed to represent me. I believe it would have been the day that he decided that he had a case.
Q. On or about December 16?
A. Yes.
Q. At that point in time, or shortly thereafter, he communicated with you in writing the details of the breach of the standard of care committed by Popovich and Mast; is that correct?
A. I believe he started to detail those out in the complaint and we were working it back and forth trying to get it right.
Q. When did you first exchange drafts of the complaint?
A. I'd have to look back in the e-mails. I don't remember the dates.
Q. Did you look for any of these e-mails in connection with my discovery requests in this case?
A. At the time I think we thought they were privileged.
Q. That privilege objection wasn't exactly made. My question is, did you look for them?
A. Did I look for them? I have them.
Q. I would ask that you preserve each and

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every communication between you and Mr. Gooch, all written communications, even phone records that might reflect the dates and times of your phone communications, if any. Did you use a cell phone back then?
A. I used VOIP over a data line.
Q. Who was your carrier?
A. Comcast.
Q. Is that still your carrier?
A. Yes.
Q. Do you have the same phone that you utilized?
A. Same phone number for 50 years, yes.
Q. What else could you remember that Gooch told you on or about the 16th of December 2016 about Mast and Popovich breaching the standard of care and how it damaged you?
A. Say that again.
Q. What, if anything, else do you recall about your discussions with Gooch on December 16 regarding the breach of the standard of care by Popovich and Mast and how it injured you?
A. We discussed the whole scenario between October and January and what happened. It was

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pretty detailed. We discussed everything that you see that's been communicated in the e-mails. He didn't have much else to go on other than the documents and the e-mails.
Q. You're talking about the e-mails between you and Hans from the fall of 2013?
A. Yes.
Q. Ultimately leading to the $5,000 settlement?
A. Yes.
Q. Other than you have a case, what did Gooch say to you?
A. He said that they definitely committed malpractice.
Q. Did he ever put this in writing?
A. Did he ever put it in writing? I think he backed it up by filing a suit. That's documented.
Q. Again, the suit wasn't filed until November of 2017.
A. Yes, he had some health problems and then his wife had some health problems. Believe me, I was pushing for him to get that done.
Q. From December of 2016 until the complaint

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was filed, you exchanged some drafts of complaints with him?
A. I believe he let me see what he wanted to put in the complaint. I got to review some things. Of course I had, do this or that's not right. In fact, a couple of these things in here we had to definitely -- you caught one. He totally worded it wrong. It was wrong. We had to amend.
MS. WILLIAMS: His question was, did he give you drafts for you to review?
THE WITNESS: Yes.
BY MR. FLYNN:
Q. These were exchanged by e-mail?
A. I believe so, yes.
Q. So you would have records of them?
A. Yes.
Q. Any comments with respect to the pleadings, as well, did you ever ask him questions? Did he explain to you the basis for the allegations in the draft complaints, similar to what you did with Hans?
A. Over many times, yes.
Q. This is all reflected in e-mails?
A. Yes.

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Q. Ultimately, you didn't file until November of 2017?
A. Correct.
Q. Popovich ceased being your lawyer March 19 of 2015, correct?
A. That sounds about right.
Q. Until December 16, 2016, you didn't have any reason to believe there was a malpractice case against --
A. Say the date again.
Q. Until December 16, 2016, you didn't have any other reason to believe there was a malpractice case against Popovich and Mast?
A. I did not know that I had a case, no.
Q. You threatened one with respect to the Gagnon case --
A. Yes.
Q. -- at another point in time, correct?
A. I think I threatened him a few times in there. Yeah. I was actually nice to what I really wanted to say.
Q. Subject to the ruling on these objections, you don't recall any other specific details that you discussed with Popovich -- I'm

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sorry -- Gooch on December 16, other than what we already talked about?
A. I discussed the exact same things that you -- the same documents that you already have. We went over the case that Mast and Popovich had against the McGuires. He followed through all the way to the end. We went over the whole case. You see as much as he did.
Q. Did Gooch ever explain to you why the McGuires would have been liable any more than Mast explained to you that they wouldn't be liable?
A. He said he agreed right away. He said that's obvious.
Q. Did Gooch ever provide you with any cases or statutes?
A. Provide to me, maybe. Maybe. I don't know.
Q. Would that be by e-mail?
A. It could be. I was in his office quite a few times. He may have.
Q. As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to

Page 140

the McGuires' liability?
A. That they were definitely liable. He tried to say that -- like Popovich and Mast were first- or second-year lawyers and that they may have made a mistake here.
I said they've got 20 years in this. You think they'd know the difference. That's the kind of thing. He agreed with me. Twenty years, yeah, they should have known better.
Q. Did you ever discuss the specifics of the McGuires' potential liability with Gooch?
A. Liability with Gooch?
Q. With Gooch, did you ever discuss the specifics of the McGuires' liability other than he thinks you have a case?
A. Yes.
Q. Did he ever tell you why? What was it?
A. Because he agreed with the expert's opinion.
Q. The expert on the chainsaw?
A. Yes. The liability expert.
Q. The expert said you should use safety goggles and gloves and things like that?
A. He said more than that, but yes.

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Q. Do you know who commissioned that expert report?
A. Boudins.
Q. Do you know when the first draft of that doctor's expert report was circulated?
A. I heard that Boudin got it in February, maybe. I don't think I got it until July, but I'm not sure about that.
Q. July of what year?
A. The same year as the mediation.
Q. Of 2016?
A. Yeah.
Q. So you actually read it in advance of the mediation?
A. I talked about this earlier. I said yes. You don't catch everything the first time you read it. I was sitting there at the mediating table and I was reading it and I caught it and I turned to Randy and I said, after it was over, does this mean -- that means.
Q. Means what?
A. Does this mean the McGuires are liable? Yeah, that means they are liable. He said, call my office after everything and I'll give you a name for

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an attorney you should go see.
MR. FLYNN: Any follow-up, Julia?
MS. WILLIAMS: I have two follow-up questions.

EXAMINATION

BY MS. WILLIAMS:
Q. Did you ever give Hans authority to make a settlement demand regarding Mr. Gagnon?
A. I think at one time in one of my meltdown letters I said get whatever you can, but no, I never actually signed anything saying you have the right to offer a settlement.
Q. Did you ever give Hans authority to make a settlement demand with regard to the McGuires?
A. A demand, no. He said he was going to probe and see what was out there, and I said, if you want to do that, that's fine.
MS. WILLIAMS: I have no further questions.
MR. FLYNN: Signature?
MS. WILLIAMS: We can waive signature.
THE REPORTER: Are you ordering this?
MR. FLYNN: Yes.
THE REPORTER: Regular delivery, e-tran?
MR. FLYNN: Yes.
THE REPORTER: Copy?

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MS. WILLIAMS: Yeah.
THE REPORTER: Regular delivery, e-tran?
MS. WILLIAMS: PDF.
(WHEREUPON, at 4:00 p.m., the deposition of PAUL DULBERG was concluded.)
* * * * *

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STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)

I, KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify:

That previous to the commencement of the examination of the witness, the witness was duly sworn to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction, and constitutes a true record of the testimony given and the proceedings had;

That the said deposition was taken before me at the time and place specified;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto

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set my hand and affix my seal of office at Chicago, Illinois this 3rd day of March, 2020.

Karen Pileggi

Notary Public, DuPage County, Illinois.
My commission expires 1/2/24.

CSR Certificate No. 84-3404

EXAMINATION

	Page	Line
PAUL DULBERG		
Examination by Mr. Flynn	3	6
Examination by Ms. Williams	142	4

E X H I B I T S

Deposition Exhibit	Page	Line
Exhibit No. 1	47	19
Exhibit No. 2	52	6
Exhibit No. 3	60	6
Exhibit No. 4	65	2
Exhibit No. 5	67	13
Exhibit No. 6	79	12
Exhibit No. 7	84	8
Exhibit No. 8	87	10
Exhibit No. 9	91	2
Exhibit No. 10	101	9
Exhibit No. 11	114	10
Exhibit No. 12	125	2
Exhibit No. 13	125	5

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANT HANS MAST'S
INTERROGATORIES TO PLAINTIFF PAUL DULBERG

NOW COMES Defendant, Hans Mast, by and through his attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 213, propounds the following interrogatories on Plaintiff, Paul Dulberg, to be answered under oath within 28 days:

DEFINITIONS & INSTRUCTIONS

The pronoun "you" refers to Plaintiff, Paul Dulberg, to whom this production request is addressed, as well as their agents, representatives, employees, anyone acting on his behalf, and unless privileged, his attorneys.

The term "document" as used herein means all records, papers, and books, transcriptions, pictures, drawings, or diagrams of every nature, whether transcribed by hand or by mechanical, electronic, photographic, or other means, as well as sound reproduction of oral statements or conversations by whatever means made, whether in your actual or constructive possession or under your control or not, relating or pertaining in any way to the subject matters in connection with which it is used, and includes originals, all file copies, and all other copies, no matter how prepared, and all drafts prepared in connection with such writing, whether used or not, including by way of

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EXHIBIT D

illustration and not by way of limitation, the following: books, records, contracts, agreements, expense accounts, canceled checks, catalogues, price lists, sound and tape recordings, memorandum (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts, and activities), minutes, diaries, calendar or desk pads, scrapbooks, notebooks, correspondence, emails, bulletins, circulars, forms, pamphlets, notices, statements, journals, postcards, letters, telegrams, reports, intra-office communications, photographs, microfilm, maps, and deposition transcripts, whether prepared by you for your own use or for transmittal or received by you.

INTERROGATORIES

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER:

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

ANSWER:

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

ANSWER:

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4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than $100,000?

ANSWER:

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANT HANS MAST'S
INTERROGATORIES TO PLAINTIFF PAUL DULBERG

NOW COMES Defendant, Hans Mast, by and through his attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 213, propounds the following interrogatories on Plaintiff, Paul Dulberg, to be answered under oath within 28 days:

DEFINITIONS & INSTRUCTIONS

The pronoun "you" refers to Plaintiff, Paul Dulberg, to whom this production request is addressed, as well as their agents, representatives, employees, anyone acting on his behalf, and unless privileged, his attorneys.

The term "document" as used herein means all records, papers, and books, transcriptions, pictures, drawings, or diagrams of every nature, whether transcribed by hand or by mechanical, electronic, photographic, or other means, as well as sound reproduction of oral statements or conversations by whatever means made, whether in your actual or constructive possession or under your control or not, relating or pertaining in any way to the subject matters in connection with which it is used, and includes originals, all file copies, and all other copies, no matter how prepared, and all drafts prepared in connection with such writing, whether used or not, including by way of

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illustration and not by way of limitation, the following: books, records, contracts, agreements, expense accounts, canceled checks, catalogues, price lists, sound and tape recordings, memorandum (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts, and activities), minutes, diaries, calendar or desk pads, scrapbooks, notebooks, correspondence, emails, bulletins, circulars, forms, pamphlets, notices, statements, journals, postcards, letters, telegrams, reports, intra-office communications, photographs, microfilm, maps, and deposition transcripts, whether prepared by you for your own use or for transmittal or received by you.

INTERROGATORIES

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER:

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

ANSWER:

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

ANSWER:

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4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than $100,000?

ANSWER:

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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** FILED ** Env: 9649054
McHenry County, Illinois
17LA000377
Date: 7/2/2020 9:30 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17 LA 377

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

PLEASE TAKE NOTICE that on the 2nd day of July 2020 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:

- **Supplemental Requests for Production to Plaintiff;**

a copy of which is attached hereto and herewith served upon you.

Dated this 2nd day of July 2020.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: /s/ *George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

EXHIBIT E

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing DEFENDANT'S NOTICE OF SERVICE OF DISCOVERY DOCUMENT was served upon:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
312-357-1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

by email on July 2, 2020.

/s/ *George K. Flynn*
One of their Attorneys

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION TO PLAINTIFF

NOW COMES Defendant, The Law Offices of Thomas J. Popovich, P.C. by and through its attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 214, respectfully requests Plaintiff, Paul Dulberg, to produce within 28 days at the law offices of Karbal, Cohen, Economou, Silk & Dunne, LLC, 150 South Wacker Drive, Suite 1700, Chicago, Illinois 60606, the following photographs, documents, objects, and other tangible things:

SUPPLEMENTAL PRODUCTION REQUESTS

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

RESPONSE:

2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

RESPONSE:

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3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

RESPONSE:

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their representation of you or provision of legal services to you.

RESPONSE:

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

RESPONSE:

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition from February 19, 2020.

RESPONSE:

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

RESPONSE:

Respectfully submitted,

/s/ *George K. Flynn*

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GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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George Flynn

From: George Flynn
Sent: Thursday, September 17, 2020 4:06 PM
To: Paul Dulberg
Subject: RE: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Thank you.

Pursuant to Illinois Supreme Court Rule 201(k), please advise when the supplemental discovery answers and documents will be served. As I indicated in court on September 10, I plan to file a motion to compel very soon if we do not receive the sworn answers and all responsive documents.

Best regards,

-----Original Message-----
From: Paul Dulberg <Paul_Dulberg@comcast.net>
Sent: Thursday, September 17, 2020 11:19 AM
To: George Flynn <gflynn@karballaw.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear Mr Flynn,

Please find the attached files named 2020-09-17_Appearance Pro se.pdf and 2020-09-17_ProofOfDelivery.pdf

I have filed these with the McHenry County Clerk via the i2file web site.

Thank you,
Paul

Paul Dulberg
847-497-4250

GROUP EXHIBIT F

Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377
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George Flynn

From: George Flynn
Sent: Saturday, August 29, 2020 8:59 PM
To: Julia WIlliams
Cc: Ed Clinton; Mary Winch; Linda Walters
Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Julia:

I write pursuant to rule 201(k) and rule 219(c). Mr. Dulberg is late in responding to discovery pursuant the the extension you requested, and to which I agreed.

It is finally time for Mr. Dulberg to properly answer discovery in conformity to his allegations, and relative to the matters which he has placed at issue.

Once the Gooch discovery is produced, I would like to immediately depose Dulberg and Gooch. Please pass this along to your client.

You and your firm have been nothing but professional and it was a pleasure working with you.

Best regards,

> On Aug 18, 2020, at 2:13 PM, George Flynn <gflynn@karballaw.com> wrote:
>
> Julia:
>
> This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k).
>
> I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated.
>
> I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved).
>
> The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020.
>
> Please feel free to contact me if you would like to discuss this matter.
>
> Very truly yours,

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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Thursday, July 30, 2020 10:07 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
Subject: Fwd: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Begin forwarded message:

From: Linda Walters <lwalters@KARBALLAW.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)
Date: July 2, 2020 at 11:11:39 AM CDT
To: "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC

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150 S. Wacker Drive
Suite 1700
Chicago, IL 60606



P: (312) 431-3641



F: (312) 431-3670



E: lwalters@KARBALLAW.com

CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

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George Flynn

From: George Flynn
Sent: Thursday, July 30, 2020 10:12 AM
To: Julia WIlliams
Cc: Ed Clinton; Mary Winch
Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Hi Julia. Yes, agreed.

On Jul 30, 2020, at 10:07 AM, Julia WIlliams <juliawilliams@clintonlaw.net> wrote:

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Begin forwarded message:

From: Linda Walters <lwalters@KARBALLAW.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)
Date: July 2, 2020 at 11:11:39 AM CDT
To: "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

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Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg>

P: (312) 431-3641

<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png>

F: (312) 431-3670

<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png>

E: lwalters@KARBALLAW.com

CONFIDENTIALITY NOTE:
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<2691756v1 - Supplemental Request for Prod. to Plaintiff.PDF>
<2691837v1 - Notice of Service of Discovery Documents -- Supplemental RTP to Plaintiff (FS).PDF>

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George Flynn

From: George Flynn <gflynn@karballaw.com>
Sent: Tuesday, September 1, 2020 10:31 AM
To: Julia WIlliams
Cc: Ed Clinton; Mary Winch; Linda Walters
Subject: RE: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Julia:

Thank you. I understand the position you and your firm are in. I will plan to either file a motion to compel, or advise the court of our intentions to file a motion on September 10.

Stay safe.

Very Truly Yours,

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Monday, August 31, 2020 8:45 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>; Linda Walters <lwalters@KARBALLAW.com>
Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

I will certainly pass this along to our client.

Unfortunately, because we are withdrawing, we are not comfortable answering discovery when another counsel may be appearing. Mr. Dulberg is seeking new counsel and would like to have his new counsel answer. I expect that we will be withdrawing on September 10, 2020. The court will grant Mr. Dulberg 21 days to find alternative counsel. Based upon this, it is unlikely that any answers to supplemental discovery will be prepared prior to the end of September.

Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377
Purchased from re:SearchIL

Thank you again for your time and courtesy in this case. It has been nice to work with you as well.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Aug 29, 2020, at 8:58 PM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

I write pursuant to rule 201(k) and rule 219(c). Mr. Dulberg is late in responding to discovery pursuant the the extension you requested, and to which I agreed.

It is finally time for Mr. Dulberg to properly answer discovery in conformity to his allegations, and relative to the matters which he has placed at issue.

Once the Gooch discovery is produced, I would like to immediately depose Dulberg and Gooch. Please pass this along to your client.

You and your firm have been nothing but professional and it was a pleasure working with you.

Best regards,

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

CONFIDENTIALITY NOTE:
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On Aug 18, 2020, at 2:13 PM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k).

Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377
Purchased from re:SearchIL

I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated.

I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved).

The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020.

Please feel free to contact me if you would like to discuss this matter.

Very truly yours,

From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Thursday, July 30, 2020 10:07 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
Subject: Fwd: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Begin forwarded message:

From: Linda Walters <lwalters@KARBALLAW.com>

Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377
Purchased from re:SearchIL

Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)
Date: July 2, 2020 at 11:11:39 AM CDT
To: "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<image001.jpg>

P: (312) 431-3641

<image002.png>

F: (312) 431-3670

<image003.png>

E: lwalters@KARBALLAW.com

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<image002.png><image003.png><image001.jpg>

Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 10675216
McHenry County, Illinois
17LA000377
Date: 10/5/2020 3:27 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Paul Dulberg, Plaintiff, v. The Law Offices of Thomas J. Popovich, P.C., And Hans Mast, Defendants.	)	Case No. 17 LA 000377 Jury Demand (Court Room 201)

NOTICE OF MOTION

TO: Paul Dulberg
4606 Hayden Court
McHenry, IL 60051
Paul_Dulberg@comcast.net

PLEASE TAKE NOTICE that on the **7th day of October 2020 at 8:45 a.m.** or as soon thereafter as this motion may be heard, we shall appear before the Honorable Judge Thomas A. Meyer or any Judge sitting in his place or stead, in Room 201, at McHenry County Government Center, 2200 N. Seminary Avenue (Route 47), Woodstock, IL 60098, and shall then and there present DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY, a copy of which is attached hereto and herewith served upon you.

Dated this 5th day of October 2020 in Chicago, Illinois.

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to each party to whom it is directed via the Odyssey eFileIL system on October 5, 2020.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377

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#11

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17LA377

☒ Jury ☐ Non-Jury

FILED
McHenry County, Illinois
OCT - 7 2020
KATHERINE M. KEEFE
Clerk of the Circuit Court

Dulberg

vs.

Popovich

Date: 10-8-20 Plaintiff's Attorney Pro-Se Defendant's Attorney George Flynn

ORDER

This matter coming to be heard for status and on Dulberg's motion for extension of time to hire counsel, and on Popovich's motion to compel, it is ordered:

1) Plaintiff's motion is granted over Defendant's objection. Plaintiff is granted leave to hire counsel within 21 days.

2) Popovich's motion to compel is entered and continued to October 27, 2020 at 8:45 a.m.

Prepared by: George Flynn
Attorney for: Popovich
Attorney Registration No.: 6239349 Judge:

C 482

Purchased from re:SearchIL

** FILED ** Env: 10893447
McHenry County, Illinois
17LA000377
Date: 10/23/2020 4:21 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY

Paul Dulberg

vs.

The Law Offices of Thomas J. Popovich, P.C. and Hans Mast

Case Number 17LA000377

APPEARANCE

I HEREBY ENTER THE APPEARANCE OF

Paul Dulberg

(Insert the name of the party for whom you are entering your appearance)

AND MY OWN AS

- ☐ REGULAR COUNSEL
- ☐ SPECIAL & LIMITED APPEARANCE
- ☐ PRO-SE
- ☑ ADDITIONAL COUNSEL
- ☐ GUARDIAN AD LITEM
- ☐ TRIAL COUNSEL
- ☐ SUBSTITUTE COUNSEL
- ☐ COUNSEL IN FORCIBLE ENTRY
- ☐ APPELLATE COUNSEL
- ☐ COURT APPOINTED COUNSEL

AND AS (HIS) (HER) (THEIR) COUNSEL IN THE ABOVE ENTITLED CASE.

SIGNED _____
(Signature of Attorney filing appearance)

Name Alphonse A. Talarico

Alphonse A. Talarico
Printed Name

ARDC Number 6184530

Attorney for Paul Dulberg

Address 707 Skokie Blvd. Suite 600

City, State Zip Northbrook, Illinois 60062

Phone (312) 808-1410

Email contact@lawofficeofalphonsetalarico.com

CC-APP1 (Revised 07-01-2018)

Received 10-26-2020 08:17 AM / Circuit Clerk Accepted on 10-26-2020 08:20 AM / Transaction #10893447 / Case #17LA000377

Purchased from re:SearchIL

** FILED ** Env: 10893447
McHenry County, Illinois
17LA000377
Date: 10/23/2020 4:21 PM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

STATE OF ILLINOIS, CIRCUIT COURT

McHenry COUNTY

ADDITIONAL PROOF OF DELIVERY

For Court Use Only

Instructions
Directly above, enter county where the case is filed.
Enter the name of the Plaintiff/ Petitioner.
Enter the name of the Defendant/Respondent.
Enter the Case Number given by the Circuit Clerk.

Paul Dulberg
Plaintiff / Petitioner *(First, middle, last name)*

v.

Hans Mast et al
Defendant / Respondent *(First, middle, last name)*

17 LA 000377
Case Number

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

1. I sent this document:
   a. To:
      Name: George K. Flynn
      First Middle Last
      Address: 150 S. Wacker Drive, Suite 1700 Chicago Illinois 60606
      Street, Apt # City State ZIP
      Email address: gflynn@karballlaw.com
   b. By:
      ☐ Personal hand delivery
      ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:
      Address of Post Office or Mailbox
      ☐ Third-party commercial carrier, with delivery paid for at:
      Name (for example, FedEx or UPS) and office address
      ☑ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
      ☐ Email *(not through an EFM or EFSP)*
      ☐ Mail from a prison or jail at:
      Name of prison or jail

In **c**, fill in the date and time that you sent the document.

   c. On: October 23, 2020
      Date
      At: 3:00 ☐ a.m. ☑ p.m.
      Time

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

2. I sent this document:
   a. To:
      Name:
      First Middle Last
      Address:
      Street, Apt # City State ZIP
      Email address:
   b. By:
      ☐ Personal hand delivery
      ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:
      Address of Post Office or Mailbox

Received 10-26-2020 08:17 AM / Circuit Clerk Accepted on 10-26-2020 08:20 AM / Transaction #10893447 / Case #17LA000377
Purchased from re:SearchIL

☐ Third-party commercial carrier, with delivery paid for at:

Name (for example, FedEx or UPS) and office address

☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)

☐ Email *(not through an EFM or EFSP)*

☐ Mail from a prison or jail at:

Name of prison or jail

c. On: _____
Date

At: _____ ☐ a.m. ☐ p.m.
Time

In **3**, if you sent the document to more than 2 parties or lawyers, fill in **a**, **b**, and **c**. Otherwise leave **3** blank.

3. I sent this document:

a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By: ☐ Personal hand delivery

☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

Address of Post Office or Mailbox

☐ Third-party commercial carrier, with delivery paid for at:

Name (for example, FedEx or UPS) and office address

☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)

☐ Email *(not through an EFM or EFSP)*

☐ Mail from a prison or jail at:

Name of prison or jail

c. On: _____
Date

At: _____ ☐ a.m. ☐ p.m.
Time

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the *Additional Proof of Delivery* is true and correct. I understand a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

707 Skokie Boulevard #600
Street Address

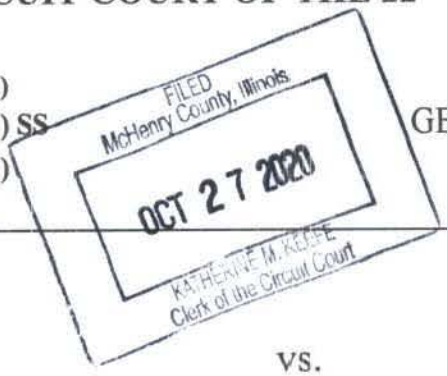
Northbrook, Illinois, 60062
City, State, ZIP

Received 10-26-2020 08:17 AM / Circuit Clerk Accepted on 10-26-2020 08:20 AM / Transaction #10893447 / Case #17LA000377
Purchased from re:SearchIL

#10

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)



GEN. NO. 17 LA 377

☒ Jury ☐ Non-Jury

Owings

vs.

Popovich

Date: 10-27-20 Plaintiff's Attorney Alphon Talarico Defendant's Attorney George Flynn

ORDER

This matter coming to be heard for status on Popovich's Motion to Compel, it is ordered:

1) Popovich's motion to Compel is entered and continued to November 29, 2020 at 8:45 a.m. for status on compliance of discovery related to Popovich's Motion to Compel.

Prepared by: Flynn

Attorney for: Popovich

Attorney Registration No.: 6239349 Judge:

Purchased from re:SearchIL

CIRCUIT COURT FOR THE 22nd JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY of McHENRY)

CASE NUMBER 17LA000377

☑ Jury ☐ Non-Jury

Paul Dulberg, Plaintiff

FILED
NOV 25 2020
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

vs. The law Offices Of Thomas J. Popovich and Hans Mast

Date Nov. 24, 2020 Plaintiff's Attorney Alphonse A. Talarico Defendant's Attorney George K. Flynn

ORDER

This matter coming on to be heard for status on Defendant Popovich's Motion to Compel and this Honorable Court being fully briefed in the premises, it is hereby Ordered that:

I) Defendant Popovich's Motion to Compel is entered and continues;

II) Plaintiff is granted 28 days, up to and including December 22, 2020 to Respond to said Motion;

III) Defendant Popovich is granted 14 days, up to and including January 5, 2021 to Reply;

IV) this Motion is set for hearing before this Honorable Court in room 201 on January 14, 2021 at 10:00 a.m.

Prepared by: Alphonse A. Talarico

Attorney for: Plaintiff Paul Dulberg

Judge: Thomas A. Meyer

eSigned by THOMAS A. MEYER 11/25/2020 13:14:32 bs6QN5md

Purchased from re:SearchIL

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

FILED Env: 11708302
McHenry County, Illinois
17LA000377
Date: 1/5/2021 12:10 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS, CIRCUIT COURT

McHenry **COUNTY**

PROOF OF DELIVERY

For Court Use Only

Instructions ▾	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person or company that filed this case as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name or Company)*
Enter the name of the Defendant/Respondent.	v.
Enter the Case Number given by the Circuit Clerk.	Hans Mast et al **Defendant / Respondent** *(First, middle, last name)* 17 LA 000377Plaintiff's **Case Number**

In **1**, enter the name of the court document you are sending to the other parties in the court case (*e.g.*, a Court Order or Answer).

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

In **c**, fill in the date and time that you sent the document.

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

1. I am sending the following court document: Response To Motion To Compel

a. To:

Name: George K. Flynn
First *Middle* *Last*

Address: 150 S. Wacker Dr. #1700 Chicago Illinois 60606
Street, Apt # *City* *State* *ZIP*

Email address: gflynn@kargallaw.com

b. By:
- ☐ Personal hand delivery
- ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

  Address of Post Office or Mailbox
- ☐ Third-party commercial carrier, with delivery paid for at:

  Name (for example, FedEx or UPS) and office address
- ☑ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFM or EFSP)*
- ☐ Mail from a prison or jail at:

  Name of prison or jail

c. On: January 5, 2021
Date

At: 11:00 ☑ a.m. ☐ p.m.
Time

2. I sent this document:

a. To:

Name:
First *Middle* *Last*

Address:
Street, Apt # *City* *State* *ZIP*

Email address:

Received 01-05-2021 02:41 PM / Circuit Clerk Accepted on 01-05-2021 05:41 PM / Transaction #11708302 / Case #17LA000377
Purchased from re:SearchIL

Enter the Case Number given by the Circuit Clerk: 17 LA 000377Plaintiff's

b. By:
- ☐ Personal hand delivery
- ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

  _____
  Address of Post Office or Mailbox
- ☐ Third-party commercial carrier, with delivery paid for at:

  _____
  Name (for example, FedEx or UPS) and office address
- ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFM or EFSP)*
- ☐ Mail from a prison or jail at:

  _____
  Name of prison or jail

If you sent your document to more than 3 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

707 Skokie Blvd. #600
Street Address

Northbrook, Illinois 60062
City, State, ZIP

Received 01-05-2021 02:41 PM / Circuit Clerk Accepted on 01-05-2021 05:41 PM / Transaction #11708302 / Case #17LA000377

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** FILED ** Env: 11708302
McHenry County, Illinois
17LA000377
Date: 1/5/2021 12:10 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and in support of said Response states as follows:

1. Plaintiff admits the allegations in Defendants' Motion to Compel #1.
2. Plaintiff admits the allegations in Defendants' Motion to Compel #2.
3. Plaintiff Paul Dulberg admits that ¶ 20 of his original Complaint states "Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBERG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the mediation, DULBERG was advised to seek an independent

Received 01-05-2021 02:41 PM / Circuit Clerk Accepted on 01-05-2021 05:41 PM / Transaction #11708302 / Case #17LA000377
Purchased from re:SearchIL

C 490

opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016." To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 3 of Defendants' Motion to Compel.

In addition, on February 7, 2018 Defendants brought their 735 ILCS 5/2-619.1 combined motion against Plaintiff's original Complaint which contained a 735 ILCS5/2-619(a)(5) motion to dismiss (not commenced within the time allowed by law) and a 735 ILCS 5/2-619(a)(9) motion (other affirmative matter avoiding the legal effect of or defeating the claim-based on judicial estoppel) and said motions were denied by this Honorable court on May 10, 2018.

4. Plaintiff admits the allegations in defendants' Motion to Compel #4.

5. Plaintiff Paul Dulberg admits that ¶56 of his Second Amended Complaint states "Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake." Plaintiff further admits that ¶57 of his Second Amended Complaint states "It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis". To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 5 of Defendants' Motion to Compel.

Received 01-05-2021 02:41 PM / Circuit Clerk Accepted on 01-05-2021 05:41 PM / Transaction #11708302 / Case #17LA000377
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6. Plaintiff admits that Dulberg gave a discovery deposition in this case on February 19, 2020. Paul Dulberg admits that he was questioned by an attorney for Defendants and that said questions and answers can be found on DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY attached as Exhibit C page 106 L1-page 114 L24. To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 6 of Defendants' Motion to Compel.

7. Plaintiff Paul Dulberg denies that his attending attorney Julia C. Williams waived the attorney-client privilege on behalf of her then client Plaintiff Paul Dulberg and additionally, states that the ability to waive the attorney-client privilege belongs to the client. Further responding Plaintiff states that his attorney did not waive or even attempt to waive the attorney-client privilege pursuant to Ill.R.Evid.502(d) illustrated by the following quotes:

Ms. Williams: There's not a question pending. I'm going to make a standing objection as to privilege with Gooch.

If we can agree that the objection will stand, we can go through this line of questioning and then if we need to later, have a judge determine whether or not that line of questioning is admissible. Are you agreeable to that?

Mr. Flynn: I'm agreeable to continuing on for a few minutes. I want to explore. I'll try to lay foundation for –to confirm this wasn't anyone else, for starters. Why don't we continue on and if you need to raise it again, we can talk.

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Ms. Williams: Otherwise, I'm just going to raise it to every single question you ask. I just don't want to continue to make the objection as to --- if questions are asked about advice given by a legal malpractice attorney. I'm going to raise an objection as to that.

please see THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY attached as Exhibit C Page 110 L18-Page 111 L12.

In addition, Plaintiff Paul Dulberg admits that the following questions and answers are transcribed as part of his Deposition:

Q. Would you agree that the legal opinion you received on December 16, 2016 is responsive to that interrogatory, whatever it is that you were told?

A. Yes.

Q. You didn't identify this December 16, 2016 discussion in the answer to that interrogatory, correct?

A. Say that again.

Q. Your discussion with Mr. Gooch on December 16, 2016, that's referenced in your original complaint, you didn't respond and identify it in this answer to the interrogatory, correct?

A. This asks for every way Popovich or Mast breached the duty of care. It didn't ask for Gooch's opinion.

please see THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY attached as Exhibit C Page 126 L12-Page 127 L3.

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Also, Plaintiff Paul Dulberg admits that the following questions and answers are transcribed as part of his Deposition:

Q. How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?

A. Yes.

Q. That's what you've alleged here in this complaint.

A. Yes.

please see THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY attached as Exhibit C Page 127 L4-L10.

To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 7 of Defendants' Motion to Compel.

8. Plaintiff Paul Dulberg admits that the Clerk of the Circuit Court's Website reflects a NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

● Supplemental Requests for Production to Plaintiffs;

a copy of which is attached hereto and herewith served upon you.

Said notice contains a Filed date of July 2, 2020

please see THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY attached as Exhibit E.

To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 8 of Defendants' Motion to Compel.

9. Plaintiff Paul Dulberg admits that the Clerk of the Circuit Court's Website

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reflects a NOTICE OF MOTION and a MOTION TO WITHDRAW AS COUNSEL FOR PLAINTIFF PAUL DULBERG filed on August 18, 2020.

To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 9 of Defendants' Motion to Compel.

10. Plaintiff Paul Dulberg admits that the Clerk of the Circuit Court's Website reflects an Order entered by this Honorable Court granting the Clinton Law Firm's motion to withdraw. The file date is September 10, 2020. Further responding Paul Dulberg admits that he filed his Appearance Pro Se on September 17, 2020.

11. Plaintiff Paul Dulberg admits that contained within *Waste Management, Inc. v. International Surplus Lines Ins. Co.,*144 Ill.2d 178, 579 N.E.2d 322, 161 Ill.Dec. 774 (Ill. 1991) the Illinois Supreme Court stated :

"The purpose of the attorney-client privilege is to encourage and promote full and frank consultation between a client and legal advisor by removing the fear of compelled

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[161 Ill.Dec. 779] disclosure of information." (Consolidation Coal Co. v. Bucyrus-Erie Co. (1982), 89 Ill.2d 103, 117-18, 59 Ill.Dec. 666, 432 N.E.2d 250.) However, the privilege is not without conditions, and we are mindful that it is the privilege, not the duty to disclose, that is the exception. (Consolidation Coal, 89 Ill.2d at 117-18, 59 Ill.Dec. 666, 432 N.E.2d 250.) Therefore, the privilege ought to be strictly confined within its narrowest possible limits. Further, the attorney-client privilege is limited solely to those communications which the claimant either expressly made confidential or which he could reasonably believe under the circumstances would be understood by the attorney as such. (Consolidation, 89 Ill.2d at 119, 59 Ill.Dec. 666, 432 N.E.2d 250; McCormick, Evidence § 91, at 217 (3d ed. 1984).) Finally, we note that in Illinois, we adhere to a strong policy of encouraging disclosure, with an eye toward ascertaining that truth which is essential to the proper disposition of a lawsuit. Monier v. Chamberlain (1966), 35 Ill.2d 351, 359, 221 N.E.2d 410.

Further responding, Plaintiff Paul Dulberg admits that contained within Bill Daily, M.D., &

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Cardiothoracic Surgery Assocs., P.C. v. Greensfelder, Hemker & Gale, P.C., 2018 IL App (5th) 150384, 98 N.E.3d 604 (Ill. App. 2018) the Appellate court stated in ¶22-23:

¶ 22 We begin with the issue of whether the documents referenced in Daily, Stinson, and Padberg's privilege logs are discoverable based on the "at issue" waiver of the attorney-client privilege. "All matters that are privileged against disclosure on the trial, including privileged communications between a party or his agent and the attorney for the party, are privileged against disclosure through any discovery procedure." Ill.S.Ct. R. 201(b)(2) (eff. July 30, 2014). "Where legal advice of any kind is sought from a lawyer in his or her capacity as a lawyer, the communications relating to that purpose, made in confidence by the client, are protected from disclosure by the client or lawyer, unless the protection is waived."

[98 N.E.3d 614]

Center Partners, Ltd. , 2012 IL 113107, ¶ 30, 367 Ill.Dec. 20, 981 N.E.2d 345. Although this statement regarding the privilege "suggests that only communications 'by the client' are protected from disclosure, the modern view is that the privilege is a two-way street, protecting both the client's communications to the attorney and the attorney's advice to the client." People v. Radojcic , 2013 IL 114197, ¶ 40, 376 Ill.Dec. 279, 998 N.E.2d 1212 (citing Edward J. Imwinkelried, The New Wigmore: A Treatise on Evidence § 6.6.1, at 585 (2002)). " 'The purpose of the attorney-client privilege is to encourage and promote full and frank consultation between a client and legal advisor by removing the fear of compelled disclosure of information.' " Waste Management, Inc. , 144 Ill.2d at 190, 161 Ill.Dec. 774, 579 N.E.2d 322 (quoting Consolidation Coal Co. v. Bucyrus–Erie Co. , 89 Ill.2d 103, 117–18, 59 Ill.Dec. 666, 432 N.E.2d 250 (1982)).

¶ 23 While the attorney-client privilege serves a purpose that our supreme court has characterized as " 'essential "to the proper functioning of our adversary system of justice" ' " (Center Partners, Ltd. , 2012 IL 113107, ¶ 30, 367 Ill.Dec. 20, 981 N.E.2d 345 (quoting In re Marriage of Decker , 153 Ill.2d 298, 313, 180 Ill.Dec. 17, 606 N.E.2d 1094 (1992), quoting United States v. Zolin , 491 U.S. 554, 562, 109 S.Ct. 2619, 105 L.Ed.2d 469 (1989)), our supreme court has also made clear that the attorney-client privilege is not without conditions, finding that it is the privilege, not the duty to disclose, that is the exception. Waste Management, Inc. , 144 Ill.2d at 190, 161 Ill.Dec. 774, 579 N.E.2d 322 (citing Consolidation Coal Co. , 89 Ill. 2d at 117–18, 59 Ill.Dec. 666, 432 N.E.2d 250). "Illinois adheres 'to a strong policy of encouraging disclosure, with an eye toward ascertaining that truth which is essential to the proper disposition of a lawsuit.' " Center Partners, Ltd. , 2012 IL 113107, ¶ 32, 367 Ill.Dec. 20, 981 N.E.2d 345 (quoting Waste Management, Inc. , 144 Ill.2d at 190, 161 Ill.Dec. 774, 579 N.E.2d 322). Accordingly, "the privilege ought to be strictly confined within its narrowest possible limits." Waste Management, Inc. , 144 Ill.2d at 190, 161 Ill.Dec. 774, 579 N.E.2d 322.

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In addition, Plaintiff Paul Dulberg admits that in Ctr. Partners, Ltd. v. Growth Head GP, LLC, 2012 IL 113107, 981 N.E.2d 345, 367 Ill.Dec. 20 (Ill. 2012) the Illinois Supreme Court in ¶35 stated:

> ¶ 35 Among the exceptions to the attorney client privilege is the concept of "waiver." The attorney-client privilege belongs to the client, rather than the attorney, although the attorney asserts the privilege on behalf of the client. *Decker,* 153 Ill.2d at 313, 180 Ill.Dec. 17, 606 N.E.2d 1094. Only the client may waive the privilege. *Decker,* 153 Ill.2d at 313, 180 Ill.Dec. 17, 606 N.E.2d 1094. The attorney, although presumed to have authority to waive the privilege on the client's behalf, may not do so over the client's objection. Richard O. Lempert et al., A Modern Approach to Evidence 884–85 (3d ed. 2000). "Any disclosure by the client is inherently inconsistent with the policy behind the privilege of facilitating a confidential attorney-client relationship and, therefore, must result in a waiver of the privilege." *Profit Management Development, Inc., v. Jacobson, Brandvik & Anderson, Ltd.,* 309 Ill.App.3d 289, 299, 242 Ill.Dec. 547, 721 N.E.2d 826 (1999). Thus, for example, the attorney-client privilege may be waived by the client when the client voluntarily testifies to the privileged matter (*Profit Management,* 309 Ill.App.3d at 299, 242 Ill.Dec. 547, 721 N.E.2d 826), or when the client voluntarily injects into the case either a factual or legal issue, the truthful resolution of which requires examination of confidential communications, such as legal malpractice actions (*Fischel & Kahn,* 189 Ill.2d at 585, 244 Ill.Dec. 941, 727 N.E.2d 240;*Lama v. Preskill,* 353 Ill.App.3d 300, 305, 288 Ill.Dec. 755, 818 N.E.2d 443 (2004)). The basic, well-settled rule is that when a client discloses to a third-party a privileged communication, that particular communication is no longer privileged and is discoverable or admissible in litigation. Michael

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> H. Graham, Evidence: An Introductory Problem Approach 563 (2002)(“The holder of the privilege against disclosure of the confidential matter or communication waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication * * *.”).

Further responding, Plaintiff Paul Dulberg admits that contained within Bill Daily, M.D., & Cardiothoracic Surgery Assocs., P.C. v. Greensfelder, Hemker & Gale, P.C., 2018 IL App (5th) 150384, 98 N.E.3d 604 (Ill. App. 2018) the Appellate court stated in ¶24-25:

¶ 24 While our supreme court has not had occasion to find an "at issue" exception to the attorney-client privilege, it has clearly recognized that such an exception exists. See *Center Partners, Ltd.* , 2012 IL 113107, ¶ 35, 367 Ill.Dec. 20, 981 N.E.2d 345. Specifically, our supreme court has stated that the "at issue" exception to the attorney-client privilege may be invoked "when the client voluntarily injects into the case either a factual or legal issue, the truthful resolution of which requires examination of confidential communications, such as legal malpractice actions." *Id.* (citing *Fischel & Kahn, Ltd. v. Van Straaten Gallery , Inc.* , 189 Ill.2d 579, 585, 244 Ill.Dec. 941, 727 N.E.2d 240 (2000), and *Lama v. Preskill* , 353 Ill.App.3d 300, 305, 288 Ill.Dec. 755, 818 N.E.2d 443 (2004)); see also *Waste Management, Inc.* , 144 Ill.2d at 19193, 161 Ill.Dec. 774, 579 N.E.2d 322 (recognizing the "at issue" exception applies where an attorney's litigation files from underlying litigation are "relevant and at issue in the present [litigation]").

¶ 25 The plaintiffs recognize that "Illinois jurisprudence does not have a case with this exact fact pattern." Nonetheless, they point to what they characterize as "well established Illinois law," which they contend sets forth a standard by which a plaintiff does not waive the attorney-client privilege by placing privileged material "at issue," unless the plaintiff "actually discloses or describes, *i.e.* , in some way expressly relies upon, attorney[-]client communications in making its claim." We disagree and find the cases cited by Greensfelder—the most relevant of which [98 N.E.3d 615] is the Illinois Supreme Court's decision in *Fischel*

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& Kahn, Ltd. , 189 Ill.2d 579, 244 Ill.Dec. 941, 727 N.E.2d 240 —to be distinguishable.

Another response by Plaintiff Paul Dulberg to Defendants Motion to Compel regarding Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc., 727 N.E.2d 240, 189 Ill.2d 579, 244 Ill.Dec. 941 (Ill. 2000) is to neither admit nor deny as the reference to this case on page 4 of DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY does not contain a specific page or paragraph citation and therefore Plaintiff Paul Dulberg respectfully refrains from responding until the exact page or paragraph is provided.

As an added response, Plaintiff Paul Dulberg admits that contained within Bill Daily, M.D., & Cardiothoracic Surgery Assocs., P.C. v. Greensfelder, Hemker & Gale, P.C., 2018 IL App (5th) 150384, 98 N.E.3d 604 (Ill. App. 2018) the Appellate court stated in ¶31-32:

¶ 31 Based on our analysis of existing Illinois law, as set forth above, we
[98 N.E.3d 617]
find that documents within Daily, Stinson, and Padberg's files, as set forth in their respective privilege logs, may contain communications that are required to be examined in order to truthfully resolve factual and legal issues that have been injected into the instant litigation by the plaintiffs. See *Center Partners, Ltd.* , 2012 IL 113107, ¶ 35, 367 Ill.Dec. 20, 981 N.E.2d 345. Although the plaintiffs are not asserting a cause of action for legal malpractice against Greensfelder, they are asserting a cause of action for breach of fiduciary duty based on Greensfelder's role as their prior counsel and its use of information acquired in that role in its representation of an adverse party leading up to, during, and in settlement of the Missouri litigation. An essential element of a claim for breach of fiduciary duty is damages proximately caused by the breach. *Huang v. Brenson* , 2014 IL App (1st) 123231, ¶ 44, 379 Ill.Dec. 891, 7 N.E.3d 729. Accordingly,

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the case at bar is more like *Pappas* than *Fischel & Kahn, Ltd.* , because there is an issue of whether Greensfelder, Daily, Stinson, and Padberg contributed to cause the Missouri litigation and its outcome and the relative contribution of each to the plaintiffs' damages.
¶ 32 In order to truthfully resolve the factual and legal issues necessary to adjudicate the causation element of the plaintiffs' claims against Greensfelder, all communications between the plaintiffs and Daily, Stinson, and Padberg that are related to the role Daily, Stinson, and Padberg played in the events leading up to and including the plaintiffs' defense of the Missouri litigation are discoverable pursuant to the "at issue" exception to the attorney-client privilege.[8] However, pursuant to the holding of our supreme court in *Fischel & Kahn , Ltd.* , 189 Ill.2d at 590, 244 Ill.Dec. 941, 727 N.E.2d 240, documents evidencing communications between the plaintiffs and Daily, Stinson, and Padberg that are relevant solely to the reasonableness of the plaintiffs' decision to settle the Missouri litigation, and the amount of that settlement, remain privileged because, for the above-stated reasons, they are not "required to be examined in order to truthfully resolve" the causation element of the plaintiffs' claim against Greensfelder for breach of fiduciary duty. Instead, they are relevant to the issue of the reasonableness of the settlement of the Missouri litigation, which, as explained above, is subject to an objective measure of proof.

To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 11 of Defendants' Motion to Compel.

12. Plaintiff Paul Dulberg response to Defendants' Motion to Compel regarding Lama v. Preskill, 353 Ill.App.3d 300, 288 Ill.Dec. 755, 818 N.E.2d 443 (Ill. App. 2004) is to neither admit nor deny as the citation to this case on page 4 of DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY does not contain a specific page or paragraph citation and therefore Plaintiff Paul Dulberg respectfully refrains from responding until the exact page or paragraph is provided.

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To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 12 of Defendants' Motion to Compel.

13. Plaintiff admits that Dulberg gave a discovery deposition in this case on February 19, 2020. Paul Dulberg admits that he was questioned by an attorney for Defendants and that said questions and answers can be found on DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY attached as Exhibit C pages 133 L1-page 142 L24. To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 13 of Defendants' Motion to Compel.

14. Plaintiff Paul Dulberg denies the allegations contained in Paragraph 14 of Defendants' Motion to Compel.

Further responding Plaintiff Paul Dulberg states that on November 28, 2012 the Illinois Supreme Court adopted Ill.R.Evid. 502 ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT; LIMITATIONS ON WAIVERS, effective January 1, 2013. Rule 502 is as follows:

Rule 502.

ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT; LIMITATIONS ON WAIVER

The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

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(a) Disclosure Made in an Illinois Proceeding or to an Illinois Office or Agency; Scope of a Waiver. When the disclosure is made in an Illinois proceeding or to an Illinois office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in any proceeding only if:

(1) the waiver is intentional;

(2) the disclosed and undisclosed communications or information concern the same subject matter; and

(3) they ought in fairness to be considered together.

(b) Inadvertent Disclosure. When made in an Illinois proceeding or to an Illinois office or agency, the disclosure does not operate as a waiver in any proceeding if:

(1) the disclosure is inadvertent;

(2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and

(3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Supreme Court Rule 201(p).

(c) Disclosure Made in a Federal or Another State's Proceeding or to a Federal or Another State's Office or Agency. When the disclosure is made in a federal or another state's proceeding or to a federal or another state's office or agency and is not the subject of a court order concerning waiver, the disclosure does not operate as a waiver in an Illinois proceeding if the disclosure:

(1) would not be a waiver under this rule if it had been made in an Illinois proceeding; or

(2) is not a waiver under the law governing the federal or state proceeding where the disclosure occurred.

(d) Controlling Effect of a Court Order. An Illinois court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other proceeding.

(e) Controlling Effect of a Party Agreement. An agreement on the effect of disclosure in an Illinois proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(f) Definitions. In this rule:

(1) "attorney-client privilege" means the protection that applicable law provides for confidential attorney-client communications; and

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(2) "work-product protection" means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

Adopted Nov. 28, 2012, eff. Jan. 1, 2013.

This Honorable Court should deny DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY based upon the following:

1) On February 7, 2018 Defendants brought their 735 ILCS 5/2-619.1 combined motion against Plaintiff's original Complaint which contained a 735 ILCS 5/2 -619(a)(5) motion to dismiss (not commenced within the time allowed by law) and a 735 ILCS 5/2-619(a)(9) motion (other affirmative matter avoiding the legal effect of or defeating the claim-based on judicial estoppel) and said motions were denied by this Honorable Court on May 10, 2018;

2) On November 28, 2012 the Illinois Supreme Court adopted Ill.R.Evid. 502 ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT; LIMITATIONS ON WAIVERS, effective January 1, 2013;

3) All of Defendants citations are to cases decided before the effective date of the Illinois Rule of Evidence 502 except Bill Daily, M.D., & Cardiothoracic Surgery Assocs., P.C. v. Greensfelder, Hemker & Gale, P.C.,2018 IL App (5th) 150384, 98 N.E.3d 604 (Ill. App. 2018);

4) Bill Daily, M.D., & Cardiothoracic Surgery Assocs., P.C. v. Greensfelder, Hemker & Gale, P.C.,2018 IL App (5th)150384, 98 N.E.3d 604 (Ill. App. 2018) Court relied on cases decided before the effective date of Illinois Rule of

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Evidence 502;

5)) Bill Daily, M.D., & Cardiothoracic Surgery Assocs., P.C. v. Greensfelder, Hemker & Gale, P.C.,2018 IL App (5th)150384, 98 N.E.3d 604 (Ill. App. 2018) Court did not recognize Illinois Rule of Evidence 502 in its majority analysis;

6)) Bill Daily, M.D., & Cardiothoracic Surgery Assocs., P.C. v. Greensfelder, Hemker & Gale, P.C.,2018 IL App (5th)150384, 98 N.E.3d 604 (Ill. App. 2018) case had a pending but not yet decided 735 ILCS 5/2 619.1 combined motions, one of which was a 735 ILCS 5/2 619(a)(5) motion to dismiss based on a statute of limitation while in the current matter before this Honorable Court the 735 ILCS 5/2-619(a)(5) and 735 IILCS 5/2-619 (a)(9) motions to dismiss were denied on May 10, 2018.

WHEREFORE PLAINTIFF PAUL DULBERG prays that DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY be denied in its entirety and for any and all further relief as this HONORABLE COURT deems right and just.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

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By: Alphonse A. Talarico
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CIRCUIT COURT FOR THE 22nd JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY of McHENRY)

CASE NUMBER 17LA000377

☑ Jury ☐ Non-Jury

FILED
JAN - 6 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

Paul Dulberg, Plaintiff

vs. The Law Offices Of Thomas J. Popovich and Hans Mast

Date January 5, 2021 Plaintiff's Attorney Alphonse A. Talarico Defendant's Attorney George K. Flynn

ORDER

This matter coming on to be heard pursuant to agreement of the parties after direct communication between the attorneys for the parties, a briefing schedule being previously entered on November 25, 2020 by this Honorable Court that the parties now desire to amend, the Court being fully advised in the premises , it is hereby ordered that:

I) Defendant Popovich's Motion to Compel is entered and continued;

II) Plaintiff is granted an additional 14 days, up to and including January 5, 2021 to respond to said motion;

III) Defendant is granted an additional 14 days, up to and including February 2, 2021 to reply;

IV) the hearing date of January 14, 2021 in room 201 at 10:00 a.m. is stricken;

v) this Motion is set for hearing before this Honorable Court in room 201 on February 10, 2021 at 11:00 a.m.

Prepared by: Alphonse A. Talarico

Attorney for: Plaintiff Paul Dulberg

Judge: Thomas A. Meyer

eSigned by THOMAS A. MEYER 01/06/2021 08:14:38 7rNP5PQH

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McHenry County, Illinois
17LA000377
Date: 2/2/2021 2:54 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: All Attorneys of Record (See Attached Service List)

PLEASE TAKE NOTICE that, on the 2nd day of February 2, 2021, we filed DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REPLY IN SUPPORT OF MOTION TO COMPEL, with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 2nd day of February 2021.

George K. Flynn
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700, Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com
Firm No. 38100

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to each party to whom it is directed via the Odyssey eFileIL system on February 2, 2021.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

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SERVICE LIST

Plaintiff's Attorney	
Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd 6th Floor Suite Northbrook, IL 60062-2841 contact@lawofficeofalphonsetalarico.com (312) 808-1410	

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Date: 2/2/2021 2:54 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, by and through their attorneys KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, for their Reply in Support of Motion to Compel Plaintiff to Answer written Discovery, state as follows:

I. INTRODUCTION

Dulberg's evasiveness, failure to respond or timely object to proper written and oral discovery, and his delay tactics should not be rewarded. Dulberg's response to the instant motion to compel provides little in the way of opposition to Popovich's position or the issues raised, and basically fails to analyze the issues material to this motion to compel, or offer any basis for the denial of said motion. Nor does he offer any valid reason why the court should not dismiss his case with prejudice pursuant to Illinois Supreme Court Rule 219.

II. ARGUMENT

Dulberg's response is formatted similar to an answer to a complaint, and in some cases admits, and some cases denies the allegations and arguments contained in the motion to compel.

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In some instances, for example Plaintiff's response to ¶8, Dulberg admits that on July 2, Popovich served supplemental production requests aimed at Dulberg's discovery of the malpractice as alleged in December 2016, including the following production requests. (Ex. F) First, Dulberg admitted service of the discovery documents, and then wrote, "to the extent that affirmative response is required, Plaintiff Paul Dulberg denies the allegations contained in ¶8 of Defendants' motion to compel." What is left to deny?

Dulberg continues on to admit the existence of some of the facts contained in the motion to compel, and admits or regurgitates some of the caselaw cited in the motion to compel. On page 10 of his response, Dulberg acknowledges citations to *Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc.*, 189 Ill. 2d 579 (2000), but fails to analyze the case because a specific page or paragraph citation was not included. The cases that were cited by defendants were general propositions, and not necessarily a quote or a court's holding in the cases. Similarly, defendants' citation to *Lama v. Preskill*, 353 Ill. App. 3d 300 (2nd Dist. 2004) was for the general proposition, and the entire factual scenario contained in the case. In fact, defendants described the material facts contained in the case. Goldberg opted to ignore the case, at his own peril.

At page 12 of his response, Dulberg responds to the defendants' argument (contained at ¶¶13 and 14) by simply denying the allegations. Dulberg then cites to Illinois Rules of Evidence including Rule 502 regarding attorney/client privilege and work product, but fails to analyze same. Finally, at page 14 of his response, Dulberg seems to argue that any of the cases analyzed in the attorney/client privilege and work product [doctrine] predate the codification of Ill. R. Evid. 502. But Dulberg fails to analyze the rule, or its application here.

Lastly, Dulberg apparently argues that page 15 of his response that the defendants' motions to dismiss under 735 ILCS 5/2-619(a)(5) were denied on May 10, 2018. Dulberg makes

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no argument that the ruling on May 10, 2018 precludes discovery and litigation concerning the statute of limitations for legal malpractice actions. In fact, defendants' motion to dismiss heard by this Honorable Court on May 10, 2018 was a combined a motion to dismiss under 735 ILCS 5/2-619.1. The Court granted the defendants' motion to dismiss for failure to state a claim under 735 ILCS 5/2-615. During the hearing (See transcript attached as Ex. F) the court held that more specificity was going to be required [by the plaintiff]. "Because they – ultimately, these things are going to factor into the statute of limitations issue. And if you're going to say that it was a breach of his duty in lying or misleading, I think we need more particularity in the allegations. You can't just make a conclusory statement to that effect." Ex. F at pp.2, 3. At page 4, the Court wrote "With respect to the issue of – upon the 2-619, I felt that in light of how I was going with the 2-615, I really couldn't rule on the – the application of the discovery rule. And, ultimately, I saw that in the long run it was going to be a question of fact, and I would probably need – and I can only address that with some more facts than what's contained in the complaint." (emphasis added) At page 9, the Court essentially wrote that because of the absence of information contained in the complaint, it was reluctant to go further [in ruling on the motion to dismiss based on statute of limitations].

II. CONCLUSION

Dulberg placed the discovery of his malpractice claim at issue. He failed to timely object to proper discovery in the form of interrogatories and production requests, and failed to answer proper and timely discovery requests, specific questioning at his deposition, and a supplemental production request and interrogatories aimed at a discovery rule. In fact, as of the time of this writing, Dulberg has failed to respond to or object to the July 2 supplemental discovery served by defendants. His response to the motion fails to address defendants' arguments, and certainly fails to provide this Court with any basis on which to deny the motion to compel. Moreover, Dulberg's egregious abuse of the discovery rules of Illinois, warrants sanctions

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available at this Court's discretion. Defendants respectfully request that the Court consider appropriate discovery sanctions, including dismissal of Dulberg's complaint. At a minimum, grant the relief requested in its motion, and compel Dulberg to properly respond to Exhibit D (interrogatory no. 1) and Exhibit E, and for any further relief this Court deems fair and proper.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 10th day of May, 2018, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE GOOCH FIRM, by
MS. SABINA WALCZYK,
On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.

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EXHIBIT 1

THE COURT: Let's go to work on Dulberg.

MS. WALCZYK: Good morning, Your Honor.

THE COURT: Good morning.

MS. WALCZYK: Sabina Walczyk on behalf of Dulberg.

MR. FLYNN: Good morning. George Flynn on behalf of the Popovich firm and Hans Mast.

THE COURT: It is -- it is rare when I know both the plaintiff and the defendant ahead of time. Only through the courtroom, but still unusual.

I looked at -- I'm going to tell you what I'm thinking. And then if you choose to argue, you can to -- if you wish to convince me that I'm wrong; or we can go forward. Either is fine.

I felt that the 2-615 motion was appropriate because I felt that -- and I -- for a specific reason, not -- not perhaps all the reasons that were cited by the defendant. I felt that the complaint, when it talked about how -- I'm looking for the words, misled -- when it said that the attorneys misled -- lied and misled Mr. Dulberg, I felt that there was some specificity that was going to be required. Because they -- ultimately, these things are going to factor into the statute of

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limitations issue. And if you're going to say that it was a breach of his duty in lying or misleading, I think we need more particularity in the allegations. You can't just make a conclusory statement to that effect.

That's my perspective. What would you like -- I'll give you an opportunity -- opportunity to replead; but if you want to argue against my thinking, I'll listen.

MS. WALCZYK: Well, Your Honor, I -- I won't argue with the Court. If Your Honor would like some more specificity as to those certain terms, we can certainly replead and plead those a little bit more specifically to --

THE COURT: And with respect to the discovery rule issue --

MS. WALCZYK: Uh-huh.

THE COURT: -- since it's going to come up one way or another, although I think it's a question of fact, I would like to see it touched upon, because I'm not following the -- the fact that he got more from the arbitrator than had been initially suggested by his attorneys, isn't really telling me anything. So I need maybe a little bit more

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information to understand the relationship of the two things.

With respect to the issue of -- on the 2-619, I felt that in light of how I was going with the 2-615, I really couldn't rule on the -- the application of the discovery rule. And, ultimately, I saw that in the long run, it was going to be a question of fact, and I would probably need -- and I could only address that with some more facts than what's just contained in the complaint.

With respect to estoppel, I didn't agree -- and you can tell me why you think I'm wrong, but I didn't agree with the argument that you were making because it -- it, carried to its logical conclusion, I could mislead and lie to my client about the -- about the implications and why he should settle, and then once he agrees to it, then I'm -- I'm released from my breach of my duty.

So I don't think that it -- that that was the type of scenario involved when the courts were discussing the estoppel issue.

Do you have anything -- do you want to contest that?

MR. FLYNN: Not at this time, Your Honor. I --

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I've always learned that it's better to quit while you're ahead. And with -- without giving a roadmap to the plaintiff, I do think that having their best complaint on file benefits us all.

THE COURT: Yes.

MR. FLYNN: So going back to the 2-615 issues, again, a legal malpractice case, they've got to plead and prove, not only the legal malpractice, but the elements of the underlying case. And it seemed to me, and as we pointed out, that -- that all of the allegations were very conclusory. That they would have gotten more, they wouldn't have done this, that the -- that Hans Mast and the Popovich firm should have undertaken additional actions in the underlying case, but they don't say what those are. And I think that they -- they're required to if they believe that there was a breach of a duty that led to damages.

The high-low agreement, which is very confusing to me and to my client, frankly, because he's never seen it, and as I understand it, that's outside of the four corners --

THE COURT: It is outside, but it did lead to an area where I was also a little bit confused. And

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I -- and I think you touched on -- I'll ask you: Is the complaint having to do with the settlement with the McGuires, or does it somehow relate to the suit that continued with respect to Gagnon and the high-low agreement?

MS. WALCZYK: Well, I think it's a little bit of both, because it started with the suit against McGuires, which settled. And then it looks like there was a high-low agreement signed.

THE COURT: Okay.

MS. WALCZYK: And --

THE COURT: Was it signed by Mr. Mast?

MS. WALCZYK: Oh, I believe it was signed by Mr. Dulberg. I haven't seen it.

THE COURT: Okay.

MS. WALCZYK: However, we can attach it if -- if you want --

THE COURT: If -- if you are going to allege malpractice as a result of entering into the high-low agreement, yes, I would require you, then, to attach it and to make that a little more explicit.

MS. WALCZYK: Yes.

THE COURT: Because I -- I came away thinking

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that was not part of your complaint, but I wasn't a 100 percent sure.

Also, let's see -- yeah, I need to know with some specificity what facts were concealed and how he was misled. I had problems with, particularly, I had -- paragraphs 20 and 21 and felt that you should have included more in that. And I won't probably say more than that.

MS. WALCZYK: Uh-huh.

THE COURT: And I -- on the estoppel argument, as I've said, I don't think that it is clear that the signing of the release was something that could be assumed to be knowing and voluntary when the plaintiff is alleging that he was misled as to the ramifications of that. Excuse me. Let's see. Okay.

Any -- so I'm granting on the 2-615. I will grant you leave to refile or replead.

MS. WALCZYK: Okay.

THE COURT: And what else? Is there anything else that we need?

MR. FLYNN: Just as a housekeeping, again, depending on what theory you're going under, if it's related to the Gagnon settlement, and we may have

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more people coming to the party; but if not, then that's it.

THE COURT: Yeah. I mean, if you're going to draw that in, then I need it a little more explicit.

MS. WALCZYK: Okay.

THE COURT: And I got -- in fact -- I'm reading from my notes. I need facts on what was false, misleading and what -- what you mean by coercion.

MR. FLYNN: So the 615 is granted with leave to replead.

THE COURT: Yes.

MR. FLYNN: I wasn't clear, I guess, on whether there's an actual ruling on the 619 or --

THE COURT: 619, I'm denying because --

MR. FLYNN: Okay.

THE COURT: -- there's a question of fact --

MR. FLYNN: Okay.

THE COURT: -- at this stage.

And I think that even if they include additional facts in their complaint, I would still come back to it being a question of fact, because I -- there's going to be a lot more about their relationship than I think can be reflected in merely the complaint. I would -- so I mean, if you were to

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bring another 2-619, feel free.

MR. FLYNN: Sure.

THE COURT: But I would still think it's going to be a question of fact as to what is clear -- Dulberg's claims are with respect to how he was misled or facts were concealed.

MR. FLYNN: Okay.

THE COURT: Because it's going to depend on their interaction.

MR. FLYNN: And it is the -- the language of statute is "knew or reasonably should have been known." And, again, this -- he does have counsel that came in right after my clients got out. So, again, the Blue Water Partners case says you -- potentially, you can't bury your head in the sand.

THE COURT: No, you can't. But because I -- of the absence of information --

MR. FLYNN: Fair enough.

THE COURT: -- I was reluctant to go further. The statute of limitations, you might get a little bit farther, but I still might run into a fact question.

MR. FLYNN: Understood.

THE COURT: So how long do you need?

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MS. WALCZYK: If I could have 28 days, Your Honor.

THE COURT: Sure.

MS. WALCZYK: We have a trial coming up.

THE COURT: And to answer or otherwise plead?

MR. FLYNN: 28, please.

THE COURT: All right. That would -- excuse me. Why don't we come back in -- 60 days is July 9th. How about July 11th, a Wednesday? Or do you have -- it's all the same to me, so long as I am here.

MR. FLYNN: Let's see. I believe I'm going to be out of state that week.

THE COURT: Okay. When is it convenient for you to come here? She's here all the time, so I don't --

MR. FLYNN: The following week would be --

THE COURT: What day works for either of you the following week?

MS. WALCZYK: We may actually have a trial that week. That may or may not go; I'm not sure at this point. At least the first two days, if we could do towards the end of week, that would be great for us.

THE COURT: 20th?

MR. FLYNN: 20th works.

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MS. WALCZYK: That's perfect.

THE COURT: All right. We'll see you on July 20th.

MR. FLYNN: Thank you, Your Honor.

MS. WALCZYK: Thank you very much.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, MAUREEN URBANSKI, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Maureen S. Urbanski

Certified Shorthand Reporter
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ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

FILED
FEB 11 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

ORDER

This matter coming to be heard for oral argument on Defendants' Motion to Compel, it is ordered:

1) Defendants' motion is granted in part, as stated on the record. Defendant's motion to compel supplemental answers to Mast's interrogatories served on March 19, 2019 is entered and continued.
2) Plaintiff is to answer Popovich's Supplemental Request for Production, served on July 2, 2020, within 28 days (March 10, 2021).
3) Plaintiff is ordered to produce all records which provide the basis for his reliance on "the discovery rule" by March 10, 2021, including any communications between Plaintiff and Attorney Tom Gooch in December of 2016 relative to discovery of a breach of the standard of care by defendants, or any such related damages.
4) Plaintiff is ordered to provide a privilege log to defendants by March 10, 2021 identifying any documents withheld in response to the July 2 Supplemental Production Request or number 3 above, and the basis for any privilege claimed and basis for withholding of any document.
5) Plaintiff is ordered to deliver the privilege log and any documents identified and withheld from production, to chambers by March 10, 2021.
6) Hearing/ruling on discoverability/disclosure of any withheld documents and further ruling on motion to compel is set for March 25, 2021 at ~~1:00 p.m.~~ 1:30 pm TAM

Prepared by:

Atty. No.	**George K. Flynn ARDC #6239349**
Name:	**Karbal, Cohen, Economou, Silk & Dunne, LLC**
Attorney for:	**Defendants**
Address:	**150 S. Wacker Drive, Suite 1700**
City:	**Chicago, IL 60606**
Telephone:	**(312) 431-3700**
E-Mail:	**gflynn@karballaw.com**

..... Thomas A. Meyer ....., 2021
eSigned by THOMAS A. MEYER 02/11/2021 09:55:29 7e8CeZh

.....
Judge **Judge's No.**

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

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Clerk of the Circuit Court

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STATE OF ILLINOIS, CIRCUIT COURT McHenry COUNTY	MOTION TO CONTINUE OR EXTEND TIME	For Court Use Only

Instructions ▾	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person who started the lawsuit as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name)*
Enter the name of the person being sued as Defendant/Respondent.	v.
Enter the Case Number given by the Circuit Clerk.	Law Offices of Thomas J. Popovich P.C., and Hans Mast **Defendant / Respondent** *(First, middle, last name)* 17 LA 377 **Case Number**

In **1**, check if you are the Plaintiff/Petitioner or Defendant/Respondent.

1. ***Motion*** **by:** ☑ Plaintiff/Petitioner ☐ Defendant/Respondent

In **2**, check the box if you are asking the court to continue (reschedule) a court date that has already been scheduled.

☐ **2.** I am asking the court **to continue (reschedule)** a court date that has already been scheduled.

In **2a**, check the reason for the court date you are asking the court to continue (reschedule).

a. Reason for court date: ☐ Motion ☐ Trial ☐ Status ☑ Other

In **2b**, enter the date and time of the court date you are asking the court to continue (reschedule).

b. Date: March 25, 2021 at 01:30 ☐ a.m ☑ p.m.

In **2c**, explain why you need to continue (reschedule) the court date.

c. I need a continuance because:
This date was set for hearing 14 days after Plaintiff was ordered to respond to Defendants' Supplemental Request to Produce and submit a Privilege Log to Defendants' attorney and to the Court. Plaintiff is requesting an extention of time to comply with the order of February 10, 2021 up to and including March 24, 2021 therefore the hearing date, in a like manner, would be continued for an additional 14 days to April 5, 2021.

In **3**, check the box if you are asking for more time to do something (e.g. file an *Answer*).

☑ **3.** I am asking the court **for more time** to do something.

In **3a**, explain what you are asking for more time to do.

a. I need more time to: comply with the order of February 10, 2021
which has a deadline of: March 10, 2021 *Date*

In **3b**, enter the date you are asking the judge to give you until.

b. I need until: March 24, 2021 *Date*

In **3c**, explain why you need more time.

c. I need more time because: Prior to representing Paul Dulberg,he had appeared Pro Se and had in his possession all documents from his two previous Law Firms. In early 2021 Plaintiff Paul Dulberg's medical condition deteriorated where he was advised to submit to two major gland removal surgeries.The first surgery was scheduled on February 4, 2021 to take place and did take place of February 22, 2021. Plaintiff has been unable to consult with his attorney during his recovery period until March 4, 2021. Starting on that date Plaintiff began transfering thousands of pages of documents that Plaintiff's attorney needs to review and evaluate regarding whether those documents are responsive to Defendants' Supplemental Request to Produce, whether they are to be claimed as privileged or whether they have been previously sent (over eight thousand documents) by prior counsel. I am the third and current attorney representing Plaintiff Paul Dulberg and I have diligently acted pursuant to this Honorable Court's Order of February 10, 2021 but my client has only been available for a short time within the time originally granted to comply.

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Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete current address and telephone number.

I certify that everything in the *Motion To Continue Or Extend Time* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

707 Skokie Boulevard #600
Street Address

Northbrook, Illinois, 60062
City, State, ZIP

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In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

1. I sent this document:

   a. To:
   Name: George K. Flynn
   First *Middle* *Last*
   Address: 150 S. Wacker Drive #1700 Chicago Illinois 60606
   Street, Apt # *City* *State* *ZIP*
   Email address: gflynn@karballaw.com

   b. By:
   ☐ Personal hand delivery
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In **c**, fill in the date and time that you sent the document.

   c. On: March 8, 2021
   Date
   At: 4:30 ☐ a.m. ☑ p.m.
   Time

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

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c. On: _____
Date
At: _____ ☐ a.m. ☐ p.m.
Time

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☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

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Address of Post Office or Mailbox

☐ Third-party commercial carrier, with delivery paid for at:

_____
Name (for example, FedEx or UPS) and office address

☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
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☐ Mail from a prison or jail at:

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Name of prison or jail

c. On: _____
Date
At: _____ ☐ a.m. ☐ p.m.
Time

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☐ I have completed an *Additional Proof of Delivery* form.

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Enter the Case Number given by the Circuit Clerk: 17 LA 377

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

I certify that everything in the Proof of Delivery is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

707 Skokie Boulevard #600
Street Address

Northbrook, Illinois 60062
City, State, ZIP

Received 03-08-2021 03:06 PM / Circuit Clerk Accepted on 03-08-2021 03:25 PM / Transaction #12489552 / Case #17LA000377
Page 4 of 4
Purchased from re:SearchIL

** FILED ** Env: 12489552
McHenry County, Illinois
17LA000377
Date: 3/8/2021 2:48 PM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

STATE OF ILLINOIS, CIRCUIT COURT McHenry COUNTY	NOTICE OF COURT DATE FOR MOTION	For Court Use Only

Instructions		
Directly above, enter the name of the county where the case was filed.		
Enter the name of the person who started the lawsuit as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name)*	
Enter the name of the person being sued as Defendant/Respondent.	v.	
Enter the Case Number given by the Circuit Clerk.	Law Offices of Thomas J. Popovich P.C.,and Hans Mast **Defendant / Respondent** *(First, middle, last name)*	17 LA 377 **Case Number**

In **1a**, enter the date and time of your hearing.

he Circuit Clerk will give you the date and time of the hearing when you file your *Motion*.

In **1b**, also enter the address of the court and court room number for the hearing.

1. Hearing Information

The reasons for this hearing are listed in the attached papers called *Motion*.

The hearing for the *Motion* I filed is scheduled for:

a. Date: March 15 , 20 21 Time: 09:45 ☑ a.m. ☐ p.m.

b. Address: 2200 N. Seminary Avenue, Woodstock Illinois, 60098
Street *City* *State* *ZIP*

Courtroom: 201

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the *oti e o Court D te or Motion* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

Enter your complete current address and telephone number.

707 Skokie Boulevard #600
Street Address

Northbrook, Illinois 60062
City, State, ZIP

(312) 808-1410
Telephone

Received 03-08-2021 03:06 PM / Circuit Clerk Accepted on 03-08-2021 03:25 PM / Transaction #12489552 / Case #17LA000377
Page 1 of 3
Purchased from re:SearchIL
C 530

Enter the Case Number given by the Circuit Clerk: 17 LA 377

PROOF OF DELIVERY

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

1. I sent this document:

   a. To:

   Name: George K. Flynn
   First *Middle* *Last*

   Address: 150 S. Wacker Drive #1700 Chicago Illinois 60606
   Street, Apt # *City* *State* *ZIP*

   Email address: gflynn@karballaw.com

   b. By:
   - ☐ Personal hand delivery
   - ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

     Address of Post Office or Mailbox
   - ☐ Third-party commercial carrier, with delivery paid for at:

     Name (for example, FedEx or UPS) and office address
   - ☑ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
   - ☐ Email *(not through an EFM or EFSP)*
   - ☐ Mail from a prison or jail at:

     Name of prison or jail

In **c**, fill in the date and time that you sent the document.

   c. On: March 8, 2021
   Date

   At: 4:30 ☐ a.m. ☑ p.m.
   Time

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

2. I sent this document:

   a. To:

   Name:
   First *Middle* *Last*

   Address:
   Street, Apt # *City* *State* *ZIP*

   Email address:

   b. By:
   - ☐ Personal hand delivery
   - ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

     Address of Post Office or Mailbox
   - ☐ Third-party commercial carrier, with delivery paid for at:

     Name (for example, FedEx or UPS) and office address
   - ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
   - ☐ Email *(not through an EFM or EFSP)*
   - ☐ Mail from a prison or jail at:

     Name of prison or jail

Received 03-08-2021 03:06 PM / Circuit Clerk Accepted on 03-08-2021 03:25 PM / Transaction #12489552 / Case #17LA000377
Purchased from re:SearchIL

c. On: _____
Date

At: _____ ☐ a.m. ☐ p.m.
Time

In **3**, if you sent the document to more than 2 parties or lawyers, fill in **a**, **b**, and **c**. Otherwise leave **3** blank.

3. I sent this document:

a. To:
Name: _____
First *Middle* *Last*
Address: _____
Street, Apt # *City* *State* *ZIP*
Email address: _____

b. By:
☐ Personal hand delivery
☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:
_____
Address of Post Office or Mailbox
☐ Third-party commercial carrier, with delivery paid for at:
_____
Name (for example, FedEx or UPS) and office address
☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
☐ Email *(not through an EFM or EFSP)*
☐ Mail from a prison or jail at:
_____
Name of prison or jail

c. On: _____
Date

At: _____ ☐ a.m. ☐ p.m.
Time

If you sent your document to more than 3 parties or lawyers, check the box and file the *Additional Proof of Delivery* form with this form.

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the Proof of Delivery is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

707 Skokie Boulevard #600
Street Address

Northbrook, Illinois, 60062
City, State, ZIP

Received 03-08-2021 03:06 PM / Circuit Clerk Accepted on 03-08-2021 03:25 PM / Transaction #12489552 / Case #17LA000377
Page 3 of 3
Purchased from re:SearchIL
C 532

** FILED ** Env: 12509452
McHenry County, Illinois
17LA000377
Date: 3/9/2021 3:44 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: All Attorneys of Record (See Attached Service List)

PLEASE TAKE NOTICE that, on the 9th day of March 2021, we filed Defendants' Objection to Plaintiff's Motion for an Extension of Time to Comply with the February 10, 2021 Order , with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 9th day of March 2021.

George K. Flynn
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700, Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com
Firm No. 38100

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to each party to whom it is directed via the Odyssey eFileIL system on March 9, 2021.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 03-09-2021 04:21 PM / Circuit Clerk Accepted on 03-09-2021 04:22 PM / Transaction #12509452 / Case #17LA000377

Purchased from re:SearchIL

SERVICE LIST

Plaintiff's Attorney	
Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd 6th Floor Suite Northbrook, IL 60062-2841 contact@lawofficeofalphonsetalarico.com (312) 808-1410	

Received 03-09-2021 04:21 PM / Circuit Clerk Accepted on 03-09-2021 04:22 PM / Transaction #12509452 / Case #17LA000377
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** FILED ** Env: 12509452
McHenry County, Illinois
17LA000377
Date: 3/9/2021 3:44 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

OBJECTION TO PLAINTIFF'S MOTION FOR AN EXTENSION OF TIME TO COMPLY WITH THE FEBRUARY 10, 2021 ORDER

Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, by and through their attorneys KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, object to Plaintiff's Motion for an Extension of Time to Comply with the February 10, 2021 Order and state as follows:

1. Defendants' Motion to Compel was filed on October 5, 2020.

2. On October 23, 2020, Plaintiff's third attorney, his current counsel, entered his appearance.

3. On October 27, 2020, Defendants' Motion to Compel was entered and continued to November 24, 2020, in order for Plaintiff's counsel to investigate the case, review documents, and determine whether he would recommend compliance, or file an objection to the motion to compel. It was at this time that Dulberg should have forwarded the responsive documents to his attorney. (October 27, 2020 order attached as Ex. A.)

Received 03-09-2021 04:21 PM / Circuit Clerk Accepted on 03-09-2021 04:22 PM / Transaction #12509452 / Case #17LA000377
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4. On November 24, 2020, a briefing schedule on Defendants' motion to compel was entered, allowing Plaintiff 28 days, up to and including December 22, 2020, to respond to the motion. (November 24, 2020 order attached as Ex. B.)

5. Due to an illness, Plaintiff's counsel contacted defendants' counsel, who agreed for an additional 14 days, up to and including January 5, 2021 for plaintiff to respond to the Motion to Compel. (January 5, 2021 order attached as Ex. C.)

6. Having still not apparently been provided with the responsive documents at issue, Plaintiff's counsel appeared for a hearing on February 10, 2021. Notably, the Plaintiff himself, Mr. Dulberg, was present in court, and was admonished due to his interruptions. Dulberg having been aware of the court's ruling on February 10, 2021, should have begun to prepare the responsive documents to send to his attorney, if he had not already done so, as of that date.

Due to Dulberg's lack of diligence, delay tactics, failure to comply with proper discovery requests, failure to make timely responses or objections to written discovery, and failure to comply with this court's February 10, 2021order, Defendants object to Plaintiff's motion, and request any additional relief the court deems fair and proper.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

Received 03-09-2021 04:21 PM / Circuit Clerk Accepted on 03-09-2021 04:22 PM / Transaction #12509452 / Case #17LA000377
Purchased from re:SearchIL

#10

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

FILED
McHenry County, Illinois
OCT 27 2020
KATHERINE M. KEEFE
Clerk of the Circuit Court

GEN. NO. 17 LA 377

☑ Jury ☐ Non-Jury

Dulberg

vs.

Popovich

Date: 10-27-20 Plaintiff's Attorney Alphonse Talarico Defendant's Attorney George Flynn

ORDER

This matter coming to be heard for status on Popovich's motion to compel, it is ordered:

1) Popovich's motion to compel is entered and continued to November 24, 2020 at 8:45 a.m. for status on compliance of discovery related to Popovich's Motion to Compel.

EXHIBIT A

Prepared by: Flynn

Attorney for: Popovich

Attorney Registration No.: 6239349 Judge: [signature]

Received 03-09-2021 04:21 PM / Circuit Clerk Accepted on 03-09-2021 04:22 PM / Transaction #12509452 / Case #17LA000377

Purchased from re:SearchIL

CIRCUIT COURT FOR THE 22nd JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY of McHENRY)

CASE NUMBER 17LA000377

☑ Jury ☐ Non-Jury

Paul Dulberg, Plaintiff

FILED
NOV 25 2020
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

vs. The law Offices Of Thomas J. Popovich and Hans Mast

Date Nov. 24, 2020 Plaintiff's Attorney Alphonse A. Talarico Defendant's Attorney George K. Flynn

ORDER

This matter coming on to be heard for status on Defendant Popovich's Motion to Compel and this Honorable Court being fully briefed in the premises, it is hereby Ordered that:

I) Defendant Popovich's Motion to Compel is entered and continues;

II) Plaintiff is granted 28 days, up to and including December 22, 2020 to Respond to said Motion;

III) Defendant Popovich is granted 14 days, up to and including January 5, 2021 to Reply;

IV) this Motion is set for hearing before this Honorable Court in room 201 on January 14, 2021 at 10:00 a.m.

Prepared by: Alphonse A. Talarico

Attorney for: Plaintiff Paul Dulberg

Judge: Thomas A. Meyer

eSigned by THOMAS A. MEYER 11/25/2020 13:14:32 bs6QN5md

EXHIBIT B

Received 03-09-2021 04:21 PM / Circuit Clerk Accepted on 03-09-2021 04:22 PM / Transaction #12509452 / Case #17LA000377
Purchased from re:SearchIL

CIRCUIT COURT FOR THE 22nd JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY of McHENRY)

CASE NUMBER 17LA000377

☑ Jury ☐ Non-Jury

FILED
JAN - 6 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

Paul Dulberg, Plaintiff

vs. The Law Offices Of Thomas J. Popovich and Hans Mast

Date January 5, 2021 Plaintiff's Attorney Alphonse A. Talarico Defendant's Attorney George K. Flynn

ORDER

This matter coming on to be heard pursuant to agreement of the parties after direct communication between the attorneys for the parties, a briefing schedule being previously entered on November 25, 2020 by this Honorable Court that the parties now desire to amend, the Court being fully advised in the premises , it is hereby ordered that:

I) Defendant Popovich's Motion to Compel is entered and continued;

II) Plaintiff is granted an additional 14 days, up to and including January 5, 2021 to respond to said motion;

III) Defendant is granted an additional 14 days, up to and including February 2, 2021 to reply;

IV) the hearing date of January 14, 2021 in room 201 at 10:00 a.m. is stricken;

v) this Motion is set for hearing before this Honorable Court in room 201 on February 10, 2021 at 11:00 a.m.

Prepared by: Alphonse A. Talarico

Attorney for: Plaintiff Paul Dulberg Judge: Thomas A. Meyer

eSigned by THOMAS A. MEYER 01/06/2021 08:14:38 7rNP5PQH

EXHIBIT C

Received 03-09-2021 04:21 PM / Circuit Clerk Accepted on 03-09-2021 04:22 PM / Transaction #12509452 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 12529231
McHenry County, Illinois
17LA000377
Date: 3/10/2021 5:05 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700 Attorneys for Defendants
gflynn@karballaw.com

PLEASE TAKE NOTICE that on March 10, 2021 I served the parties by email:

Plaintiff Paul Dulberg's:

- Response to Defendant's Supplemental Request for Production.
- Paul Dulberg's Privilege Log

Copies of which are attached hereto and herewith served upon you.

Received 03-11-2021 08:13 AM / Circuit Clerk Accepted on 03-11-2021 08:14 AM / Transaction #12529231 / Case #17LA000377
Purchased from re:SearchIL

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on March 10, 2021, I caused to be served the attached Response to Defendant's Supplemental Request for Production and Paul Dulberg's Privilege Log to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

Date: March 10, 2021

Received 03-11-2021 08:13 AM / Circuit Clerk Accepted on 03-11-2021 08:14 AM / Transaction #12529231 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 12579872
McHenry County, Illinois
17LA000377
Date: 3/15/2021 4:25 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700 Attorneys for Defendants
gflynn@karballaw.com

PLEASE TAKE NOTICE that on March 15, 2021 I served the parties by email:

Plaintiff Paul Dulberg's:

●**Additional** Response to Defendant's Supplemental Request for Production #3

Bates stamped email string 8744-8746 communication between Plaintiff and his first attorney's office pursuant to Court Order of March 15, 2021.

Received 03-16-2021 08:16 AM / Circuit Clerk Accepted on 03-16-2021 08:23 AM / Transaction #12579872 / Case #17LA000377
Purchased from re:SearchIL

Copies of which are attached hereto and herewith served upon you.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on March 15, 2021, I caused to be served the attached Additional Response to Defendant's Supplemental Request for Production to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

Date: March 15, 2021

Received 03-16-2021 08:16 AM / Circuit Clerk Accepted on 03-16-2021 08:23 AM / Transaction #12579872 / Case #17LA000377
Purchased from re:SearchIL

ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

FILED
MAR 16 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

ORDER

This matter coming to be heard on Plaintiff's Motion for Extension of Time to Comply with the Court's February 10, 2021 order, with counsel for all parties present and the court hearing argument, it is ordered:

1) Plaintiff's Motion for Extension is withdrawn;

2) Plaintiff is ordered to produce documents previously withheld as privileged, bates labelled Dulberg 008744-008746;

3) The parties agree that the written communication from Paul Dulberg to the Court is to be discarded;

4) Defendant's counsel is to forward courtesy copies of Popovich's July 2, 2020 Supplemental Production Request and Plaintiff's Response, to chambers for continued hearing on Defendant's Motion to Compel on March 25, 2021 at 1:30 p.m.

Prepared by:

Atty. No.	**George K. Flynn ARDC #6239349**
Name:	**Karbal, Cohen, Economou, Silk & Dunne, LLC**
Attorney for:	**Defendants**
Address:	**150 S. Wacker Drive, Suite 1700**
City:	**Chicago, IL 60606**
Telephone:	**(312) 431-3700**
E-Mail:	**gflynn@karballaw.com**

....., 2021

ENTER:

..... Thomas A. Meyer .....

eSigned by THOMAS A. MEYER 03/16/2021 14:47:07 K:tAN2gQ

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

Purchased from re:SearchIL

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Dolbus

Plaintiff

vs

Mast

Defendant

FILED
McHenry County, Illinois
MAR 25 2021
KATHERINE M. KEEFE
Clerk of the Circuit Court

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Case Number 17LA 377

ORDER

☒ Plaintiff(s) appear in person/by attorney _____

☐ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☒ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to 4/1, 2021 at 8:45 A m. for Status on Defendants Motion

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☐ **COURT FURTHER ORDERS:** _____

Date: _____

/s/ Thomas A. Meyer
Judge

CV-ORD13: Revised 10/01/08

Purchased from re:SearchIL

ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

FILED
APR - 6 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

ORDER

This matter coming to be heard for status and continued hearing on Defendant's Motion to Compel, the court having heard argument, it is hereby ordered:

1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

2) Plaintiff's objections of "undue burden" raised in its initial responses to Popovich's Supplemental Requests for Production numbers 1-7 are overruled.

3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.

Prepared by:

Atty. No.	**George K. Flynn ARDC #6239349**
Name:	**Karbal, Cohen, Economou, Silk & Dunne, LLC**
Attorney for:	**Defendants**
Address:	**150 S. Wacker Drive, Suite 1700**
City:	**Chicago, IL 60606**
Telephone:	**(312) 431-3700**
E-Mail:	**gflynn@karballaw.com**

....., 2021

ENTER:

.....

eSigned by THOMAS A. MEYER 04/06/2021 09:09:24 RN0hbgqY

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

Purchased from re:SearchIL

** FILED ** Env: 13517710
McHenry County, Illinois
17LA000377
Date: 6/1/2021 10:57 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700 Attorneys for Defendants
gflynn@karballaw.com

PLEASE TAKE NOTICE that on June 1, 2021 I served the parties by email:

Plaintiff Paul Dulberg's:

● AMENDED ADDITIONAL ANSWER TO DEFENDANT HANS MAST'S INTERROGATORY #1

●AMENDED ADDITIONAL RESPONSE TO DEFENDANT THE LAW OFFICE OF THOMAS J. POPOVICH P.C.'S SUPPLEMENTAL REQUESTS FOR

Received 06-01-2021 12:08 PM / Circuit Clerk Accepted on 06-01-2021 01:16 PM / Transaction #13517710 / Case #17LA000377
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PRODUCTION

Copies of which are attached hereto and herewith served upon you.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on June 1, 2021, I caused to be served the attached AMENDED ADDITIONAL ANSWER TO DEFENDANT HANS MAST'S INTERROGATORY #1 and AMENDED ADDITIONAL RESPONSE TO DEFENDANT THE LAW OFFICE OF THOMAS J. POPOVICH P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

Date: June 1, 2021

Received 06-01-2021 12:08 PM / Circuit Clerk Accepted on 06-01-2021 01:16 PM / Transaction #13517710 / Case #17LA000377
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14

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
JUN 14 2021
KATHERINE M. KEEFE
Clerk of the Circuit Court

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Plaintiff Dolberg

vs

Defendant Popovich

Case Number 17LA377

ORDER

☒ Plaintiff(s) appear in person/by attorney _____

☐ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☐ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to 8/19, 2021 at 8:45 Am. for STATUS FI.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☐ **COURT FURTHER ORDERS:** _____

Date: _____

Judge

CV-ORD13: Revised 10/01/08

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** FILED ** Env: 14019112
McHenry County, Illinois
17LA000377
Date: 7/13/2021 1:29 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO SUPPLEMENT DEFENDANTS' MOTION TO COMPEL AND TO REQUEST HEARING ON PLAINTIFF'S COMPLIANCE WITH APRIL 6, 2021 ORDER ON DEFENDANTS' MOTION TO COMPEL

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for their Motion to Supplement Defendants' Motion to Compel and To Request Hearing on Plaintiff's Compliance with April 6, 2021 Order on Defendants' Motion to Compel, state as follows:

1) Defendants are bringing this motion to supplement their prior Motion to Compel and request a hearing on Plaintiff's compliance with the Court's April 6, 2021 Order (attached as Ex. A).

2) The Defendants never received a file-stamped copy of the draft order which their counsel submitted to the Court for entry on April 2, 2021 (see Group Ex. B, April 2, 2021 email from Linda Walters, and attached Order). Defendants never received a response, nor received electronic notice of the entry of the Order on April 6, 2021, and accordingly did not diary the June 14, 2021 hearing, and thus did not appear.

Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
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Page 1 of 29
C 550

3) In the Court's April 6, 2021 Order granting Defendants' motion to compel, the Court ordered the Plaintiff to serve a supplemental answer to Mast's Interrogatory No. 1, and amend its responses to Popovich's Supplemental Request. The Court further ordered, "Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

4) On June 1, 2021, the Plaintiff served Exhibit C (Plaintiff's Amended Additional Answer to Defendant Hans Mast's Interrogatory to Plaintiff Paul Dulberg), and Exhibit D (Plaintiff's Amended Additional Response to Defendant The Law Offices of Thomas J. Popovich, P.C.'s Supplemental Request for Production). Dulberg also produced fourteen pages of bates labeled records (See Ex. E).

5) The Plaintiff has not complied with the Court's April 6, 2021 Order. Accordingly, Defendants respectfully request that the Court strike the non-responsive portions of Exhibits C, D, and E and close written discovery.

6) With respect to Exhibit C, Dulberg provide a "non-answer." Dulberg was ordered to specifically answer each discovery request. Mast's Interrogatory No. 1 states as follows: Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach. Dulberg's amended additional answer does not describe how there was a breach of the standard of care, he simply identifies a discovery date (December 12, 2016) based upon a binding mediation order. He does not describe the breach of the standard of care, or how, specifically, he became aware of it. He simply writes, "He knew the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016." He does not describe the

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discussion or explain how the standard of care was breached, or why his discussion with Tom Gooch enlightened him as to the breach.

7) Moreover, Popovich's supplemental requests for production are aimed specifically at identifying how Dulberg "discovered" his breach of the standard of care, and when he recognized damages as a result of same. In Exhibit D, Dulberg's amended additional response, Dulberg simply attaches various pages from pleadings in this case. He does not attach any discoverable materials, such as emails, letters, etc. Instead, he is simply regurgitating his position in this case. As previously argued in Defendants' Motion to Compel and at hearing, if Dulberg has no documents responsive to the discovery requests, and he has no basis for a tolling of the statute of limitations in this case, then his answer should simply state, "none." Enough is enough. Dulberg's non-responses to this discovery requests should be stricken, and he should be barred attempting to present any additional evidence in support of his tolling theory.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court grant their Motion to Supplement Defendants' Motion to Compel and set hearing on Plaintiff's compliance with April 6, 2021 Order on Defendants' Motion to Compel, and for any and all further relief this Court deems just and appropriate.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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Purchased from re:SearchIL

ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

FILED
APR - 6 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

ORDER

This matter coming to be heard for status and continued hearing on Defendant's Motion to Compel, the court having heard argument, it is hereby ordered:

1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

2) Plaintiff's objections of "undue burden" raised in its initial responses to Popovich's Supplemental Requests for Production numbers 1-7 are overruled.

3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.

Prepared by:

Atty. No.	**George K. Flynn ARDC #6239349**
Name:	**Karbal, Cohen, Economou, Silk & Dunne, LLC**
Attorney for:	**Defendants**
Address:	**150 S. Wacker Drive, Suite 1700**
City:	**Chicago, IL 60606**
Telephone:	**(312) 431-3700**
E-Mail:	**gflynn@karballaw.com**

....., 2021

ENTER:

.....

eSigned by THOMAS A. MEYER 04/06/2021 09:09:24 RN0hbgqY

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

EXHIBIT A

Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Purchased from re:SearchIL

Linda Walters

From: Linda Walters <lwalters@karballaw.com>
Sent: Friday, April 2, 2021 10:17 AM
To: proposedorders
Cc: contact@lawofficeofalphonsetalarico.com; George Flynn
Subject: RE: Paul Dulberg v. The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (Circuit Court of McHenry County, IL Case No.: 17 LA 000377)
Attachments: 2868280v1 - Proposed Order (4-2-21).PDF; 2867639v1 - Proposed Order (4-2-21).DOCX

On behalf of George Flynn, attached is a copy of a proposed order in both word and pdf format relative to the above. All counsel of record have been copied on this email.

Thank you.
Linda Walters
Asst. to George Flynn

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@karballaw.com

CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@karballaw.com

CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

GROUP EXHIBIT B

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

ORDER

This matter coming to be heard for status and continued hearing on Defendant's Motion to Compel, the court having heard argument, it is hereby ordered:

1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

2) Plaintiff's objections of "undue burden" raised in its initial responses to Popovich's Supplemental Requests for Production numbers 1-7 are overruled.

3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.

Prepared by:
Atty. No. **George K. Flynn**
ARDC #6239349
Name: **Karbal, Cohen, Economou, Silk & Dunne, LLC**
Attorney for: **Defendants**
Address: **150 S. Wacker Drive, Suite 1700**
City: **Chicago, IL 60606**
Telephone: **(312) 431-3700**
E-Mail: **gflynn@karballaw.com**

……., 2021
ENTER:

…….
Judge **Judge's No.**

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S AMENDED ADDITIONAL ANSWER TO DEFENDANT HANS MAST'S INTERROGATORY TO PLAINTIFF PAUL DULBERG

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Amended Additional Answer to Defendant Hans Mast's Interrogatory #1 states as follows:

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER: Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

EXHIBIT C

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Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

AMENDED ADDITIONAL ANSWER: Dulberg discovered the pecuniary injury on December 12, 2016 based upon a binding mediation award and knew he had a legal malpractice case on December 16, 2016. He knew that the Defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

Dulberg discovered in the defendants' document disclosure, POP 000192, that Mast had in fact sent the McGuires' attorney a $7,500.00 offer on October 22, 2013 without Dulberg's knowledge and that was before the November 4, 2013 meeting in Mast's office when Mast first asked Dulberg if Mast could probe and see what was on the table for a possible settlement with the McGuires.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

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VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily belies the same to be true.

Paul Dulberg

June 1, 2021

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)
	)
Plaintiff,	)
	)
	)
v.	) Case No. 17LA 377
	)
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)
	)
	)
Defendants.	)

PLAINTIFF'S AMENDED ADDITIONAL RESPONSE TO DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Amended Additional Response states as follows:

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016, 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

Objection-privileged Bates stamped e-mail string 8744-8746

EXHIBIT D

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2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016 and 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

RESPONSE: Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

Bates stamped document 8709-8710 previously enclosed.

Objection-privileged Bates stamped e-mail string 8744-8746

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 006502. (attached)

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their

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representation of you or provision of legal services to you.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931, 003133, and 004884. (attached)

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708

Misstates Plaintiff Paul Dulberg's contention was that he discovered the injury on December 16, 2016.

Dulberg actually discovered the pecuniary injury on December 12, 2016 and actually discovered he had a legal malpractice case on December 16, 2016.

2020 IL App (1st) 191953 Nos. 1-19-1953 & 1-19-1973 (consol.) Opinion filed November 30, 2020 Modified upon denial of rehearing December 31, 2020 which is equally available to all parties.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931.(Please see above)

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition

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from February 19, 2020.

RESPONSE:

Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022

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Purchased from re:SearchIL

(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF COMPLETENESS

The undersigned, Paul Dulberg, being first duly sworn and under oath, deposes and states as follows:

1. I am the Plaintiff in the above-captioned action.

2. I have personal knowledge of the matters and facts set forth in this Affidavit and, if sworn as a witness, I can testify competently to those matters and facts.

3. The documents that I produced in response to the Court ordered Amended Additional Supplemental Requests for Production propounded by Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C are complete in accordance with the Court Order and Supplemental Requests for Production.

4. Plaintiff Paul Dulberg reserves the right to supplement his response to Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'s Supplemental Requests for Production as additional documents become known to me or come into my possession, custody, or control.

VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid

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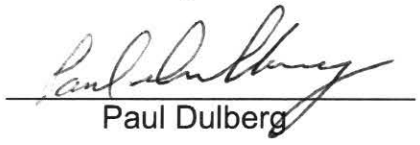
that he verily belies the same to be true.



Paul Dulberg

June 1, 2021

Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Purchased from re:SearchIL

LA 178. (Exhibit 2, ¶ 9, and Exhibit 2B)[1]. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of $5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 2, ¶ 18 and Exhibit 2D). Defendants continued to represent Dulberg until March 2015. (Exhibit 2, ¶ 21). Dulberg retained successor counsel and proceeded to a binding mediation and received a mediation award (Exhibit 2, ¶ 24 and Exhibit 2G). After the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 2, ¶ 28-29).

B. Alleged Acts of Negligence

Popovich's and Mast's alleged malpractice revolves around the settlement of the underlying case between Dulberg and McGuires. The allegations of a breach of the standard of care are all contained in ¶ 31, subsections a) through o) inclusive. Paragraph 31 states as follows:

> 31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:
>
> a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;
>
> b) Failed to thoroughly investigate liability issues against property owners of the subject property;

[1] The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 2A, 2B, 2C, 2D, 2E, 2F, and 2G.

EXHIBIT E

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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

Received 06-07-2018 01:29 PM / Circuit Clerk Accepted on 06-07-2018 03:53 PM / Transaction #17111166062 / Case #17LA000377
Page 6 of 24
Dulberg 001809
Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Page 17 of 29
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C 566

fact." *(Emphasis added)* (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." *See* 735 ILCS 5/13-215.

45. DULBERG's Complaint states that DULBERG discovery the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

46. Therefore DULBERG would have until December 2021 to file his claims under fraudulent concealment. DULBERG filed his claims well within the five-year fraudulent concealment statute.

CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants' Combined Motion to Dismiss, and for all other relief this Honorable Court

Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
Page 13 of 32
Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Page 18 of 29
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C 567

fact." *(Emphasis added)* (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." *See* 735 ILCS 5/13-215.

45. DULBERG's Complaint states that DULBERG discovery the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

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CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants' Combined Motion to Dismiss, and for all other relief this Honorable Court

Dulberg 008999
Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
Page 13 of 32
Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Page 19 of 29
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C 568

mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000377 Dulberg 009016
Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
Page 5 of 10
Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Page 30 of 32
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Page 20 of 29
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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

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b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

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LAW OFFICES
FERRIS, THOMPSON & ZWEIG, LTD.

SAUL M. FERRIS
GARY R. THOMPSON
MICHAEL L. ZWEIG*

RAFAEL J. GUZMÁN
ATTORNEYS AT LAW
*Licensed in IL & NY

103 S. GREENLEAF AVENUE, SUITE G
GURNEE, ILLINOIS 60031

TELEPHONE (847) 263-7770
FAX (847) 263-7771
www.ftzlaw.com

March 4, 2015

Mr. Paul Dulberg
3416 W. Elm Street
McHenry, IL 60050

RE: Your accident of January 24, 2013

Dear Mr. Dulberg:

Thank you for consulting with our firm on December 31, 2014 in regards to your personal injury case. Unfortunately, we have decided not to accept your case. Therefore, on behalf of Ferris, Thompson & Zweig, Ltd., we will not be taking any further action on your behalf as it relates to this matter. I believe you should not have settled with the property owners for $5,000.00. There are other reasons for my decision.

This is merely our professional opinion and does not mean you do not have a case. We recommend that you attempt to settle the case at the upcoming pretrial conference with your current attorney.

Sincerely,

Saul M. Ferris

SMF/cl

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From: Randy Baudin II <randybaudin2@gmail.com>
Subject: award
Date: December 12, 2016 7:34:42 PM CST
To: pdulberg@comcast.net
1 Attachment, 45.2 KB

Congrats!!

Click to get my LinkedIn Profile

W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation	
medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P+S	75,000.
L N L	75,000.

Dulberg 002928

Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
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The Honorable James P. Etchingham, (Ret.)

ADR Systems • 20 North Clark Street • Floor 29 • Chicago, IL 60602
312.960.2260 • info@adrsystems.com • www.adrsystems.com

Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: award**
Date: December 13, 2016 10:48:50 AM CST
To: paul_dulberg@comcast.net
1 Attachment, 45.2 KB

Paul Dulberg
847-497-4250
Sent from my iPad

Begin forwarded message:

From: Randy Baudin II <randybaudin2@gmail.com>
Date: December 12, 2016 at 7:34:42 PM CST
To: pdulberg@comcast.net
Subject: award

Congrats!!

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W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

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Finding in favor of: Paul Dulberg
Gross Award: $660,000.
Comparative fault: 15 % (if applicable)
Net Award: $561,000

Dulberg 002930

Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
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Comments/Explanation medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P+S	75,000.
L N L	75,000.

The Honorable James P. Etchingham, (Ret.)

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312.960.2260 • info@adrsystems.com • www.adrsystems.com

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ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

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Net Award: $561,000

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future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
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From: Paul Dulberg <pdulberg@comcast.net>
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Paul Dulberg
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Click to get my LinkedIn Profile

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Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg
Gross Award: $660,000.
Comparative fault: 15 % (if applicable)
Net Award: $561,000

Dulberg 004884

Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Purchased from re:SearchIL

Comments/Explanation

medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
PIS	75,000.
LNL	75,000.

The Honorable James P. Etchingham, (Ret.)

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** FILED ** Env: 14019112
McHenry County, Illinois
17LA000377
Date: 7/13/2021 1:29 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Paul Dulberg,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 000377
	)	Jury Demand
The Law Offices of Thomas J. Popovich, P.C.,	)	(Court Room 201)
And Hans Mast,	)	
	)	
Defendants.	)	

NOTICE OF MOTION

TO: ALL ATTORNEYS OF RECORD – See Attached Service List

PLEASE TAKE NOTICE that on the **19th day of July 2021 at 8:45 a.m.** or as soon thereafter as this motion may be heard, we shall appear before the Honorable Judge Thomas A. Meyer or any Judge sitting in his place or stead, in Room 201, at McHenry County Government Center, 2200 N. Seminary Avenue (Route 47), Woodstock, IL 60098, and shall then and there present DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO SUPPLEMENT DEFENDANTS' MOTION TO COMPEL AND REQUEST HEARING ON PLAINTIFF'S COMPLIANCE WITH APRIL 6, 2021 ORDER ON DEFENDANTS' MOTION TO COMPEL, a copy of which is attached hereto and herewith served upon you.

Dated this 13th day of July 2021 in Chicago, Illinois.

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on July 13, 2021.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

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SERVICE LIST

Plaintiff's Attorney	
Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd 6th Floor Suite Northbrook, IL 60062-2841 contact@lawofficeofalphonsetalarico.com (312) 808-1410	

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IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT #10

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17 L 4 377

☒ Jury ☐ Non-Jury

Dolberg

vs.

Popovich

FILED
McHenry County, Illinois
JUL 19 2021
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date: 7/19/21 Plaintiff's Attorney _____ Defendant's Attorney George Flynn

ORDER

This matter coming to be heard on Popovich's motion to supplement its motion to compel and requesting hearing on Plaintiffs compliance, it is ordered:

1) Based on Plaintiffs representations on the record, Defendants' motion is withdrawn.

2) The August 19, 2021 status hearing is stricken.

3) status hearing on September 17, 2021 at 8:45 a.m.

Prepared by: George Flynn
Attorney for: Defendants
Attorney Registration No.: 6239549 Judge: _____

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** FILED ** Env: 14112950
McHenry County, Illinois
17LA000377
Date: 7/20/2021 2:48 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: All Attorneys of Record (See Attached Service List)

PLEASE TAKE NOTICE that, on the 20th day of July 2021, we filed DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REQUEST FOR ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENT TO PLAINTIFF PAUL DULBERG, with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 20th day of July 2021.

George K. Flynn
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700, Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com
Firm No. 38100

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on July 20, 2021.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 07-20-2021 03:59 PM / Circuit Clerk Accepted on 07-20-2021 04:04 PM / Transaction #14112950 / Case #17LA000377

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SERVICE LIST

Plaintiff's Attorney Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd 6th Floor Suite Northbrook, IL 60062-2841 contact@lawofficeofalphonsetalarico.com (312) 808-1410	

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Page 2 of 2
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** FILED ** Env: 14112950
McHenry County, Illinois
17LA000377
Date: 7/20/2021 2:48 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REQUEST FOR ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENT TO PLAINTIFF PAUL DULBERG

Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to Illinois Supreme Court Rule 216, respectfully request that Plaintiff, Paul Dulberg, respond to the following request for admissions of fact and genuineness of document within 28 days under oath:

WARNING:
If you fail to serve the response required by Rule 216 within 28 days after you are served with this document, all the facts set forth in the requests will be deemed true and all the documents described in the requests will be deemed genuine.

REQUESTS FOR ADMISSION

1. Admit that Exhibit A attached hereto is a true, accurate, and genuine copy of a March 4, 2015 letter drafted by attorney Saul Ferris.

2. Admit that you received Exhibit A on or within 7 days of March 4, 2015.

3. Admit that you received Exhibit A on or within 30 days of March 4, 2015.

4. Admit that you met with Saul Ferris on or about December 31, 2014 with regard to your personal injury case.

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RESPONSE:

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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Page 2 of 3
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LAW OFFICES
FERRIS, THOMPSON & ZWEIG, LTD.

SAUL M. FERRIS
GARY R. THOMPSON
MICHAEL L. ZWEIG*

RAFAEL J. GUZMÁN
ATTORNEYS AT LAW
*Licensed in IL & NY

103 S. GREENLEAF AVENUE, SUITE G
GURNEE, ILLINOIS 60031

TELEPHONE (847) 263-7770
FAX (847) 263-7771
www.ftzlaw.com

March 4, 2015

Mr. Paul Dulberg
3416 W. Elm Street
McHenry, IL 60050

RE: Your accident of January 24, 2013

Dear Mr. Dulberg:

Thank you for consulting with our firm on December 31, 2014 in regards to your personal injury case. Unfortunately, we have decided not to accept your case. Therefore, on behalf of Ferris, Thompson & Zweig, Ltd., we will not be taking any further action on your behalf as it relates to this matter. I believe you should not have settled with the property owners for $5,000.00. There are other reasons for my decision.

This is merely our professional opinion and does not mean you do not have a case. We recommend that you attempt to settle the case at the upcoming pretrial conference with your current attorney.

Sincerely,

Saul M. Ferris

SMF/cl

EXHIBIT A

Received 07-20-2021 03:59 PM / Circuit Clerk Accepted on 07-20-2021 04:04 PM / Transaction #14112950 / Case #17LA000377
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** FILED ** Env: 14453076
McHenry County, Illinois
17LA000377
Date: 8/16/2021 4:21 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700 Attorneys for Defendants
gflynn@karballaw.com
Linda Walters on behalf of George K. Flynn
lwalters@karballaw.com

PLEASE TAKE NOTICE that on August 16, 2021 I served the parties by email:

Plaintiff Paul Dulberg's:

●Response to DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REQUEST FOR ADMISSION OF FACT AND GENUINENESS OF DOCUMENT TO PLAINTIFF PAUL DULBERG.

Received 08-16-2021 04:30 PM / Circuit Clerk Accepted on 08-17-2021 08:31 AM / Transaction #14453076 / Case #17LA000377
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Copies of which are attached hereto and herewith served upon you.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on August 16, 2021, I caused to be served the attached Plaintiff's Responses to DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., AND HANS MAST'S REQUEST FOR ADMISSION OF FACT AND GENUINENESS OF DOCUMENT to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

Date: August 16, 2021

Received 08-16-2021 04:30 PM / Circuit Clerk Accepted on 08-17-2021 08:31 AM / Transaction #14453076 / Case #17LA000377
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** FILED ** Env: 14574184
McHenry County, Illinois
17LA000377
Date: 8/25/2021 1:26 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO DEEM FACTS ADMITTED

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for their Motion to Deem Facts Admitted, state as follows:

1) Dulberg's pattern and practice of abusing the discovery process with improper and incomplete responses is repeated in his latest filing, Plaintiff's Responses to Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast's Request for Admissions of Fact and Genuineness of Document (Exhibit 1). (Request for Admissions attached as Exhibit 2).

2) Defendants' Requests for Admissions simply intended to authenticate a March 4, 2015 letter purportedly drafted by attorney Saul Ferris, and establish when it was received by Dulberg. Dulberg finally produced said letter in discovery on June 7, 2021 with no explanation why it was not previously produced in this litigation (Exhibit 3, Plaintiff's Amended Additional Response to Defendant Law Offices of Thomas J. Popovich, P.C.'s Supplemental Requests for Production).

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3) Notably, Dulberg was deposed on February 19, 2020 and was asked about the discovery of his malpractice action at that time at pgs. 38 and 95 (attached as Group Exhibit 4). On page 38, Dulberg described a communication from Ferris and other attorneys who would not take over his underlying personal injury case from defendant Popovich. "As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that." Dulberg testified that Saul Ferris made that comment in a letter, "and he said it on the phone and he sent me an email, I think. I don't remember the ways he contacted me. I would have to go back and look."

4) The attached Request for Admissions was an attempt at simply authenticating the copy of Ferris's letter, which again should have been produced years ago in this litigation but was not. Instead of acknowledging the authenticity of the copy of the letter, Dulberg's response is a muddled and evasive attempt at muddying the water, and should not be countenanced by this court. Dulberg's specious objections and attempt at explaining away the content of Ferris's letter is deserving of a sanction.

5) Perhaps the most egregious of Dulberg's violations, aside from his attempt at redefining common legal terms and their variations such as "genuine" and "authentic", is his denial of the genuineness of Exhibit A because he does not agree with the accuracy of the content, and because he is not in control of the author (see Response #1). A close second, is his failure to admit in No. 2 and No. 3 that he received the document from Ferris within 7 or within 30 days respectively, of the date affixed to the face of the letter.

6) Not only should those facts contained in the Request to Admit be admitted, but Defendants should not have to engage in "teeth pulling" discovery in order to simply authenticate a copy of a document which was inexplicably withheld in the first place. The

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document is responsive to discovery, and is relevant to the so-called "discovery" of Dulberg's legal malpractice claim, given that he has filed it outside of the two year statute of limitations.

7) Dulberg should have either objected or answered the Request to Admit, but not both. *Chicago Use of Schools v. Albert J. Schorsch Realty Co.,* 95 Ill. App. 2d 264, 280 (4th Dist. 1968). The purpose of a Rule 216 "admission of fact or of genuineness of documents" request is to not to discover facts. Rather the purpose of such a request is to establish some of the material facts in the case without the necessity of formal proof at trial. This enables the parties and the court to limit the issues and it results in substantial savings of time and expense, for both parties and the court. *Fraser v. Jackson*, 214 IL App (2d) 130283 (an award of costs and fees was warranted due to the defendant's lack of good faith in responding to requests for admission). "Rule 219(c) provides that the trial court may award as sanctions the 'reasonable expenses incurred as a result of the [offending party's] misconduct, including a reasonable attorney fee…. The trial court may award attorney fees as sanctions when a party's misconduct has caused another party to incur fees.'" 2011 IL App (1st) 103506 at **[P19].

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court enter an Order:

1) Granting Defendants' Motion, denying all of Dulberg's objections, and deeming Requests 1, 2, 3, and 4 admitted;
2) Granting fees and costs for Defendants in prosecuting this motion;
3) Alternatively, should the deposition of Saul Ferris be necessary if Requests 1, 2, 3, and 4 are not deemed admitted, that Dulberg be assessed Defendants' attorney fees and costs in deposing Saul Ferris; and
4) For any additional relief this honorable court deems fair and proper.

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Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S RESPONSES TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REQUEST FOR ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENT

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Response states as follows:

GENERAL OBJECTIONS: Plaintiff Paul Dulberg reserves the right to amend his Responses as additional information becomes available through ongoing discovery. This objection applies globally to all the responses following.

1. Admit that Exhibit A attached hereto is a true, accurate, and genuine copy of a March 4, 2015 letter drafted by attorney Saul Ferris.

EXHIBIT 1

Received 08-25-2021 02:19 PM / Circuit Clerk Accepted on 08-25-2021 02:58 PM / Transaction #14574184 / Case #17LA000377
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1. Specific Objection to Defendants' Request to Admit #1: Defendants' Request to Admit #1 is vague or ambiguous because it includes the undefined terms true, accurate and genuine. Plaintiff does not intend to waive this objection but responds if Defendants agree to adopt the definitions of the words used in Exhibit A as defined as follows.

Plaintiff, relying upon *Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.*

What is GENUINE?

As applied to notes, bonds, and other written instruments, this termmeans [sic] that they are truly what they purport to be, and that they are not false, forged, fictitious, simulated, spurious, or counterfeit. Baldwin v. Van Deusen, 37 N. Y. 492;Smelt- zer v. White, 92 U. S. 392, 23 L. Ed. 508; Dow v. Spenny, 29 Mo. 390; Cox v.Northwestern Stage Co., 1 Idaho, 379.

1. Response: Plaintiff admits that Exhibit A attached to Defendants' REQUEST FOR ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENT is a genuine digital scan of a document he received by regular mail delivered by the United States Postal Service. However, Plaintiff denies that the original document itself and the content within the document, purporting to be from Saul M. Ferris, is genuine because Plaintiff believes that the document contains false information; specifically, the date of Plaintiff's accident is misstated as January 24, 2013, and the date of Plaintiff's consultation with Saul M. Ferris is misstated as December 31, 2014. Since Saul M. Ferris is not under the control of Plaintiff, there is no way to verify that this document is genuine in relation to its stated dates and author.

Plaintiff, relying upon *Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.*

What is TRUE?

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Conformable to fact; correct; exact; actual; genuine; honest "In one sense, that only is true which is conformable to the actual state of things. In that sense, a statement is untrue which does not express things exactly as they are. Rut [sic] in another and broader sense, the word 'true' is often used as a synonym of 'honest,' 'sincere,' 'not fraudulent.' " Moulor v. American L. Ins. Co.. [sic] Ill U. S. 345, 4 Sup. Ct. 400, 28 L. Ed. 447

The clearest example of why the content of Exhibit A is not true is the topic Statement "RE: Your accident of January 24, 2013", which misstates the date of Plaintiff's accident and is the subject of this litigation. The correct date was June 28, 2011. Therefore, this statement is untrue as it does not "express things exactly as they are". Further responding, Plaintiff denies that Exhibit A is an accurate copy (or digital scan) of a document he received purporting to be from Saul M. Ferris because Defendants have failed to include in their Request a definition of the word "true" as they are using it herein.

Plaintiff, relying upon *Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.*

What is ACCURATE?

Honestly agreeing and practicing standards of due diligence. Financial statements are verified for correctness. Refer to precise.

The clearest example of why Exhibit A is not accurate is because, in paragraph one, the purported author of the document states, "Therefore, on behalf of Ferris, Thompson & Zweig, Ltd., we will not be taking any further action on your behalf as it relates to this matter". However, in the final paragraph, the purported author of the document states, "We recommend that you attempt to settle the case at the upcoming pretrial conference

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with your current attorney". Thus, the statements of the purported author are not accurate because they are imprecise and conflicting.

In the first paragraph, the author states that the firm will not be taking any further action on Plaintiff's behalf. Yet, in the final paragraph, the purported author ignores their previous statement and takes further action on Plaintiff's behalf by providing legal advice, where the firm recommends Plaintiff attempt to settle the case.

Plaintiff Paul Dulberg neither admits nor denies that Exhibit A was drafted by attorney Saul M. Ferris because he did not represent Plaintiff, nor is he currently retained by Plaintiff. Therefore, Ferris is not under Plaintiff's control.

2. Admit that you received Exhibit A on or within 7 days of March 4, 2015.

2. Response: Plaintiff neither admits nor denies that he received Exhibit A on or within 7 days of March 4, 2015, because Plaintiff has no independent recollection of the date that the document referenced herein was delivered to him by the United States Postal Service. After conducting a good faith search for records that would support a definite response and reviewing the incorrectly stated date of the accident and the incorrectly stated date of consultation, Plaintiff questions the accuracy of the information stated therein. Plaintiff has made reasonable inquiry, including but not limited to the emails directly related or tangentially related to the document, and states that the

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information known or readily obtainable is insufficient to enable the Plaintiff to admit or deny this inquiry.

3. Admit that you received Exhibit A on or within 30 days of March 4, 2015.

3. Response: Plaintiff neither admits nor denies that he received Exhibit A on or within 30 days of March 4, 2015, because Plaintiff has no independent recollection of the date that the document referenced herein was delivered to him by the United States Postal Service. After conducting a good faith search for records that would support a definite response and reviewing the incorrectly stated date of the accident and the incorrectly stated date of consultation, Plaintiff questions the accuracy of the information stated therein. Plaintiff has made reasonable inquiry, including but not limited to the emails directly related or tangentially related to the document, and states that the information known or readily obtainable is insufficient to enable the Plaintiff to admit or deny this inquiry.

4. Admit that you met with Saul Ferris on or about December 31, 2014, with regard to your personal injury case.

4. Response: Plaintiff denies that he met with Saul Ferris on or about December 31, 2014, with regard to his personal injury case. After conducting a good faith search for records that would support a definite Response, speaking to a person under the "control" of Plaintiff who attended the meeting with Plaintiff and reviewing the incorrectly

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stated date of the accident and the incorrectly stated date of consultation, Plaintiff questions the accuracy of the information stated therein. Plaintiff's investigation indicates that Plaintiff met with Saul M. Ferris between February 23, 2015, and March 6, 2015.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument, including but not limited to Plaintiff's inability to truthfully admit or deny a Request to Admit, are true and correct, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Paul Dulberg — Paul Dulberg

8/14/2021 — Dated

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Date: 7/20/2021 2:48 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REQUEST FOR ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENT TO PLAINTIFF PAUL DULBERG

Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to Illinois Supreme Court Rule 216, respectfully request that Plaintiff, Paul Dulberg, respond to the following request for admissions of fact and genuineness of document within 28 days under oath:

WARNING:
If you fail to serve the response required by Rule 216 within 28 days after you are served with this document, all the facts set forth in the requests will be deemed true and all the documents described in the requests will be deemed genuine.

REQUESTS FOR ADMISSION

1. Admit that Exhibit A attached hereto is a true, accurate, and genuine copy of a March 4, 2015 letter drafted by attorney Saul Ferris.

2. Admit that you received Exhibit A on or within 7 days of March 4, 2015.

3. Admit that you received Exhibit A on or within 30 days of March 4, 2015.

4. Admit that you met with Saul Ferris on or about December 31, 2014 with regard to your personal injury case.

EXHIBIT 2

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RESPONSE:

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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LAW OFFICES
FERRIS, THOMPSON & ZWEIG, LTD.

SAUL M. FERRIS
GARY R. THOMPSON
MICHAEL L. ZWEIG*

RAFAEL J. GUZMÁN
ATTORNEYS AT LAW
*Licensed in IL & NY

103 S. GREENLEAF AVENUE, SUITE G
GURNEE, ILLINOIS 60031

TELEPHONE (847) 263-7770
FAX (847) 263-7771
www.ftzlaw.com

March 4, 2015

Mr. Paul Dulberg
3416 W. Elm Street
McHenry, IL 60050

RE: Your accident of January 24, 2013

Dear Mr. Dulberg:

Thank you for consulting with our firm on December 31, 2014 in regards to your personal injury case. Unfortunately, we have decided not to accept your case. Therefore, on behalf of Ferris, Thompson & Zweig, Ltd., we will not be taking any further action on your behalf as it relates to this matter. I believe you should not have settled with the property owners for $5,000.00. There are other reasons for my decision.

This is merely our professional opinion and does not mean you do not have a case. We recommend that you attempt to settle the case at the upcoming pretrial conference with your current attorney.

Sincerely,

Saul M. Ferris

SMF/cl

EXHIBIT A

Received 08-25-2021 02:19 PM / Circuit Clerk Accepted on 08-25-2021 02:58 PM / Transaction #14574184 / Case #17LA000377
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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S AMENDED ADDITIONAL RESPONSE TO DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Amended Additional Response states as follows:

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016, 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

Objection-privileged Bates stamped e-mail string 8744-8746

EXHIBIT 3

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2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016 and 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

RESPONSE: Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

Bates stamped document 8709-8710 previously enclosed.

Objection-privileged Bates stamped e-mail string 8744-8746

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 006502. (attached)

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their

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representation of you or provision of legal services to you.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931, 003133, and 004884. (attached)

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708

Misstates Plaintiff Paul Dulberg's contention was that he discovered the injury on December 16, 2016.

Dulberg actually discovered the pecuniary injury on December 12, 2016 and actually discovered he had a legal malpractice case on December 16, 2016.

2020 IL App (1st) 191953 Nos. 1-19-1953 & 1-19-1973 (consol.) Opinion filed November 30, 2020 Modified upon denial of rehearing December 31, 2020 which is equally available to all parties.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931.(Please see above)

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition

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from February 19, 2020.

RESPONSE:

Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022

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alphonsetalarico@gmail.com

AFFIDAVIT OF COMPLETENESS

The undersigned, Paul Dulberg, being first duly sworn and under oath, deposes and states as follows:

1. I am the Plaintiff in the above-captioned action.

2. I have personal knowledge of the matters and facts set forth in this Affidavit and, if sworn as a witness, I can testify competently to those matters and facts.

3. The documents that I produced in response to the Court ordered Amended Additional Supplemental Requests for Production propounded by Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C are complete in accordance with the Court Order and Supplemental Requests for Production.

4. Plaintiff Paul Dulberg reserves the right to supplement his response to Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'s Supplemental Requests for Production as additional documents become known to me or come into my possession, custody, or control.

VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid

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that he verily belies the same to be true.

Paul Dulberg

June 1, 2021

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attorneys.
Q. I don't recall seeing any lawyers, but I would ask you to search for those.
MS. WILLIAMS: We'll search for those. I'll make a note.
BY MR. FLYNN:
Q. As you sit here, do you recall the basis for any attorney declining to take your personal injury case over from Popovich?
A. Say that again.
Q. As you sit here today, do you recall any of the reasons why any attorney declined to take your personal injury case over from the Popovich firm?
A. Yes.
Q. What were those reasons?
A. I remember a few. One I was looking at local lawyers in McHenry County and I was told like -- I can name them. My sister was married to him.
Anyway, I was told if Tom Popovich says you don't have a case, you don't have a case and we're not even going to look at it. That I got a lot of it.

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Q. That's one reason. Any others?
A. That I got locally a lot of. As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that.
Q. Who said that?
A. Sal Ferris.
Q. When did you speak to Sal Ferris?
A. I don't know the exact date.
Q. When did he --
A. He wasn't the only one.
Q. When did he say that to you, that you just described?
A. He said it in a letter and he said it on the phone and he sent me an e-mail, I think. I don't remember the ways that he contacted me. I'd have to go back and look.
MS. WILLIAMS: We'll find it.
BY MR. FLYNN:
Q. Besides Sal Ferris, can you recall any other attorney, specifically, that told you they wouldn't take the case because of your settlement with the McGuires?

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A. Yes.
Q. Who was that?
A. There was at least three firms downtown here right near the Daley Center that I came down to see and I don't remember their names, but they -- I got the same thing out of all three of them.
Q. Did any of the lawyers give you any other reason for declining your case?
A. Mostly it was because they knew Popovich or it was the McGuire settlement.
Q. Did any lawyer tell you that they didn't want to take your case because there was questionable liability against David Gagnon?
A. No.
Q. Did any lawyer tell you that there was questionable liability against the property owners, the McGuires?
A. No.
Q. We're jumping ahead, but did you have different lawyers that handled a binding arbitration or binding mediation for you in the underlying case?
A. Yes.
Q. Their name was Baudin?
A. Yes.

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Q. Why did Brad Balke not handle the binding arbitration?
A. I fired him.
Q. When did you fire Brad Balke?
A. I'd have to look at the dates. I'm not sure, exactly.
Q. Why did you fire him?
A. Because he forced me to undergo the exact mediation at the McHenry County court in front of Judge Meyer that Hans Mast set up that I specifically said no to.
Q. When was this mediation?
A. I'd have to look at the dates again.
Q. Was it a pretrial conference?
A. Yes.
Q. You actually attended this pretrial conference?
A. Yes, I did.
Q. What happened?
A. I said no.
Q. You said no about what?
A. They offered an amount of money and I said no.
Q. The defendants offered an amount of

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GROUP EXHIBIT 4

Page 93

chance.
A. I think later on he says nine out of ten.
Q. In this e-mail he says seven out of ten you will lose.
A. Yes.
Q. He's recognizing three times out of ten you may win, right?
A. I don't know what Hans is thinking.
Q. Is that what he said?
A. He says seven out of ten times you lose.
Q. You understood that there are risks in taking the case to trial that you could lose?
A. There are unforeseen risks, yes.
Q. There are always risks, period, in taking a case to trial?
A. Yes.
Q. Before you hired Brad Balke and after Hans told you he couldn't represent you, did you talk to any other lawyers about taking your case?
A. Yes.
Q. How many?
A. I can't tell you. A lot.
Q. Did any of them tell you that they wouldn't take the case because they didn't think you

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could prevail against Gagnon?
A. No.
Q. Not one?
A. No.
Q. What are the names of any of the lawyers you talked to about taking your case over from Popovich?
A. I can't tell you without looking at documents who it was and what date it was, what it was between these two.
Q. I don't think documents I produced would help you in that regard.
I'll just ask you based on your memory the names of any lawyers you met with from the time Hans wrote this February 22 e-mail --
A. I believe –
Q. Let me finish.
A. I believe –
MS. WILLIAMS: He has not finished his question.
THE WITNESS: Sorry.
BY MR. FLYNN:
Q. From the time that Hans wrote this February 22 e-mail and the time that Brad Balke

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enters an appearance on March 19. Just the name of any lawyer you --
A. I believe that Sal Ferris that I was talking about was one of the lawyers that I talked to.
Q. You're not sure? You believe that he was?
A. In between this time and this time?
Q. Yes.
A. I believe it's right around then.
Q. What type of law practice does Sal Ferris have?
A. I believe personal injury.
Q. Did you ever talk to him about taking your case before that date?
A. Before the date of this e-mail?
Q. Yes.
A. I'd have to look at it.
Q. He wasn't one of the original attorneys that you spoke with at the beginning of the case?
A. No.
Q. Fair to say once Balke entered his appearance on March 19, 2015 that Mast and Popovich were no longer your attorneys, correct?

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A. When Balke enters his appearance?
Q. Yes.
A. I would believe that, yes.
Q. They were terminated and Balke stepped in?
A. Yes.
Q. Can you tell me how the binding mediation which proceeded on December 8, 2015 evolved and came to be.
A. I was ordered into it from a bankruptcy court.
Q. Why is that?
A. I believe that the trustee put a motion up. I don't know who did it. I assume it was the trustee and the court ordered that it be put into binding mediation.
Q. Did you appear at the mediation?
A. Yes.
Q. Do you recall the name of the mediator?
A. Not off the top of my head, no.
Q. One of the exhibits to your second amended complaint indicates it was retired Judge James Etchingham.
A. That sounds familiar.

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17LA000377
Date: 8/25/2021 1:26 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Paul Dulberg, Plaintiff, v. The Law Offices of Thomas J. Popovich, P.C., And Hans Mast, Defendants.	)	Case No. 17 LA 000377 Jury Demand (Court Room 201)

NOTICE OF MOTION

TO: ALL ATTORNEYS OF RECORD – See Attached Service List

PLEASE TAKE NOTICE that on the **7th day of September 2021 at 8:45 a.m.** or as soon thereafter as this motion may be heard, we shall appear before the Honorable Judge Thomas A. Meyer or any Judge sitting in his place or stead, in Room 201, at McHenry County Government Center, 2200 N. Seminary Avenue (Route 47), Woodstock, IL 60098, and shall then and there present DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO DEEM FACTS ADMITTED, a copy of which is attached hereto and herewith served upon you.

Dated this 25th day of August 2021 in Chicago, Illinois.

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on August 25, 2021.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

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SERVICE LIST

Plaintiff's Attorney	
Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd 6th Floor Suite Northbrook, IL 60062-2841 contact@lawofficeofalphonsetalarico.com (312) 808-1410	

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McHenry County, Illinois
17LA000377
Date: 9/3/2021 1:30 PM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts

STATE OF ILLINOIS, CIRCUIT COURT McHenry COUNTY	PROOF OF DELIVERY	For Court Use Only

Instructions	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person or company that filed this case as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name or Company)*
	v.
Enter the name of the Defendant/Respondent.	Hans Mast et al **Defendant / Respondent** *(First, middle, last name)*
Enter the Case Number given by the Circuit Clerk.	17 LA 000377Plaintiff's **Case Number**

In **1**, enter the name of the court document you are sending to the other parties in the court case (*e.g.,* a Court Order or Answer).

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

In **c**, fill in the date and time that you sent the document.

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

1. I am sending the following court document: Response To Motion To Deem Fact

a. To:

Name: George K. Flynn
First Middle Last

Address: 150 S. Wacker Dr. #1700 Chicago Illinois 60606
Street, Apt # City State ZIP

Email address: gflynn@kargallaw.com

b. By:
- ☐ Personal hand delivery
- ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

  Address of Post Office or Mailbox
- ☐ Third-party commercial carrier, with delivery paid for at:

  Name (for example, FedEx or UPS) and office address
- ☑ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFM or EFSP)*
- ☐ Mail from a prison or jail at:

  Name of prison or jail

c. On: September 3, 2021
Date

At: 12:01 ☐ a.m. ☑ p.m.
Time

2. I sent this document:

a. To:

Name:
First Middle Last

Address:
Street, Apt # City State ZIP

Email address:

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b. By:
- ☐ Personal hand delivery
- ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

Address of Post Office or Mailbox

- ☐ Third-party commercial carrier, with delivery paid for at:

Name (for example, FedEx or UPS) and office address

- ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFM or EFSP)*
- ☐ Mail from a prison or jail at:

Name of prison or jail

If you sent your document to more than 3 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

707 Skokie Blvd. #600
Street Address

Northbrook, Illinois 60062
City, State, ZIP

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17LA000377
Date: 9/3/2021 1:30 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S RESPONSES TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO DEEM FACTS ADMITTED

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Response states as follows:

1) Illinois Supreme Court Rule 201(K) states as follows:

(k) Reasonable Attempt to Resolve Differences Required. The parties shall facilitate discovery under these rules and shall make reasonable attempts to resolve differences over discovery. Every motion with respect to discovery shall incorporate a statement that counsel responsible for trial of the case after personal consultation and reasonable attempts to resolve differences have been unable to reach an accord or that opposing counsel made himself or herself unavailable for personal consultation or was unreasonable in attempts to resolve differences.

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2) Defendants have not, nor could they include this required statement as Defendants have not complied with Illinois Supreme Court Rule 201(K).

3) Request to Admit are listed under Illinois Supreme Court Rule 201(a) which states as follows:

Rule 201. General Discovery Provisions (a) Discovery Methods. Information is obtainable as provided in these rules through any of the following discovery methods: depositions upon oral examination or written questions, written interrogatories to parties, discovery of documents, objects or tangible things, inspection of real estate, requests to admit and physical and mental examination of persons. Duplication of discovery methods to obtain the same information and discovery requests that are disproportionate in terms of burden or expense should be avoided.

4) Although Plaintiff can state many examples of Defendants actually being the party that has been, and by this clear example, the abusive party in this litigation, Plaintiff and his attorney choose to take the high road and for the sake of civility only request that the following be granted:

Defendants' Motion to Deem Facts Admitted be stricken for failure to comply with Supreme Court Rule 201(K) and that Plaintiff be granted attorney's fees for bringing this motion in violation of the discovery rules, and wasting the time of Plaintiff, Plaintiff's Attorney, and this Honorable Court.

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Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

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ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
09/07/2021 2:10 PM
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

ORDER

This matter coming to be heard on Defendants' Motion to Deem Facts Admitted, the court having reviewed the motion and response and having heard oral argument in the premises, it is ordered:

1) Request number 1 is deemed admitted.
2) Request number 2 is denied.
3) Request number 3 is denied.
4) Request number4 is denied.
5) Defendant is granted leave to depose attorney Saul Ferris.
6) The hearing on September 17, 2021 is stricken.
7) Status set for November 8, 2021 at 8:45 a.m.

Prepared by:

Atty. No.	**George K. Flynn**
	ARDC #6239349
Name:	**Karbal, Cohen, Economou, Silk & Dunne, LLC**
Attorney for:	**Defendants**
Address:	**150 S. Wacker Drive, Suite 1700**
City:	**Chicago, IL 60606**
Telephone:	**(312) 431-3700**
E-Mail:	**gflynn@karballaw.com**

9/7/2021
……., **2021**
ENTER:

Thomas A. Meyer
……
Judge **Judge's No.**

Thomas Meyer
CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

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McHenry County, Illinois
17LA000377
Date: 9/23/2021 2:31 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17 LA 377

NOTICE OF SERVICE OF DISCOVERY DOCUMENT

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on the 23rd day of September 2021 we served the parties via email DEFENDANTS' SUBPOENA – SAUL FERRIS, a copy of which was previously served upon you.

Dated this 23rd day of September 2021 in Chicago, Illinois.

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on September 23, 2021.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

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SERVICE LIST

Plaintiff's Attorney

Alphonse A. Talarico
Law Office of Alphonse A. Talarico
707 Skokie Blvd 6th Floor Suite
Northbrook, IL 60062-2841
contact@lawofficeofalphonsetalarico.com
(312) 808-1410

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Dolberg
Plaintiff

vs

Mass
Defendant

FILED
McHenry County, Illinois
NOV - 8 2021
KATHERINE M. KEEFE
Clerk of the Circuit Court

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Case Number 17L4377

ORDER

☒ Plaintiff(s) appear in person/by attorney _____

☒ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☐ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to 12/7, 2021 at 8:45 A.m. for STATUS #1.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☒ **COURT FURTHER ORDERS:** All outstanding written discovery to be completed

Date: _____

John A. Noverini
Judge

CV-ORD13: Revised 10/01/08

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McHenry County, Illinois
17LA000377
Date: 12/1/2021 12:48 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO ANSWER OUTSTANDING WRITTEN DISCOVERY AND TO EXTEND THE TIME FOR OUTSTANDING WRITTEN DISCOVERY TO BE COMPLETED

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Motion To Compel and for an Extension of Time to Complete outstanding written Discovery states as follows:

1) On October 9, 2018 Plaintiff's first attorney Thomas W. Gooch, III of THE GOOCH FIRM Noticed and Served :

a) Plaintiff's First Request for Production of Documents to Defendants;

b) Plaintiff's First Set of Interrogatories to Defendants;

c) Plaintiff's 213(f) (1)(2) & (3) Interrogatories to Defendants.

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2) Said discovery was filed pursuant to Supreme Court Rule 201(m) and shall hereafter be referred to as the Gooch discovery. (Please see Exhibit A, PROOF OF SERVICE OF DISCOVERT DOCUMENTS attached)

3) On October 15, 2018 this Honorable Court entered an order granting Thomas W. Gooch and The Gooch Firm leave to withdraw (their) appearance.

4) On November 8, 2018 Plaintiff's second attorneys, Julia C Williams and Edward X. Clinton both of The Clinton Law Firm filed separate Appearances.

5) On November 13, 2018, pursuant to inquiry by this Honorable Court, Defendants' attorney stated that the Gooch discovery was outstanding. (Please see Exhibit B, Report of Proceedings pg. 2 line 20 -pg.3 line 3 attached)

6) On March 22, 2019 Julia C. Williams served Plaintiff's second set of Discovery by e-mail upon Defendants' counsel without filing a certificate of service of discovery document pursuant to Illinois Supreme Court Rule 201(m).

7) Plaintiff's second set of Discovery was erroneously titled:

a) PAUL DULBERG'S FIRST SET OF DOCUMENTS REQUESTS;

b) PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS;

c) PLAINTIFF'S RULE 213(F) INTERROGATORIES TO DEFENDANT.

8) Plaintiff's second set of Discovery shall be known hereafter as the Clinton discovery.

9) Defendants responded to the Clinton discovery on May 29, 2019 (Please see Exhibit C, NOTICE OF SERVICE OF DISCOVERY DOCUMENTS, that was filed pursuant to Supreme Court Rule 201(m).

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10) On May 30, 2019, Plaintiff's attorney Julia C. Williams stated that "Written discovery's been issued and defendants have answered…" (Please see Exhibit D, Report of Proceedings pg. 2 line 13 - 14 attached)

11.) The Gooch discovery has not been answered or objected to.

12.) In addition to the Gooch discovery Plaintiff prays that this Honorable Court declare the following answers to be nonresponsive and compel the Defendants to answer the Clinton discovery for the following reasons:

PLAINTIFF'S FIRST [SIC] SET OF INTERROGATORIES TO DEFENDANTS:

a) Interrogatory Number 5 is addressed to claims or defenses in this matter but both Defendants' answers are nonresponsive because the answers address the underlying matter only (not this matter) and neither include the subject of the information;

b) Interrogatory Number 6 requests a detailed response but both Defendants answer with a "General" duplicative one sentence response;

c) Interrogatory Number 7 is answered by both Defendants in mirror image and separately first with an objection and thereafter with a reference to Supreme Court Rule 213(e) directing the recipient to find Mast's and Popovich's response to this interrogatory in their response to Plaintiff's Request for the production of documents by instructing Plaintiff to "…please see all correspondence between Mast and Dulberg in connection with the underlying case, produced in response to Plaintiff's request for the production of documents." Those responses are contrary to the Honorable Thomas A. Meyer instructions in this case. (Please see Exhibit E, Report of Proceedings 1st day of April 2021, pg.4 line 10 -pg.5 line 5 attached)

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Note: Defendants' response to Request for Production #1,#2,#3,#5 & #6 is "See attached documents bates labeled POP 000001 through POP 001455.

d) Interrogatory Number 9 is answered by both Defendants in mirror image and is nonresponsive because it refers the reader to see interrogatory #8 which Plaintiff directed to 12 LA 178 while Plaintiff directed interrogatory #9 to 17 LA 377.

PAUL DULBER'S FIRST [SIC] SET OF DOCUMENT REQUESTS:

e) Request to Produce Number 1 is answered in duplicative by Defendants and is nonresponsive because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case. Defendants' response to Request for Production #1 is "See attached documents bates labeled POP 000001 through POP 001455 .
(Note: of the 1,455 pages approximately 106 pages were completely blacked out);

f) Request to Produce Number 2 is answered in duplicative by Defendants and is nonresponsive because of the 1,455 pages approximately 106 pages were completely blacked out;

g) Request to Produce Number 3 is answered in duplicative by Defendants and is nonresponsive because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case. Defendants' response to Request for Production #3 is "See attached documents bates labeled POP 000001 through POP 001455 .
(Note: of the 1,455 pages approximately 106 pages were completely blacked out);

h) Request to Produce Number 4 is answered in duplicative by Defendants and is nonresponsive because no documents are specifically identified as Defendants answered with the statement " None other than those documents ultimately served or filed in the underlying matter' ;

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i) Request to Produce Number 5 is answered in duplicative by Defendants and is nonresponsive because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case. Defendants' response to Request for Production #5 is "See attached documents bates labeled POP 000001 through POP 001455 .
(Note: of the 1,455 pages approximately 106 pages were completely blacked out);

j) Request to Produce Number 6 is answered in duplicative by Defendants and is nonresponsive because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case. Defendants' response to Request for Production #6 is "See attached documents bates labeled POP 000001 through POP 001455 .
(Note: of the 1,455 pages approximately 106 pages were completely blacked out);

k) Request to Produce Number 8 is answered in duplicative by Defendants and is a nonresponsive because the request is for "A copy of any insurance agreement..." whereas Defendants' response is "see declaration page, bates labeled POP 000001 through POP 00002." ;

l) Request to Produce Number 9 is answered in duplicative by Defendants and is nonresponsive because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case. Defendants' response to Request for Production #9 is "None other than those documents being produced herewith, bates labeled POP 000001 through POP 001455, including transcripts of the depositions from the underlying case in defendant's counsel's possession (Paul Dulberg, David Gagnon, Carolyn McGuire, Bill McGuire, Michael McArtor). Investigation continues."
(Note: of the 1,455 pages approximately 106 pages were completely blacked out);

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m) Request to Produce Number 10 is answered in duplicative by Defendants and is nonresponsive because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case. Defendants' response to Request for Production #10 is "None other than those produced herewith bates labeled POP 000001 through POP 001455."

(Note: of the 1,455 pages approximately 106 pages were completely blacked out).

Illinois Supreme Court Rule 201(k) statement: That Alphonse A. Talarico, counsel responsible for trial of the case, after personal consultation and reasonable attempts to resolve differences with counsel for the Defendants, George K. Flynn, have been unable to reach an accord.

Disclosure: During 201(k) email conferences Defendants' attorney, George K. Flynn, indicated that he had recently spoke with Plaintiff's former attorney who agreed with Mr. Flynn that Julia C. Williams of the Clinton Law Firm and George K. Flynn had previously reached an accord that Defendants do not have to respond to the Gooch discovery. An email confirmation sent to Julia C. Williams has gone unanswered.

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Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
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(312) 808-1410
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** FILED ** Env: 2464522
McHenry County, Illinois
17LA000377
Date: 10/9/2018 12:00 AM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	)	Case No.: 2017 LA 377
v.	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
Defendants.	)	

PROOF OF SERVICE OF DISCOVERY DOCUMENTS

To: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

I HEREBY CERTIFY THE FOLLOWING DOCUMENTS WERE SERVED TO THE ABOVE NAMED:

1) Plaintiff's First Request for Production of Documents to Defendants;

2) Plaintiff's First Set of Interrogatories to Defendants; and

3) Plaintiff's 213(f) (1)(2) & (3) Interrogatories to Defendants.

Via McHenry County E-file system and email from Wauconda, Illinois before 5:00 p.m. on October 8, 2018.

Thomas W. Gooch, III
Thomas W. Gooch, III

THE GOOCH FIRM
209 S, Main Street
Wauconda, Illinois 60084
847 526 0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No. 3123355

Exhibit A

Received 10-10-2018 08:09 AM / Circuit Clerk Accepted on 10-10-2018 03:08 PM / Transaction #2464522 / Case #17LA000377
Received 12-01-2021 02:33 PM / Circuit Clerk Accepted on 12-01-2021 03:00 PM / Transaction #15786247 / Case #17LA000377
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** FILED ** Env: 15602122
McHenry County, Illinois
17LA000377
Date: 11/15/2021 1:47 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.) No. 17 LA 377

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,

Defendants.

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 13th day of November, 2018, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

MS. JULIA WILLIAMS
ATTORNEY AT LAW

On behalf of the Plaintiff;

MR. GEORGE K. FLYNN
ATTORNEY AT LAW

On behalf of the Defendants.

EXHIBIT B

Received 11-15-2021 03:12 PM / Circuit Clerk Accepted on 11-15-2021 03:47 PM / Transaction #15602122 / Case #17LA000377
Received 12-01-2021 02:33 PM / Circuit Clerk Accepted on 12-01-2021 03:00 PM / Transaction #15786247 / Case #17LA000377
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MS. WILLIAMS: Good morning, your Honor. This is line 7, Dulberg versus Pop- --

THE COURT: Yes.

MS. WILLIAMS: Law Offices of Thomas Popovich. Julie Williams, new counsel on behalf of the plaintiff. We did file an appearance, myself and Ed Clinton, last week. And we also filed a motion for extension of time to file an amended pleading. Opposing counsel has indicated that he's had no objection to that and we'd just like to December 6th and then get a -- and time to answer or respond.

MR. FLYNN: Right, the --

MS. WILLIAMS: I apologize. I didn't let you introduce yourself.

MR. FLYNN: George Flynn for the defendants. That takes us to January 3. Due to -- because of the holiday, if I can have until January 10 --

THE COURT: Sure.

MR. FLYNN: -- to file a response of pleading --

THE COURT: And have you started discovery?

MR. FLYNN: We have not. This is -- there's no complaint on file right now.

THE COURT: Okay.

MR. FLYNN: Actually, I take that back.

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Mr. Gooch served some discovery shortly before he withdrew. My position would be I'd rather not answer that until we're at issue, but --

THE COURT: Let's go towards late February. How is the week of February 25th for status and F-1?

MS. WILLIAMS: That should be fine.

THE COURT: What days -- what day works for you guys?

MS. WILLIAMS: I'm actually really open that week --

MR. FLYNN: Same here.

MS. WILLIAMS: -- since it's far enough out, so --

THE COURT: 25th, Monday?

MS. WILLIAMS: 25th works great.

THE COURT: All right. I'll see you then.

MS. WILLIAMS: At 9:00 a.m. your Honor?

THE COURT: 9:00 a.m.

MS. WILLIAMS: Thank you.

THE COURT: All right. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, CRISTIN M. KELLY, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Cristin M. Kelly
Certified Shorthand Reporter
License No. 084-004529
Date: November 15, 2021

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** FILED ** Env: 5214049
McHenry County, Illinois
17LA000377
Date: 5/29/2019 11:00 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17 LA 377

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on the 29th day of May 2019 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:
- Response to Plaintiff's First Set of Document Requests;
- Answer to Plaintiff's First Set of Interrogatories to Defendants;

Defendant Hans Mast's:
- Response to Plaintiff's First Set of Document Requests;
- Answer to Plaintiff's First Set of Interrogatories to Defendants; and

Defendant The Law Offices of Thomas J. Popovich, P.C.'s and Hans Mast's:
- Answer to Plaintiff's Rule 213(f) Interrogatories to Defendants

copies of which are attached hereto and herewith served upon you.

Dated this 29th day of May 2019 in Chicago, Illinois.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: */s/ George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed on May 29, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Exhibit C

Received 05-30-2019 10:13 AM / Circuit Clerk Accepted on 05-30-2019 12:22 PM / Transaction #5214049 / Case #17LA000377
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SERVICE LIST

Plaintiff's Attorney	
Edward X. Clinton, Jr. Julia C. Williams The Clinton Law Firm 111 W. Washington Street, Suite 1437 Chicago, IL 60602 312-357-1515 ed@clintonlaw.net juliawilliams@clintonlaw.net Marywinch@clintonlaw.net	

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McHenry County, Illinois
17LA000377
Date: 11/19/2021 4:07 PM
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Clerk of the Circuit Court

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, Defendant.	No. 17 LA 377

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 30th day of May, 2019, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

MS. JULIA WILLIAMS
ATTORNEY AT LAW

On behalf of the Plaintiff;

MR. GEORGE K. FLYNN
ATTORNEY AT LAW

On behalf of the Defendants.

EXHIBIT D

Received 11-19-2021 04:17 PM / Circuit Clerk Accepted on 11-22-2021 08:47 AM / Transaction #15681175 / Case #17LA000377
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THE COURT: Yes?

MS. WILLIAMS: Good morning, your Honor. This is Dulberg versus Popovich. It's line 2 on your call. I'm Julia Williams. I represent the plaintiff.

MR. FLYNN: Good morning, your Honor. George Flynn for the defendants.

MS. WILLIAMS: So defendants have answered. We filed a motion for default. We'll withdraw that motion. It was entered --

THE COURT: Okay.

MS. WILLIAMS: -- and continued to today. Written discovery's been issued and defendants have answered, as the plaintiff. We tendered documents today. We have not tendered our written answers yet. We expect to do that within 7 days.

THE COURT: All right. Go ahead.

MS. WILLIAMS: This case -- this is a legal malpractice case, so it's a case within a case. We've tendered, I believe, over 2,000 pieces of paper, essentially. It's all electronic, but --

THE COURT: Yeah.

MS. WILLIAMS: -- but over 2,000 pages, and counsel's indicated that he tendered about 1500

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pages. So we anticipate the review of that taking some time. There were several depositions taken in the underlying case and those all need to be reviewed by both counsel to make sure that we have everything from the underlying case that was done in the underlying case. And then we need to decide are there any fact issues from the underlying case that we need to hash out in this case. And then I think we can start taking party deps. So I think we need a bit of time to get through the 3,000-some pieces of paper --

THE COURT: All right. So I was going to give you 90 days.

MS. WILLIAMS: I think that sounds good.

THE COURT: That's --

MR. FLYNN: That is to get started on --

THE COURT: Yeah, just put it out for status on F1 and I'll let you progress at your own speed. When in late August works for you?

MS. WILLIAMS: I am out that last -- that entire -- family vacation that entire last week of August.

THE COURT: Okay.

MS. WILLIAMS: If we could do sometime during

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the week of the 19th --

MR. FLYNN: Sure.

MS. WILLIAMS: -- or we can go into September 1st, but whatever defendant --

THE COURT: What's your preference?

MR. FLYNN: Doesn't matter to me. Why don't we go into September just to be safe? As long as it's not the week of the (indiscernible).

MS. WILLIAMS: So any time the 3rd, 4th, 5th, or 6th?

THE COURT: All are fine. So what's your preference?

MS. WILLIAMS: How's (indiscernible)?

MR. FLYNN: That's fine.

THE COURT: Sorry. What date?

MS. WILLIAMS: September 5th.

THE COURT: Okay. We'll see you then.

MS. WILLIAMS: At 9:00 a.m.?

THE COURT: Yeah.

MS. WILLIAMS: Thanks, your Honor.

MR. FLYNN: Thanks, Judge.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, CRISTIN M. KELLY, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Cristin M. Kelly
Certified Shorthand Reporter
License No. 084-004529
Date: November 17, 2021

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McHenry County, Illinois
17LA000377
Date: 4/23/2021 2:57 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
vs.)
) No. 17 LA 377
THE LAW OFFICES OF THOMAS)
J. POPOVICH, P.C., and)
HANS MAST,)
)
Defendants.)

ELECTRONICALLY RECORDED Report of Proceedings had in the above-entitled cause before The Honorable Thomas A. Meyer, Judge of the Circuit Court of McHenry County, Illinois, on the 1st day of April, 2021, in the Michel J. Sullivan Judicial Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by:
MR. ALPHONSE A. TALARICO,
Appearing via videoconference,

on behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by:
MR. GEORGE K. FLYNN,
Appearing via videoconference,

on behalf of the Defendants.

EXHIBIT E

Received 04-23-2021 03:02 PM / Circuit Clerk Accepted on 04-26-2021 09:51 AM / Transaction #13075436 / Case #17LA000377
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THE COURT: All right. For the record, this is Dulberg versus Mast. And, plaintiff's counsel, if you could identify yourself.

MR. TALARICO: Your Honor, good morning. Mr. Flynn. My name is Alphonse Talarico. I represent the plaintiff, Paul Dulberg.

THE COURT: Okay. And for the defense?

MR. FLYNN: Attorney George Flynn, F-l-y-n-n. And, Judge, and, counsel, I would like to extend my apologies for the calendaring issue last week.

THE COURT: It happens. But let's -- where are we? Because I -- yeah, bring me up to date with where you are.

MR. FLYNN: Generally, Judge, the -- Okay. So the court ordered the plaintiff to produce certain documents that were withheld. That has been done. We have I think a continued issue with respect to interrogatory answers from the -- Hans Mast interrogatories served in July of 2019, and then the improper and vague answer, responses, to the production request where the plaintiff has just simply identified Bate's documents 1 through 8,708 relative to the discovery of the alleged malpractice.

THE COURT: Yeah, I looked at the answers, those

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answers, and I believe those are nonresponsive. Merely identifying all the records is not a direct response to your request, so I'm going to direct plaintiff to provide a supplemental response to those requests.

Mr. Talarico, you have something to say?

MR. TALARICO: Yes, Judge, actually, I do. Those 8,707 prior documents that had been submitted, according to the information I have, between Mr. Flynn and the Clinton Law Firm, the previous law firm, were under the initial request to produce. The answers that I have from the Clinton Law Firm indicate the wording that the documents will be produced and then there is no objection between Flynn -- Mr. Flynn and the Clinton Law Firm. There's no -- and I have no way of researching how the relationship between the first set of answers that covered document 1 through 8707 have been done. I -- that's why I said that that will be unreasonable and an expense and I have to go back to each document and see how it responded.

Mr. Flynn, as far as I've seen, had not objected to those answers, so to do that would force me to review close to 9,000 documents to see which were responsive -- 9,000 -- 8,707 that have already been turned over and, in addition to that, on February 10th,

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Judge, the last hearing date on this matter, you focused and ordered us to focus our response to the time Mr. Dulberg knew or should have known, and the only documents that at that time hadn't been turned over to Mr. Flynn would be six hundred something odd documents, communications between the second -- the Gooch law firm and Mr. Dulberg. Those I reviewed and submitted the one that responded to what -- to what the court indicated the communications in December of --

THE COURT: Before we get into that -- because I think that issue's resolved. Before we get into that, why are you -- I guess I'm not following. You're saying that it's -- giving him specific responses to his discovery requests is overly burdensome on you at this point?

MR. TALARICO: Right, to go back and review 8,700 documents that had been turned over in the past --

THE COURT: Well, who should?

MR. TALARICO: Excuse me?

THE COURT: Well, who's burden is that to provide the accurate answer?

MR. TALARICO: Judge, those were responded to. They were supplied to Mr. Flynn in the past in response to requests to produce.

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THE COURT: He may have -- I accept he has every single relevant document, but you can't just say in response to a discovery request find it yourself, it's in these thousands of pages of documents. You got to tell him where it is. So --

MR. TALARICO: I understand -- I'm sorry, Judge.

THE COURT: The bottom line, your answer has to be one that you can be pinned down on for purposes of impeachment, and your answers are -- don't permit that. So if you're going to respond, you've got to give him a direct response to a direct question, and you didn't do that. You've given him -- you said here's everything we have, find it yourself. And that is nonresponsive.

MR. TALARICO: Judge, with all due respect, again, the -- this was -- what I'm reflecting on is these are the documents that were submitted to Mr. Flynn by the Clinton Law Firm with no objection.

THE COURT: But I have a motion to compel that -- I mean -- so I think --

MR. FLYNN: And that's not accurate, Judge. There have been multiple 201(k) conferences and it was a long, unusual production in response to the interrogatories in the case as it was.

THE COURT: Regardless, I am ordering compliance and

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you must give specific responses to each of the requests, and you can't just say it's somewhere in these 8,000 plus pages. How long is it going to take you to do that?

MR. TALARICO: Judge, if I could have 60 days to cover 9,000 -- close to 9,000 documents.

THE COURT: Sure, I'll give you 60 days, because, yeah, that is a lot of -- those are a lot of documents, so I'll put this out 60 days.

Mr. Flynn, is there anything else we need to address at this time?

MR. FLYNN: Well, the supplemental production response, again, is a nonresponsive production response. The question is, is there a document in that 8,000 pages. We don't think there is, but Dulberg testified both ways essentially, whether there was a December 16, 2016, written communication with Tom Gooch that provided him with the basis for the tolling of the statute of limitations. If there is none, then the response should say there is none, not see 8,000 documents and maybe it's in them.

THE COURT: I agree.

Mr. Talarico, --

MR. FLYNN: And with respect to the --

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THE COURT: Well, hang on.

Mr. Talarico, I'm not going to tell you how to respond, but if there is no such document, -- I did take note of the fact that I saw none in the documents I reviewed -- if there is no such document, then just say there is no such document.

MR. TALARICO: With all due respect, I think I did answer that question. There was one document and I turned it over to Mr. Flynn. The only document between Gooch and the plaintiff in December of 2016, one document turned over, without objection, without a privilege log.

THE COURT: Mr. Flynn? You're being told that all documents responsive to that request have been turned over. And I agree that at least in the documents I was asked to review, there was nothing that corresponded with the December 2016 date that we initially were discussing, but --

MR. FLYNN: It should be a pretty simple process then and it should be in writing. Then I can attach it to my summary judgment motion, which I know is not a surprise to anyone. The same goes with respect to the interrogatory answers. Dulberg admitted in his deposition that he didn't respond completely to

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interrogatory number one, in particular, from Hans Mast. So that is also part of this motion to compel.

Again, that one is a little different. It says identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach and when and how you became aware of the breach. He didn't answer it.

THE COURT: Okay. Mr. Talarico? And I'm going to move on to everybody else and then come back to you -- in fact, I'll come back to you guys. I'll let -- let me get rid of everyone else and we'll resume this in a moment.

(Whereupon, the above-entitled cause was passed and subsequently recalled.)

THE COURT: That brings us back to Dulberg. What I'm doing right now is looking up -- I want to go to the interrogatory. Mr. Flynn, while I'm looking for -- it's interrogatory number one; am I correct?

MR. FLYNN: Correct.

THE COURT: All right. I'm looking in your motion to compel and since nothing is marked, I've got to page through these one at a time, so while I'm doing that, rather than just staring at me, why don't you tell me what the interrogatory says.

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MR. FLYNN: Sure. It says identify and describe each and every way that Popovich or Mast breached a duty of care to you, the date of the breach, and when and how you became aware of the breach.

THE COURT: Okay. And what was the response?

MR. FLYNN: Between October of 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires.

THE COURT: Okay.

MR. FLYNN: Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment. Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon. So that says nothing specifically about a breach, the date of the breach or when and how he became aware of it.

THE COURT: Well, it doesn't -- no, it doesn't tell you the date.

Mr. Talarico, do you have a response on that?

MR. TALARICO: No, Your Honor, it doesn't say specifically the date of the breach.

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THE COURT: All right. And --

MR. FLYNN: And we were forwarded the discovery. Again, this goes back to the Gooch -- whether it be a verbal or written communication on December 16, 2016.

MR. TALARICO: Mr. Flynn, verbal -- I don't know where I could get verbal responses. I've gone over everything and I -- Judge, I have in total 90 emails between the two, between Mr. Gooch and Mister -- and the plaintiff, and I would be willing to turn over every one of them. That's the written -- that's what I have.

MR. FLYNN: I just want to know what the basis is for the discovery of the malpractice, and if there isn't anything other than a verbal discussion with Tom Gooch in his office, that's fine; but it just needs to specify that. And I think that's been the ruling with this.

THE COURT: And I think --

MR. FLYNN: And that's what the testimony seems to reflect.

THE COURT: I -- I think the answer -- and I certainly don't know, but based upon what I understand already, I think the answer points to that December 2016 date addressed in the production response, but I don't know and I -- my concern is making sure it is clear from the answer to interrogatory that is in fact what we're

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talking about. If there's another date, fine, but it has to be disclosed.

I don't know about -- I'm not sure how he responds to the date of the breaches because I -- I do think that that's an incredibly broad question because it --

MR. FLYNN: I understand that.

THE COURT: -- in essence, it's every day after the resolution of the initial claim, and you do have a date for that, at least by way of a settlement or order.

So, Mr. Talarico, can you supplement that answer with the date of discovery?

MR. TALARICO: I will do my best, Judge. I will.

THE COURT: Okay. Mr. Flynn, the next one?

MR. FLYNN: You know, generally I think that's it, Judge. It's the supplemental production response and then these interrogatories, so what I would ask that the order reflect, that the specific answers need to be made and that the objections in the supplemental production response be overruled. I think the objection is undue burden on each of them --

THE COURT: Yeah, and to the extent that there are objections to the burdensome nature, those are overruled. I recognize that it is a burden, but you got

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to -- somebody's got to do it, and it is your claim, it is your burden. But I will give you 60 days in which to complete that.

Mr. Talarico, anything you want to add?

MR. TALARICO: No, Judge.

THE COURT: So why don't we -- 60 days is June 1st. Let's assume -- and I'm going to -- I won't assume compliance prior to June 1st, but if we come back on June 14th, that's a Monday, Mr. Flynn, do you think you would be able to give me your comments on compliance by then?

MR. FLYNN: If I have a response and, say, amended interrogatory answers and amended supplemental responses by June 1?

THE COURT: Yeah.

MR. FLYNN: Yes, sure.

THE COURT: Okay. So I will direct a supplemental answer to interrogatory number one. I'll direct amended answers to the production request, and all due by June 1st.

Is there anything else we need to address?

MR. TALARICO: No, Judge, that's my birthday --

THE COURT: Happy birthday.

MR. TALARICO: (Indiscernible).

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MR. FLYNN: I guess the only thing going forward, we've got the objections in the deposition transcript. Does the court typically just rule on those when ruling on a summary judgment motion?

THE COURT: No, I -- let me -- I have not had to deal with ruling on objections in a discovery deposition related to a motion for summary judgment.

MR. FLYNN: Okay.

THE COURT: So I haven't done that before, but I do think that we have to address that and the only way to address it is to just walk through them, so perhaps if we set -- and I know this is putting it out, but I'm wondering -- and you know better -- whether any of the objections are going to become moot once you have responses to the written discovery. Is that going to fix anything?

MR. FLYNN: I think that a lot of them are already moot. I think that some of the rulings over the last month or so on these objections have probably covered those that are contained in the dep transcripts; however, I just want to make the summary judgment process as clean as possible.

Maybe I can talk to Mr. Talarico and we can come up with an agreement on whether some of these

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objections in the dep are withdrawn, but, again, I just -- I don't want the summary judgment motion to bog down on objections in a dep transcript, so --

THE COURT: Okay. And I don't know.

MR. FLYNN: So -- Okay. I wanted to raise that issue in advance so the court's aware that that might be an issue.

THE COURT: Why don't we put the hearing at 1:30 on Monday, June 14th, and if you are unable to work out the issues on the discovery deposition, then we'll walk through the transcript. You'll need to give me a copy. And -- unless there is one in the court file already. You'll need -- and we'll walk through each one and I'll take argument at that time and --

MR. FLYNN: Okay.

THE COURT: -- I'll rule then. And that may get you where you want to go, and if there are none, great. Then we don't have to deal with it.

Does that --

MR. FLYNN: Okay.

THE COURT: Does that resolve your concern for today at least?

MR. FLYNN: I think so.

THE COURT: All right. So, Mr. Flynn, if you could

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draft the order.

Mr. Talarico, is there anything you want to add?

MR. TALARICO: Well, I've read -- I wasn't present at the deposition, so I'm just trying to get my brain wrapped around it. The objections were attorney-client privilege, sir, was that --

MR. FLYNN: Many of them, yes.

MR. TALARICO: Okay. That's all.

MR. FLYNN: And, again, it goes to the discovery of the malpractice. I think that it's been placed at issue by virtue of the pleadings, so -- and, again, I think that there's been a ruling, at least in part, on some of these issues, but, --

THE COURT: In the alternative --

MR. FLYNN: -- you know, why don't we --

THE COURT: -- if you agree that some of the questions could have been answered, can you do this by way of interrogatory rather than a supplemental deposition?

MR. FLYNN: I think that for the most part Mr. Dulberg answered over the objections.

THE COURT: Okay.

MR. FLYNN: And so the record was set there. The

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objections were made on the record. I think that it could probably be dealt with fairly swiftly.

THE COURT: All right. Great. Then I'll wait for your order. As soon as I see it, I'll sign it. And, otherwise, I'll see you June 14th.

MR. FLYNN: Okay. Thanks, Judge. Do you have a time that you needed the order by? I would like to send a draft to Mr. Talarico after my secretary prepares it.

THE COURT: The clerks will harass you, --

MR. FLYNN: Okay.

THE COURT: -- but if you get it in by Monday, that's fine.

MR. FLYNN: Oh, okay. I was thinking sometime today.

THE COURT: Today's perfect. So anytime this afternoon is fine, but Monday is kind of the to-die date. I got to have it by then.

MR. FLYNN: Fair enough.

THE COURT: All right.

MR. FLYNN: Thank you very much, Your Honor.

THE COURT: Thank you.

MR. TALARICO: Thank you, Judge. Thank you, Mr. Flynn.

MR. FLYNN: Thanks, Counsel.

(Which was and is all of the evidence offered at the hearing of said cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

I, Stacey A. Collins, an Official Court Reporter of the 22nd Judicial Circuit of Illinois, do hereby certify the foregoing to be a true and accurate transcription to the best of my ability and based on the quality of the recording of all the proceedings heard on the electronic recording system in the above-entitled cause.

Stacey A. Collins, CSR
Official Court Reporter

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STATE OF ILLINOIS, CIRCUIT COURT

McHenry COUNTY

NOTICE OF COURT DATE FOR MOTION

For Court Use Only

Instructions

Directly above, enter the name of the county where the case was filed.

Enter the name of the person who started the lawsuit as Plaintiff/Petitioner.

Enter the name of the person being sued as Defendant/Respondent.

Enter the Case Number given by the Circuit Clerk.

Paul Dulberg
Plaintiff / Petitioner *(First, middle, last name)*

v.

Law Offices of Thomas J. Popovich P.C., and Hans Mast
Defendant / Respondent *(First, middle, last name)*

17 LA 377
Case Number

In **1**, enter
- he court date and time of your hearing. Call your Circuit Clerk to get this information. If e-filing in Cook County, you may get the date when you e-file.
- he courtroom and address of the court building.
- he call-in or video information for remote appearances (if applicable).
-The clerk's phone number and website.
ll this information is available from the Circuit Clerk, you can find their contact information at illinoiscourts.gov/courts/circuit-court/circuit-court-clerks/.

1. Hearing Information

The reasons for this hearing are listed in the attached papers called *Motion*. The hearing for the *Motion* I filed is scheduled for:

a. On 12/07/2021 *Date* at 8:45 *Time* ☑ a.m. ☐ p.m. in 201 *Courtroom*

In-person at:

2200 N. Seminary Avenue, Woodstock Illinois 60098
Courthouse Address *City* *State* *ZIP*

OR

Remotely (You may be able to attend this court date by phone or video conference. This is called a "Remote Appearance.")

By telephone: 888-882-6878
Call in number for telephone remote appearance

By video conference: https://zoom.us/my/mchenrycourtroom201
Video conference ebsite

272-959-8070
Video conference log in information (meeting ID, pass ord, etc)

Call the Circuit Clerk at: 815.334.4190 *Local Circuit Clerk's phone #* or visit their website at https://www.mchenrycountyil.gov/county-g *ebsite* to find out more about how to do this.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the *Notice of Court Date for Motion* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

Enter your complete address, telephone number, and email address, if you have one.

707 Skokie Boulevard #600
Street Address

Northbrook, Illinois 60062
City, State, ZIP

contact@lawofficeofalphonsetalarico.com
Email

(312) 808-1410 *Telephone* 6184530 *Attorney # (if any)*

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In **c**, fill in the date and time that you are sending the document.

1. I am sending the *Notice of Court Date for Motion*

a. To:

Name: George K. Flynn
First *Middle* *Last*

Address: 150 S. Wacker Drive #1700 Chicago Illinois 60606
Street, Apt # *City* *State* *ZIP*

Email address: gflynn@karballaw.com

b. By:

- ☑ An approved electronic filing service provider (EFSP)
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Only use one of the methods belo if you do not have an email address, or the person you are sending the document to does not have an email address

- ☐ Personal hand delivery to:
  - ☐ The party
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  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

c. On: 11/30/2021 *Date* at: 4:30 *Time* ☐ a.m. ☑ p.m.

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

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Street, Apt # *City* *State* *ZIP*

Email address:

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  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
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  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

c. On: _____ *Date* at: _____ ☐ a.m. ☐ p.m.

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I certify that everything in the *Proof of Delivery* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

/s/ Alphonse A. Talarico *Your Signature*	707 Skokie Boulevard #600 *Street Address*
Alphonse A. Talarico *Print Your Name*	Northbrook Illinois 60062 *City, State, ZIP*
(312) 808-1410 *Telephone*	contact@lawofficeofalphonsetalarico.com *Email*

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: All Attorneys of Record (See Attached Service List)

PLEASE TAKE NOTICE that, on the 6th day of December 2021, we filed DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL, with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 6th day of December 2021.

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on December 6, 2021.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

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SERVICE LIST

Plaintiff's Attorney

Alphonse A. Talarico
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Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for their Response to Plaintiff's Motion to Compel, state as follows:

1) The instant motion to compel is the latest of the Plaintiff's abuses of discovery and another example of unnecessary fees incurred (in responding to this motion) due to the "musical chairs" at the Plaintiff's counsel table in this case. The instant motion brought by Plaintiff's third attorney in this case, at the Plaintiff's direction, should be denied because: 1) it is untimely, and 2) Defendants answered the written discovery at issue in the instant motion to the satisfaction and agreement of Plaintiff's second attorney. Plaintiff's second attorney confirmed as much on December 3, 2021, and her written confirmation supporting Defendants' position on these matters was forwarded to the Plaintiff's counsel. Despite knowledge of the email response from Plaintiff's now withdrawn counsel, he has proceeded with the instant motion. Accordingly, Defendants request that the court award any and all available relief under Illinois Supreme Court Rule 137.

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2) In summary, Defendants' counsel, George K. Flynn, and Dulberg's then-counsel Julia Williams of the Clinton Law Firm, agreed that written discovery propounded by Plaintiff's first counsel, Thomas Gooch, would not be answered by Defendants, and would be replaced by discovery propounded by Williams and the Clinton firm. Defendants answered that written discovery to the satisfaction of Plaintiff's counsel. Plaintiff's counsel reported to this court that Defendants had answered written discovery. The parties then moved on with oral fact discovery including Williams' deposition of Defendant Hans Mast on June 25, 2020. Plaintiff's third attorney entered his appearance in this case on October 23, 2020 and never raised any issue with Defendants' written discovery answers for over thirteen months. Nor has counsel noticed a single deposition in the case. Defendants' written discovery answers were served over 2.5 years ago. Any objection now is untimely to say the least. Written discovery must be closed. Unfortunately, a timeline of events and response to the instant motion is necessary as follows:

3)

2018

- October 9, 2018 The Gooch Firm first serves notice of Motion to Withdraw and "The Gooch Discovery."
- October 15, 2018 The Gooch Firm is granted leave to withdraw as Dulberg's counsel.
- November 8, 2018 The Clinton Firm, with attorney Julia Williams as primary handling attorney, appears for Dulberg
- November 13, 2018 George K. Flynn, defendants' counsel reported in court that Gooch had issued written discovery (see Plaintiff's Exhibit B, pages 2-3)
- Williams serves Plaintiff's "First Set" of Interrogatories and First Set of Document Requests

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2019

- May 29, 2019 Flynn serves Popovich's and Mast's Answers to Plaintiff's First Set of Interrogatories and Responses to Plaintiff's First Set of Document Requests (Plaintiff's Ex. C)

- May 30, 2019 Williams reports to the court that Defendants have answered written discovery (Plaintiff's Ex. D, p. 2)

2020

- February 19, 2020 Flynn takes Dulberg's discovery deposition with Williams defending

- June 25, 2020 Williams takes Hans Mast discovery deposition

- September 10, 2020 Clinton Law Firm Granted Leave to withdraw as counsel for Plaintiff

- October 23, 2020 Alphonse Talarico appears for Plaintiff

2021

- November 8, 2021 In court, Talarico first mentions unspecified outstanding discovery owed by Defendants

- November 9, 2021 Flynn sends 201(k) communication to Talarico requesting that allegedly outstanding discovery be identified (Exhibit 1)

- November 13, 2021 Talarico sends 201(k) communication to Flynn outlining alleged incomplete answers and claiming neither Popovich nor Flynn signed (Exhibit 2)

- November 14, 2021 Flynn responds to Talarico email addressing issues and attaching properly signed discovery served on May 29, 2019 (Exhibit 3)

- December 3, 2021 Julia Williams confirms all representations made by Flynn in his December 2, 2021 email (Both attached as Exhibit 4)

- December 3, 2021 Flynn forwards Williams' email to Talarico requesting Motion to Compel be withdrawn and Talarico Response (Exhibit 5)

4) Defendants should be able to rely on the conduct, representations, and agreements made by Dulberg's counsel from when that counsel represented Dulberg. By filing this motion,

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Dulberg apparently does not agree. Based on the 201(k) communications attached here, all of the issues recently raised by Dulberg have been addressed. 1) Mast, Popovich, and Flynn all signed the discovery, 2) Williams agreed that defendants would not answer the "Gooch discovery" and re-issued "First" Requests and Interrogatories, 3) The "redacted pages from defendants' production were not redactions—Williams and Flynn met at Popovich's office where Williams inspected the file and confirmed the blank pages were "file dividers" 4) Defendant's answers were sufficient (Williams reported as much to the court, and moved on with oral discovery). (See Exhibit 4)

5) This leaves only plaintiff's "tit for tat" complaints about the substance of defendants' answers and mischaracterization of Judge Meyer's previous rulings on defendants' motion(s) to compel. First, Dulberg's motion, brought over 2.5 years after defendants answered discovery, is untimely, to say the least. Illinois Supreme Court Rule 214(c) states in pertinent part that "[a]ny objection to the request or the refusal to respond shall be heard by the court upon prompt notice and motion of the party submitting the request." There is nothing prompt about this motion, and the detrimental reliance on prior counsel's conduct and actions is outlined sufficiently above.

6) Plaintiff's claim that Judge Meyer's prior rulings on defendants' motion(s) to compel have any application here, is meritless. Defendants' motions to compel were based on facts placed at issue by Dulberg's pleadings (the accrual date and date of "discovery" of his alleged malpractice claim). Defendants served pointed and specific discovery aimed at discovering and flushing out all facts supporting Dulberg's contention that the 2 year statute of limitations should be tolled since he didn't file his lawsuit within the 2 year limitations period. Here Dulberg is simply complaining about general responses to general requests for

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C 665

production. There is really no explanation as to what he is looking for, or what he cannot find. As discussed above, the complaints are untimely and unnecessary. The parties moved on from defendants' written discovery long ago. Dulberg's attorney was satisfied with the responses, reported as much to the court, and the parties provided oral fact discovery.

7) It bears repeating, Flynn and Williams agreed that the "Gooch discovery" would not be answered. This is why Williams titled the "Clinton" discovery as "First" requests. Flynn relied on this agreement, and relied on Williams representations to the court that defendants had answered discovery. Flynn also relied on any lack of objection to the answers in agreeing to present his client at a deposition. Had there been any issues (such as the "redaction issue") they would have been resolved prior to oral fact discovery.

8) Dulberg's motion should be denied and fact discovery closed. Moreover, since Dulberg was provided an opportunity to withdraw this frivolous motion, and was supplied with his prior attorney's written confirmation of the facts and agreements made between counsel at the time, he should be ordered to pay for the costs and fees incurred by defendants in responding to this motion pursuant to Rule 137.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court enter an Order denying Plaintiff's Motion to Compel, ordering Plaintiff to pay costs and fees associated with this motion, for any further relief this court deems fair and proper.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

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GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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George Flynn

From: George Flynn
Sent: Tuesday, November 9, 2021 10:39 AM
To: Alphonse Talarico
Cc: Linda Walters
Subject: Dulberg v. Popovich

Dear Mr. Talarico:

I was surprised to hear you mention during yesterday's court hearing with Judge Meyer, that there is some written discovery purportedly owed, not completed, or otherwise lacking from defendants. As far as I know, defendants have answered all outstanding written discovery. Moreover, no written discovery has been served on defendants for months, if not years, in the case.

I would like to resolve any purported issues as quickly and efficiently as possible, without duplicating any previous efforts or delaying the process.

If you would kindly advise of the nature of the issue, we would like to resolve it.

Best regards,

EXHIBIT 1

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George Flynn

From: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Sent: Saturday, November 13, 2021 3:51 PM
To: George Flynn
Cc: Linda Walters
Subject: Dulberg v. Popovich and Mast 201(k) communication

Dear Mr. Flynn,

First let me thank you for your kind words regarding my scheduled medical procedure but unfortunately the Doctor's office telephoned this morning to say that the Doctor had an emergency and will not be able to fulfill her schedule today.
I was understandably upset and their promise to call me to reschedule has not yet been fulfilled so my schedule is very much unsettled.
As a backup I contacted Northwestern Medical and accepted their earliest appointment to start over and that is currently scheduled for December 21, 2021.
As to my concerns regarding Defendants' responses and lack of responses that are the basis of our 201(k) communications, I will attempt to alert you as best I can today so that we may be able to resolve them as soon as possible.

My independent investigation and the court file reveal no responses to 1) Plaintiff's First Request for Production of Documents to Defendants; 2) Plaintiff's First Set of Interrogatories to Defendants; and 3) Plaintiff's 213(f)(1)(2)&(3) Interrogatories to Defendants. Those appear to have been served upon you by Thomas W. Gooch III while you were with your previous firm on or about October 9, 2019.

Next my review of Defendant Hans Mast indicates non responsive answers that must be corrected. I say Defendant Hans Mast's responses because all the discovery served (but not noticed or filed?) was sent to Defendants but the responses were not signed by the Law Offices of Thomas J. Popovich, P.C. nor by you on their behalf.
I will attempt to state my reasons why the responses to discovery from Julia C. Williams of The Clinton Law Firm are non-responsive. Since you responded to the Clintons' discovery, I can safely assume that you were served with the requests sometime prior to your filing date of 5/29/2019.
I believe an analysis of each discovery response will help us find a workable solution .

PLAINTIFF'S FIRST [SIC] SET OF INTERROGATORIES TO DEFENDANTS:
Interrogatory Number 5 is answered/verified by Hans Mast (only) thereafter although the interrogatory is addressed to claims or defenses in this matter Mast's answer is non responsive because it addresses the underlying matter only

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EXHIBIT 2

and does not include the subject of the information, therefore there is no response regarding the current matter;
Interrogatory Number 6 is answered/verified by Hans Mast (only) thereafter although the interrogatory requests a detailed response Mast's answer is a "General" one sentence non response;
Interrogatory Number 7 is answered/ verified by Hans Mast (only) first with an objection and thereafter with a nonresponse directing the recipient to find Mast's response to this interrogatory in Masts' response to Plaintiff's Request for the production of documents, which itself is a nonresponsive answer. Defendant Hans Mast responses are specifically in violation of the Honorable Thomas A. Meyer instructions in this case Note: Defendant Hans Mast response to Request for Production #1 is "See attached documents bates labeled POP 000001 through POP 001455;
Interrogatory Number 9 is answered/ verified by Hans Mast (only) and is non responsive because it refers the reader to see interrogatory #8 which is directed to 12 LA 178 while interrogatory #9 refers to 17 LA 377.

PAUL DULBER'S FIRST [SIC] SET OF DOCUMENT REQUESTS:
Request to Produce Number 1 is answered by Hans Mast (only) and is a non-responsive answer because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case . Note: Defendant Hans Mast response to Request for Production #1 is "See attached documents bates labeled POP 000001 through POP 001455;
Request to Produce Number 3 is answered by Hans Mast (only) and is a non-responsive answer because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case . Note: Defendant Hans Mast response to Request for Production #3 is "See attached documents bates labeled POP 000001 through POP 001455;
Request to Produce #4 is answered by Hans Mast (only) and is non-responsive because no documents are specifically identified;
Request to Produce Number 5 is answered by Hans Mast (only) and is a non-responsive answer because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case . Note: Defendant Hans Mast response to Request for Production #5 is "See attached documents bates labeled POP 000001 through POP 001455;
Request to Produce Number 6 is answered by Hans Mast (only) and is a non-responsive answer because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case . Note: Defendant Hans Mast response to Request for Production #6 is "See attached documents bates labeled POP 000001 through POP 001455;
Request to Produce Number 8 is answered by Hans Mast (only) and is a non-responsive answer because the request is for "A copy of any insurance agreement..." whereas Mast's response is "see declaration page, bates labeled POP 000001 through POP 00002." ;
Request to Produce Number 9 is answered by Hans Mast (only) and is a non-responsive answer because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case . Note: Defendant Hans Mast response

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to Request for Production #9 is " None other than those documents being produced herewith, bates labeled POP 000001 through POP 001455...";
Request to Produce Number 10 is answered by Hans Mast (only) and is a non-responsive answer because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case . Note: Defendant Hans Mast response to Request for Production #10 is "None other than those produced herewith bates labeled POP 000001 through POP 001455."

As the old chestnut states " investigation continues" but I wanted to give you a heads up to what I am thinking as soon as possible.

Please call me as soon as possible to continue the 201(K) discussions.

Your anticipated cooperation is greatly appreciated,
Alphonse A. Talarico

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George Flynn

From: George Flynn
Sent: Sunday, November 14, 2021 9:52 PM
To: Alphonse Talarico
Cc: Linda Walters
Subject: FW: Dulberg v. Popovich
Attachments: 2367006v1 - Popovich Answer to Plaintiff_s 1st Set of Rogs to Defendants.PDF; 2367038v1 - Mast Answer to Plaintiff_s 1st Set of Rogs to Defendants.PDF; 2367040v1 - Mast Response to Plaintiff_s 1st Set of Document Requests.PDF; 2367045v1 - Popovich Response to Plaintiff_s 1st Set of Document Requests.PDF; 2367088v1 - Popovich & Mast_s Answer to Plaintiff_s 213(f) Rogs to Defendants.PDF; 2367513v1 - Notice of Service of Discovery Documents -- Defendants_ Answers to Plaintiff_s Discovery.PDF

Mr. Talarico:

In response to your 201(k) correspondence of November 13, 2021, please see the attached email from Linda Walters to Julia Williams, Dulberg's predecessor counsel in this case, attaching Popovich's and Mast's discovery answers with signature pages as indicated. These discovery responses and signature (which should be readily available in the file materials from the Clinton firm) refute the contentions made in the November 13 letter regarding missing signatures or lack of discovery responses.

With respect to the written discovery served by Tom Gooch after he noticed his motion to withdraw, this discovery was withdrawn by Ms. Williams and an agreement reached that she would issue the written discovery to be answered. This was why we answered the discovery she propounded and not the discovery served by Gooch. I am certain that Ms. Williams will be able to confirm this.

As to any claimed deficiencies in Popovich's or Mast's written discovery responses, we consider any objection raised nearly 2.5 years after the discovery was answered, to be untimely. Considerable time was spent between me and Ms. Williams in working through written discovery. She had no issues or objections to Popovich's and Mast's discovery answers by the time she noticed and deposed Hans Mast. Nor was any ruling sought as to any objection raised by Popovich or Mast in their respective discovery answers.

Judge Meyer's rulings on discovery disputes in this case were generated by Dulberg's incomplete or non-responsive written discovery answers and non-responsive deposition testimony, which were timely brought to the court's attention after the defendants' many 201(k) overtures were unsuccessful. Suffice it to say that the court seemed to agree with our position.

I am willing to have a brief 201(k) conference. However, the defendant's have incurred considerable costs and incurred delays in moving their case to disposition due to Mr. Dulberg's evasiveness in discovery and in changing counsel two times in the case. The very discovery I am re-sending is one example of a duplication of effort resulting from the substation in counsel. While this may not be your fault Mr. Talarico, it certainly was not caused by my clients in any way.

If you still wish to discuss any issues, I can be available on Tuesday November 16, 2021. I would suggest 10:00 a.m.

Best regards,

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EXHIBIT 3

From: Linda Walters <lwalters@KARBALLAW.com>
Sent: Wednesday, May 29, 2019 1:03 PM
To: Julia WIlliams <juliawilliams@clintonlaw.net>
Cc: George Flynn <gflynn@karballaw.com>
Subject: RE: Dulberg v. Popovich

On behalf of George Flynn, please see the attached:

- Defendant The Law Offices of Thomas J. Popovich, P.C.'s Response to Plaintiff's First Set of Document Requests;
- Defendant The Law Offices of Thomas J. Popovich, P.C.'s Answer to Plaintiff's First Set of Interrogatories to Defendants;
- Defendant Hans Mast's Response to Plaintiff's First Set of Document Requests;
- Defendant Hans Mast's Answer to Plaintiff's First Set of Interrogatories to Defendants;
- Defendant The Law Offices of Thomas J. Popovich, P.C.'s and Hans Mast's Answer to Plaintiff's Rule 213(f) Interrogatories to Defendants; and
- Notice of Service of Discovery Documents (A file-stamped copy of the NOS will be forwarded upon receipt.)

Also, Mr. Flynn asked that I let you know that he will give you a flash drive containing the responsive documents at the hearing tomorrow.

Thank you.

Linda Walters
Secretary to George Flynn

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@KARBALLAW.com

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From: George Flynn <gflynn@karballaw.com>
Sent: Friday, May 24, 2019 1:23 PM
To: Julia WIlliams <juliawilliams@clintonlaw.net>
Cc: Linda Walters <lwalters@KARBALLAW.com>
Subject: RE: Dulberg v. Popovich

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Julia:

Thanks, that is agreed.

Have a nice holiday.

Best regards,

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Friday, May 24, 2019 1:22 PM
To: George Flynn <gflynn@karballaw.com>
Cc: Linda Walters <lwalters@KARBALLAW.com>
Subject: Re: Dulberg v. Popovich

Dear George,

I am in a similar position. Let's just agree that we will exchange before we appear on Thursday.

Best,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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> On May 23, 2019, at 4:11 PM, George Flynn <gflynn@karballaw.com> wrote:
>
> Julia:

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Just writing with an update. I have my discovery answers out for signature. My secretary is out tomorrow, so I may not be able to serve them until Tuesday, unless the signatures come in and I have some assistance on Friday.

We have a little over 1400 pages of documents that we have Bates labelled and plan to put on a flash drive (this includes 5 fact witness depositions we ordered recently). Note that there are still 4 or 5 transcripts from the Physicians who were deposed in the underlying case. I have not ordered those transcripts.

Please let me know if this is agreeable. I certainly want to have everything served before we appear on 5-30.

Thanks

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Thursday, May 9, 2019 9:06 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Linda Walters <lwalters@KARBALLAW.com>
Subject: Re: Dulberg v. Popovich

Of course. Sorry for not responding sooner.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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On May 8, 2019, at 8:28 AM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

I could still use a few weeks to answer. Can we agree on another 14 days?

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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On Apr 18, 2019, at 3:16 PM, Julia WIlliams <juliawilliams@clintonlaw.net> wrote:

> Perfect.
>
> Thanks!
>
> Julia Williams
> Of Counsel
> The Clinton Law Firm
> 111 W. Washington, Ste. 1437
> Chicago, IL 60602
> P:312.357.1515
> F: 312.201.0737
> juliawilliams@clintonlaw.net
>
> This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.
>
> > On Apr 18, 2019, at 3:13 PM, George Flynn <gflynn@karballaw.com> wrote:
> >
> > Julia:
> >
> > Thanks for your message. We could also use a little extra time to answer discovery. Can we agree on 3 weeks for all parties to answer?
> >
> > **George Flynn**
> >
> > **Karbal | Cohen | Economou | Silk | Dunne | LLC**
> > 150 S. Wacker Drive
> > Suite 1700
> > Chicago, IL 60606
> > <phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
> > <fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670

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<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

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George Flynn

From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Friday, December 3, 2021 9:14 AM
To: George Flynn
Cc: Ed Clinton
Subject: Re: Dulberg

Dear George,

I agree with your representations.

I do recall that we issued new discovery after Mr. Gooch had previously issued discovery. I do not recall what exactly we agreed to or whether we formalized the withdraw of the original written discovery issued by Mr Gooch, but it was my assumption that your firm/your clients would answer the written discovery issued by our firm and we were not intending to enforce any requirement to answer the written discovery issued by Mr. Gooch or his office. Again, I thought we had confirmed in writing or with the court in an open hearing, but obviously we were unable to locate that. I am fairly certain that our office had agreed to withdraw those requests.

As for the "black" pages that originally appeared to be improper or unexplained redactions, I do recall that after court one day we met at Mr. Popovich's office to review the original documents that were tendered in response to our written discovery requests. Mr. Popovich was representing that the redactions were dividers or blank pages between the other pages. I did review Mr. Popovich's entire file and the blank, black, or redacted pages that appeared in the scanned documents were actually blank pages and not redactions. I personally reviewed the original physical file and was satisfied that everything in the file had been produced in your scanned copy tendered to us.

I hope this helps everyone resolve these issues.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

> On Dec 2, 2021, at 3:14 PM, George Flynn <gflynn@karballaw.com> wrote:
>
> Julia:
>
> Further to our recent discussion, please see the attached motion to compel, filed more than 2.5 years after my clients answered the discovery propounded by your firm ("The Clinton Firm").

EXHIBIT 4

Received 12-06-2021 02:49 PM / Circuit Clerk Accepted on 12-06-2021 02:55 PM / Transaction #15837231 / Case #17LA000377
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I plan to respond in writing and represent to the court that we agreed that defendants would not answer the "Gooch discovery" and that is why you reported to the court that defendants had answered ["the Clinton"] discovery.

Counsel also asserts that your description of the discovery documents as "First Set..." is erroneous. I believe that his assumption is erroneous.

With respect to the so-called redacted documents, I explained the history to Mr. Talarico—that you suspected improper redactions—that we agreed to meet at Popovich's office where you inspected the original file materials and were satisfied after personal inspection that the "blank" pages in the production were from file dividers in the original file that were copied.

You and I then moved on to oral fact discovery, and you deposed defendant Hans Mast. My position is that neither you nor I would have agreed to proceed with Mast's deposition if there were outstanding issues with defendants' written discovery responses. Moreover, this issue is totally distinct from defendants' decision to depose Dulberg and test his objections and claims of privilege, along with what we perceived to be improper and incomplete answers to discovery aimed at his alleged "discovery" of his malpractice claims and incurred damages in December 2016.

I would appreciate it if you would respond with your agreement to my representations here. As you and I discussed, I recall that we had an agreement that defendants would not answer the Gooch discovery. I thought we had confirmed this agreement in writing, but I have not been able to locate such written confirmation. However, I believe that it is clear from the court orders, transcripts, and our conduct in handling discovery, and my memory, that this was our agreement.

As always, thanks for your time and professionalism, Julia.

Best regards,

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

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<3007617v1 - Plaintiff_s Motion to Compel Defendants to Answer Outstanding Written Discovery & to Extend Time for OUtstanding Written Discovery to be Completed.PDF>

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George Flynn

From: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Sent: Friday, December 3, 2021 10:43 AM
To: George Flynn
Cc: Linda Walters
Subject: Re: Dulberg

Dear Mr. Flynn,
I have been instructed to proceed on the Motion To Compel.

Sincerely,
Alphonse A. Talarico

From: George Flynn <gflynn@karballaw.com>
Sent: Friday, December 3, 2021 9:20 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: Linda Walters <lwalters@karballaw.com>
Subject: FW: Dulberg

Mr. Talarico:

Please see my email below and Ms. Williams' response. Please confirm that your motion to compel will be withdrawn. I will wait until this afternoon to begin preparing a response. Again, it is our position that my client should not have to bear the expense in responding to the motion.

Regards,

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com
CONFIDENTIALITY NOTE:
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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Friday, December 3, 2021 9:14 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Ed Clinton <ed@clintonlaw.net>
Subject: Re: Dulberg

Dear George,

Received 12-06-2021 02:49 PM / Circuit Clerk Accepted on 12-06-2021 02:55 PM / Transaction #15837231 / Case #1

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I agree with your representations.

I do recall that we issued new discovery after Mr. Gooch had previously issued discovery. I do not recall what exactly we agreed to or whether we formalized the withdraw of the original written discovery issued by Mr Gooch, but it was my assumption that your firm/your clients would answer the written discovery issued by our firm and we were not intending to enforce any requirement to answer the written discovery issued by Mr. Gooch or his office. Again, I thought we had confirmed in writing or with the court in an open hearing, but obviously we were unable to locate that. I am fairly certain that our office had agreed to withdraw those requests.

As for the "black" pages that originally appeared to be improper or unexplained redactions, I do recall that after court one day we met at Mr. Popovich's office to review the original documents that were tendered in response to our written discovery requests. Mr. Popovich was representing that the redactions were dividers or blank pages between the other pages. I did review Mr. Popovich's entire file and the blank, black, or redacted pages that appeared in the scanned documents were actually blank pages and not redactions. I personally reviewed the original physical file and was satisfied that everything in the file had been produced in your scanned copy tendered to us.

I hope this helps everyone resolve these issues.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

> On Dec 2, 2021, at 3:14 PM, George Flynn <gflynn@karballaw.com> wrote:
>
> Julia:
>
> Further to our recent discussion, please see the attached motion to compel, filed more than 2.5 years after my clients answered the discovery propounded by your firm ("The Clinton Firm").
>
> I plan to respond in writing and represent to the court that we agreed that defendants would not answer the "Gooch discovery" and that is why you reported to the court that defendants had answered ["the Clinton"] discovery.
>
> Counsel also asserts that your description of the discovery documents as "First Set..." is erroneous. I believe that his assumption is erroneous.
>
> With respect to the so-called redacted documents, I explained the history to Mr. Talarico—that you suspected improper redactions—that we agreed to meet at Popovich's office where you inspected the original file materials and were satisfied after personal inspection that the "blank" pages in the production were from file dividers in the original file that were copied.

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You and I then moved on to oral fact discovery, and you deposed defendant Hans Mast. My position is that neither you nor I would have agreed to proceed with Mast's deposition if there were outstanding issues with defendants' written discovery responses. Moreover, this issue is totally distinct from defendants' decision to depose Dulberg and test his objections and claims of privilege, along with what we perceived to be improper and incomplete answers to discovery aimed at his alleged "discovery" of his malpractice claims and incurred damages in December 2016.

I would appreciate it if you would respond with your agreement to my representations here. As you and I discussed, I recall that we had an agreement that defendants would not answer the Gooch discovery. I thought we had confirmed this agreement in writing, but I have not been able to locate such written confirmation. However, I believe that it is clear from the court orders, transcripts, and our conduct in handling discovery, and my memory, that this was our agreement.

As always, thanks for your time and professionalism, Julia.

Best regards,

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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<3007617v1 - Plaintiff_s Motion to Compel Defendants to Answer Outstanding Written Discovery & to Extend Time for OUtstanding Written Discovery to be Completed.PDF>

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KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
12/07/2021 1:45 PM
McHenry County, Illinois
22nd Judicial Circuit

CIRCUIT COURT FOR THE 22nd JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY of McHENRY)

CASE NUMBER 17LA377

☑ Jury ☐ Non-Jury**********

Paul Dulberg

vs. Law Office of Thomas Popovich and Hans Mast

Date December 7 Plaintiff's Attorney Alphonse A. Talarico Defendant's Attorney George K. Flynn

ORDER

This matter coming on to be heard on Plaintiff's Motion to Compel Defendants to Answer Outstanding Written Discovery and to extend the time for Outstanding Written Discovery to be complete, this Honorable Court being apprised in the premises, it is hereby ordered:

1) Plaintiff is granted 14 days, up to and including December 21, 2021 to file and serve his Reply to Defendants response filed and served on December 6, 2021;

2) Plaintiff is allowed to file and serve as additional exhibits to his Reply all Discovery proponded by Plaintiff and all Responses to the aforesaid;

3) this matter is continued to January 4, 2022 at 10:00 a.m. before this Honorable Court for hearing.

12/7/2021

707 SKOKIE BLVD #600, NORTHBROOK/IL. 60062
LAWOFFICEOFALPHONSETALARICO.COM
ARDC #6184530
(312) 808-1410

Prepared by: Alphonse A. Talarico

Attorney for: Paul Dulberg Judge: Thomas A. Meyer

Thomas Meyer

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This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

FILED * Env: 16048317
McHenry County, Illinois
17LA000377
Date: 12/22/2021 10:53 AM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS, CIRCUIT COURT McHenry ☑ COUNTY	PROOF OF DELIVERY	For Court Use Only

Instructions ▾	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person or company that filed this case as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name or Company)*
Enter the name of the Defendants/ Respondents.	v.
Enter the Case Number given by the Circuit Clerk.	Hans Mast et al **Defendants / Respondents** *(First, middle, last name, or business name)* 17 LA 000377 **Case Number**

In **1**, enter the name of each court document you are sending.

1. I am sending the following court document: Reply to Defendants Response to Plaintiff's Motion to CompelDefendants to Answer Outstanding Written Discovery and to Exten

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

a. To:

Name: George K. Flynn
First Middle Last

Address: 150 S. Wacker Dr. #1700 Chicago Illinois 60606
Street, Apt # City State ZIP

Email address: gflynn@kargallaw.com

In **1b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

b. By:

- ☑ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

In **c**, fill in the date and time that you are sending the document.

c. On: 12/20/2021 *Date* at: 12.01 *Time* ☐ a.m. ☑ p.m.

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In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the

In **c**, fill in the date and time that you are sending the document.

If you are sending your document to more than 2 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

2. I am sending this document:

a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:

☐ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

☐ Personal hand delivery to:

- ☐ The party
- ☐ The party's family member who is 13 or older, at the party's residence
- ☐ The party's lawyer
- ☐ The party's lawyer's office

☐ Mail or third-party carrier

c. On: _____ at: _____ ☐ a.m. ☐ p.m.
Date *Time*

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

6184530
Attorney # (if any)

707 Skokie Blvd. #600
Street Address

Northbrook, Illinois, 60062
City, State, ZIP

contact@lawofficeofalphonsetalarico.com
Email

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McHenry County, Illinois
17LA000377
Date: 12/22/2021 10:53 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST Defendants.	) Case No. 17LA 377

REPLY TO DEFENDANTS'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO ANSWER OUTSTANDING WRITTEN DISCOVERY AND TO EXTEND THE TIME FOR OUTSTANDING WRITTEN DISCOVERY TO BE COMPLETED

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his REPLY to Defendants' Response to Plaintiff's Motion To Compel and for an Extension of Time to Complete outstanding written Discovery states as follows:

1) Plaintiff's Motion to Compel and Plaintiff's Reply to Defendants' Response has been made necessary by Defendants', cooperatively with Plaintiff's second attorneys' actions mislabeling discovery responses, agreeing to the withdrawal of late outstanding discovery without informing this Honorable Court or Plaintiff Paul Dulberg and by Plaintiff's former attorneys' failing to follow the requirements of Supreme Court Rule 201(m).

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2) Plaintiff's current attorney filed his Appearance on October 23, 2020 at which time a review of the court file reflected:

2a) Plaintiff's First set of Discovery (called herein The Gooch Discovery) with proper notice pursuant to Supreme Court Rule 201(m) filed on October 9, 2018 (please see Plaintiff's Exhibit A attached to Plaintiff's Motion to Compel);

2b) Defendants' Response to Plaintiff's [***FIRST***] Set of Discovery Responses filed on May 29, 2019 with Supreme Court Rule 201(m) notice erroneously titling The Clinton Discovery Plaintiff's [***FIRST***] (please see Plaintiff's Exhibit C attached to Plaintiff's Motion to Compel);

2c) Report of Proceedings November 13, 2018 where Defendants' attorney informed this Honorable Court that the Gooch Discovery was outstanding (please see Plaintiff's Exhibit B attached to Plaintiff's Motion to Compel);

2d) Report of Proceedings May 30, 2019 where Plaintiff's second attorneys notified this Honorable Court that "Written discovery's been issued and defendants have answered..." without informing this Honorable Court of the agreement to withdraw the Gooch Discovery, already many months overdue, and replace it without filing a Supreme Court Rule 201(m) notice and titling The Clinton Discovery Plaintiff's ***[FIRST]*** instead of the correct title Plaintiff's Second (please see Plaintiff's Exhibit D attached to Plaintiff's Motion to Compel);

2e) This Honorable Court had issued a standing order on May 11, 2020 that all outstanding written discovery filed on or before March 23, 2020 (The Gooch Discovery filed on October 9, 2018 and The Clinton Discovery not filed but answered on May 29,

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2019 and therefore by necessity it had to be served on or before May 29, 2019) shall be completed on or before June 29, 2020.

3) Written discovery has not yet been closed by this Honorable Court.

4) Supreme Court Rule 183. Extensions of Time The court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time. Corrected February 16, 2011, effective immediately.

Therefore, based upon the Court file, Judge Thomas A. Meyer's Standing Order of May 11, 2020, the fact that the agreement to withdraw discovery and replace it was not clearly advanced to this Court, the fact that the discovery was mislabeled by Defendants, the fact that neither this Honorable Court nor Plaintiff Paul Dulberg knew of the switch pursuant to an undisclosed oral agreement between Defendants' and Plaintiff's withdrawing attorneys, that the requirements of Supreme court rule 201(m) were not followed, that a careful review of Defendants' nonresponses leaves Plaintiff to search 1455 documents for possible responses and the flexibility intended in Supreme Court Rule 183, Plaintiff's current Motion to Compel is not untimely. Accordingly, Plaintiff requests that this Honorable Court award any and all available relief under Supreme Court Rule 137.

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5) Defendants' attorney continues to ignore facts that disprove his position and mischaracterize communication received by him only.

5a) For the first time, in an e-mail dated November 14, 2021, Defendants' attorney advances his position that there was an agreement between Plaintiff's attorney Julia Williams prior to her withdrawing, acquiescing to all Defendants attorney's discovery actions. (Please see Defendants' Exhibit 3 attached to Defendants' Response To Plaintiff's Motion To Compel).

5b) On November 17, 2021 Plaintiff's current counsel attempted to confirm the allegations of Defendants' attorney agreement with Julia Williams by e-mailing her using her preferred current method of communication. (Please see Plaintiff's Exhibit I attached).

5c) On November 22, 2021 Defendants' attorney e-mailed Plaintiff's current attorney that he had spoken to Plaintiff's former attorney Julia Williams and that she acquiesced in all the Discovery activities as Defendants' attorney has described.(Please see Plaintiff's Exhibit II attached).

5d) On November 22, 2021 Plaintiff's current attorney responded by email to Defendants' attorney that " As you know, I emailed the pertinent questions to Julia Williams last week but as of today she has ignored my written questions and has not deemed me important enough to grace with the requested written answers.

I am surprised that she would talk to you but since there is no prohibition, I will just have to wait until she does answer me (now, more importantly than before -in written form)".(Please see Plaintiff's Exhibit III attached).

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5e) As of the writing of this Reply Plaintiff's withdrawn attorney Julia Williams has chosen to communicate with Defendants' attorney only.

5f) Defendants' attorney mischaracterizes the contents of an email sent to him after his verbal communications with Plaintiff's withdrawn attorney Julia Williams.

5g) In Defendants attorney's Response he states "• December 3, 2021 Julia Williams confirms [***ALL REPRESENTATIONS]*** made by Flynn in his December 2, 2021 email (Both attached as exhibit 4)" (Please see Defendants' Response Page 3 of 6)

5h) What Plaintiff's withdrawn attorney wrote is "Dear George,

I agree with your representations.

I do recall that we issued new discovery after Mr. Gooch had previously issued discovery. [***I DO NOT RECALL WHAT EXACTLY WE AGREED TO OR WHETHER WE FORMALIZED THE WITHDRAWAL OF THE ORIGINAL WRITTEN DISCOVERY ISSUED BY MR. GOOCH, BUT IT WAS MY ASSUMPTION THAT YOUR FIRM/YOUR CLIENTS WOULD ANSWER THE WRITTEN DISCOVERY ISSUED BY OUR FIRM AND WE WERE NOT INTENDING TO ENFORCE ANY REQUIREMENTS TO ANSWER THE WRITTEN DISCOVERY ISSUED BY MR. GOOCH OR HIS OFFICE, AGAIN, I THOUGHT WE HAD CONFIRMED IN WRITING OR WITH THE COURT IN AN OPEN HEARING , BUT OBVIOUSLY WE WERE UNABLE TO LOCATE THAT. I AM FAIRLY CERTAIN THAT OUR OFFICE HAD AGREED TO WITHDRAW THOSE REQUESTS]***". (Please see Defendants' Exhibit 4 attached to Defendants' Response To Plaintiff's Motion To Compel).

5i) " I do not recall what exactly we agreed to...But it was my assumption...I am fairly certain that..." does not confirm all representations made by Flynn.

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5j) Plaintiff's current Motion to Compel was brought promptly after discovery of these undisclosed issues (neither was this Honorable Court made aware, and in fact the language responding to Judge Meyers' question was all seeming, nor was the Plaintiff Paul Dulberg).

5k) "Tit for tat" reference by Defendants regarding this Motion by Plaintiff is based upon Defendants' complaint that the same response when Defendants' motion for discovery answers, that defendants had been given Discovery documents Dulberg 1-8708 that were therefore nonresponsive, is now being brought to this Honorable Court's attention as nonresponsive POP 1-001455 answers by Defendants. The more descriptive term is now "the shoe is on the other foot".

5l) Pursuant to the Court Order dated December 7, 2021 granting Plaintiff the ability to file Plaintiff's Discovery and Defendants' Responses Plaintiff attaches the following so that this Honorable Court become fully aware of alleged discovery nonresponses.

(Please see Plaintiff's Exhibit IV "The Gooch Discovery" PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS attached)

(Please see Plaintiff's Exhibit V "The Gooch Discovery" PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS attached)

(Please see Plaintiff's Exhibit VI "The Gooch Discovery" PLAINTIFF'S 213F (1),(2) & (3) INTERROGATORIES TO DEFENDANTS attached)

(Please see Plaintiff's Exhibit VII "The Clinton Discovery" DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S RESPONSE TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS attached)

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(Please see Plaintiff's Exhibit VIII "The Clinton Discovery" DEFENDANT HANS MAST'S RESPONSE TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS attached)

(Please see Plaintiff's Exhibit IX "The Clinton Discovery " DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S ANSWER TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS attached)

(Please see Plaintiff's Exhibit X "The Clinton Discovery" DEFENDANT HANS MAST'S ANSWER TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS attached)

(Please see Plaintiff's Exhibit XI "The Clinton Discovery" DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.AND HANS MAST'S ANSWER TO PLAINTIFF'S RULE 213(F) INTERROGATORIES TO DEFENDANTS attached)

6. Defendants' complicity in their attempt to mask the true state of Discovery in this matter, Defendants ongoing attempt to manipulate the facts and mischaracterize statements to support Defendants' strained version of what Julia Clinton, Plaintiff's withdrawn attorney said in her communications, both oral and written, solely with defense counsel and Defendants' nonresponsive answers to previously filed and served Discovery should warrant an order to pay for the costs and fees incurred by Plaintiff in bringing this Motion to Compel and Replying pursuant to Illinois Supreme Court Rule 137.

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WHEREFORE Plaintiff Paul Dulberg respectfully prays that this Honorable Court enter an Order instructing Defendants to respond to all outstanding written discovery and Ordering Defendants to pay costs and fees associated with this motion and for any and all further relief deemed fair and proper.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

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Julia Williams contact

Alphonse Talarico <alphonsetalarico@yahoo.com>

Wed 11/17/2021 9:27 AM

To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>



EXHIBIT 1

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tations to maintain their business relationship, and
t the individual shareholders of a corporation. Ms.
litigation, legal malpractice and attorney fees disputes.

Volunteer Legal Services, where she represents low-

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or if you prefer, call our office at
312.357.1515

Alphonse Talarico

contact@lawofficeofalphonsetalarico.com

3128081410

you agreed to this but I do not see any Notice to withdraw Discovery or Notice of filing your discovery on the McHenry Court file. Also was the judge notified because all that is reflected is Mr. Flynn

SUBMIT

PRACTICE AREAS

BUSINESS LAW

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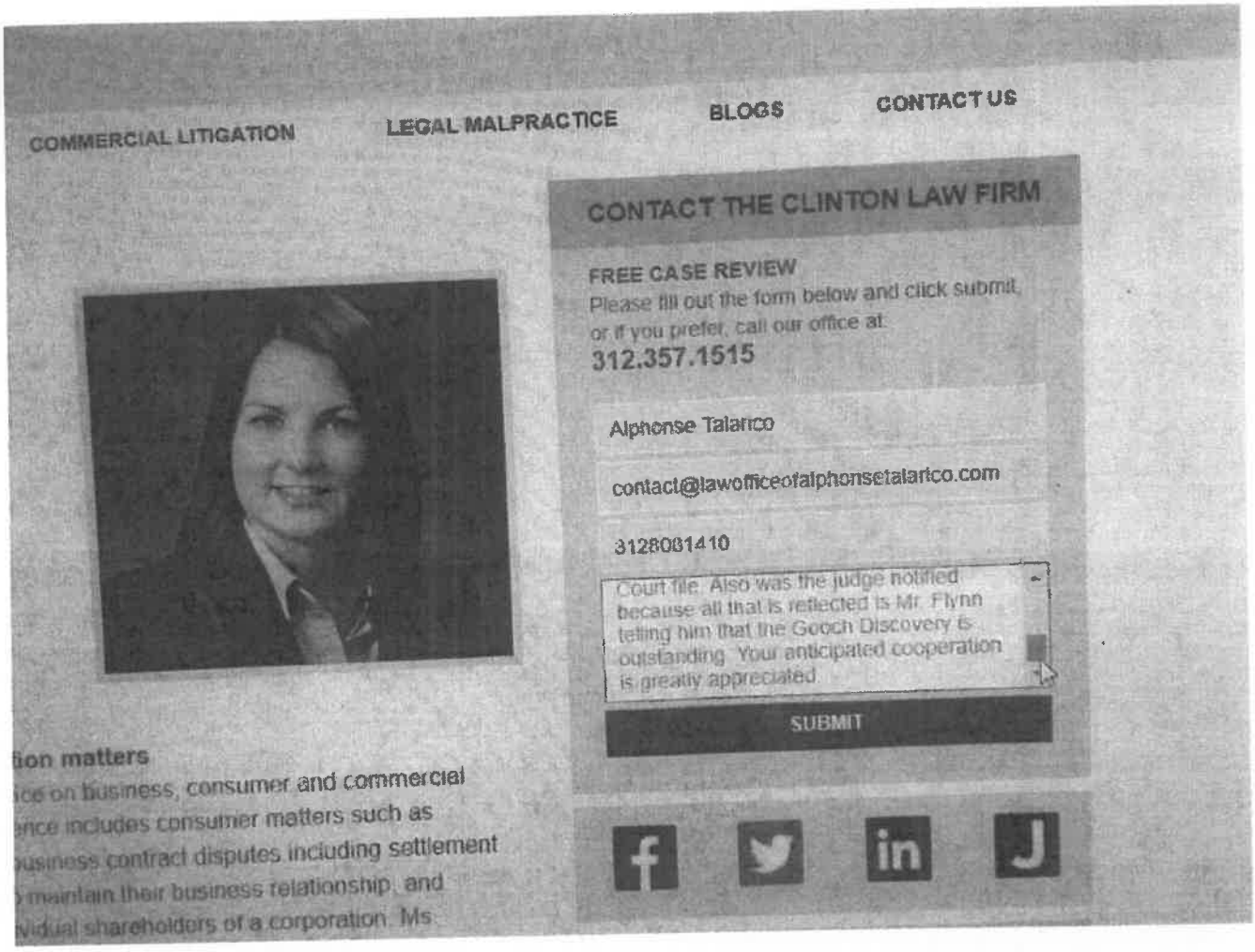

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RE: 201(K) telephone contact Tuesday in Dulberg v. Popovich

George Flynn <gflynn@karballaw.com>
Mon 11/22/2021 9:22 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Mr. Talarico:

I am available at 10:00 a.m. on Tuesday.

Since you first advised of the issues you raised last week, I spoke with Julia Williams, and have obtained copies of several hearing transcripts addressing written discovery. In short, Julia and I had an agreement that she would issue discovery to be answered. We agreed that Defendants would not answer the discovery propounded by Gooch. When Popovich and Mast answered discovery, she informed the court that it had been answered. We then moved on and she deposed Mr. Mast.

Ms. Williams had no issues or objections to Mast'a and Popovich's responses, besides some questions she had with the document production. We then made arrangements for her to view the physical file at Popovich's office. I met her there, she reviewed the file and her inquiry was satisfied. Defendants relied on Williams' agreement and representations to the court that written discovery had been answered.

With respect to the manner in which Popovich and Mast responded to Williams' document requests, Williams had no objection, given the general nature of the requests. And again, she wrote to me with some issues that she did have, and we resolved the issues. She agreed with my assessment when we spoke last week.

With this background, I do not see what issues need to be resolved at this late date. I plan to ask the court to close f(1) discovery.

In any event, please call my cell phone number at 10:00 a.m. Tuesday. 773-341-8114.

Thank you

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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From: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Sent: Sunday, November 21, 2021 12:50 PM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: 201(K) telephone contact Tuesday in Dulberg v. Popovich



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Dear Mr. Flynn,

Does Tuesday November 23, 2021 at 10:00 am work for you ?

If so, I will make the call so that we can try to find a mutually agreeable solution regarding discovery issues.

This email and our follow up telephone conversation(s) are pursuant to Supreme Court Rule 201(K).

Your anticipated cooperation is greatly appreciated,
Alphonse A. Talarico

From: George Flynn <gflynn@karballaw.com>
Sent: Wednesday, November 17, 2021 7:37 PM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: Linda Walters <lwalters@karballaw.com>
Subject: Re: 201(K) telephone contact tomorrow Dulberg v. Popovich

Mr. Talarico.

If you would still like to talk, please let me know a date and time next week that will work. I will be out of town the remainder of this week.

Thanks

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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On Nov 15, 2021, at 10:02 AM, Alphonse Talarico <contact@lawofficeofalphonsetalarico.com> wrote:

Dear Mr Flynn,

Tomorrow will not work for me.

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I am sure that additional communication is warranted but I will contact you to find a mutually agreeable date and time.

YOUR ANTICIPATED COOPERATION IS GREATLY APPRECIATED,
Alphonse A Talarico

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Re: 201(K) telephone contact Tuesday in Dulberg v. Popovich

Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Mon 11/22/2021 10:26 AM
To: George Flynn <gflynn@karballaw.com>

Dear Mr. Flynn,
I hope your out-of-town trip was concluded successfully and appreciate that you have responded so quickly to my continued Illinois Supreme Court Rule 201(k) communications.
As you know, I e-mailed the pertinent questions to Julia Williams last week but as of today she has ignored my written questions and has not deemed me important enough to grace with the requested written answers.
I am surprised that she would talk to you but since there is no prohibition, I will just have to wait until she does answer me (now, more importantly than before-in written form).
I am glad that you are available for a 201(K)-call tomorrow but that call must be delayed until I receive Julia Williams written reply.
I hope she responds in writing quickly so we can reschedule our call.

I am sure we can work out our discovery issues amicably and without court intervention.
I will contact you to reschedule our 201(K) call as soon as she responds in writing.

As always, your anticipated cooperation is greatly appreciated,
Alphonse A. Talarico



From: George Flynn <gflynn@karballaw.com>
Sent: Monday, November 22, 2021 9:22 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Subject: RE: 201(K) telephone contact Tuesday in Dulberg v. Popovich

Mr. Talarico:

I am available at 10:00 a.m. on Tuesday.

Since you first advised of the issues you raised last week, I spoke with Julia Williams, and have obtained copies of several hearing transcripts addressing written discovery. In short, Julia and I had an agreement that she would issue discovery to be answered. We agreed that Defendants would not answer the discovery propounded by Gooch. When Popovich and Mast answered discovery, she informed the court that it had been answered. We then moved on and she deposed Mr. Mast.

Ms. Williams had no issues or objections to Mast'a and Popovich's responses, besides some questions she had with the document production. We then made arrangements for her to view the physical file at Popovich's office. I met her there, she reviewed the file and her inquiry was satisfied. Defendants relied on Williams' agreement and representations to the court that written discovery had been answered.

With respect to the manner in which Popovich and Mast responded to Williams' document requests, Williams had no objection, given the general nature of the requests. And again, she wrote to me with some issues that she did have, and we resolved the issues. She agreed with my assessment when we spoke last week.

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With this background, I do not see what issues need to be resolved at this late date. I plan to ask the court to close f(1) discovery.

In any event, please call my cell phone number at 10:00 a.m. Tuesday. 773-341-8114.

Thank you

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com
CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

From: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Sent: Sunday, November 21, 2021 12:50 PM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: 201(K) telephone contact Tuesday in Dulberg v. Popovich

Dear Mr. Flynn,

Does Tuesday November 23, 2021 at 10:00 am work for you ?

If so, I will make the call so that we can try to find a mutually agreeable solution regarding discovery issues.

This email and our follow up telephone conversation(s) are pursuant to Supreme Court Rule 201(K).

Your anticipated cooperation is greatly appreciated,
Alphonse A. Talarico

From: George Flynn <gflynn@karballaw.com>
Sent: Wednesday, November 17, 2021 7:37 PM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: Linda Walters <lwalters@karballaw.com>
Subject: Re: 201(K) telephone contact tomorrow Dulberg v. Popovich

Mr. Talarico.

If you would still like to talk, please let me know a date and time next week that will work. I will be out of town the remainder of this week.

Thanks

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George Flynn

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CONFIDENTIALITY NOTE:

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On Nov 15, 2021, at 10:02 AM, Alphonse Talarico <contact@lawofficeofalphonsetalarico.com> wrote:

Dear Mr Flynn,

Tomorrow will not work for me.

I am sure that additional communication is warranted but I will contact you to find a mutually agreeable date and time.

YOUR ANTICIPATED COOPERATION IS GREATLY APPRECIATED,
Alphonse A Talarico

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	)	Case No.: 2017 LA 377
v.	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
Defendants.	)	

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS

To: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

NOW COMES Plaintiff, PAUL DULBERG ("DULBERG") by and through his attorneys THE GOOCH FIRM, and hereby respectfully moves that Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST (hereafter collectively referred to as "DEFENDANTS"), along with their attorneys and agents, produce at THE GOOCH FIRM, 209 South Main Street, Wauconda, Illinois 60084, within 28 days for inspection and copying the following:

DEFINITIONS

The following Definitions are to be considered applicable with respect to each Request contained herein:

1. "Billings" or "bills" means the monthly bills charged **DULBERG** at any time regardless of whether full or partial payments were made.

2. "Billing records" also can mean records of time billed or recorded on behalf of other clients of **DEFENDANTS** by any time keeper during the relevant period on days when that time keeper performed tasks pursuant to the engagement letter for **DULBERG.**

EXHIBIT IV

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3. "Calendar" means the master calendar of **DEFENDANTS** and all individual calendars of any person involved in the underlying case during the relevant time period.

4. "Client file" means any documents gathered or received by **DEFENDANTS** during its representation of **DULBERG** in the underlying matter.

5. "Consultant[s]" means and refers to persons, whether retained as experts or as non-experts, contacted by you or on your behalf to provide information, opinions, and/or review of materials or tangible things relating or referring to the positions or potential positions taken by you in preparation of the prenuptial agreement.

6. "Document[s]" means any written, graphic or recorded matter any object or tangible thing of every kind of description, or any combination thereof, and without limitation, whether draft, revision or final; whether original or reproduction; however produced and reproduced; whether such object, record or communication is written, typewritten, printed by hand or recorded, and including without limitation, correspondence, contracts, memorandums of understanding, term sheets, proposals, quotes, notes, memoranda, letters, reports, minutes, resolutions, summaries, telegrams, publications, invoices, purchase orders, estimations, accounting records and work papers, accounts, accounts payables, cash flow statements, commission agreements and commission statements, conferences (including but not limited to reports and/or summaries thereof), annual or other periodic reports, applications, appointment books, appraisals, assignments, assignment of beneficial interest, audit reports, calendar entries or notations, calendars, checks, checkbooks, canceled checks, cards, cartridges, cash flow statements, cassettes certificates, change orders, charts, release orders, checks, registers, receipts, statements, financial statements, filings with any government agency (including but not limited to federal, state, local or foreign governments) inventories, investigations and summaries of investigations, periodicals, photographs, slides or negatives, photographs and negatives, pictures or other matter which is able to be seen or read without mechanical or electrical assistance, plans, plates, pleadings, policies, press releases, proformas, programs, projections, promissory notes, promotional literature and materials, proof, proof of claims, records, records of meetings (including but not limited to notes, reports and summaries of conferences or interviews, whether formal or informal), recordings or transcriptions (including but n limited to notes, reports, and summaries of conferences or interviews, whether formal or informal), communiques, contracts, agreement, amendment, addendums, modifications and cancellations to contracts, recordings, transcriptions of recordings, inspection reports, videotapes, audiotapes, e-mails, facsimiles, diaries, schedules, files, file folders, original or preliminary notes, outlines, papers, personal records, loan documents, manuals or excerpts therefrom, retainer agreements, statements of income and expense, statements or books of account, statistical or information accumulations or compilations, tax returns, handbooks, and business records and shall include, without limitation, originals, duplicates, all file copies, all other copies (with or without notes or changes thereon) no matter how prepared, drafts, data, disks, tapes, databases, back-up tapes, zip-drives and disks,

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C 704

compilations, computer files, directories and any other computerized data or information, working papers, routing slips and similar materials, and including all documents which relate to the subject matter of this action.

7. "Engagement letter" and/or "engagement agreement" means the letter or agreement between **DEFENDANTS** and/or his firm and **DULBERG**.

8. "Identify" and "describe" means and refer to:

a. Provide a detail of all facts and circumstances supporting your contentions, and/or the act, occurrence, statement, communication and/or conduct which is the subject of the interrogatory and provide the date of such act, occurrence, statement or communication, the persons present, persons involved, persons who witnessed and/or persons who have knowledge of such facts, circumstances, acts, occurrences, statements, and/or communications;

b. Provide the name, address and telephone number of all persons having knowledge of such facts and circumstances and/or of all persons present, involved and/or who witnessed the same;

c. Provide the title of any responsive documents relating to the subject of the interrogatory, the person who created such documents, the persons who were the recipients of such documents, the date such documents were created and the present location of the documents; and

d. Provide the name, address, and telephone number of any company which is the subject of the interrogatory.

9. "Objects" and "tangible things" means and refers to material items or assets capable of being perceived or capable of being appraised at an actual or approximate value.

10. "Person" or "person[s]" means and refer to any natural person, partnership, corporation, joint venture, business organization whether public or private, and/or other entity and including its officers, directors, partners, joint venturers, employees, consultants, representatives, and agents.

11. "Refer[ing]" or "relate[ing] to" means to be legally, factually and/or logically connected to.

12. "Relevant time period" means the time from **May 1, 2012 to the present.**

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13. "Task" means and refers to each discrete duty, assignment or job performed by you and/or any of your employees for which you are charging fees to **DULBERG**, as contained in the Engagement Agreement.

14. "Timekeeper" means any attorney employee of **DEFENDANTS** or non-attorney employee of **DEFENDANTS** who during the relevant time period performed any task on behalf of **DULBERG** in the underlying case.

15. "Timesheets" means and refers to the maintaining, tracking or keeping record of time for legal services performed by you and/or your consultants, whether such timesheets are kept contemporaneously or non-contemporaneously, typewritten or handwritten, and/or retained in or on pre-printed forms, calendars, logs, diaries, folders, files, computer-generated forms or forms contained within computer programs, including but not limited to software designed for and used by legal firms and/or accounting departments to track time for services such as time slips and/or Excel spreadsheets and print-outs of computer generated forms.

16. "Underlying matter" means and refers to **DEFENDANTS Client/Matter Case Number 2012 LA 178** and any and all other matters involving **DULBERG**.

17. "You," "your," and "yours" means and refers to, **DULBERG**, whether acting in this name or any alias names or surnames used by you, and/or including your agents, representatives, attorneys, accountants, employees, and/or anyone acting at your direction and/or on your behalf or at your request.

18. "Your counsel" means and refers to your attorneys representing you in this case, and/or your counsel's agents, representatives and/or anyone acting at their direction or their request on your behalf.

19. Whenever used herein, the singular shall include the plural and vice versa.

20. Whenever used herein, "and" may be understood to mean "or" and vice versa whenever such construction results in a broader request for information.

21. To the extent any paragraph is objected to, please set forth all reasons for your objection, specifically identifying the legal basis for any objection based upon a claim of work product or any common law or statutory privilege as required by S. Ct. Rule 201(n).

22. Duplicitous Request: It is not the intention of this production request to duplicate responses. If any request duplicates another request, only one response is required. Reference may be made to the previous response.

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REQUESTS FOR PRODUCTION

1. Where a party has given a statement to some person or entity other than his attorney or insurer, said statement shall be produced by the person or entity to whom it was given or transferred.

RESPONSE:

2. All documents, memoranda, notes, correspondence, pleadings, settlement agreements, contracts, check, bills, invoices, or other documentary material in your possession or under your control identified in your answers to Plaintiff's First Set of Interrogatories.

RESPONSE:

3. A list giving the name, addresses and specialties of all expert witnesses other than purely consultant experts who are not to testify at the trial, omitting all persons already listed above.

RESPONSE:

4. Copies of the reports from all experts listed in paragraph 3.

RESPONSE:

5. All documents in your possession or under your control which relate in any way to **DULBERG**, as known to you on or before your last day of representation.

RESPONSE:

6. The entire client file maintained by you during your representation of **DULBERG** and following said representation not otherwise produced pursuant to Interrogatory No. 5.

RESPONSE:

7. All emails and/or text messages not otherwise produced which was sent between any member of Defendants law firm, employees and/or agents, relating to **DULBERG** or the underlying cause of action.

RESPONSE:

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8. Unless otherwise produced pursuant to requests set forth above, produce any other documents including work produce, which pertains in any way to the underlying case or this cause of action.

RESPONSE:

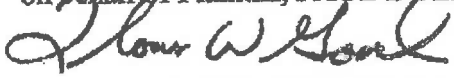
9. If privilege is claimed as to any document please produce the usual and customary privilege log.

RESPONSE:

10. Plaintiff further requests that each party and/or its attorneys furnish an affidavit stating whether the production is complete in accordance with this request for production.

RESPONSE:

Respectfully submitted by,
THE GOOCH FIRM,
on behalf of Plaintiff, PAUL DULBERG,



THOMAS W. GOOCH, III

THE GOOCH FIRM
209 South Main Street
Wauconda, IL 60084
847.526.0110
ARDC: 3123355
gooch@goochfirm.com
office@goochfirm.com

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	)	Case No.: 2017 LA 377
v.	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
Defendants.	)	

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS

To: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

NOW COMES Plaintiff, PAUL DULBERG ("DULBERG") by and through his attorneys THE GOOCH FIRM, and hereby submits his First Set of Interrogatories pursuant to Illinois Supreme Court Rule 213 to Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST (hereafter collectively referred to as "DEFENDANTS"), along with Instructions and Definitions. Plaintiff requests a written response within twenty-eight (28) days of service.

DEFINITIONS

The following Definitions are to be considered applicable with respect to each interrogatory contained herein:

1. "Billings" or "bills" means the monthly bills charged **DULBERG** at any time regardless of whether full or partial payments were made.

2. "Billing records" also can mean records of time billed or recorded on behalf of other clients of **THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST** by any time keeper during the relevant period on days when that time keeper performed tasks pursuant to the engagement letter for **DULBERG.**



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3. "Calendar" means the master calendar of **THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST** and all individual calendars of any person involved in the underlying case during the relevant time period.

4. "Client file" means any documents gathered or received by **THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST** during their representation of **DULBERG** in the underlying matter.

5. "Consultant[s]" means and refers to persons, whether retained as experts or as non-experts, contacted by you or on your behalf to provide information, opinions, and/or review of materials or tangible things relating or referring to the positions or potential positions taken by you in preparation of any documents, hearings, or settlement negotiations.

6. "Document[s]" means any written, graphic or recorded matter any object or tangible thing of every kind of description, or any combination thereof, and without limitation, whether draft, revision or final; whether original or reproduction; however produced and reproduced; whether such object, record or communication is written, typewritten, printed by hand or recorded, and including without limitation, correspondence, contracts, memorandums of understanding, term sheets, proposals, quotes, notes, memoranda, letters, reports, minutes, resolutions, summaries, telegrams, publications, invoices, purchase orders, estimations, accounting records and work papers, accounts, accounts payables, cash flow statements, commission agreements and commission statements, conferences (including but not limited to reports and/or summaries thereof), annual or other periodic reports, applications, appointment books, appraisals, assignments, assignment of beneficial interest, audit reports, calendar entries or notations, calendars, checks, checkbooks, canceled checks, cards, cartridges, cash flow statements, cassettes certificates, change orders, charts, release orders, checks, registers, receipts, statements, financial statements, filings with any government agency (including but not limited to federal, state, local or foreign governments) inventories, investigations and summaries of investigations, periodicals, photographs, slides or negatives, photographs and negatives, pictures or other matter which is able to be seen or read without mechanical or electrical assistance, plans, plates, pleadings, policies, press releases, proformas, programs, projections, promissory notes, promotional literature and materials, proof, proof of claims, records, records of meetings (including but not limited to notes, reports and summaries of conferences or interviews, whether formal or informal), recordings or transcriptions (including but n limited to notes, reports, and summaries of conferences or interviews, whether formal or informal), communiques, contracts, agreement, amendment, addendums, modifications and cancellations to contracts, recordings, transcriptions of recordings, inspection reports, videotapes, audiotapes, e-mails, facsimiles, diaries, schedules, files, file folders, original or preliminary notes, outlines, papers, personal records, loan documents, manuals or excerpts therefrom, retainer agreements, statements of income and expense, statements or books of account, statistical or information accumulations or compilations, tax returns, handbooks, and business records and shall include, without limitation,

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originals, duplicates, all file copies, all other copies (with or without notes or changes thereon) no matter how prepared, drafts, data, disks, tapes, databases, back-up tapes, zip-drives and disks, compilations, computer files, directories and any other computerized data or information, working papers, routing slips and similar materials, and including all documents which relate to the subject matter of this action.

7. "Engagement letter" and/or "engagement agreement" means the letter or agreement or retainer agreement between **THE LAW OFFICE OF THOMAS J. POPOVICH, P.C.** and **HANS MAST** and **DULBERG.**

8. "Identify" and "describe" means and refer to:

a. Provide a detail of all facts and circumstances supporting your contentions, and/or the act, occurrence, statement, communication and/or conduct which is the subject of the interrogatory and provide the date of such act, occurrence, statement or communication, the persons present, persons involved, persons who witnessed and/or persons who have knowledge of such facts, circumstances, acts, occurrences, statements, and/or communications;

b. Provide the name, address and telephone number of all persons having knowledge of such facts and circumstances and/or of all persons present, involved and/or who witnessed the same;

c. Provide the title of any responsive documents relating to the subject of the interrogatory, the person who created such documents, the persons who were the recipients of such documents, the date such documents were created and the present location of the documents; and

d. Provide the name, address, and telephone number of any company which is the subject of the interrogatory.

9. "Objects" and "tangible things" means and refers to material items or assets capable of being perceived or capable of being appraised at an actual or approximate value.

10. "Person" or "person[s]" means and refer to any natural person, partnership, corporation, joint venture, business organization whether public or private, and/or other entity and including its officers, directors, partners, joint venturers, employees, consultants, representatives, and agents.

11. "Refer[ing]" or "relate[ing] to" means to be legally, factually and/or logically connected to.

12. "Relevant time period" means the time from **May 1, 2012 to the present.**

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13. "Task" means and refers to each discrete duty, assignment or job performed by you and/or any of your employees for which you are charging fees to **DULBERG**, as contained in the Engagement Agreement.

14. "Timekeeper" means any attorney employee of **THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST** or non-attorney employee of **THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST** who during the relevant time period performed any task on behalf of **DULBERG** in the underlying case.

15. "Timesheets" means and refers to the maintaining, tracking or keeping record of time for legal services performed by you and/or your consultants, whether such timesheets are kept contemporaneously or non-contemporaneously, typewritten or handwritten, and/or retained in or on pre-printed forms, calendars, logs, diaries, folders, files, computer-generated forms or forms contained within computer programs, including but not limited to software designed for and used by legal firms and/or accounting departments to track time for services such as time slips and/or Excel spreadsheets and print-outs of computer generated forms.

16. "Underlying matter" means and refers to **PAUL DULBERG** and any and all other matters involving **DULBERG**.

17. "You," "your," and "yours" means and refers to, **THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST** whether acting in this name or any alias names or surnames used by you, and/or including your agents, representatives, attorneys, accountants, employees, and/or anyone acting at your direction and/or on your behalf or at your request.

18. "Your counsel" means and refers to your attorneys representing you in this case, and/or your counsel's agents, representatives and/or anyone acting at their direction or their request on your behalf.

19. Whenever used herein, the singular shall include the plural and vice versa.

20. Whenever used herein, "and" may be understood to mean "or" and vice versa whenever such construction results in a broader request for information.

21. To the extent any paragraph is objected to, please set forth all reasons for your objection, specifically identifying the legal basis for any objection based upon a claim of work product or any common law or statutory privilege as required by S. Ct. Rule 201(n).

22. Duplicitous Request: It is not the intention of this production request to duplicate responses. If any request duplicates another request, only one response is required. Reference may be made to the previous response.

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INTERROGATORIES

1. Please state your name and State Bar Number.

ANSWER:

2. With respect to your education, please identify each institution of higher learning that you ever attended, including the law school from which you graduated. Also, as to each institution, please set forth the following information specifically and in detail:

a. State each declared major/minor area of study.
b. Set forth each bar association of which you are a member.

ANSWER:

3. Do you maintain that you concentrate your practice in any particular type of area of the law? If so, please set forth the following information:

a. A description of the legal work, area of law, or type of matter in which your practice is concentrated
b. For how many years have you engaged in the practice of law concentrated in a particular area.

ANSWER:

4. Have you ever been suspended, censured, reprimanded or otherwise disciplined by the Illinois Supreme Court or the Attorney Registration and Disciplinary Commission of the Illinois Supreme Court?

ANSWER:

5. Did you ever enter, at any time, into or establish an attorney-client relationship with the Plaintiff? If your answer is anything other than an unconditional "no," please set forth the following information specifically and in detail:

a. The date upon which the relationship was first established, and if the relationship was ever terminated, the date or dates of each such termination.
b. The nature and description of the legal services that you agreed to provide.
c. Please identify every contract, retainer agreement, letter of engagement or

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writing that relates to the establishment of your relationship with the Plaintiff by stating a brief summary of its contents. Alternatively, in lieu of your answer, please attach the document.

ANSWER:

6. Commencing from the date when the Plaintiff first contacted you through the date of your answers to these Interrogatories, state whether you are covered or were covered by a policy of professional liability insurance (i.e., malpractice insurance) which is providing coverage or which has denied or reserved coverage for the claim of the Plaintiff? If the answer is no, see 2(c). If the answer is yes, see 2(a)-2(b):

a. Please provide the name of the insurer and the policy number.
b. If coverage has been reserved or denied, describe the reasons of for the denial or reservation and attach any document you have received from the insurer relating to the reservation or denial.
c. If you are not covered by a policy of professional liability coverage, please state the last time you were insured.

ANSWER:

7. Do you have possession of Plaintiff's client file created during the time period you represented Plaintiff?

ANSWER:

8. Did you ever represent the Plaintiff with respect to any matters other than those which are the subject of this litigation?

ANSWER:

9. Set forth the name and title of each individual who participated in the preparation, investigation, evaluation, and analysis of any aspect of your representation of the Plaintiff, including but not limited to present and former attorneys, secretaries, paralegals, investigators, law clerks, student assistants, and other individuals who participated in the handling or preparation of the Plaintiff's matter.

ANSWER:

10. With respect to each meeting, telephone conversation, mailed letters or other

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correspondence, and email discussions you had with the Plaintiff, please set forth the following:

a. The mode of the communication, date/time of the communication and the substance of the communication.

b. Identify any/all correspondence that mentions or refers to the communication by stating its date and authors. Include a brief description of the contents of the correspondence or, alternatively, attach a copy of it to your answers to these Interrogatories.

ANSWER:

11. Did you ever refuse to communicate with the Plaintiff or act on his behalf

ANSWER:

12. Did you withdraw from representation of the Plaintiff?

ANSWER:

13. With respect to the pending action against you and the firm for legal malpractice and with respect to the Plaintiff, please identify each drafting of work that you engaged in on the Plaintiff's behalf, and with respect to each, please set forth the following information specifically and in detail:

a. A description of the work performed. The date that the work was performed, the approximate amount of time spent, and the amount charged to the Plaintiff for said work.

ANSWER:

14. State the name, title and telephone number of any employee of any Defendant during your period of representation of the Plaintiff.

ANSWER:

15. State the name of the person responsible for assembling monthly bills/invoices and sending them to the Plaintiff during the time period you represented Plaintiff.

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ANSWER:

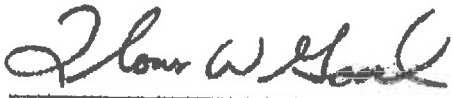
16. If any person listed in Interrogatory No. 15 is no longer employed by you, identify that person by name and providing telephone number.

ANSWER:

17. Describe all documents reviewed by anyone in the course of preparation of the responses to these interrogatories.

ANSWER:

Respectfully submitted,
THE GOOCH FIRM
on behalf of Plaintiff, PAUL DULBERG,



THOMAS W. GOOCH, III

THE GOOCH FIRM
209 South Main Street
Wauconda, IL 60084
(847) 526-0110
ARDC No. 3123355
gooch@goochfirm.com

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	)	Case No.: 2017 LA 377
v.	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
Defendants.	)	

PLAINTIFF'S 213F (1), (2) & (3) INTERROGATORIES TO DEFENDANTS

To: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

NOW COMES your Plaintiff, PAUL DULBERG, by and through his attorneys THE GOOCH FIRM, and for his Supreme Court Rule 213(f) Interrogatories Propounded to the Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH and HANS MAST, states as follows:

1. Pursuant to Illinois Supreme Court Rule 213(f)(1), provide the following of each witness who will testify at Trial as a lay witness:

(a) his or her name, address, telephone number, occupation, and current employment;

(b) the subject matter of his or her expertise;

(c) his or her educational background, academic qualifications, employment history, employment experience, and any other matters which you contend qualify him or her as an expert;

(d) the identification of any and all statements, reports, letters, tape recordings, photographs, memoranda, or

EXHIBIT
VI

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documentation of any type furnished to or obtained by said expert or experts;

(e) the substance of all facts and opinions which he or she could testify, if called as a witness;

(f) the bases and grounds for each such opinion;

(g) the identification of all documents and other tangible evidence relied upon by the opinion witness as a basis for his or her opinion;

(h) the contractual agreement for his or her retention in this case, including the amount of his or her compensation, whether the compensation has already been paid, and whether any compensation is contingent on the outcome of this litigation;

(i) the identification of each book, article, paper, or public statement by the opinion witness which relates to the subject matter of his or her expertise; and

(j) the name and document number of each judicial, administrative or legislative proceeding which he or she has testified or otherwise (as by deposition or affidavit) given evidence within the last ten (10) years, plus the name of the court or other body before which the evidence was given.

ANSWER:

2. Pursuant to Illinois Supreme Court Rule 213(f)(2), provide the following of each witness who will testify at Trial as an independent expert witness:

(a) his or her name, address, telephone number, occupation, and current employment;

(b) the subject matter of his or her expertise;

(c) his or her educational background, academic qualifications, employment history, employment experience, and any other matters which you contend qualify him or her as an expert;

(d) the identification of any and all statements, reports, letters, tape recordings, photographs, memoranda, or

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documentation of any type furnished to or obtained by said expert or experts;

(e) the substance of all facts and opinions which he or she could testify, if called as a witness;

(f) the bases and grounds for each such opinion;

(g) the identification of all documents and other tangible evidence relied upon by the opinion witness as a basis for his or her opinion;

(h) the contractual agreement for his or her retention in this case, including the amount of his or her compensation, whether the compensation has already been paid, and whether any compensation is contingent on the outcome of this litigation;

(i) the identification of each book, article, paper, or public statement by the opinion witness which relates to the subject matter of his or her expertise; and

(j) the name and document number of each judicial, administrative or legislative proceeding which he or she has testified or otherwise (as by deposition or affidavit) given evidence within the last ten (10) years, plus the name of the court or other body before which the evidence was given.

ANSWER:

3. Pursuant to Illinois Supreme Court Rule 213(f)(3), provide the following of each witness who will testify at Trial as a controlled expert witness:

(a) his or her name, address, telephone number, occupation, and current employment;

(b) the subject matter of his or her expertise;

(c) his or her educational background, academic qualifications, employment history, employment experience, and any other matters which you contend qualify him or her as an expert;

(d) the identification of any and all statements, reports, letters, tape recordings, photographs, memoranda, or

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documentation of any type furnished to or obtained by said expert or experts;

(e) the substance of all facts and opinions which he or she could testify, if called as a witness;

(f) the bases and grounds for each such opinion;

(g) the identification of all documents and other tangible evidence relied upon by the opinion witness as a basis for his or her opinion;

(h) the contractual agreement for his or her retention in this case, including the amount of his or her compensation, whether the compensation has already been paid, and whether any compensation is contingent on the outcome of this litigation;

(i) the identification of each book, article, paper, or public statement by the opinion witness which relates to the subject matter of his or her expertise; and

(j) the name and document number of each judicial, administrative or legislative proceeding which he or she has testified or otherwise (as by deposition or affidavit) given evidence within the last ten (10) years, plus the name of the court or other body before which the evidence was given.

ANSWER:

Respectfully submitted by

THE GOOCH FIRM on behalf of Plaintiff,
PAUL DULBERG,



THOMAS W. GOOCH, III

THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No. 3123355

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	)	
vs.	)	No. 17 LA 377
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	

DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S RESPONSE TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS

NOW COMES Defendant, The Law Offices of Thomas J. Popovich, P.C. ("Popovich"), by and through its attorneys, KARBAL, COHEN, ECONOMOU, SILK & DUNNE LLC, and for its Response to Plaintiff's First Set of Document Requests, states as follows:

DEFINITIONS

1. The term "documents" is defined to include all written, typed, printed, transcribed, filed, or graphic matter of every kind and description, including originals, copies of originals or copies of copies, drafts, carbon copies, printouts, including, but not limited to, letters, reports, memoranda (including those of telephone or other conversations), emails, text messages, instant messaging (such as GChat or Facebook Messenger), minutes, communications, plans, specifications, blueprints, drawings, job site logs, shop drawings, agreements, working papers, financial statements and records, accounting data, property records, travel records, purchase orders, invoices, receipts, checks, checkbooks, bank accounts, legal documents, stenographic notes, photostats, photographs, microfilms, summaries, discs, reels, tapes, computer programs, computer printouts, films, or other forms of mechanical or electrical transcription of information, tables, diary entries, schedules, desk calendars or pads, or advertisements.

2. "And" as well as "or" are to be construed either disjunctively or conjunctively so as to bring within the scope of this request any matters which otherwise may be construed as outside its scope.

3. Whenever appropriate, the singular form of a word should additionally be interpreted in the plural and the plural form of a word should additionally be interpreted in the singular.



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4. The term "relating to in any way" means in any way logically or factually connected with the matter set forth.

5. The term "pertaining to" means. without limitation. embodying, mentioning, relating to. or concerning directly or indirectly, in whole or in part the subject matter identified.

6. The terms "refer to" or "relate to" mean the following inclusive: (i) constitute, (ii) contain, (iii) support, (iv) modify, (v) contradict, (vi) criticize, (vii) discuss, (viii) mention, (ix) describe, (x) evaluate, (xi) arise from, or (xii) make in connection with.

7. The term "person" shall include all natural persons and corporations, partnerships, limited partnerships, joint ventures, sole proprietorships, trusts, associations, firms, companies, business styles, clubs or other business or legal entities of any kind.

8. "In your possession, custody or control" includes all documents held or controlled by you in *any* capacity including, but not limited to, your capacity as officer, director, trustee. or agent for your own account or the account of others, and includes your present or former attorneys, accountants, officers, employees, directors, trustees, agents, or other persons purporting to act on your behalf in any capacity.

9. "Communication" means a transfer, attempted transfer, or request for a transfer of information by a person including, without limitation, transfers, attempted transfers, or requests for transfer of information between parts or divisions of a person other than a natural person, or any file thereof.

10. Plaintiff is not seeking any communications between Defendant and its counsel of record.

11. The term "Defendant" refers to Defendant Hans Mast, Defendant Law Offices of Thomas Popovich, and any attorneys, paralegals or staff persons who worked on their behalf or on the Dulberg Matter, as defined below.

12. The term "Dulberg Matter" refers to the case of Paul Dulberg v. David Gagnon, Caroline McGuire, and Bill McGuire, *12 LA 178*, filed in Circuit Court of the Twenty Second Judicial Circuit, McHenry County, and any ancillary legal representation of Paul Dulberg related to that filed case, the arbitration, and/or all legal services provided to Paul Dulberg regarding the facts alleged in the case that was filed.

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DOCUMENTS AND COMMUNICATIONS FOR WHICH PRIVILEGE IS CLAIMED

If any document called for herein is not produced by you on the ground that it is privileged or otherwise protected against discovery by any rule of law, provide the following information in writing at the time and place specified for production of documents with respect to each such document:

1. Identify the document by stating the title of the document, the identity of the author(s) and recipient(s) of the document, the length of the document, and detailed description of the contents of the document;

2. Identify the present location and possessors of the original and each copy of the document and state the date or approximate date on which said recipient(s) received such original or copy;

3. Identify all other persons to whom the contents of the document have been disclosed, state the date such disclosure took place and the means of such disclosure, and identify all persons involved in the disclosure; and

4. State the privilege or other rule of law relied upon by you and the facts supporting your position with respect thereto.

DOCUMENTS TO BE PRODUCED

1. All communications, correspondence, emails or text messages from between Plaintiffs and Defendants.

RESPONSE: See attached documents bates labeled POP 000001 through POP 001455.

2. A copy of Defendant's complete file for the Dulberg Case, including all pleadings, orders, discovery, settlement documents, billing records, arbitration pleadings, correspondence, emails, text messages, memoranda and notes whether in handwriting or transcribed.

RESPONSE: See attached documents bates labeled POP 000001 through POP 001455.

3. Any and all communications, correspondence, emails or text messages to any third-party witness, including expert witnesses, concerning the Dulberg Case.

RESPONSE: See attached documents bates labeled POP 000001 through POP 001455.

4. All drafts concerning the Dulberg Case, including any drafts of interrogatory answers or expert disclosures.

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RESPONSE: None other than those documents ultimately served or filed in the underlying matter.

5. All internal memoranda or notes concerning the Dulberg Case.

RESPONSE: See attached documents bates labeled POP 000001 through POP 001455.

6. All invoices concerning the Dulberg Case.

RESPONSE: See attached documents bates labeled POP 000001 through POP 001455.

7. All time entries concerning the Dulberg Case.

RESPONSE: None.

8. A copy of any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy judgment.

RESPONSE: See declarations page, bates labeled POP 000001 through POP 000002. Note that premium and deductible information has been redacted.

9. A copy of any documents, electronically stored information, and tangible things that the Defendant may use to support any claim or defense.

RESPONSE: None other than those documents being produced herewith, bates labeled POP 000001 through POP 001455, including transcripts of the depositions from the underlying case in defendant's counsel's possession (Paul Dulberg, David Gagnon, Carolyn McGuire, Bill McGuire, Michael McArtor). Investigation continues.

10. A copy of all documents identified in your response to the Complaint, 213 discovery responses, or other pleadings or discovery responses in the above captioned case.

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RESPONSE: None other than those produced herewith bates labeled POP 000001 through POP 001455.

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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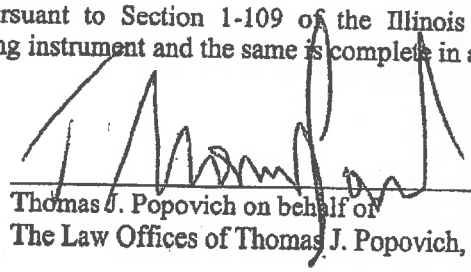
Verification

Under penalties provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that I have read the foregoing instrument and the same is complete in accordance with the request to the best of my knowledge.

By: 

Thomas J. Popovich on behalf of
The Law Offices of Thomas J. Popovich, P.C.

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANT HANS MAST 'S RESPONSE TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS

NOW COMES Defendant, Hans Mast ("Mast"), by and through his attorneys, KARBAL, COHEN, ECONOMOU, SILK & DUNNE LLC, and for his Response to Plaintiff's First Set of Document Requests, states as follows:

DEFINITIONS

1. The term "documents" is defined to include all written, typed, printed, transcribed, filed, or graphic matter of every kind and description, including originals, copies of originals or copies of copies, drafts, carbon copies, printouts, including, but not limited to, letters, reports, memoranda (including those of telephone or other conversations), emails, text messages, instant messaging (such as GChat or Facebook Messenger), minutes, communications, plans, specifications, blueprints, drawings, job site logs, shop drawings, agreements, working papers, financial statements and records, accounting data, property records, travel records, purchase orders, invoices, receipts, checks, checkbooks, bank accounts, legal documents, stenographic notes, photostats, photographs, microfilms, summaries, discs, reels, tapes, computer programs, computer printouts, films, or other forms of mechanical or electrical transcription of information, tables, diary entries, schedules, desk calendars or pads, or advertisements.

2. "And" as well as "or" are to be construed either disjunctively or conjunctively so as to bring within the scope of this request any matters which otherwise may be construed as outside its scope.

3. Whenever appropriate, the singular form of a word should additionally be interpreted in the plural and the plural form of a word should additionally be interpreted in the singular.



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4. The term "relating to in any way" means in any way logically or factually connected with the matter set forth.

5. The term "pertaining to" means. without limitation. embodying, mentioning, relating to. or concerning directly or indirectly, in whole or in part the subject matter identified.

6. The terms "refer to" or "relate to" mean the following inclusive: (i) constitute, (ii) contain, (iii) support, (iv) modify, (v) contradict, (vi) criticize, (vii) discuss, (viii) mention, (ix) describe, (x) evaluate, (xi) arise from, or (xii) make in connection with.

7. The term "person" shall include all natural persons and corporations, partnerships, limited partnerships, joint ventures, sole proprietorships, trusts, associations, firms, companies, business styles, clubs or other business or legal entities of any kind.

8. "In your possession, custody or control" includes all documents held or controlled by you in *any* capacity including, but not limited to, your capacity as officer, director, trustee. or agent for your own account or the account of others, and includes your present or former attorneys, accountants, officers, employees, directors, trustees, agents, or other persons purporting to act on your behalf in any capacity.

9. "Communication" means a transfer, attempted transfer, or request for a transfer of information by a person including, without limitation, transfers, attempted transfers, or requests for transfer of information between parts or divisions of a person other than a natural person, or any file thereof.

10. Plaintiff is not seeking any communications between Defendant and its counsel of record.

11. The term "Defendant" refers to Defendant Hans Mast, Defendant Law Offices of Thomas Popovich, and any attorneys, paralegals or staff persons who worked on their behalf or on the Dulberg Matter, as defined below.

12. The term "Dulberg Matter" refers to the case of Paul Dulberg v. David Gagnon, Caroline McGuire, and Bill McGuire, *12 LA 178*, filed in Circuit Court of the Twenty Second Judicial Circuit, McHenry County, and any ancillary legal representation of Paul Dulberg related to that filed case, the arbitration, and/or all legal services provided to Paul Dulberg regarding the facts alleged in the case that was filed.

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DOCUMENTS AND COMMUNICATIONS FOR WHICH PRIVILEGE IS CLAIMED

If any document called for herein is not produced by you on the ground that it is privileged or otherwise protected against discovery by any rule of law, provide the following information in writing at the time and place specified for production of documents with respect to each such document:

1. Identify the document by stating the title of the document, the identity of the author(s) and recipient(s) of the document, the length of the document, and detailed description of the contents of the document;

2. Identify the present location and possessors of the original and each copy of the document and state the date or approximate date on which said recipient(s) received such original or copy;

3. Identify all other persons to whom the contents of the document have been disclosed, state the date such disclosure took place and the means of such disclosure, and identify all persons involved in the disclosure; and

4. State the privilege or other rule of law relied upon by you and the facts supporting your position with respect thereto.

DOCUMENTS TO BE PRODUCED

1. All communications, correspondence, emails or text messages from between Plaintiffs and Defendants.

RESPONSE: See attached documents bates labeled POP 000001 through POP 001455.

2. A copy of Defendant's complete file for the Dulberg Case, including all pleadings, orders, discovery, settlement documents, billing records, arbitration pleadings, correspondence, emails, text messages, memoranda and notes whether in handwriting or transcribed.

RESPONSE: See attached documents bates labeled POP 000001 through POP 001455.

3. Any and all communications, correspondence, emails or text messages to any third-party witness, including expert witnesses, concerning the Dulberg Case.

RESPONSE: See attached documents bates labeled POP 000001 through POP 001455.

4. All drafts concerning the Dulberg Case, including any drafts of interrogatory answers or expert disclosures.

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RESPONSE: None other than those documents ultimately served or filed in the underlying matter.

5. All internal memoranda or notes concerning the Dulberg Case.

RESPONSE: See attached documents bates labeled POP 000001 through POP 001455.

6. All invoices concerning the Dulberg Case.

RESPONSE: See attached documents bates labeled POP 000001 through POP 001455.

7. All time entries concerning the Dulberg Case.

RESPONSE: None.

8. A copy of any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy judgment.

RESPONSE: See declarations page, bates labeled POP 000001 through POP 000002. Note that premium and deductible information has been redacted.

9. A copy of any documents, electronically stored information, and tangible things that the Defendant may use to support any claim or defense.

RESPONSE: None other than those documents being produced herewith, bates labeled POP 000001 through POP 001455, including transcripts of the depositions from the underlying case in defendant's counsel's possession (Paul Dulberg, David Gagnon, Carolyn McGuire, Bill McGuire, Michael McArtor). Investigation continues.

10. A copy of all documents identified in your response to the Complaint, 213 discovery responses, or other pleadings or discovery responses in the above captioned case.

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RESPONSE: None other than those produced herewith bates labeled POP 000001 through POP 001455.

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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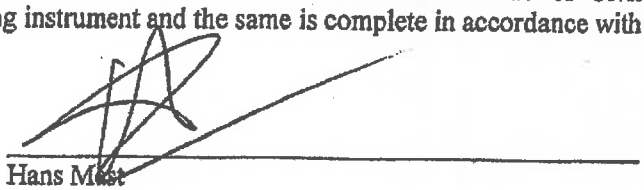
Verification

Under penalties provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that I have read the foregoing instrument and the same is complete in accordance with the request to the best of my knowledge.

By: 

Hans Mast

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	)	
vs.	)	No. 17 LA 377
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	

DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. 'S ANSWER TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS

NOW COMES Defendant, The Law Offices of Thomas J. Popovich, P.C. ("Popovich"), by and through its attorneys, KARBAL, COHEN, ECONOMOU, SILK & DUNNE LLC, and for its Answer to Plaintiff's First Set of Interrogatories, states as follows:

DEFINITIONS

1. The term "Document" as used herein shall mean and refer to all written and graphic matters of any kind or description, however, produced, reproduced, or transcribed whether draft, revision or final, original or reproduction, and also tangible or intangible from which written or graphic matters may be generated, produced or transcribed, including, but not limited to, all advertisements, affidavits, agreements, announcements, appointment records, assignments, balance sheets, bills, books, books of account, bulletins, cable grams, catalogues, certificates, charters, charts, checks, communications, computations, computer printouts, computer tapes, discs or other data-storage devices, contracts, correspondence, data processing materials, delivery records, diaries, drafts, drawings, estimates, field notes, financial analysis, financial statements, interoffice and intraoffice communications, instructions, invoices, itemizations, jottings, journals, letters, licenses, lists, manuals, meeting reports, memoranda, memoranda of all conversations including telephone calls, microfilm, minutes, notes, notations, notices, opinions, pamphlets, papers, permits, photocopies, photographs, plans, proofs, publications, receipts, reportings, statements, statistical records, studies, summaries, tapes, telegrams, telex messages, transcripts, writing or work papers and all non-identical copies thereof which are in your possession, custody or control or which are in the possession, custody or control of your attorneys, accountants, or any of your agents or of which you have knowledge of current or former existence. The term "Document" also includes any copies of a Document if the copies are in any way whatsoever not identical copies of the original, by reason of additional writing notations or otherwise.

EXHIBIT IX

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2. As used herein, one thing shall "Relate" or be "Related" to another if the former constitutes, contains, embodies, evidences, reflects, identifies, states or refers to, or is in any way legally, logically or factually relevant to, or connected with, the latter.

3. "Identify," as used herein with respect to a natural person, shall mean state such person's name, residence address, business address, employment and job title, both at the time of the events and at the present time.

4. "Identify," as used herein with respect to an entity, shall mean state the entity's name, address, principal place of business, and its legal structure (*i.e.,* corporation), registered agent and identify all individuals acting on its behalf.

5. "Identify" as used herein with respect to a communication, shall mean to state the date of that communication, the identity of the person who were parties to that communication, the identity of the person who were witnesses (other than the parties to the communication) to the communication; whether the communication was face-to-face and/or over the telephone or other telecommunications, and if face-to-face, the location of the communication, and the identity of any documents that pertain to that communication.

6. "Online" shall mean electronic information transmitted through telecommunications lines or networked lines, including but not limited to web pages, blogs, web postings, electronic mail systems, instant messenger systems, or twitter.

7. "You" shall mean Defendant Hans Mast, Defendant Law Offices of Thomas Popovich as well as any attorney, paralegal, staff, or other agent acting on his/her/its behalf. If an agent is acting on your behalf, identify the agent.

8. The term "Defendant" refers to Defendant Hans Mast, Defendant Law Offices of Thomas Popovich, and any attorneys, paralegals or staff persons who worked on their behalf or on the Dulberg Matter, as defined below.

9. The term "Dulberg Matter" refers to the case of Paul Dulberg v. David Gagnon, Caroline McGuire, and Bill McGuire, *12 LA 178*, filed in Circuit Court of the Twenty Second Judicial Circuit, McHenry County, and any ancillary legal representation of Paul Dulberg related to that filed case, the arbitration, and/or all legal services provided to Paul Dulberg regarding the facts alleged in the case that was filed.

INSTRUCTIONS

1. In answering these Interrogatories, you are required to furnish all information that is available to you or subject to reasonable inquiry by you, including information in your possession, or in possession of your attorneys, experts or other person(s) directly or indirectly employed by, or connected with you or your attorneys, and anyone otherwise subject to you or your attorneys' control.

2. The singular shall include the plural and the plural shall include the singular.

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3. A masculine, feminine or neuter pronoun shall not exclude the other genders.

4. Separate answers are required to be given for each interrogatory, responses to separate interrogatories should not be joined together, nor should they be joined with Responses to Document Requests.

5. If any response calls for information that you claim is privileged or otherwise protected from disclosure, you shall comply with the requirements contained in Supreme Court Rule 213.

6. If you object to any interrogatory, you shall indicate which portion of the interrogatory is objected to and the basis of this objection, and answer the portion of the interrogatory that is not objectionable.

7. These interrogatories are continuing in nature with answers to be supplemented as you obtain or locate further information.

8. In accordance with Supreme Court Rule 213, attach an affidavit attesting to the completeness and accuracy of your answers.

9. Unless otherwise identified, the time frame for this request is April 1, 2012 to the present.

INTERROGATORIES

1. Identify the person or agent of an entity responding to these interrogatories.

ANSWER: Thomas J. Popovich.

2. Identify any person or agent of an entity who assisted in answering any discovery requests in this case, including the specific request that was responded to and the information provided.

ANSWER: Thomas J. Popovich with assistance of counsel, George Flynn of Karbal, Cohen, Economou, Silk, & Dunne, LLC.

3. Identify any person or agent of an entity who provided information in responding to any pleading in this matter.

ANSWER: Hans Mast and Thomas J. Popovich.

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4. Identify any person or entity that has information related to the facts alleged in the complaint and/or affirmative defenses in this matter, along with the subject of the information.

ANSWER: It is likely that the plaintiff Paul Dulberg has information related to the facts alleged in the complaint, as well as both defendants, Hans Mast and Thomas J. Popovich.

5. Identify any person likely to have discoverable information that you may use to support any claims or defenses in this matter, along with the subject of the information.

ANSWER: As for the underlying matter, it is likely that the fact witnesses who were deposed, including Paul Dulberg, Bill McGuire, Carolyn McGuire, Michael McArtor, and David Gagnon likely have discoverable information relating to the claims or defenses in the matter. It is also likely that Dr. Marcus Talerico, Dr. Scott Sagerman, Dr. Apiwat Ford, and Dr. Kujawa possess information regarding Dulberg's injuries.

6. Describe in detail any legal services requested of you by Plaintiff.

ANSWER: Generally, Hans Mast of the Law Offices of Thomas J. Popovich, P.C. was primarily responsible for prosecuting personal injury claims on behalf of the plaintiff in connection with his alleged injury of June 28, 2011.

7. Describe in detail all legal services, including advice to settle, provided to Plaintiff and the basis for that advice.

ANSWER: Objection. Interrogatory is overly broad and unduly burdensome, and calls for a narrative response more appropriate for a deposition. Notwithstanding and without waiving said objections, and pursuant to Illinois Supreme Court Rule 213(e), please see all correspondence between Mast and Dulberg in connection with the underlying case, produced in response to Plaintiff's request for the production of documents.

8. Describe in detail all investigation conducted regarding the Dulberg Case.

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ANSWER: Written discovery was exchanged with the defendants in the underlying matter, and discovery depositions of all those witnesses identified in response to interrogatory no. 5, were conducted. Counsel for defendants has ordered and is possession of copies of the transcripts of Paul Dulberg, David Gagnon, Carolyn McGuire, Bill McGuire, and Michael McArtor.

9. Describe in detail on[sic] discovery performed on this case.

ANSWER: See answer to interrogatory no. 8.

10. Describe in detail all communications, correspondence, and discussions with any expert retained by You or Plaintiff in this case.

ANSWER: None at this time. Defendants reserve the right to identify expert witnesses at the appropriate court mandated time.

11. Do you maintain any insurance policy or insurance agreement under which an insurance business may be liable to satisfy all or party of a possible judgment in this above captioned action or to indemnify or reimburse for payments made to satisfy the judgment? If yes, please identify the insurance business and policy limits.

ANSWER: Yes. See attached declaration page. Premium and Deductible information have been redacted.

12. Have you notified the insurance business which may be liable to satisfy all or party of a possible judgment in this above captioned action or to indemnify or reimburse for payments made to satisfy the judgment of the pending claims?

ANSWER: Yes.

Respectfully submitted,

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/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

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KARBAL COHEN ECONOMOU SILK DUNNE, LLC
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Verification

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes them to be true.

By: _____

Thomas J. Popovich on behalf of
The Law Offices of Thomas J. Popovich, P.C.

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANT HANS MAST 'S ANSWER TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS

NOW COMES Defendant, Hans Mast ("Mast"), by and through its attorneys, KARBAL, COHEN, ECONOMOU, SILK & DUNNE LLC, and for his Answer to Plaintiff's First Set of Interrogatories, states as follows:

DEFINITIONS

1. The term "Document" as used herein shall mean and refer to all written and graphic matters of any kind or description, however, produced, reproduced, or transcribed whether draft, revision or final, original or reproduction, and also tangible or intangible from which written or graphic matters may be generated, produced or transcribed, including, but not limited to, all advertisements, affidavits, agreements, announcements, appointment records, assignments, balance sheets, bills, books, books of account, bulletins, cable grams, catalogues, certificates, charters, charts, checks, communications, computations, computer printouts, computer tapes, discs or other data-storage devices, contracts, correspondence, data processing materials, delivery records, diaries, drafts, drawings, estimates, field notes, financial analysis, financial statements, interoffice and intraoffice communications, instructions, invoices, itemizations, jottings, journals, letters, licenses, lists, manuals, meeting reports, memoranda, memoranda of all conversations including telephone calls, microfilm, minutes, notes, notations, notices, opinions, pamphlets, papers, permits, photocopies, photographs, plans, proofs, publications, receipts, reportings, statements, statistical records, studies, summaries, tapes, telegrams, telex messages, transcripts, writing or work papers and all non-identical copies thereof which are in your possession, custody or control or which are in the possession, custody or control of your attorneys, accountants, or any of your agents or of which you have knowledge of current or former existence. The term "Document" also includes any copies of a Document if the copies are in any way whatsoever not identical copies of the original, by reason of additional writing notations or otherwise.



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2. As used herein, one thing shall "Relate" or be "Related" to another if the former constitutes, contains, embodies, evidences, reflects, identifies, states or refers to, or is in any way legally, logically or factually relevant to, or connected with, the latter.

3. "Identify," as used herein with respect to a natural person, shall mean state such person's name, residence address, business address, employment and job title, both at the time of the events and at the present time.

4. "Identify," as used herein with respect to an entity, shall mean state the entity's name, address, principal place of business, and its legal structure (*i.e.,* corporation), registered agent and identify all individuals acting on its behalf.

5. "Identify" as used herein with respect to a communication, shall mean to state the date of that communication, the identity of the person who were parties to that communication, the identity of the person who were witnesses (other than the parties to the communication) to the communication; whether the communication was face-to-face and/or over the telephone or other telecommunications, and if face-to-face, the location of the communication, and the identity of any documents that pertain to that communication.

6. "Online" shall mean electronic information transmitted through telecommunications lines or networked lines, including but not limited to web pages, blogs, web postings, electronic mail systems, instant messenger systems, or twitter.

7. "You" shall mean Defendant Hans Mast, Defendant Law Offices of Thomas Popovich as well as any attorney, paralegal, staff, or other agent acting on his/her/its behalf. If an agent is acting on your behalf, identify the agent.

8. The term "Defendant" refers to Defendant Hans Mast, Defendant Law Offices of Thomas Popovich, and any attorneys, paralegals or staff persons who worked on their behalf or on the Dulberg Matter, as defined below.

9. The term "Dulberg Matter" refers to the case of Paul Dulberg v. David Gagnon, Caroline McGuire, and Bill McGuire, *12 LA 178*, filed in Circuit Court of the Twenty Second Judicial Circuit, McHenry County, and any ancillary legal representation of Paul Dulberg related to that filed case, the arbitration, and/or all legal services provided to Paul Dulberg regarding the facts alleged in the case that was filed.

INSTRUCTIONS

1. In answering these Interrogatories, you are required to furnish all information that is available to you or subject to reasonable inquiry by you, including information in your possession, or in possession of your attorneys, experts or other person(s) directly or indirectly employed by, or connected with you or your attorneys, and anyone otherwise subject to you or your attorneys' control.

2. The singular shall include the plural and the plural shall include the singular.

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3. A masculine, feminine or neuter pronoun shall not exclude the other genders.

4. Separate answers are required to be given for each interrogatory, responses to separate interrogatories should not be joined together, nor should they be joined with Responses to Document Requests.

5. If any response calls for information that you claim is privileged or otherwise protected from disclosure, you shall comply with the requirements contained in Supreme Court Rule 213.

6. If you object to any interrogatory, you shall indicate which portion of the interrogatory is objected to and the basis of this objection, and answer the portion of the interrogatory that is not objectionable.

7. These interrogatories are continuing in nature with answers to be supplemented as you obtain or locate further information.

8. In accordance with Supreme Court Rule 213, attach an affidavit attesting to the completeness and accuracy of your answers.

9. Unless otherwise identified, the time frame for this request is April 1, 2012 to the present.

INTERROGATORIES

1. Identify the person or agent of an entity responding to these interrogatories.

ANSWER: Hans Mast.

2. Identify any person or agent of an entity who assisted in answering any discovery requests in this case, including the specific request that was responded to and the information provided.

ANSWER: Thomas J. Popovich with assistance of counsel, George Flynn of Karbal, Cohen, Economou, Silk, & Dunne, LLC.

3. Identify any person or agent of an entity who provided information in responding to any pleading in this matter.

ANSWER: Hans Mast and Thomas J. Popovich.

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4. Identify any person or entity that has information related to the facts alleged in the complaint and/or affirmative defenses in this matter, along with the subject of the information.

ANSWER: It is likely that the plaintiff Paul Dulberg has information related to the facts alleged in the complaint, as well as both defendants, Hans Mast and Thomas J. Popovich.

5. Identify any person likely to have discoverable information that you may use to support any claims or defenses in this matter, along with the subject of the information.

ANSWER: As for the underlying matter, it is likely that the fact witnesses who were deposed, including Paul Dulberg, Bill McGuire, Carolyn McGuire, Michael McArtor, and David Gagnon likely have discoverable information relating to the claims or defenses in the matter. It is also likely that Dr. Marcus Talerico, Dr. Scott Sagerman, Dr. Apiwat Ford, and Dr. Kujawa possess information regarding Dulberg's injuries.

6. Describe in detail any legal services requested of you by Plaintiff.

ANSWER: Generally, Hans Mast of the Law Offices of Thomas J. Popovich, P.C. was primarily responsible for prosecuting personal injury claims on behalf of the plaintiff in connection with his alleged injury of June 28, 2011.

7. Describe in detail all legal services, including advice to settle, provided to Plaintiff and the basis for that advice.

ANSWER: Objection. Interrogatory is overly broad and unduly burdensome, and calls for a narrative response more appropriate for a deposition. Notwithstanding and without waiving said objections, and pursuant to Illinois Supreme Court Rule 213(e), please see all correspondence between Mast and Dulberg in connection with the underlying case, produced in response to Plaintiff's request for the production of documents.

8. Describe in detail all investigation conducted regarding the Dulberg Case.

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ANSWER: Written discovery was exchanged with the defendants in the underlying matter, and discovery depositions of all those witnesses identified in response to interrogatory no. 5, were conducted. Counsel for defendants has ordered and is possession of copies of the transcripts of Paul Dulberg, David Gagnon, Carolyn McGuire, Bill McGuire, and Michael McArtor.

9. Describe in detail on[sic] discovery performed on this case.

ANSWER: See answer to interrogatory no. 8.

10. Describe in detail all communications, correspondence, and discussions with any expert retained by You or Plaintiff in this case.

ANSWER: None at this time. Defendants reserve the right to identify expert witnesses at the appropriate court mandated time.

11. Do you maintain any insurance policy or insurance agreement under which an insurance business may be liable to satisfy all or party of a possible judgment in this above captioned action or to indemnify or reimburse for payments made to satisfy the judgment? If yes, please identify the insurance business and policy limits.

ANSWER: Yes. See attached declaration page. Premium and Deductible information have been redacted.

12. Have you notified the insurance business which may be liable to satisfy all or party of a possible judgment in this above captioned action or to indemnify or reimburse for payments made to satisfy the judgment of the pending claims?

ANSWER: Yes.

Respectfully submitted,

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/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

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Verification

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes them to be true.

By: 

Hans Mast

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S ANSWER TO PLAINTIFF'S RULE 213(F) INTERROGATORIES TO DEFENDANTS

NOW COME Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, KARBAL, COHEN, ECONOMOU, SILK & DUNNE LLC, and for their Answer to Plaintiff's Rule 213(f) Interrogatories to Defendants, state as follows:

1. Please identify the name, address, and telephone number of every individual "Lay Witness" who will testify at trial on behalf of the Plaintiff, and identify the subject matter of each witness' testimony.

ANSWER:

A. It is likely that Hans Mast will testify regarding the facts and circumstances surrounding the underlying accident and injuries, the prosecution of the case of *Dulberg v. Gagnon, et. al.*, and regarding the nature, scope and representation of Dulberg by Popovich and Mast in the prosecution of the underlying case. It is expected that he will testify consistent with his testimony in the instant matter.

B. It is likely that Thomas Popovich will testify regarding the facts and circumstances surrounding the underlying accident and injuries, the prosecution of the case of *Dulberg v.*

EXHIBIT X1

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Gagnon, et. al., and regarding the nature, scope and representation of Dulberg by Popovich and Mast in the prosecution of the underlying case. It is expected that he will testify consistent with his testimony in the instant matter.

C. Paul Dulberg will be called as an adverse witness pursuant to 735 ILCS 5/2-1102 and IRE 611(c). It is likely that he will testify regarding the facts and circumstances surrounding the underlying accident and injuries, the prosecution of the case of *Dulberg v. Gagnon, et. al.*, and regarding the nature, scope and representation of Dulberg by Popovich and Mast in the prosecution of the underlying case. It is expected that he will testify consistent with his testimony in the underlying case, and any deposition ultimately conducted in the instant matter.

D. It is likely that Bill McGuire will testify regarding the facts and circumstances surrounding the underlying accident and injuries, the prosecution of the case of *Dulberg v. Gagnon, et. al.*, and regarding the nature, scope and representation of Dulberg by Popovich and Mast in the prosecution of the underlying case. It is expected that he will testify consistent with his testimony in the underlying case, and any deposition ultimately conducted in the instant matter.

E. It is likely that Carolyn McGuire will testify regarding the facts and circumstances surrounding the underlying accident and injuries, the prosecution of the case of *Dulberg v. Gagnon, et. al.*, and regarding the nature, scope and representation of Dulberg by Popovich and Mast in the prosecution of the underlying case. It is expected that she will testify consistent with her testimony in the underlying case, and any deposition ultimately conducted in the instant matter.

F. It is likely that Michael McArtor will testify regarding the facts and circumstances surrounding the underlying accident and injuries, the prosecution of the case of *Dulberg v.*

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Gagnon, et. al., and regarding the nature, scope and representation of Dulberg by Popovich and Mast in the prosecution of the underlying case. It is expected that he will testify consistent with his testimony in the underlying case, and any deposition ultimately conducted in the instant matter.

G. It is likely that David Gagnon will testify regarding the facts and circumstances surrounding the underlying accident and injuries, the prosecution of the case of *Dulberg v. Gagnon, et. al.*, and regarding the nature, scope and representation of Dulberg by Popovich and Mast in the prosecution of the underlying case. It is expected that he will testify consistent with his testimony in the underlying case, and any deposition ultimately conducted in the instant matter.

H. Dr. Marcus Talerico is expected to testify concerning the facts, nature and scope of his treatment of Paul Dulberg's injuries allegedly sustained in the underlying accident, and consistent with his deposition testimony in the underlying case, and any future deposition in the instant case. To the extent that he may be considered a Rule 213 (f) (2) witness, defendants reserve the right to identify him as an independent expert witness at the appropriate time.

I. Dr. Scott Sagerman is expected to testify concerning the facts, nature and scope of his treatment of Paul Dulberg's injuries allegedly sustained in the underlying accident, and consistent with his deposition testimony in the underlying case, and any future deposition in the instant case. To the extent that he may be considered a Rule 213 (f) (2) witness, defendants reserve the right to identify him as an independent expert witness at the appropriate time.

J. Dr. Apiwat Ford is expected to testify concerning the facts, nature and scope of his treatment of Paul Dulberg's injuries allegedly sustained in the underlying accident, and consistent with his deposition testimony in the underlying case, and any future deposition in the

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instant case. To the extent that he may be considered a Rule 213 (f) (2) witness, defendants reserve the right to identify him as an independent expert witness at the appropriate time.

K. Dr. Kujawa is expected to testify concerning the facts, nature and scope of his treatment of Paul Dulberg's injuries allegedly sustained in the underlying accident, and consistent with his deposition testimony in the underlying case, and any future deposition in the instant case. To the extent that he may be considered a Rule 213 (f) (2) witness, defendants reserve the right to identify him as an independent expert witness at the appropriate time.

2. Please identify the name, address and telephone number of every independent Expert Witness who will testify at trial on behalf of the Plaintiff, and identify the subject matter of each witness' testimony.

ANSWER: Defendants have not identified all Illinois Supreme Court Rule 213(f)(2) witnesses, and will disclose same at the appropriate court mandated time.

3. Please identify the name, address, and telephone number of every Controlled Expert Witness who will testify at trial on behalf of Plaintiff, and for each Controlled Expert Witness, please identify:

1. the subject matter on which the witness will testify;
2. the conclusions and opinions of the witness and the bases therefor;
3. the qualifications of the witness; and
4. any reports prepared by the witness about the case.

ANSWER: Defendants have not identified Illinois Supreme Court Rule 213(f)(3) expert witnesses, and will disclose same at the appropriate mandated time.

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

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McHenry County, Illinois
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Date: 12/27/2021 8:04 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

MOTION FOR AN EXTENSION OF TIME TO FILE REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO ANSWER OUTSTANDING WRITTEN DISCOVERY AND TO EXTEND THE TIME FOR OUTSTANDING WRITTEN DISCOVERY TO BE COMPLETED AND TO FILE PLAINTIFF'S REPLY TO DEFENDANTS' AFFIRMATIVE DEFENSE #4

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his MOTION FOR AN EXTENSION OF TIME TO FILE REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO ANSWER OUTSTANDING WRITTEN DISCOVERY AND TO EXTEND THE TIME FOR OUTSTANDING WRITTEN DISCOVERY TO BE COMPLETED AND TO FILE PLAINTIFF"S REPLY TO DEFENDANTS' AFFIRMATIVE DEFENSE #4 states as follows:

I) Regarding Plaintiff's compliance with Court Order dated December 7, 2021:

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1) Supreme Court Rule 183. Extensions of Time The court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time. Corrected February 16, 2011, effective immediately;

2) Pursuant to an order dated December 7, 2021 this Honorable Court granted Plaintiff 14 days, up to and including December 21, 2021 to file his REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO ANSWER OUTSTANDING WRITTEN DISCOVERY AND TO EXTEND THE TIME FOR OUTSTANDING WRITTEN DISCOVERY TO BE COMPLETED;

3) on December 21, 2021 Plaintiff's attorney e-filing method was having technical problems. (Please see Plaintiff's Exhibit A attached);

4) On December 21, 2021 Plaintiff submitted his Reply as multiple filings under the same envelope number because a single "envelope" was not accepted. (Please see Plaintiff's Group Exhibit B attached);

5) On December 22, 2021 Plaintiff's filing was returned because it was not a single filing. (Please see Plaintiff's Group Exhibit C attached);

6) On December 22, 2021 Plaintiff re-submitted this filing without any changes to the contents. This filing was split into two filings with the same envelope number instead of three. (Please see Plaintiff's Group Exhibit D attached);

7) On December 22, 2021 the filing was accepted. (Please see Plaintiff's Group Exhibit E attached);

8) The McHenry Circuit Clerk published the day filed as December 22, 2021.

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II) Regarding Plaintiff's failure to Reply to Defendants' Affirmative Defense #4:

1) Please see Supreme Court Rule 183. above;

2) On March 11, 2019 Defendants filed their **DEFEDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT AT LAW.**

3) The Affirmative Defenses were as follows:

a. **FIRST AFFIRMATIVE DEFENSE: CONTRIBUTARY NEGLIGENCE** ;

b. **SECOND AFFIRMATIVE DEFENSE-STATUE OF LIMITATIONS** ;

c. **THIRD AFFIRMATIVE DEFENSE : PROXIMATE CAUSE** .

4) On April 8, 2019 Plaintiff filed his **PAUL DULBERG'S ANSWERS TO DEFENDANTS' AFFIRMATIVE DEFENSES.**

5) Nearly (8) eight months later, on November 4, 2019 (or 11 months after Plaintiff filed his second amended Complaint at Law) Defendants filed their **DEFENDANTS'THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES.** (Please see Plaintiff's Exhibit G attached)

6) Defendants specifically did not withdraw their previously filed (and previously responded to by Plaintiff) (3) three Affirmative Defenses.

7) Defendants titled their defense **FOURTH AFFIRMATIVE DEFENSE (Judgmental Immunity/Lawyer's Judgement Rule).**

8) It appears that Defendants' errors in this document caused Plaintiff's former counsel, Julia C. Williams, to fail to Reply to the FOURTH AFFIRMATIVE DEFENSE.

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9) The errors made by Defendants were as follows:

a. Mislabeling/failing to include the fact that what was contained in Paragraphs 1. through 2(d) is not allegations of **"Judgmental Immunity /Lawyer's Judgement Rule"** but allegations of Defendants' FIRST AFFIRMATIVE DEFENSE: CONTRIBUTARY NEGLIGENCE.

b. Defendants' paragraph 1 through paragraph 2(d) of their FOURTH AFFIRMATIVE DEFENSE (Judgmental Immunity/Lawyer's Judgement Rule) is a precise copy of Defendants' paragraph 1 through paragraph 2(d) of their FIRST AFFIRMATIVE DEFENSE: CONTRIBUTARY NEGLIGENCE.

10) Plaintiff has previously replied to this portion and advances that his previously filed reply, if necessary, stand as Plaintiff's Reply to this portion of **THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES.**

11) 735 ILCS 5/2-616 allows the amendment of pleadings at any time before final judgment on just and reasonable terms.

12) The filing of Plaintiff's amended Reply (to a portion of Defendant's Fourth Affirmative Defense will cause no unfair surprise, prejudice, or unreasonable delay in the case.

13) Plaintiff attaches as his Exhibit H a draft Reply to **DEFENDANTS'THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES.**

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WHEREFORE Plaintiff Paul Dulberg respectfully prays that this Honorable Court enter an Order allowing the Reply to DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO ANSWER OUTSTANDING WRITTEN DISCOVERY AND TO EXTEND THE TIME FOR OUTSTANDING WRITTEN DISCOVERY TO BE COMPLETED submitted on December 21, 2021 and accepted on December 22, 2021 to be considered timely filed and to allow Plaintiff to file his REPLY TO DEFENDANTS' AFFIRMATIVE DEFENSE #4 and all further relief deemed fair and proper.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
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Northbrook, Illinois 60022
(312) 808-1410
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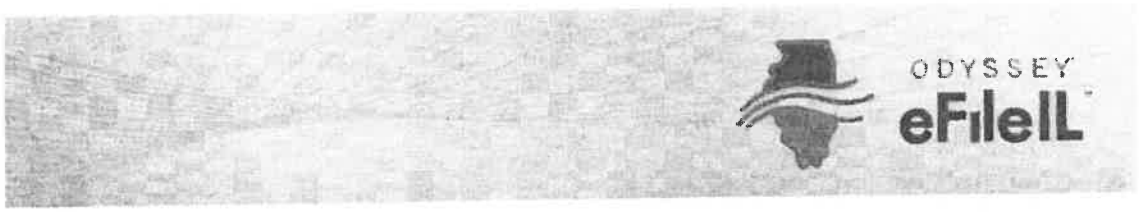

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Accepted Comments	
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Accepted Comments	
Filing Type	EFileAndServe
Filing Description	Reply to Defendants' Response and Exhibits
Activity Requested	Reply
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Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17 LA 377

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast plead the following amended affirmative defense in the alternative and without prejudice to Defendants' earlier denials and contentions:

FOURTH AFFIRMATIVE DEFENSE
(Judgmental Immunity/Lawyer's Judgement Rule)

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

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(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. Alternatively, this suit is barred by the attorney judgment rule. Errors in attorney judgment do not constitute negligence. *Goldstein*, 154 Ill. App. 3d at 599-601; *O'Brien & Assocs., P.C. v. Tim Thompson, Inc.*, 274 Ill. App. 3d 472, 479-480 (2nd Dist. 1995). Legal advice provided in areas "where there are no sure and definite answers" or where "future courses of action [cannot be determined] by precise mathematical equations" are areas where the attorney is afforded discretion in the exercise of judgment. *Goldstein*, 154 Ill. App. 3d at 600 (citation omitted). The fact that an unfavorable result is obtained in one of these scenarios does not suggest that any standard of care was breached. *Id.* Further, if the client must speculate as to how it would have been better off, there is no actionable harm. *O'Brien*, 274 Ill. App. 3d at 479-80.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that judgment be entered on their behalf and against Plaintiff, Dulberg.

Respectfully submitted,

/s/ George K. Flynn

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GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
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Attorneys for Defendants
gflynn@karballaw.com

2442287

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST Defendants.	) Case No. 17LA 377

PLAINTIFF'S REPLY TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Reply states as follows:

FOURTH AFFIRMATIVE DEFENSE

(Judgmental Immunity/Lawyer's Judgement Rule)

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

Reply: Plaintiff has previously replied to this allegation and as such incorporates said reply as though fully stated here.

EXHIBIT H

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2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

Reply: Plaintiff has previously replied to this allegation and as such incorporates said reply as though fully stated here.

3. Alternatively, this suit is barred by the attorney judgment rule. Errors in attorney judgment do not constitute negligence. Goldstein, 154 Ill. App. 3d at 599-601; O'Brien & Assocs., P.C. v. Tim Thompson, Inc., 274 Ill. App. 3d 472, 479-480 (2nd Dist. 1995). Legal advice provided in areas "where there are no sure and definite answers" or where "future courses of action [cannot be determined] by precise mathematical equations" are areas where the attorney is afforded discretion in the exercise of judgment. Goldstein, 154 Ill. App. 3d at 600 (citation omitted). The fact that an unfavorable result is obtained

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in one of these scenarios does not suggest that any standard of care was breached. Id. Further, if the client must speculate as to how it would have been better off, there is no actionable harm. O'Brien, 274 Ill. App. 3d at 479- 80.

Reply: Plaintiff denies the allegation of Paragraph #3 and states that Defendants' merely stating that Illinois recognizes the attorney judgement rule does not equate to Defendants submitting sufficient proof that they did not violate the required standard of care which is the burden of Defendants as they are advancing this theory.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

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McHenry County, Illinois
17LA000377
Date: 12/27/2021 8:04 PM
Katherine M. Keefe
Clerk of the Circuit Court

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STATE OF ILLINOIS, CIRCUIT COURT

McHenry ☑ **COUNTY**

PROOF OF DELIVERY

For Court Use Only

Instructions ▾	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person or company that filed this case as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name or Company)*
Enter the name of the Defendants/ Respondents.	v.
Enter the Case Number given by the Circuit Clerk.	Hans mast et al **Defendants / Respondents** *(First, middle, last name, or business name)* 17 LA 000377 **Case Number**

In **1**, enter the name of each court document you are sending.

1. I am sending the following court document: Plaintiff's Motion for an extension of Time to File Reply to Defendants' Response to Plaintiff's Motion to Compel Defendants To Ans

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

a. To:

Name: George K. Flynn
First *Middle* *Last*

Address: 150 S. Wacker Dr. #1700 Chicago Illinois 60606
Street, Apt # *City* *State* *ZIP*

Email address: gflynn@kargallaw.com

In **1b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

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Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

In **c**, fill in the date and time that you are sending the document.

c. On: 12/27/2021 *Date* at: 12.01 *Time* ☐ a.m. ☑ p.m.

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In 2a, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In 2b, check the box to show how you are sending the document. **CAUTION:** If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the

In c, fill in the date and time that you are sending the document.

If you are sending your document to more than 2 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

2. I am sending this document:

a. To:

Name: _____
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Address: _____
Street, Apt # *City* *State* *ZIP*

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  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

c. On: _____ at: _____ ☐ a.m. ☐ p.m.
Date *Time*

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

6184530
Attorney # (if any)

707 Skokie Blvd. #600
Street Address

Northbrook, Illinois, 60062
City, State, ZIP

contact@lawofficeofalphonsetalarico.com
Email

GETTING COURT DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

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McHenry County, Illinois
17LA000377
Date: 12/28/2021 10:05 AM
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Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST Defendants.	) Case No. 17LA 377

NOTICE OF SERVICE OF PLAINTIFF PAUL DULBERG'S REQUEST FOR THE ADMISSION OF FACT AND THE GENUINENESS OF DOCUMENT TO DEFENDANT HANS MAST

TO: GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700 Attorneys for Defendants
gflynn@karballaw.com
Linda Walters on behalf of George K. Flynn
lwalters@karballaw.com

PLEASE TAKE NOTICE that on December 28, 2021 I served the parties by email:

- **PLAINTIFF PAUL DULBERG'S REQUEST FOR THE ADMISSION OF FACT AND THE GENUINENESS OF DOCUMENT TO DEFENDANT HANS MAST**

Received 12-28-2021 10:32 AM / Circuit Clerk Accepted on 12-28-2021 11:40 AM / Transaction #16088637 / Case #17LA000377
Purchased from re:SearchIL

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on December 28, 2021, I caused to be served Plaintiff PAUL DULBERG'S REQUEST FOR THE ADMISSION OF FACT AND THE GENUINENESS OF DOCUMENT TO DEFENDANT HANS MAST to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

Date: December 28, 2021

Received 12-28-2021 10:32 AM / Circuit Clerk Accepted on 12-28-2021 11:40 AM / Transaction #16088637 / Case #17LA000377
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McHenry County, Illinois
17LA000377
Date: 1/6/2022 10:31 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS, CIRCUIT COURT

McHenry ☑ **COUNTY**

PROOF OF DELIVERY

For Court Use Only

Instructions ▾	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person or company that filed this case as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name or Company)*
Enter the name of the Defendants/ Respondents.	v.
Enter the Case Number given by the Circuit Clerk.	Thomas Popovich and Hans Mast **Defendants / Respondents** *(First, middle, last name, or business name)* 17LA000377 **Case Number**

In **1**, enter the name of each court document you are sending.

1. I am sending the following court document: Plaintiff's Reply To Defendants The law Offices of Thomas J. Popovich, P.C. and Hans Mast's Amended Affirmative Defenses

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

a. To:

Name: Geopge K. Flynn
First *Middle* *Last*

Address: 150 S. Wacker Dr. #1700 Chicago Illinois 60606
Street, Apt # *City* *State* *ZIP*

Email address: gflynn@kargallaw.com

In **1b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

b. By:

- ☑ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

In **c**, fill in the date and time that you are sending the document.

c. On: 01/06/2022 *Date* at: 2:29 *Time* ☐ a.m. ☑ p.m.

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Enter the Case Number given by the Circuit Clerk: 17LA000377

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the

In **c**, fill in the date and time that you are sending the document.

If you are sending your document to more than 2 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

2. I am sending this document:

a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:

- ☐ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

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  - ☐ The party's lawyer's office
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c. On: _____ at: _____ ☐ a.m. ☐ p.m.
Date *Time*

☐ I have completed an *Additional Proof of Delivery* form.

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If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

61684530
Attorney # (if any)

707 Skokie Blvd.#600
Street Address

Northbrook, Illinois. 60062
City, State, ZIP

contact@lawofficeofalphonsetalarico.com
Email

GETTING COURT DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

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17LA000377
Date: 1/6/2022 10:31 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S REPLY TO DEFENDANTS THE LAW OFFICES OF THOMAS J POPOVICH, P C AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Reply states as follows:

FOURTH AFFIRMATIVE DEFENSE

(Judgmental Immunity Lawyer's Judgement Rule)

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

R : Plaintiff has previously replied to this allegation and as such incorporates said reply as though fully stated here.

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C 789

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(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

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(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

R : Plaintiff has previously replied to this allegation and as such incorporates said reply as though fully stated here.

3. Alternatively, this suit is barred by the attorney judgment rule. Errors in attorney judgment do not constitute negligence. Goldstein, 154 Ill. App. 3d at 599-601; O'Brien & Assocs., P.C. v. Tim Thompson, Inc., 274 Ill. App. 3d 472, 479-480 (2nd Dist. 1995). Legal advice provided in areas "where there are no sure and definite answers" or where "future courses of action [cannot be determined] by precise mathematical equations" are areas where the attorney is afforded discretion in the exercise of judgment. Goldstein, 154 Ill. App. 3d at 600 (citation omitted). The fact that an unfavorable result is obtained

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in one of these scenarios does not suggest that any standard of care was breached. Id. Further, if the client must speculate as to how it would have been better off, there is no actionable harm. O'Brien, 274 Ill. App. 3d at 479- 80.

R : Plaintiff denies the allegation of Paragraph #3 and states that Defendants' merely stating that Illinois recogni es the attorney judgement rule does not equate to Defendants submitting sufficient proof that they did not violate the required standard of care which is the burden of Defendants as they are advancing this theory.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

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Date: 1/24/2022 1:39 PM
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Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)
	)
Plaintiff,	)
	)
	)
v.	) Case No. 17LA 377
	)
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)
	)
	)
Defendants.	)

DEFENDANT HANS MAST'S ANSWER TO PLAINTIFF PAUL DULBERG'S REQUEST FOR THE ADMISSION OF FACT AND THE GENUINENESS OF DOCUMENT

Defendant, Hans Mast, by and through his attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for his Answer to Plaintiff's Request for Admission of Fact and the Genuineness of Document, states as follows:

REQUEST FOR ADMISSION

1. Admit that Exhibit A attached hereto is a true, accurate, and genuine copy of page 8 AFFIDAVIT of a Complaint titled PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants. 12LA178 filed on May 15, 2012.

RESPONSE: Defendant admits that Exhibit A is a true, accurate and genuine copy of a Rule 222 affidavit he executed and attached to the Complaint at the time of its filing.

2. Admit that Exhibit A attached hereto is a true, accurate, and genuine copy of page 8 AFFIDAVIT that you signed.

RESPONSE: Admit.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

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GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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Page 2 of 3
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C 793

Verification

I, Hans Mast, state that I have read the foregoing Response to Plaintiff's Request for Admission of Fact and the Genuineness of Document, and under penalties provided by law pursuant to §1-109 of the Illinois Code of Civil Procedure, certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies that he verily believes same to be true.



By:_____
Hans Mast

Received 01-24-2022 01:57 PM / Circuit Clerk Accepted on 01-24-2022 01:59 PM / Transaction #16414069 / Case #17LA000377
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McHenry County, Illinois
17LA000377
Date: 1/24/2022 1:39 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: All Attorneys of Record (See Attached Service List)

PLEASE TAKE NOTICE that, on the 24th day of January 2022, we filed DEFENDANT HANS MAST'S ANSWER TO PLAINTIFF PAUL DULBERG'S REQUEST FOR THE ADMISSION OF FACT AND THE GENUINENESS OF DOCUMENT, with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 24th day of January 2022.

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on January 24, 2022.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 01-24-2022 01:57 PM / Circuit Clerk Accepted on 01-24-2022 01:59 PM / Transaction #16414069 / Case #17LA000377

Purchased from re:SearchIL

SERVICE LIST

Plaintiff's Attorney	
Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd 6th Floor Suite Northbrook, IL 60062-2841 contact@lawofficeofalphonsetalarico.com (312) 808-1410	

Received 01-24-2022 01:57 PM / Circuit Clerk Accepted on 01-24-2022 01:59 PM / Transaction #16414069 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 16530005
McHenry County, Illinois
17LA000377
Date: 2/1/2022 1:45 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700 Attorneys for Defendants
gflynn@karballaw.com
Linda Walters on behalf of George K. Flynn
lwalters@karballaw.com

PLEASE TAKE NOTICE that on February 1, 2022, I served the parties by email:

Plaintiff Paul Dulberg's:

●Court Ordered Additional Request To Produce

●Court Ordered Additional Interrogatories

Copies of which are attached hereto and herewith served upon you.

Received 02-01-2022 03:49 PM / Circuit Clerk Accepted on 02-01-2022 03:54 PM / Transaction #16530005 / Case #17LA000377
Purchased from re:SearchIL

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on February 1, 2022, I caused to be served the attached Plaintiff's Court Ordered Additional Request To Produce and Court Ordered Additional Interrogatories to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

Date: February 1, 2022

Received 02-01-2022 03:49 PM / Circuit Clerk Accepted on 02-01-2022 03:54 PM / Transaction #16530005 / Case #17LA000377
Purchased from re:SearchIL

10

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Dulberg
Plaintiff

vs

Mast
Defendant

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Case Number 17LA377

FILED
McHenry County, Illinois
FEB - 3 2022
KATHERINE M. KEEFE
Clerk of the Circuit Court

ORDER

☒ Plaintiff(s) appear in person/by attorney _____

☒ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20__

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20__ at _____ .m. in Courtroom ____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☐ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to 4/5, 2022 at 8:45 A.m. for STATUS F1.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☐ **COURT FURTHER ORDERS:** _____

Date: _____

Judge

CV-ORD13: Revised 10/01/08

Purchased from re:SearchIL

** FILED ** Env: 16933255
McHenry County, Illinois
17LA000377
Date: 3/3/2022 12:00 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17 LA 377

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on the 3rd day of March 2022 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:

- Response to Plaintiff's Court Ordered Additional Document Requests;
- Answer to Plaintiff's Court Ordered Additional Interrogatories; and

Defendant Hans Mast's:

- Response to Plaintiff's Court Ordered Additional Document Requests;
- Answer to Plaintiff's Court Ordered Additional Interrogatories;

copies of which are attached hereto and herewith served upon you.

Dated this 3rd day March 2022 in Chicago, Illinois.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: /s/ *George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on March 3, 2022.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 03-03-2022 02:14 PM / Circuit Clerk Accepted on 03-03-2022 03:16 PM / Transaction #16933255 / Case #17LA000377

Purchased from re:SearchIL

SERVICE LIST

Plaintiff's Attorney	
Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd 6th Floor Suite Northbrook, IL 60062-2841 contact@lawofficeofalphonsetalarico.com (312) 808-1410	

Received 03-03-2022 02:14 PM / Circuit Clerk Accepted on 03-03-2022 03:16 PM / Transaction #16933255 / Case #17LA000377
Purchased from re:SearchIL

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

FILED
MAR 24 2022
KATHERINE M. KEEFE
MCHENRY CTY. CIR. CLK.

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury

PAUL DULBERG
Plf

vs.

THE LAW OFFICES OF THOMAS J. POPOVICH PC and HANS MAST
Defts

Date: 3-24-22 Plaintiff's Attorney _____ Defendant's Attorney _____

ORDER

LEAVE IS GRANTED TO AMEND THE SCRIVENER'S ERROR ON THE FACE OF THE TITLE PAGE OF THE FEBRUARY 10, 2021, TRANSCRIPT FILED ON FEBRUARY 26, 2021, TO REFLECT THE CORRECT DATE OF THE PROCEEDINGS.

Prepared by: _____

Attorney for: _____

Attorney Registration No.: _____ Judge: Thomas A Meyer

Purchased from re:SearchIL

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

15

Plaintiff Dulbus

vs

Defendant Mast

FILED
McHenry County, Illinois
APR - 5 2022
KATHERINE M. KEEFE
Clerk of the Circuit Court

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Case Number 17CH377

ORDER

☒ Plaintiff(s) appear in person/by attorney _____

☒ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☐ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to 4/27, 2022 at 10, ☐ m. for Hearing on Discovery Objections

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☒ **COURT FURTHER ORDERS:** 4/13/22 Date is Stricken

Date: _____

Judge

CV-ORD13: Revised 10/01/08

Purchased from re:SearchIL

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)
	)
Plaintiff,	)
	)
	)
v.	) Case No. 17LA 377
	)
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)
	)
	)
Defendants.	)

NOTICE OF DEPOSITIONS FOR RECORDS ONLY

TO: GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700 Attorneys for Defendants
gflynn@karballaw.com
Linda Walters on behalf of George K. Flynn
lwalters@karballaw.com

You are hereby notified that on April 28, 2022, at 10:00 A.M. at 707 Skokie Boulevard, Suite 600, Northbrook, Illinois 60062 the depositions of: Paula Ann Erickson, 1405 Linden Court, Burlington, Wisconsin 53105; Margaret Maggie Orton, 475 E. Crystal Lake Avenue, Crystal Lake, Illinois 60014-6244; and Keeper Of Records, Bank of America, N.A., 1167 N. State St., Chicago, Illinois 60610, will be taken for discovery in this case.

Received 04-19-2022 03:08 PM / Circuit Clerk Accepted on 04-19-2022 03:49 PM / Transaction #17550873 / Case #17LA000377
Purchased from re:SearchIL

THERE WILL BE NO INTERROGATION OF THE DEPONENTS

PLEASE TAKE NOTICE that on April 19, 2022, I served the parties by email:

- **SUBPOENA FOR DOCUMENTS to PAULA ANN ERICKSON;**
- **AFFIDAVIT OF SERVICE UPON PAULA ANN ERICKSON;**
- **SUBPOENA FOR DOCUMENTS to MARGARET MAGGIE ORTON;**
- **AFFIDAVIT OF SERVICE UPON MARGARET MAGGIE ORTON;**
- **SUBPOENA FOR DOCUMENTS to KEEPER OF RECORDS, BANK OF AMERICA N.A. ;**
- **AFFIDAVIT OF SERVICE UPON KEEPER OF RECORDS, BANK OF AMERICA N.A.**

Copies of which are attached hereto and herewith served upon you.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on April 19, 2022, I caused to be served the attached listed Notice Of Depositions For Records Only, Subpoenas and Affidavits of Service to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Received 04-19-2022 03:08 PM / Circuit Clerk Accepted on 04-19-2022 03:49 PM / Transaction #17550873 / Case #17LA000377
Purchased from re:SearchIL

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

Date: April 19, 2022

Received 04-19-2022 03:08 PM / Circuit Clerk Accepted on 04-19-2022 03:49 PM / Transaction #17550873 / Case #17LA000377
Purchased from re:SearchIL

Purchased from re:SearchIL

** FILED ** Env: 17550873
McHenry County, Illinois
17LA000377
Date: 4/19/2022 11:44 AM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts

STATE OF ILLINOIS, CIRCUIT COURT

McHenry **COUNTY**

PROOF OF DELIVERY

For Court Use Only

Instructions ▾	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person or company that filed this case as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name or Company)*
	v.
Enter the name of the Defendants/ Respondents.	
Enter the Case Number given by the Circuit Clerk.	Hans Mast and The Law Offices of Thomas Popovich, PC **Defendants / Respondents** *(First, middle, last name, or business name)* 17LA000377 **Case Number**

In **1**, enter the name of each court document you are sending.

1. I am sending the following court document: Notice of Depositions For Records Only

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

a. To:

Name: George K. Flynn
First Middle Last

Address: 150 S. Wacker Dr. #1700 Chicago Illinois 60606
Street, Apt # City State ZIP

Email address: gflynn@kargallaw.com

In **1b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

b. By:

- ☑ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

In **c**, fill in the date and time that you are sending the document.

c. On: 04/19/2022 *Date* at: 4:00 *Time* ☐ a.m. ☑ p.m.

Received 04-19-2022 03:08 PM / Circuit Clerk Accepted on 04-19-2022 03:49 PM / Transaction #17550873 / Case #17LA000377

Page 1 of 2

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the

In **c**, fill in the date and time that you are sending the document.

If you are sending your document to more than 2 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

2. I am sending this document:

a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:

☐ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

☐ Personal hand delivery to:

- ☐ The party
- ☐ The party's family member who is 13 or older, at the party's residence
- ☐ The party's lawyer
- ☐ The party's lawyer's office

☐ Mail or third-party carrier

c. On: _____ at: _____ ☐ a.m. ☐ p.m.
Date *Time*

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

61684530
Attorney # (if any)

707 Skokie Blvd. #600
Street Address

Northbrook, Illinois 60062
City, State, ZIP

contact@lawofficeofalphonsetalarico.com
Email

GETTING COURT DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

Received 04-19-2022 03:08 PM / Circuit Clerk Accepted on 04-19-2022 03:49 PM / Transaction #17550873 / Case #17LA000377
Page 2 of 2
Purchased from re:SearchIL
C 808

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
05/02/2022 8:10 AM
McHenry County, Illinois
22nd Judicial Circuit
****

ORDER

THIS CAUSE COMING TO BE HEARD for status hearing, and hearing on discovery objections, due notice having been given, and the Court being fully advised in the premises:

IT IS ORDERED:

As to Popovich's Answer to Dulberg's Additional Interrogatories, the court finds that:

1) Popovich's Answer is responsive.

2) Popovich stipulates that Tom Popovich is the supervising partner referenced as "Popovich" in line of answer #2, and agrees to strike the reference to "See generally Hans Mast Deposition testimony.

3) Popovich stipulates and amends the objection to interrogatory #3 that the attorney/client privilege asserted is between Popovich and attorney George K. Flynn of the Karbal Cohen firm.

As to Hans Mast's Answers to Plaintiff's Additional Interrogatories the court finds that:

1) Mast Answer #1 is responsive.
2) Mast Answer #2 is responsive.
3) Mast is ordered to amend his answer to #3 to include responsive page numbers of his discovery deposition.
4) The first clause of Mast's answer to #4 is stricken and he will amend that answer.
5) Mast Answer to #5 is responsive. Mast will forward a copy of Exhibit 12 from his deposition to Plaintiff.
6) Mast Answer #6 is responsive.
7) Objection overruled. Mast's Answer to #7 must be amended to include page numbers of Dulberg's discovery deposition.

As to Popovich's Responses to Court Additional Requests for Production, the court finds that:

Purchased from re:SearchIL

1) Popovich's Response #1 is responsive.
2) Popovich's Response #2 is responsive.
3) Popovich is ordered to produce the front and back of the settlement check for $5,000 (POP 000658) if in its possession.
4) Popovich's Response to #4 is responsive.

As to Mast's Responses to Additional Requests for Production, the court finds that:

1) Mast's Response #1 is responsive.
2) Mast's Response #2 is responsive.
3) Mast's Response #3 is responsive.
4) Mast's Response #4 is responsive.
5) Mast's Response #5 is responsive.
6) Mast's Response #6 is responsive.

Prepared by:

Atty. No. **George K. Flynn ARDC #6239349**
Name: **Karbal, Cohen, Economou, Silk & Dunne, LLC**
Attorney for: **Defendants**
Address: **150 S. Wacker Drive, Suite 1700**
City: **Chicago, IL 60606**
Telephone: **(312) 431-3700**
E-Mail: **gflynn@karballaw.com**

5/2/2022
……., 2022
ENTER:

Thomas A. Meyer
……
Judge **Judge's No.**

Thomas Meyer
CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

3088362

Purchased from re:SearchIL

ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
05/03/2022 8:50 AM
McHenry County, Illinois
22nd Judicial Circuit
****

ORDER

THIS CAUSE COMING TO BE HEARD on April 27, 2022 for hearing on discovery objections, due notice having been given, and the Court being fully advised in the premises:

IT IS ORDERED:

This matter is set for status via Zoom on June 10, 2022 at 9:45 a.m. Zoom information for Room 201: Link: https://zoom.us/my/mchenrycourtroom201; Meeting ID: 272-959-8070; Personal Link Name: mchenrycourtroom201; Password: no password required

Prepared by:

Atty. No. George K. Flynn
ARDC #6239349
Name: Karbal, Cohen, Economou, Silk & Dunne, LLC
Attorney for: Defendants
Address: 150 S. Wacker Drive, Suite 1700
City: Chicago, IL 60606
Telephone: (312) 431-3700
E-Mail: gflynn@karballaw.com

5/3/2022
……., 2022
ENTER:

Thomas A. Meyer
……
Judge **Judge's No.**

Thomas Meyer

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

Purchased from re:SearchIL

** FILED ** Env: 17944673
McHenry County, Illinois
17LA000377
Date: 5/18/2022 11:06 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17 LA 377

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on the 18th day of May 2022 we served the parties via email: DEFENDANT HANS MAST'S SUPPLEMENTAL ANSWERS TO PLAINTIFF'S COURT ORDERED ADDITIONAL INTERROGATORIES TO HANS MAST, a copy of which is attached hereto and herewith served upon you.

Dated this 18th day May 2022 in Chicago, Illinois.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: /s/ *George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on May 18, 2022.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 05-19-2022 09:56 AM / Circuit Clerk Accepted on 05-19-2022 12:09 PM / Transaction #17944673 / Case #17LA000377

Purchased from re:SearchIL

SERVICE LIST

Plaintiff's Attorney	
Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd 6th Floor Suite Northbrook, IL 60062-2841 contact@lawofficeofalphonsetalarico.com (312) 808-1410	

Received 05-19-2022 09:56 AM / Circuit Clerk Accepted on 05-19-2022 12:09 PM / Transaction #17944673 / Case #17LA000377
Page 2 of 2
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C 813

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts

FILED - Env: 18013031
McHenry County, Illinois
17LA000377
Date: 5/23/2022 5:55 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS, CIRCUIT COURT

McHenry ☑ **COUNTY**

PROOF OF DELIVERY

For Court Use Only

Instructions ▾	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person or company that filed this case as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name or Company)*
Enter the name of the Defendants/ Respondents.	v.
Enter the Case Number given by the Circuit Clerk.	Hans Mast and The law Offices of Thomas Popovich, PC **Defendants / Respondents** *(First, middle, last name, or business name)* 17 LA000377 **Case Number**

In **1**, enter the name of each court document you are sending.

1. I am sending the following court document: Notice of Deposition For Records Only

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

a. To:

Name: George K. Flynn
First Middle Last

Address: 150 S. Wacker Dr. #1700 Chicago Illinois 60606
Street, Apt # City State ZIP

Email address: gflynn@karballaw.com

In **1b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

b. By:

- ☑ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

In **c**, fill in the date and time that you are sending the document.

c. On: 05/20/2022 *Date* at: 4:30 *Time* ☐ a.m. ☑ p.m.

Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Purchased from re:SearchIL

Enter the Case Number given by the Circuit Clerk: 17 LA000377

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the

In **c**, fill in the date and time that you are sending the document.

If you are sending your document to more than 2 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

2. I am sending this document:

a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:

☐ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

☐ Personal hand delivery to:

- ☐ The party
- ☐ The party's family member who is 13 or older, at the party's residence
- ☐ The party's lawyer
- ☐ The party's lawyer's office

☐ Mail or third-party carrier

c. On: _____ at: _____ ☐ a.m. ☐ p.m.
Date *Time*

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

61684530
Attorney # (if any)

707 skokie Blvd. #600
Street Address

Northbrook, Illinois 60062
City, State, ZIP

contact@lawofficeofalphonsetalarico.com
Email

GETTING COURT DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Purchased from re:SearchIL

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

NOTICE OF DEPOSITIONS FOR RECORDS ONLY

TO: GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700 Attorneys for Defendants
gflynn@karballaw.com
Linda Walters on behalf of George K. Flynn
lwalters@karballaw.com

You are hereby notified that on June 9, 2022, at 10:00 A.M. at 707 Skokie Boulevard, Suite 600, Northbrook, Illinois 60062 the deposition of Barbara G. Smith, 2302 Bluestone Bay Dr., New Lenox, Illinois 60451 will be taken for discovery in this case.

THERE WILL BE NO INTERROGATION OF THE DEPONENT AND THE APPEARANCE AT THE DEPOSITION WILL BE EXCUSED IF SPECIFIED DOCUMENTS OR TANGIBLE THINGS ARE PRODUCED.

Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Purchased from re:SearchIL

PLEASE TAKE NOTICE that on May 20, 2022, I served the parties by email:

•SUBPOENA FOR DOCUMENTS to BARBARA G. GMITH;

•AFFIDAVIT OF SERVICE UPON BARBARA G. SMITH.

Copies of which are attached hereto and herewith served upon you.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on May 20, 2022, I caused to be served the attached listed Notice Of Deposition For Records Only, Subpoena and Affidavit of Service to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

Date: May 20, 2022

Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Page 4 of 8
Purchased from re:SearchIL
C 817

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	CASE NO. 17 LA 377 JUDGE THOMAS A. MEYER

SUBPOENA FOR DOCUMENTS
(THIS SUBPOENA IS FOR RECORDS ONLY.)

TO: Barbara G. Smith
2302 BLUESTONE BAY DR,
NEW LENOX, IL 60451

YOU ARE COMMANDED to produce responsive documents, electronically stored information (ESI), or objects in response to the requests below on June 9, 2022, at 10:00 a.m. at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062.

You are subpoenaed by the undersigned attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed. If you fail to respond to this subpoena, you may be in contempt of court.

PLEASE TAKE FURTHER NOTICE that, pursuant to this subpoena, Barbara G Smith is requested to produce the following documents, electronically stored information (ESI), or objects

Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Purchased from re:SearchIL

in response to the requests by June 9, 2022, at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062:

1. TWENTY (20) CONTEMPORANEOUSLY DATED ORIGINAL/GENUINE SIGNATURES OF Barbara G Smith. The acceptable and required date range begins on January 1, 2020 and ends on December 31, 2020.

Instruction: If copies of checks are provided as exemplars, the checks have to be copied one per page and reproduced to the size/scale of the original check.

2. TWENTY (20) CONTEMPORANEOUSLY DATED ELECTRONIC SIGNATURES OF Barbara G Smith. The acceptable and required date range begins on January 1, 2020 and ends on December 31, 2020.

Instruction: If you used an electronic signature during the relevant time period, a list (containing all necessary contact information) of each and every person, organization and legal entity that was granted the use of said electronic signature.

3. The original discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes.

Please note that the appearance of the respondent is excused, and no deposition will be taken, if the documents specified above are produced on or before June 1, 2022

NOTE TO WITNESS: Please contact attorney Alphonse A, Talarico at (312) 808-1410 for information as to the reimbursement of additional charges for production incurred by the respondent.

NOTE TO WITNESS: Enclosed with this subpoena is a check for statutory witness fees and mileage reimbursement in the amount of $45.00 plus $25.00 for production costs. The total money forwarded is $70.00.

Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Purchased from re:SearchIL

Dated: May 12, 2022

By: Alphonse A. Talarico

Alphonse A. Talarico 6184530
Law Office of Alphonse A. Talarico
707 Skokie Boulevard #600
Northbrook, Illinois, 60062
Tel: (312) 808-1410
contact@lawofficeofalphonsetalarico.com
Attorneys for Plaintiff Paul Dulberg

Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Purchased from re:SearchIL

AFFIDAVIT OF SERVICE

Case:	Court:	County:	Job:
17 LA 377	Circuit Court of the Twenty Second Judical Circuit	Mchenry, IL	7093435
Plaintiff / Petitioner: Paul Dulberg		**Defendant / Respondent:** The Law Offices of Thomas J. Popivich, P.C., and Hans Mast	
Received by: Gazelle Process & Investigations PLLC.		**For:** Alphonse A. Talarico	
To be served upon: Barbara G Smith			

I, REX JONES, state on oath that I am at least 18 years old, not a party to this case/action, that I am authorized to perform service in Illinois, and am a registered sub-contractor of Gazelle Process & Investigations PLLC under Illinois Detective Agency License 117.001853

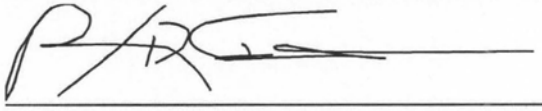
Recipient Name / Address: Barbara G Smith, HOME: 2302 Bluestone Bay Dr, New Lenox, IL 60451-9216

Manner of Service: Personal/Individual, May 18, 2022, 5:42 pm CDT

Documents: Witness Fee (Check VV018) (Received May 12, 2022 at 10:47am CDT), Subpoena (Received May 12, 2022 at 10:47am CDT)

Additional Comments:
1) Successful Attempt: May 18, 2022, 5:42 pm CDT at HOME: 2302 Bluestone Bay Dr, New Lenox, IL 60451-9216 received by Barbara G Smith. Age: 59; Ethnicity: Caucasian; Gender: Female; Weight: 160; Height: 5'8"; Hair: Brown;

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the above statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.



05/20/2022

REX JONES
#117.001571

Date

Gazelle Process & Investigations PLLC.
518 S. IL HIGHWAY 31 Suite 325
MCHENRY, IL 60050-7464
847-752-4450

Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 18148418
McHenry County, Illinois
17LA000377
Date: 6/3/2022 10:32 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Paul Dulberg,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 000377
	)	Jury Demand
The Law Offices of Thomas J. Popovich, P.C.,	)	(Court Room 201)
And Hans Mast,	)	
	)	
Defendants.	)	

NOTICE OF CHANGE OF ADDRESS

TO: ALL ATTORNEYS OF RECORD (See Attached Service List)

Counsel for DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., AND HANS MAST hereby notifies the Court and counsel of record of our firm's change of address, effective immediately as follows:

KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC
200 S. Wacker Drive, Suite 2550
Chicago, IL 60606

Our telephone and facsimile numbers and email addresses remain the same.

Dated at Chicago, Illinois, this 3rd day of June 2022.

George K. Flynn
KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC
200 S. Wacker Drive, Suite 2550
Chicago, IL 60606
(312) 431-3700
gflynn@karballaw.com
Firm ID No. 38100

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on June 3, 2022.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

3101374

Received 06-03-2022 02:17 PM / Circuit Clerk Accepted on 06-03-2022 02:33 PM / Transaction #18148418 / Case #17LA000377

Purchased from re:SearchIL

SERVICE LIST

Plaintiff's Attorney	
Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd 6th Floor Suite Northbrook, IL 60062-2841 contact@lawofficeofalphonsetalarico.com (312) 808-1410	

Received 06-03-2022 02:17 PM / Circuit Clerk Accepted on 06-03-2022 02:33 PM / Transaction #18148418 / Case #17LA000377

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

16

FILED
McHenry County, Illinois
JUN 10 2022
KATHERINE M. KEEFE
Clerk of the Circuit Court

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Dulberg
Plaintiff

vs

MAST
Defendant

Case Number 17LA377

ORDER

☒ Plaintiff(s) appear in person/by attorney _____

☒ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☐ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to 7/11, 2022 at ~~9:15~~ 9:45 a.m. for STATUS on Defendants

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute. Motion to Close F1

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☐ **COURT FURTHER ORDERS:** _____

Date: _____

Judge

CV-ORD13: Revised 10/01/08

Purchased from re:SearchIL

KATHERINE M. KEEFE
Clerk of the Circuit Court
22nd JUDICIAL CIRCUIT McHENRY COUNTY
2200 N. Seminary Avenue
Woodstock, IL 60098
www.mchenrycircuitclerk.org

Civil Division
815.334.4310

Criminal/Traffic/
Juvenile Division
815.334.4190

FILED
McHenry County, Illinois
JUN 16 2022
KATHERINE M. KEEFE
Clerk of the Circuit Court

June 16, 2022

Alphonse A. Talarico
Law Office of Alphonse A. Talarico
707 Skokie Boulevard, Suite 600
Northbrook, IL 60062

Re: Subpoena for Documents – 17LA377 - DULBERG, PAUL VS MAST, HANS, ET AL

Dear Mr. Talarico:

In response to your *Subpoena for Documents* dated May 31, 2022, served on our office on June 14, 2022, the McHenry County Circuit Clerk's office no longer maintains the physical paper court file from 12LA000178 - DULBERG, PAUL VS GAGNON, DAVID, ET AL. The physical files from the 2012 Law cases were destroyed by our office in June of 2020 pursuant to the Illinois Supreme Court's policy which allows the physical paper files which are scanned and maintained electronically in our case management system to be destroyed.

As per our phone conversation today, we can produce a copy of the electronic file, which contains all the scanned documents, but it is the same record which can be viewed on the *Attorney Access Portal*. It was determined that reproduction of the electronic court file was not necessary, as a result I am returning your check #VV036 for $138.80 for witness fees and production costs. Please let me know if you need anything additional.

Sincerely,

Katherine M. Keefe
Clerk of the Circuit Court
McHenry County, IL

Enclosure – check #VV036, payable to Katherine M. Keefe, $138.80

Purchased from re:SearchIL

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	CASE NO. 17 LA 377 JUDGE THOMAS A. MEYER

SUBPOENA FOR DOCUMENTS
(THIS SUBPOENA IS FOR RECORDS ONLY.)

TO: Katherine M. Keefe
McHenry County Circuit Court Clerk
2200 N. Seminary Avenue
Woodstock, Illinois 60098
Room 136 Civil Division

YOU ARE COMMANDED to produce responsive documents or objects in response to the requests below on June 28, 2022, at 10:00 a.m. at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062.

You are subpoenaed by the undersigned attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed. If you fail to respond to this subpoena, you may be in contempt of court.

PLEASE TAKE FURTHER NOTICE that, pursuant to this subpoena, Katherine M. Keefe McHenry County Circuit Court Clerk is requested to produce the following documents or

Purchased from re:SearchIL

objects in response to the requests by June 28, 2022, at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062:

1. The entire physical paper file(s) and file jacket(s) with all notes within the file(s) or written upon the outside file jacket(s) for the case identified as PAUL DULBERG, Plaintiff vs. DAVID GAGNON, Individually, and as Agent of CAROLINE (a/k/a CAROLYN) McGuire and BILL McGuire and CAROLINE (a/k/a CAROLYN) McGuire and BILL McGuire, Individually, Defendants. 12LA000178

Please note that the appearance of the respondent is excused, and no deposition will be taken, if the documents specified above are produced on or before June 20, 2022

NOTE TO WITNESS: Please contact attorney Alphonse A, Talarico at (312) 808-1410 for information as to the reimbursement of additional charges for production incurred by the respondent.

NOTE TO WITNESS: Enclosed with this subpoena is a check for statutory witness fees and mileage reimbursement in the amount of $38.80 plus $100.00 for production costs. The total money forwarded is $ 138.80.

Purchased from re:SearchIL

Dated: May 31, 2022

By: Alphonse A. Talarico

Alphonse A. Talarico 6184530
Law Office of Alphonse A. Talarico
707 Skokie Boulevard #600
Northbrook, Illinois, 60062
Tel: (312) 808-1410
contact@lawofficeofalphonsetalarico.com
Attorneys for Plaintiff Paul Dulberg

Purchased from re:SearchIL

PROOF OF SERVICE

Gazelle Process & Investigations PLLC #117-001853 on oath states:

I am over the age of 18 and not a party to this case.

I served the foregoing Subpoena for Documents on Katherine M. Keefe, McHenry County Circuit Court Clerk as follows:

By leaving a copy of the Subpoena for Documents with _____

personally at _____ on _____, 2022

at the hour of _____.m.

I also enclosed a check for $138.80 for the witness and mileage fees plus production costs.

Pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that the signer verily believes the same to be true.

_____

Gazelle Process & Investigations PLLC #117-001853

Purchased from re:SearchIL

** FILED ** Env: 18587480
McHenry County, Illinois
2017LA000377
Date: 7/7/2022 5:56 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

NOTICE OF DEPOSITIONS FOR RECORDS ONLY

TO: GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
200 S. Wacker Drive, Suite 2550
Chicago, Illinois 60606
(312) 431-3700 Attorneys for Defendants
gflynn@karballaw.com
Linda Walters on behalf of George K. Flynn
lwalters@karballaw.com

You are hereby notified that on June 28, 2022, at 10:00 A.M. at 707 Skokie Boulevard, Suite 600, Northbrook, Illinois 60062 the deposition of Katherine M. Keefe, 2200 N. Seminary Avenue, Woodstock, Illinois 60098 will be taken for discovery in this case.

THERE WILL BE NO INTERROGATION OF THE DEPONENT AND THE APPEARANCE AT THE DEPOSITION WILL BE EXCUSED IF SPECIFIED DOCUMENTS OR TANGIBLE THINGS ARE PRODUCED.

Received 07-08-2022 10:42 AM / Circuit Clerk Accepted on 07-08-2022 10:43 AM / Transaction #18587480 / Case #2017LA000377
Purchased from re:SearchIL

C 830

PLEASE TAKE NOTICE that on July 7, 2022, I served the parties by email:

●**SUBPOENA FOR DOCUMENTS to KATHERINE M. KEEFE;**

●**AFFIDAVIT OF SERVICE UPON KATHERINE M. KEEFE**

Copies of which are attached hereto and herewith served upon you.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on July 7, 2022, I caused to be served the attached listed Notice Of Deposition For Records Only, Subpoena and Affidavit of Service to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

Date: July 7, 2022

Received 07-08-2022 10:42 AM / Circuit Clerk Accepted on 07-08-2022 10:43 AM / Transaction #18587480 / Case #2017LA000377
Purchased from re:SearchIL

Received 07-08-2022 10:42 AM / Circuit Clerk Accepted on 07-08-2022 10:43 AM / Transaction #18587480 / Case #2017LA000377
Purchased from re:SearchIL

C 833
Purchased from re:SearchIL

** FILED ** Env: 18587480
McHenry County, Illinois
2017LA000377
Date: 7/7/2022 5:56 PM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

STATE OF ILLINOIS, CIRCUIT COURT McHenry **COUNTY**	**PROOF OF DELIVERY**	*For Court Use Only*

Instructions	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person or company that filed this case as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name or Company)*
Enter the name of the Defendants/ Respondents.	v.
Enter the Case Number given by the Circuit Clerk.	Hans Mast & The law Offices of Thomas J. Popovich P.C **Defendants / Respondents** *(First, middle, last name, or business name)* 17 LA 377 **Case Number**

In **1**, enter the name of each court document you are sending.

1. I am sending the following court document: supplemental responses to Records Subpoena only served on Barbara G. Smith flash drive certified mail 70200090000205334340

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

a. To:

Name: George K. Flynn
First *Middle* *Last*

Address: 200 S. Wacker Drive, Suite 2550 Chicago Illinois 60606
Street, Apt # *City* *State* *ZIP*

Email address: gflynn@karballaw.com

In **1b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

b. By:

- ☐ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☑ Mail or third-party carrier

In **c**, fill in the date and time that you are sending the document.

c. On: 07/07/2022 *Date* at: 10:00 *Time* ☑ a.m. ☐ p.m.

Received 07-08-2022 10:42 AM / Circuit Clerk Accepted on 07-08-2022 10:43 AM / Transaction #18587480 / Case #2017LA000377
Page 1 of 2

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

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2. I am sending this document:

a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:

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c. On: _____ at: _____ ☐ a.m. ☐ p.m.
Date *Time*

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

61684530
Attorney # (if any)

707 skokie Blvd. #600
Street Address

Northbrook, Illinois 60062
City, State, ZIP

contact@lawofficeofalphonsetalarico.com
Email

GETTING COURT DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

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Page 2 of 2
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C 834

C 835
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** FILED ** Env: 18587480
McHenry County, Illinois
2017LA000377
Date: 7/7/2022 5:56 PM
Katherine M. Keefe
Clerk of the Circuit Court

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STATE OF ILLINOIS, CIRCUIT COURT

McHenry **COUNTY**

PROOF OF DELIVERY

For Court Use Only

Instructions ▾	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person or company that filed this case as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name or Company)*
	v.
Enter the name of the Defendants/ Respondents.	Hans Mast & The Law Offices of Thomas J Popovich PC. **Defendants / Respondents** *(First, middle, last name, or business name)*
Enter the Case Number given by the Circuit Clerk.	17 LA 377 **Case Number**

In **1**, enter the name of each court document you are sending.

1. I am sending the following court document: N otice of Deposition For Records only

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

a. To:

Name: George K. Flynn
First Middle Last

Address: 200 S. Wacker Drive, suite 2550 Chicago Illinois 60606
Street, Apt # City State ZIP

Email address: gflynn@karballaw.com

In **1b**, check the box to show how you are sending the document.

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2. I am sending this document:

a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:

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☐ Email *(not through an EFSP)*

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/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

61684530
Attorney # (if any)

707 Skokie Blvd. #600
Street Address

Northbrook, Illinois 60062
City, State, ZIP

contact@lawofficeofalphonsetalarico.com
Email

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Page 2 of 2
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C 836

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
07/11/2022 3:22 PM
McHenry County, Illinois
22nd Judicial Circuit
****

ORDER

THIS CAUSE COMING TO BE HEARD for Status, due notice having been given, and the Court being fully advised in the premises:

IT IS ORDERED:

1. On the Court's motion, F(1) discovery is closed;
2. Plaintiff is granted leave to issue a subpoena to The Clinton Law Firm; and
3. A status hearing is set for **September 16, 2022** at **9:30 a.m.** per the Court's order.

Zoom information for Room 201:
Link: https://zoom.us/my/mchenrycourtroom201;
Meeting ID: 272-959-8070
Personal Link Name: mchenrycourtroom201;
Password: no password required

Prepared by:

Atty. No. George K. Flynn/ARDC No. 6239349
Name: Karbal, Cohen, Economou, Silk & Dunne, LLC
Attorney for: Defendants
Address: 200 S. Wacker Drive, Suite 2550
City: Chicago, IL 60606
Telephone: (312) 431-3700
E-Mail: gfynn@karballaw.com

7/11/2022

…….., 2022

ENTER:

Thomas A. Meyer

……

Judge Judge's No.

Thomas Meyer

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

Purchased from re:SearchIL

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

FILED - Env: 18999306
McHenry County, Illinois
2017LA000377
Date: 8/8/2022 4:20 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS, CIRCUIT COURT

McHenry ☑ **COUNTY**

PROOF OF DELIVERY

For Court Use Only

Instructions

Directly above, enter the name of the county where the case was filed.

Enter the name of the person or company that filed this case as Plaintiff/Petitioner.

Enter the name of the Defendants/ Respondents.

Enter the Case Number given by the Circuit Clerk.

Paul Dulberg
Plaintiff / Petitioner *(First, middle, last name or Company)*

v.

Hans Mast & Law Offices of Thomas J. Popovich, P. C.
Defendants / Respondents *(First, middle, last name, or business name)*

17 LA 377
Case Number

In **1**, enter the name of each court document you are sending.

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **1b**, check the box to show how you are sending the document.

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In **c**, fill in the date and time that you are sending the document.

1. I am sending the following court document: Notice of Deposition For Records Only

Julia C. Williams & Williams Law,LLC

a. To:

Name: George K. Flynn
First Middle Last

Address: 200 S. Wacker Drive, Suite 2550 Chicago, Illinois 60606
Street, Apt # City State ZIP

Email address: gflynn@karballaw.com

b. By:

☑ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

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- ☐ The party's lawyer
- ☐ The party's lawyer's office

☐ Mail or third-party carrier

c. On: 08/08/2022 *Date* at: 4:30 *Time* ☐ a.m. ☑ p.m.

Received 08-09-2022 08:18 AM / Circuit Clerk Accepted on 08-09-2022 09:37 AM / Transaction #18999306 / Case #2017LA000377
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Enter the Case Number given by the Circuit Clerk: 17 LA 377

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

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Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

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/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

61684530
Attorney # (if any)

707 Skokie Blvd. #600
Street Address

Northbrook, Illinois 60062
City, State, ZIP

contact@lawofficeofalphonsetalarico.com
Email

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

NOTICE OF DEPOSITIONS FOR RECORDS ONLY

TO: GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
200 So. Wacker Drive, Suite 2550
Chicago, Illinois 60606
(312) 431-3700 Attorneys for Defendants
gflynn@karballaw.com
Linda Walters on behalf of George K. Flynn
lwalters@karballaw.com

You are hereby notified that on August 31, 2022, at 10:00 A.M. at 707 Skokie Boulevard, Suite 600, Northbrook, Illinois 60062 the depositions of: Julia Christine Williams, Individually and as manager of Williams Law, LLC, 111 West Washington Street Suite 1437, Chicago, Illinois 60602-2708 will be taken for discovery in this case.

THERE WILL BE NO INTERROGATION OF THE DEPONENTS

Received 08-09-2022 08:18 AM / Circuit Clerk Accepted on 08-09-2022 09:37 AM / Transaction #18999306 / Case #2017LA000377
Purchased from re:SearchIL

PLEASE TAKE NOTICE that on August 8, 2022, I served the parties by email:

- **SUBPOENA FOR DOCUMENTS to Julia Christine Williams, Individually and as manager of Williams Law, LLC;**
- **AFFIDAVIT OF SERVICE UPON Julia Christine Williams, Individually and as manager of Williams Law, LLC.**

Copies of which are attached hereto and herewith served upon you.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on August 8, 2022, I caused to be served the attached listed Notice Of Deposition For Records Only, Subpoena and Affidavit of Service to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

Date: August 8, 2022

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McHenry County, Illinois
2017LA000377
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Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS, CIRCUIT COURT

McHenry ☑ **COUNTY**

PROOF OF DELIVERY

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Instructions

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Enter the name of the person or company that filed this case as Plaintiff/Petitioner.

Enter the name of the Defendants/ Respondents.

Enter the Case Number given by the Circuit Clerk.

Paul Dulberg
Plaintiff / Petitioner *(First, middle, last name or Company)*

v.

Hans Mast & Law Offices of Thomas J. Popovich, P. C.
Defendants / Respondents *(First, middle, last name, or business name)*

17 LA 377
Case Number

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Edward X. Clinton & Clinton Law Firm, LLC

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Alphonse A. Talarico
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Telephone

61684530
Attorney # (if any)

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

NOTICE OF DEPOSITIONS FOR RECORDS ONLY

TO: GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
200 So. Wacker Drive, Suite 2550
Chicago, Illinois 60606
(312) 431-3700 Attorneys for Defendants
gflynn@karballaw.com
Linda Walters on behalf of George K. Flynn
lwalters@karballaw.com

You are hereby notified that on August 31, 2022, at 1:00 P.M. at 707 Skokie Boulevard, Suite 600, Northbrook, Illinois 60062 the deposition of: Edward X. Clinton, Individually and as manager of Clinton Law Firm, LLC, 111 West Washington Street Suite 1437, Chicago, Illinois 60602-2708 will be taken for discovery in this case.

THERE WILL BE NO INTERROGATION OF THE DEPONENTS

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- **AFFIDAVIT OF SERVICE UPON Julia Christine Williams, Individually and as manager of Williams Law, LLC.**

Copies of which are attached hereto and herewith served upon you.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on August 8, 2022, I caused to be served the attached listed Notice Of Deposition For Records Only, Subpoena and Affidavit of Service to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

Date: August 8, 2022

Received 08-09-2022 08:18 AM / Circuit Clerk Accepted on 08-09-2022 09:37 AM / Transaction #18999306 / Case #2017LA000377
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McHenry County, Illinois
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This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

STATE OF ILLINOIS, CIRCUIT COURT

McHenry **COUNTY**

PROOF OF DELIVERY

For Court Use Only

Instructions

Directly above, enter the name of the county where the case was filed.

Enter the name of the person or company that filed this case as Plaintiff/Petitioner.

Enter the name of the Defendants/ Respondents.

Enter the Case Number given by the Circuit Clerk.

Paul Dulberg
Plaintiff / Petitioner *(First, middle, last name or Company)*

v.

Hans Mast & Law Offices of Thomas J. Popovich, P.C.
Defendants / Respondents *(First, middle, last name, or business name)*

17 LA 377
Case Number

In **1**, enter the name of each court document you are sending.

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

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1. I am sending the following court document: Dulberg's Amended Answers to the Law Offices of Thomas J. Popovivh P.C. Interrogatories to Plaintiff.

a. To:

Name: George K. Flynn
First Middle Last

Address: 200 S. Wacker Drive, Suite 2550 Chicago Illinois 60606
Street, Apt # City State ZIP

Email address: gflynn@karballaw.com

b. By:

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  - ☐ The party
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c. On: 09/14/2022 *Date* at: 4:00 *Time* ☐ a.m. ☑ p.m.

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Date *Time*

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I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Alphonse A, Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

(312) 808-1410
Telephone

61684530
Attorney # (if any)

707 Skokie Blvd. #600
Street Address

Northbrook, Illinois 60062
City, State, ZIP

contact@lawofficeofalphonsetalarico.com
Email

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** FILED ** Env: 19502183
McHenry County, Illinois
2017LA000377
Date: 9/15/2022 10:18 AM
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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Paul Dulberg, Plaintiff, v. The Law Offices of Thomas J. Popovich, P.C., And Hans Mast, Defendants.	)	Case No. 17 LA 000377 Jury Demand (Court Room 201)

NOTICE OF MOTION

TO: ALL ATTORNEYS OF RECORD – See Attached Service List

PLEASE TAKE NOTICE that on the **16th day of September 2022 at 9:30 a.m.** or as soon thereafter as this motion may be heard, we shall appear before the Honorable Judge Thomas A. Meyer or any Judge sitting in his place or stead, in Room 201, at McHenry County Government Center, 2200 N. Seminary Avenue (Route 47), Woodstock, IL 60098, and shall then and there present DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION/MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT, a copy of which is attached hereto and herewith served upon you.

Dated this 15th day of September 2022 in Chicago, Illinois.

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
200 So. Wacker Drive, Suite 2550
Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on September 15, 2022.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

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SERVICE LIST

Plaintiff's Attorney	
Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd 6th Floor Suite Northbrook, IL 60062-2841 contact@lawofficeofalphonsetalarico.com (312) 808-1410	

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

DULBERG, PAUL
Plaintiff/Petitioner

v.

MAST, HANS ET AL
Defendant/Respondent

Reviewing Court No: 2-23-0072
Circuit Court/Agency No: 2017LA000377
Trial Judge/Hearing Officer: JOEL D BERG

2
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APPELLATE COURT 2ND DISTRICT

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2017LA000377
Date: 9/16/2022 2:53 PM
Katherine M. Keefe
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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION/MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast ("Mast") (sometimes collectively "Popovich") by and through their attorneys Karbal, Cohen, Economou, Silk, & Dunne, LLC, pursuant to 735 ILCS 5/2-1005, submit this Motion/Memorandum in Support of their Motion for Summary Judgment, and state as follows:

I. INTRODUCTION

Plaintiff Paul Dulberg ("Dulberg") was allegedly injured on June 28, 2011 when he was assisting a friend, David Gagnon ("Gagnon"), trim a tree with a chainsaw in the backyard of a home owned by Dulberg's neighbors, Bill and Carolyn McGuire ("The McGuires"). Gagnon, who is Carolyn McGuire's son, and Dulberg were both over the age of 40 at the time of the accident. Dulberg retained defendant Popovich to prosecute a personal injury lawsuit against Gagnon and the McGuires. Defendant Hans Mast was the primary handling attorney. Eventually, in Mast's legal opinion, the case against the property owners was weak because the evidence showed they did not control the work. Mast recommended Dulberg accept the McGuires' settlement offer. Dulberg deliberated and accepted the McGuires' offer in January 2014. Thus

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McGuires were dismissed from the lawsuit in January 2014, and Dulberg continued to prosecute the case against Gagnon.

Popovich and Mast withdrew from representing Dulberg on March 13, 2015. Dulberg later settled with Gagnon, and waited until November 28, 2017 to sue Popovich and Mast. In an unavailing attempt to excuse the late filing of his lawsuit, Dulberg alleges that he did not become aware of a claim against defendants until he sought a legal opinion in December of 2016. He has never been able to explain what legal opinion he received or how it caused him to "discover" his claim and damages, or why he still waited almost another year after December 2016 to file his lawsuit. Summary judgment must be entered because Dulberg's claims are barred by the two-year statute of limitations for Illinois legal malpractice claims under 735 ILCS 13/214.3(b).

II. STATEMENT OF CLAIM

The following facts can be gleaned from the Complaint (Exhibit A), Amended Complaint (Exhibit B) and Second Amended Complaint (Exhibit C).[1] [2]

On or about June 28, 2011, Dulberg was involved in an accident while assisting David Gagnon in the cutting down of a tree on the McGuire property. Exhibit A, ¶6. Gagnon lost control of the chainsaw he was using causing it to strike Dulberg. Exhibit A, ¶7. In May 2012, Dulberg retained the Law Offices of Thomas J. Popovich. Exhibit A, ¶8. In late 2013 or early 2014, Mast met with Dulberg and agreed with Mast to accept $5,000, releasing William and Caroline McGuire. Exhibit A, ¶13. Mast and Popovich continued to represent Dulberg through March of 2015. Exhibit A, ¶14. Thereafter, Dulberg retained other attorneys and proceeded to a binding

[1] The Complaint and Amended Complaint were filed by The Gooch Firm and signed by attorney Thomas W. Gooch, III.

[2] Dulberg denied the material allegations contained in Popovich's Affirmative Defenses, including its Second Affirmative Defense based on the two-year statute of limitation. (Dulberg Answer to Affirmative Defenses, Exhibit D).

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mediation where he received an award. Exhibit A, ¶16. Dulberg alleges that following the execution of the mediation agreement and final mediation award, he realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. Following the mediation Dulberg was advised to seek an independent opinion from an attorney handling malpractice matters, and received that opinion on or about December 16, 2016. Exhibit A, ¶20.

In his First Amended Complaint, Dulberg modified his "discovery" allegations and alleged "it was not until the mediation in December 2016, based on the expert's opinion that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000 on an "all or nothing" basis. Exhibit B, ¶29. In ¶30 he reiterates that "Dulberg was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016." Exhibit B, ¶30.

Dulberg's first substitute counsel in this case filed a Second Amended Complaint, further modifying the allegations. It is alleged that "after accepting a $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating that "I trust your judgment." Exhibit C, ¶48. He further alleges in ¶55 of Ex. C that "only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable." Exhibit C, ¶55. He also alleges that following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information that Mast and Popovich had given Dulberg was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. Exhibit C, ¶56. He alleged that it was not until the mediation in December 2016 based on the expert's opinions that Dulberg retained for the mediation that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and

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coercing him to accept a settlement for $5,000 on an "all or nothing" basis. Exhibit C, ¶57. Dulberg's allegations of Popovich' breaches of the standard of care are contained in Exhibit C, ¶58 as follows:

> 58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:
>
> a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;
>
> b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;
>
> c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance company would pay close to that;
>
> d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;
>
> e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the[sic] all the claims against both the McGuires and Gagnon in order to obtain a full recovery;
>
> f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

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III. UNDISPUTED MATERIAL FACTS

A. Paul Dulberg Testimony

Dulberg has hired a personal injury attorney in 2002 and has hired a corporate lawyer in the past. (Dulberg Deposition, Exhibit E, pp.8, 9). He was injured on June 28, 2011 while assisting David Gagnon with a chainsaw cutting up some branches after they were removed from a tree. (Exhibit E, pp.12, 13). He hired Popovich to sue Gagnon and Bill and Carolyn McGuire in connection with his June 28, 2011 injury. (Exhibit E, pp. 9, 30). Hans Mast was the primary handling attorney. (Exhibit E, p. 30). Brad Balke substituted for Dulberg on March 19, 2015 when Popovich withdrew. (Exhibit E, p. 35). Dulberg asked hundreds of lawyers to take over his case when Popovich withdrew, but none accepted. (Exhibit, E, p. 36). Dulberg fired Balke prior to the binding arbitration, and he was then represented by the Baudin Law Firm. While Brad Balke handled the case, Balke never gave him an opinion as to the liability of the McGuires and whether the prior settlement was appropriate. (Exhibit E, p. 42). At some point, Dulberg hired The Daley Disability Law Firm to assist him with a Social Security disability claim. A criminal lawyer represented him in a guilty plea for drug possession in 1990. (Exhibit E, pp.34-35) (Exhibit E, p. 43). At some point during the case, it was Hans Mast's opinion that the McGuires did not have liability because they did not control the work David Gagnon was doing. (Exhibit E, pp. 50, 51). Mr. McGuire was inside the house for 45 minutes before the accident happened. (Exhibit E, pp. 51, 52).

On November 18, 2013, Mast emailed Dulberg and relayed a $5,000 settlement offer from the McGuires. (Exhibit E, p.52). Mast suggested that the $5,000 offer be accepted. Dulberg testified that at one point, "Mast defined what an independent contractor is and he said that David was an independent contractor and the McGuires weren't liable because they had hired somebody

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outside even though it's their own son, he is an adult, outside to do the work and that they weren't responsible." (Exhibit E, p.55). Dulberg believed that Mast was relying on his honest legal opinion at the time. (Exhibit E, p.59). Dulberg did not accept the settlement offer on November 8, 2013. Dulberg met with Mast on November 20, 2013. (Exhibit E, p.61). Then Dulberg reviewed the depositions of the McGuires and David Gagnon before he accepted the offer. (Exhibit E, p.63). Eventually Dulberg told Mast that he would agree to accept the $5,000 settlement offer from the McGuires, just before Christmas in December of 2013. (Exhibit E, p.66) Dulberg received a letter with a settlement release from Mast on January 29, 2014 and signed it and sent it back. (Exhibit E, p.69). From December 25 until he received the settlement release, he contacted Mast again to discuss whether it would be appropriate to let the McGuires out for $5,000. (Exhibit E, p.70). Dulberg did not talk to any other lawyers and there was nothing preventing him from seeking a second opinion from some other lawyer at the time. (Exhibit E, p.71). Dulberg emailed Mast with a question about the release on January 29, 2014, and then put a stamp on the envelope with the executed release, put it in his mailbox, put the flag up, and waited for the mailman. (Exhibit E, pp. 71, 72). Mast did not force him to take the settlement. (Exhibit E, p.73).

The case continued against Gagnon through discovery and some of Dulberg's doctors were deposed. (Exhibit E, pp. 78, 79). Dulberg told Mast "First, I'm sorry that I'm not a better witness to prove David cut me with a chainsaw." Dulberg already started looking for new lawyers in the summer of 2014. Mast thought the case against David Gagnon was difficult. (Exhibit E, p.81). Mast told Dulberg that he did not make a good witness at his deposition. (Exhibit E, p.82). Dulberg and Gagnon were the only people who witnessed the accident. (Exhibit E, p.83). There were differences between the factual testimony provided by Gagnon and Dulberg in the underlying

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case. (Exhibit E, p.83). His relationship with Mast was deteriorating over the fall and winter of 2015, even long before that. (Exhibit E, p.86). On February 22, 2015, Dulberg wrote in an email to Mast "Now I'm left wondering… how hard it is to sue an attorney?" (Exhibit F). When asked what the reference to suing an attorney meant he replied:

A. That was me being angry.

Q. With Hans?

A. Yes. I was seeing red.

Q. You're suggesting that you may sue him?

A. Yeah. I didn't know that I could. I'm wondering about it.

Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?

A. Yes.

Q. You, ultimately, sued him for legal malpractice, right?

A. Yes.

On February 22, 2015, Mast wrote in an email to Dulberg "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case." (Exhibit E, p.91). Mast speculated that seven out of ten times he would lose the case outright. (Exhibit E, p.92). Dulberg filed for bankruptcy. He was ordered by the bankruptcy trustee to participate in binding mediation on December 8, 2016. (Exhibit E, p.96). Dulberg admitted that the allegation in his complaint regarding Popovich being involved with the high/low agreement in the mediation was a mistake. (Exhibit E, p.103). Dulberg testified that it was Baudin that advised him to seek an independent opinion from an attorney handling legal malpractice matters. (Exhibit E, p.108). The lawyer he received the legal opinion on December 16, 2016 was Thomas Gooch, the drafter of the Complaint in this case. (Exhibit E, p.108). It was confirmed by Gooch on December 16,

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2016 that Dulberg had a valid case against Popovich. (Exhibit E, p.113). He did not file a lawsuit until nearly a year later because "Thomas Gooch had some health issues and that his wife had some health issues. It took a while." (Exhibit E, p.114). Dulberg agreed that the legal opinion he received on December 16, 2016 was responsive to Interrogatory No. 1 from Dulberg's answers to Mast's Interrogatories. (Exhibit E, pp.125, 126). The legal opinion Dulberg received from Gooch was verbal. (Exhibit E, p.130). Gooch simply stated, "You have a case here. You have a valid case." (Exhibit E, p.130). When asked did he tell you exactly what they did wrong in connection with your – their representation of you, Dulberg replied "He probably did. I'm not recalling it right now. I'm pulling a blank." (Exhibit E, p.131).

Dulberg was questioned further: "Other than you have a case, what did Gooch say to you?" Dulberg responded, "He said they definitely committed malpractice." When asked whether Gooch ever put this in writing, Dulberg replied, "I think he backed it up by filing a suit. That's documented." (Exhibit E, p.136). Dulberg was asked, "As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to the McGuires' liability? Answer: They were definitely liable. He tried to say that – like Popovich and Mast were first – or second year lawyers and that they may have made a mistake here." (Ex. E, pp.139-140).

B. <u>Hans Mast Testimony</u>

Mast graduated from Kent Law School in 1991 and has been admitted to practice law in Illinois since 1991. (Mast Deposition, Exhibit G, p.10). He joined the Popovich firm in 2001 and worked there for approximately 18 years. (Exhibit G, p.12). He testified that every time he met with Dulberg: "Every time we met, we talked about this because this was the subject at the time with the McGuires and the testimony of the McGuires, given Paul' testimony, given the lack of

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any evidence that they were controlling any work or even knew what Paul was doing, I felt it was a big, high risk at moving forward on that claim." (Exhibit G, p.43). Mast thought Paul's case was going to be very difficult to prove based on the testimony of everybody, credibility issues, and the lack of evidence to support and prove. (Exhibit G, p.77). Gagon's testimony regarding the facts surrounding the accident differed from Paul Dulberg's version of the facts. (Exhibit G, p.77). Mast took that difference in testimony into account in his evaluation and his analysis of the case. (Exhibit G, p.77). Mast also took into account Paul Dulberg's poor performance as a witness at his discovery deposition. Mast's analysis and evaluation of the case hinged in part on whether the McGuires controlled the method of the use of the chainsaw. Mast testified that the McGuires were inside the house and not paying attention to what was going on outside at the time of the accident. (Exhibit G, p.78). Mast's recommendation or suggestion that Dulberg settle the case for $5,000 against the McGuires was based on his analysis of the entire case, including the risks and benefits of going forward and potentially losing the case at trial. (Exhibit G, pp.78,79). Based on his professional judgment, Mast suggested that Dulberg attempt to settle the matter as opposed to taking it to trial against the McGuires. (Exhibit G, p.79).

IV. LEGAL STANDARD

The purpose of summary judgment is not to try a question of fact but to determine whether there is a genuine issue of material fact. *N. Ill. Emergency Physicians v. Landau, Omahana, & Kopka, Ltd.*, 216 Ill. 2d 294, 305 (2005). Summary judgment is proper if, when viewed in the light most favorable to the nonmovant, the pleadings, depositions, admissions, and affidavits on record establish that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Id.* A defendant moving for summary judgment may meet the initial burden of production by either affirmatively showing that some element of the case must be resolved in

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defendant's favor, or by showing the absence of evidence supporting the plaintiff's position on one or more elements of the cause of action. *Hutchcraft v. Independent Mechanical Industries, Inc.*, 312 Ill App. 3d 351, 355 (4th Dist.,2000). The plaintiff is not required to prove his case at the summary judgment stage; in order to survive a motion for summary judgment, he must present a factual basis that would arguably entitle him to a judgment. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002).

V. ARGUMENT

Dulberg's legal malpractice claim against Popovich is time barred by the two (2) year statute of limitations set forth in 735 ILCS 5/2-614.3.

735 ILCS 5/13-214.3(b) reads as follows:

> (b) An action for damages based on tort, contract or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services [...] must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.

735 ILCS 5/13-214.3(b).

While Popovich denies breaching any standard of care or proximately causing Dulberg any damages, assuming *arguendo* there was malpractice, Dulberg knew or should have known of his injury and that it was wrongfully caused when Popovich withdrew. In the alternative, Dulberg should have investigated any potential claims when he questioned the appropriateness of settling with the McGuires.

In his various pleadings, Dulberg alleged that Popovich concealed his malpractice and coerced him to settle with the McGuires, but his own testimony does not bear out any such concealment. He also attempts to plead that he did not discover the malpractice and his injury until December 12, 2016, but his anticipatory pleading is not supported by his own testimony. Under any analysis, Dulberg knew or should have known of the alleged malpractice

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and his injury by the time Popovich withdrew. Dulberg fails to meet his burden of proving a discovery date that would toll the limitations period.

To state a cause of action for legal malpractice, the plaintiff must allege facts to establish (1) the defendant attorney owed the plaintiff client a duty of due care arising from an attorney-client relationship, (2) the attorney breached that duty, (3) the client suffered an injury in the form of actual damages, and (4) the actual damages resulted as a proximate cause of the breach." *Nelson v. Quarles & Grady*, 2013 IL App (1st) 123122 at [*P28], citing *Fox v. Seiden*, 382 Ill. App. 3d 288, 294 (1st Dist. 2008). A legal malpractice suit is by its nature dependent upon a predicate lawsuit. *Claire Associates v. Pontikes*, 151 Ill. App. 3d 116, 122 (1st Dist. 1986). Thus, a legal malpractice claim presents a "case within a case." *Id.* "[N]o malpractice exists unless counsel's negligence has resulted in the loss of an underlying cause of action, or the loss of a meritorious defense if the attorney was defending in the underlying suit."

The two-year statute of limitations for legal malpractice under 735 ILCS 5/13-214.3(b) incorporates the discovery rule which delays commencement of the statute of limitations until the plaintiff knows or reasonably should have known of the injury or that it may have been wrongfully caused. *Scheinblum v. Schain Banks Kenny & Schwartz, Ltd.*, 2021 IL App. (1st) 200798 at [*P24], quoting *Dancor International, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666 (1st Dist. 1997). Under this rule, the statute of limitations begins to run when the injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Scheinblum* at [*P24] citing *Janousek v. Katten Muchin Rosenman LLP*, 2015 IL App (1st) 142989. Under the discovery rule, "a statute of limitations may run despite the lack of actual knowledge of negligent conduct." *SK Partners I, LP*, 408 Ill. App. 3d at 130 (1st Dist. 2011). A "person knows or reasonably should know an injury is 'wrongfully caused' when

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he or she possesses sufficient information concerning an injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct had occurred." *Janousek* at [*p13]. Under Illinois law, the burden is on the injured party to inquire further as to the existence of a cause of action. "When a plaintiff uses the discovery rule to delay the commencement of the statute of limitations, the burden is on the plaintiff to prove the date of discovery." *Dancor* at 673. Identification of one wrongful cause of the plaintiff's injuries initiates his limitations period as to all other causes. *Carlson v. Fish*, 2015 IL App (1st) 140526 at ¶39.

In *Blue Water Partners, Inc. v. Mason*, 2012 IL App (1st) 102165, the Appellate Court again had the occasion to examine the discovery rule under the two-year legal malpractice statute of limitations. The court ruled that the statute of limitations begins to run when the purportedly injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Blue Water Partners* at [*P51]. In that case, the court found little dispute that the plaintiff acted on its obligation to inquire further on possible wrongful conduct when consulting with an attorney about potential claims, albeit the Plaintiff lacked diligence in filing the suit.

In the recent Illinois Supreme Court case *Suburban Real Estate Servs. v. Carlson*, 2022 IL 126935, the court distinguished between transactional malpractice and legal malpractice arising out of litigation. The court explained that when the attorney's negligence arises out of underlying litigation, no injury exists, and therefore no actionable claim arises, unless and until the attorney's negligence results in a loss of the underlying cause of action. The court explained that in "this type of legal malpractice claim, commonly referred to as a 'case within a case,' the allegation is that the client suffered a monetary loss and but for the attorney's negligence the client would have recovered in the underlying litigation." *Suburban Real Estate* at [*P19] and [citing *Tri-G, Inc. v. Burke,*

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Bosselman & Weaver, 222 Ill. 2d 218 (2006). In *Fox v. Seiden*, 382 Ill. App. 3d 288 (1st Dist. 2008), the appellate court analyzed the requirement of actual damages and held that where malpractice was alleged in the prosecution of a case, the entry of judgment in that underlying case, as opposed to the payment of judgment, is sufficient to establish the element of damages in order to state a legal malpractice claim. *Fox* at 297, 299. Here, the settlement with the McGuires was executed by January 29, 2014, and they were dismissed with prejudice in January 2014. (Dismissal Order, Exhibit H).

On its face, Dulberg's legal malpractice complaint is time barred. He bears the burden of proving a date of discovery that can salvage his claim, but Dulberg has not and can never meet that burden. Dulberg's deposition testimony and pleadings are vague and inconsistent with respect to how Popovich breached the standard of care, and when and how he became aware that his injury was wrongfully caused. As discussed, Dulberg's own testimony refutes many of his allegations of concealment, undue influence and coercion.

Dulberg has fiddled with his "discovery" allegations, going back and forth as to when and how he became aware of his malpractice claim and damages. First, he plead that he sought a **legal opinion,** and received that opinion on December 16, 2016. The legal opinion was supplied by the same attorney who filed his first two pleadings in this case. Then he changed his pleading and theory and attempted to rely on discovery by virtue of the report of a "chainsaw expert" he read in connection with the December 2016 mediation. However, he actually received the opinion (Exhibit I) in July 2016 but "you don't catch everything the first time you read it." (Exhibit D, p.141). Notably the report from Dr. Lanford is dated much earlier, February 27, 2016 and was addressed to Dulberg's then attorney, Randy Baudin.

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Here defendants painstakingly attempted to seek discovery as to how Popovich allegedly breached the standard of care, and when and how Dulberg became aware of any damages. Dulberg's discovery responses and deposition testimony were repeatedly evasive. See Dulberg testimony, Exhibit D, pages 106 to 141. This behavior continued and caused the need for a motion to compel (See Group Exhibit J, Motion to Compel, Motion to Supplement Motion to Compel, and July 19, 2021 transcript from hearing).

Moreover, Dulberg's dissatisfaction with Popovich's representation surfaced much earlier, and he even threatened in writing to sue Mast as early as February 22, 2015. Dulberg, no "babe in the woods" when it comes to experience with litigation retention, met with "hundreds" of attorneys and had opportunity after opportunity to investigate and inquire as to whether Popovich breached the standard of care and caused him any damage in connection with the case (including prosecution of the case against Gagnon and the McGuires). The many cases cited above establish the Plaintiff's duty to inquire, and here Dulberg had the tools, the information, and opportunity to inquire. His contrived late discovery of his claims and damages should not be countenanced by this court. He was clearly questioning whether he should agree to accept the McGuires' offer, and he deliberated on it extensively. Nothing prevented him from seeking a second opinion. Likewise, nothing prevented him from inquiring of Mr. Balke or the Baudin firm whether his injury was wrongfully caused. Summary Judgment must be entered as his claims are barred by the two-year statute of limitations.

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VI. CONCLUSION

Wherefore, Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, pray that the motion for summary judgment be granted, that summary judgment be entered in its favor and against Plaintiff, and for any other relief that this court deems just and appropriate.

Dated: September 15, 2022

Respectfully submitted,

KARBAL, COHEN, ECONOMOU SILK & DUNNE, LLC

By: */s/ George K. Flynn*
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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: 17111117451
17LA000377
11/26/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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EXHIBIT A

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By:

Date:

Date:

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT

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COPY
MAY 15 2012
KATHERINE M. KAUPE, McHENRY CITY, CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT B
ALL-STATE LEGAL®

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 9/18 20 12, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON 20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
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(815) 344-3797
ARDC No. 06203684

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The Law Offices of Thomas J. Popovich P.C.

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Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kohlak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT C
ALL-STATE LEGAL®

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No: 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comperative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

ALL-STATE LEGAL

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendant.	)	No. 17 LA 377

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111166062
17LA000377
06/07/2018
McHenry County, Illinois
22nd Judicial Circuit
****

FIRST AMENDED COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his First Amended Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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EXHIBIT B

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the same area.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike and cut DULBERG's arm. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A.**

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants properly filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. Also MAST incorrectly informed DULBERG that the insurance policy limit for the Gagnon was only $100,000.00, when in reality the policy was $300,000.00.

14. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST began urging DULBERG to settle the matter against William McGuire and Caroline McGuire for $5,000.00.

15. On November 18, 2013, MAST wrote two emails to DULBERG urging DULBERG to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

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16. Similarly, on November 20, 2013 MAST emailed DULBERG urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.)**

17. On or around December 2013 or January 2014, MAST met with DULBERG and other family members and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told DULBERG that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

18. DULBERG, having no choice in the matter, reluctantly agreed with MAST to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit D**.

19. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled

20. After accepting the $5,000 settlement, DULBERG wrote MAST an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.)**

21. MAST and POPOVICH continued to represent DULBERG into 2015 and continuously assured him that his case was being handled properly.

22. On February 22, 2015, as to any chance of settling the remainder of his case against Gagnon MAST wrote to DULBERG that, "There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only

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alternative is to take the case to trial and I am not interested in doing that." (See Email attached as **Exhibit F.**)

23. MAST and POPOVICH represented DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship due to a claimed failure of communication. MAST and POPOVICH withdrew from the representation of DULBERG.

24. Thereafter, DULBERG retained other attorneys and proceeded to a Court ordered binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. However, due to the settlement with the McGuires, DULBERG was only able to collect $300,000.00 based upon the insurance policy available. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit G.**

25. The McGuires were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuires were well able to pay all, or a portion of the binding mediation award had they still remained parties.

26. DULBERG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

27. Until the time of the mediation award, DULBERG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuires would only complicate the case.

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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

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f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails. into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;

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n) Failed to retain a liability expert to prove DULBERG's damages;

o) Were otherwise negligent in their representation of DULBERG.

32. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBERG to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~fifty~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
A

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COPY
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 206 ON
11-28, 2012, AT 2 AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ON
20 AT AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER
DEFAULT BEING ENTERED.

EXHIBIT
Exhibit

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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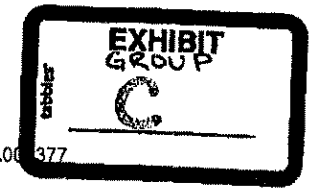
From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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C 907 V2

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kobiak

Mark J. Vogo
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
> > ----- Original Message -----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
> > Subject: McGuire settlement
> > Here is a copy of the first page.
> > It has check boxes and one of the check boxes says;
> > I am not eligible to receive SSI or SSDI.
> > Another says;
> > I am not receiving SSI or SSDI.
> > As you know, I have applied for SSDI and SSI

EXHIBIT
tabbies
E

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.

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F

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (If applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

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** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendant.	)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

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15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

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27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A.**

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

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44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

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53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing

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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

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Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
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ed@clintonlaw.net
juliawilliams@clintonlaw.net

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
A

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COPY
FILED
MAY 15 2012
KATHARINE M. KEEPE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count 1

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRI lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 11-28-2022, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____ 20__, AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
B

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Shelia today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kohnak

Mark J. Vogo
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
D

Waukegan Offices
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI

EXHIBIT
E

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.



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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

EXHIBIT

sticker C

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Pamela Walker

From: McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
Sent: Monday, December 10, 2018 1:37 PM
To: George K. Flynn; Pamela Walker
Subject: 17LA000377 - 2 Documents Filed

17LA000377

DULBERG, PAUL VS MAST, HANS, ET AL

Doc Type	**COAA**
Description	**COMPLAINT - AMENDED**
Date Filed	**12/6/2018**
Image Link	View Document Image

Doc Type	**NOTF**
Description	**NOTICE - FILING**
Date Filed	**12/6/2018**
Image Link	View Document Image

NOTE: E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

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** FILED ** Env: 4610589
McHenry County, Illinois
17LA000377
Date: 4/8/2019 3:52 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

PAUL DULBERG'S ANSWERS TO DEFENDANTS' AFFIRMATIIVE DEFENSES

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, answers Paul Dulberg's Affirmative Defenses as follows:

AFFIRMATIVE DEFENSES
FIRST AFFIRMATIVE DEFENSE: CONTRIBUTION NEGLIGENCE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiffs own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

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3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

SECOND AFFIRMATIVE DEFENSE
STATUTE OF LIMITATIONS

1. In Plaintiffs Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiffv. David Gagnon, et al., Defendants,* Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2, subparts a-d.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

4. Accordingly, this matter is time-barred.

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ANSWER: Plaintiff denies the allegations of this Paragraph #4.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

AFFIRMATIVE DEFENSES
THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause ofDulberg's damages.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

Respectfully submitted,

By: /s/ Julia C. Williams

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 Washington Street, Suite 2400
Chicago, IL 6002
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

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Page 1

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

The deposition of PAUL DULBERG, called for examination, taken pursuant to the provisions of the Code of Civil Procedure and the rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Realtime Reporter of said state, at 150 South Wacker Drive, Chicago, Illinois, February 19, 2020, at the approximate hour of 1:00 p.m.

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PRESENT:

THE CLINTON LAW FIRM,
111 West Washington Street, Suite 1437,
Chicago, Illinois 60602,
312-357-1515, by:
MS. JULIA C. WILLIAMS,
juliawilliams@clintonlaw.net,
appeared on behalf of the Plaintiff;

KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC,
150 South Wacker Drive, Suite 1700,
Chicago, Illinois 60606,
312-431-3700, by:
MR. GEORGE K. FLYNN,
gflynn@karballaw.com,
appeared on behalf of the Defendants.

REPORTED BY: Karen Pileggi, CSR, RPR, RMR, CRR,
CSR License No. 84-3404

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(WHEREUPON, the witness was duly sworn.)

PAUL DULBERG,

called as the plaintiff herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FLYNN:

Q. Let the record reflect that this is the discovery deposition of Paul Dulberg taken by agreement of the parties and pursuant to notice.

This deposition is being taken pursuant to the Rules of the Illinois Supreme Court, the Illinois Code of Civil Procedure and any applicable local rules in McHenry County.

Sir, could you state your name and spell your last name for the record.

A. Palm Dulberg, D-u-l-b-e-r-g.

Q. What is your address?

A. 4606 Hayden Court, McHenry, Illinois 60051.

Q. How long have you lived there?

A. Forty-nine years.

Q. Who do you live there with now?

A. Mike McArtor.

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Q. Did your mother live there at some point throughout the history of this case?

A. Yes.

Q. I'm just going to go over a few rules for the deposition. I know you've testified at least one time in a deposition before because you testified in the underlying personal injury case, correct?

A. Correct.

Q. Have you testified in any other depositions before?

A. No.

Q. I'll just remind you of a few rules that I'm sure you were aware of back then when you gave your deposition.

The court reporter is here to take down everything that you and I say. She can only take down one at a time so I'd ask that before you answer a question, let me finish the entire question. Okay?

A. Yes.

Q. I'll try to do the same. I'll try to let you respond before I ask a follow-up question.

You just nodded your head. That's

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another good point to make. She can't take down nods of the head, shrugs of the shoulders or other hand gestures. Your answers need to be verbal.

From time to time we forget those rules and I may just point to the court reporter as a reminder, if that's okay.

A. Yes.

Q. If you need to take a break at any time, feel free to stop me. I just ask that it's not while a question is pending that has not been answered. Fair enough?

A. I'll try to do that.

Q. If you've answered a question, I will assume you understood it. Okay?

A. Yes.

Q. I was asking you about your mother. She lived at the house during the pendency of the underlying case?

A. Yes.

Q. Is she still alive?

A. Yes.

MS. WILLIAMS: Can we define "underlying case"?

BY MR. FLYNN:

Q. The underlying case is a personal injury

Page 6

case that you filed against Bill and Caroline McGuire and David Gagnon.

A. That sounds correct.

Q. We'll get into the dates of the filing a little bit later. We'll call that, generally, the underlying case.

Your mother lived at the house at that time?

A. Yes.

Q. Did she own the house?

A. No.

Q. Do you own the house currently?

A. Yes.

Q. Does anyone else own the house?

A. No.

Q. How long have you owned it?

A. I think I first purchased it off my parents in '97, '98, something like that.

Q. Did you hire a lawyer in connection with that transaction?

A. No.

Q. Were your parents represented by a lawyer?

A. No.

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Q. The building, as I understand it, is a duplex; is that right?

A. No.

Q. Were there two apartments in the building at one time?

A. No.

Q. Was there a point in time where you and your mother lived in one half of the house and Mike McArtor lived in the other half?

A. Yes.

Q. How was that arrangement with respect to the location of the living spaces, if you can describe it?

A. It has a walkout basement. He had the downstairs with an exit out the back. We had the upstairs with an exit out the front.

Q. Have you ever been convicted of a crime of fraud, dishonesty or deceit?

A. No.

Q. Besides the hiring of the Popovich firm in connection with the underlying personal injury case, up to that point in time had you ever had an occasion to hire a lawyer?

A. I did during a traffic accident, and I

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don't remember the year.

Q. Were you injured in about 2002? Does that sound right?

A. Roughly.

Q. Who did you hire?

A. I might get the name wrong because it's been a long time. I think it was Weiss and Michling and something else. It was a lawyer right outside the courthouse in Woodstock.

Q. A McHenry County lawyer?

A. Yeah.

Q. It was a personal injury case?

A. Yeah. It was a car accident.

Q. Did you file a lawsuit in that case?

A. I don't think we needed to.

Q. You just filed an insurance claim?

A. They did, yes.

Q. You settled it?

A. Yes.

Q. Any other occasions to hire a lawyer between that time and the time you hired the Popovich firm?

A. May I consult for a minute because I'm not sure how to answer that.

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Q. Why don't you just tell me why you can't answer it.
A. Because I've hired lawyers, but they were for the company that I had. That's different.
Q. I'm asking general questions about any interaction you've had with hiring lawyers. Any experience you've had with hiring lawyers.
A. I had a corporate lawyer. My mom and dad hired a lawyer for me when I was a kid. It was something. And myself, just the corporate lawyer, the car accident lawyer and the Popovich firm.
Q. Have you ever been married?
A. No.
Q. So you never hired a divorce lawyer. Good. How old are you now?
A. Forty-nine.
Q. The underlying case arose out of an injury that occurred on June 28, 2011, correct?
A. That sounds correct.
Q. How old were you at that time?
A. Forty-one.
Q. Besides the underlying lawsuit against the McGuires and Mr. Gagnon, had you ever filed any other lawsuit up until that point in time?

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A. No.
Q. Have you filed any lawsuits since that time besides the lawsuit against Popovich and Mast?
A. No.
Q. Do you have any military experience?
A. Yes.
Q. Please tell me about that.
A. Army National Guard. Illinois Army National Guard.
Q. How long have you been in the National Guard?
A. I'm not currently in it.
Q. When were you, from when to when?
A. I may not get the year correct. '88 or '89 to '92 or '93, somewhere in there.
Q. What was your highest rank when you were discharged from the National Guard?
A. When I was discharged?
Q. Correct.
A. I don't know. I've gotten moved up and moved down. I don't know where I ended up.
Q. How was it that you were discharged?
A. Less than honorable.
Q. What was the cause?

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A. I missed morning call, roll call. If you're not there, you're AWOL.
Q. Absent without leave?
A. Yes.
Q. What is the highest level of education that you've attained?
A. I do not have a degree. Two years of college.
Q. You graduated from high school?
A. Yes.
Q. Was that in Johnsburg in 1988?
A. Yes.
Q. Did you know Mr. Gagnon from Johnsburg High School?
A. Not from high school but just after high school.
Q. Just coincidentally you attended the same high school?
A. He was three years older than I was. I didn't know who he was until after high school.
Q. You had some education after high school but did not receive a degree, correct?
A. Correct.
Q. Where did you study?

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A. I had a couple classes at McHenry County College and McMurray College.
Q. What did you study?
A. The first two years. The basics.
Q. General studies?
A. Yeah. I did a criminal justice course. I did a macro/microeconomics. I did psychology, sociology. The normal stuff.
Q. How did you meet David Gagnon?
A. Through a mutual friend.
Q. When was that?
A. I want to say, roughly, 1990.
Q. Was your home located somewhere fairly close to his parents' home or his mom and stepdad's home?
A. Two streets away.
Q. That's where you were injured on June 28, 2011, was at David Gagnon's mom's house and his stepdad's house?
A. Yes.
Q. And their name is McGuire?
A. Yes.
Q. Generally speaking, you were injured assisting David with a chainsaw trying to cut down a

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tree?
A. He was cutting a branch.
Q. Cutting branches off a tree, correct?
A. Cutting up the branches after they were off the tree.
Q. Could you tell me a little bit about your work history. Do you have any licenses or certifications?
A. I'm certified to run printing presses. Or at least I was.
Q. You worked for Sharp Printing, Inc. from '91 to 2011; is that right?
A. Ninety-one? No. I would say 1999.
Q. Did you own that corporation?
A. Yes. Well, partner. I was a partner. I didn't own like...
Q. It was an Illinois corporation?
A. Yes.
Q. Were you –
A. A stockholder.
Q. Let me just finish my question so she can take us down.
You were a stockholder in Sharp Printing, Inc.?

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A. Yes.
Q. Who else were the stockholders?
A. Mike McArtor and Scott Dulberg and at that time it was Herbert Dulberg.
Q. What does that mean? Do you mean Scott's name was Herbert?
A. No. Scott Dulberg was an owner and Herbert Dulberg was an owner. Three different Dulbergs: me, my brother, my dad.
Q. And Mike McArtor?
A. Yes.
Q. There were four owners at what time?
A. Until my dad died and then it went to three.
Q. Was that business incorporated?
A. Yes.
Q. Did a lawyer assist the corporation with setting up the corporation?
A. Yes.
Q. When did that happen?
A. 1999.
Q. Did you hire the lawyer yourself?
A. All three of us did. All four of us. Sorry.

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Q. What was the name of that attorney?
A. McAndrews, and I don't remember the rest of it. It was McAndrews in McHenry. I can get you the rest of that information.
Q. They are based in Crystal Lake, Illinois?
A. It used to be in McHenry when we did that.
Q. Patrick McAndrews, he was also identified as the registered agent of that corporation?
A. Yes.
Q. It was voluntarily dissolved on April 8, 2011; is that right?
A. That's what the Secretary of State's Office has, yes.
Q. Is that your understanding as well?
A. I was corrected. My partners – I was corrected. It was actually after the accident. How it got to end up with that date, I'm not sure.
Q. What was corrected, exactly?
A. Well, do you want me to – Mike read my deposition and he said, "You got that wrong." I said, "What do you mean?" because I answered it twice in that deposition.
I was thinking that Juskie happened

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before the accident. Sharp Printing wasn't actually dissolved until after the accident when we decided to sell off the equipment and end it all. That's the honest truth.
Q. I will represent to you that the Illinois Secretary of State's Website as of today shows that the company was involuntarily dissolved on April 8, 2011. So it's your testimony that that is not true?
A. I don't know how they come up with that.
Q. Why don't we break it down and start with why the corporation was involuntarily dissolved. Do you know that?
A. Involuntarily? I don't know. It may be that I was late on paying the corporate licensing thing, which we just pay a fine and did it. We didn't renew it because we decided to end it.
We had a ten-year thing, I think, on it. I may be wrong. I've got to go back and look at the records.
Q. Is it possible that the corporation was actually involuntarily dissolved by the Illinois Secretary of State on April 8, 2011?
A. Sure.
Q. Did Sharp Printing, Inc. file corporate

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tax returns while it was a going concern?
A. We had a problem the couple of years before the accident because I was not up in Illinois and I usually did that with the lawyer and the accountant and things got screwed up while I was taking care of a loved one who was dying down in Florida.
Q. Did the corporation ever file tax returns?
A. Oh, yes.
Q. When did they file?
A. Quarterly and annually.
Q. Until what year?
A. Roughly somewhere in 2008. I was missing things because I was not here. I know we missed a few.
Q. I believe you testified in your underlying deposition that Sharp Printing, Inc. was not dissolved as a result of your June 28, 2011 chainsaw accident, correct?
A. Yes, I did. I stood corrected by my partners.
Q. So is it your testimony that the corporation was dissolved because of your personal

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injury?
A. I don't know how to answer that without going back and looking at records.
Q. Was the company winding down up until about the time you were hurt?
A. The company books got screwed up when I was down in Florida and I was back up in Illinois in 2010 getting back on my feet and I was going to pick things back up, get everything paid up, the fines and everything.
Q. Who were you taking care of in Florida?
A. My grandmother.
Q. You were gone from when until when?
A. I want to say from the mid to end of 2007 until somewhere in the beginning of 2010.
Q. Was anyone running Sharp Printing during that period of time?
A. Mike McArtor.
Q. Did Sharp Printing have any customers for that three-year period?
A. Yes, they did.
Q. How many?
A. I'm not sure, without looking at the books.

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Q. Can you estimate what the yearly revenues were for Sharp Printing in the year 2007?
A. In 2007? I'd have to look at the books, to be honest with you.
Q. Was it more than $5,000?
A. Yes.
Q. Was it more than $100,000?
A. No.
Q. Was it more than $20,000?
A. Yes.
Q. Same line of questioning with respect to 2008. Do you know what the revenues were for Sharp Printing in '08?
A. Are you asking me what we reported or what we made and put into accounts for equipment?
Q. I'm asking you about revenues.
A. Total sales?
Q. Total revenues.
A. In two thousand...?
Q. 2008.
A. I'd have to go back and look.
Q. Can you estimate what they were?
A. No, because I wasn't there.
Q. Do you know how many customers the

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company had in 2008?
A. We had a few, I know that. I don't know how many. Mike was handling it and it got messed up.
Q. What types of customers did Sharp Printing have in 2007 and 2008?
A. What kind of customers?
Q. Right. What did you do?
A. We printed on t-shirts. We printed on CDs. We printed on anything that wasn't wet. We printed on glass, all different stuff.
Q. Were there any full-time employees of Sharp Printing in '07 and '08?
A. In '07 and '08, no.
Q. Just the owners?
A. Just the owners.
Q. Did all the owners operate the business?
A. Yes.
Q. Including your brother?
A. Yes.
Q. What were the yearly revenues of Sharp Printing in 2009?
A. I don't know.
Q. What about 2010, do you know?

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A. No.
Q. When did Sharp Printing start selling its equipment?
A. I put up the ad in August. I think August. I might be off by a month or two. August of 2011.
Q. Did you sell any equipment prior to August 2011?
A. No.
Q. What type of equipment did Sharp Printing, Inc. have or own?
A. Mostly textile screen printing equipment, but we had other screen printing stuff too. Paper.
Q. Where was the equipment located?
A. My home.
Q. Did you require a license to conduct this business out of your home?
A. We had what was called a temporary -- we're in a rural area so we didn't have to have that.
Q. In any event, you didn't have a license, correct?
A. We had a license to do business there, yes.

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Q. In that location?
A. Yes.
Q. Did customers ever come to the shop?
A. Yes.
Q. Do you recall how many customers the business had in 2010?
A. Not in 2010.
Q. Was it more than five?
A. Yes.
Q. Was it more than 100?
A. It might be around that. I don't know, specifically.
Q. In 2010 you may have had 100 customers that you did t-shirt screen prints for?
A. Possibly. I'm not saying that is the number, but it's possible.
Q. Did Sharp Printing have any customers in 2011?
A. Mike was finishing up one customer's thing in the spring of 2011, yes. We don't -- I'll give you -- we don't typically get much work between January 1st and the first warm days of Spring. We sell t-shirts and not a lot of people buy during that period. They just don't.

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Q. You did not earn a salary from Sharp Printing, correct?
A. No.
Q. You did not earn an hourly wage, correct?
A. No.
Q. I think your interrogatory answers indicate you didn't take a profit or a draw, correct?
A. Correct.
Q. How much, if any, money did you earn from Sharp Printing in 2011?
A. Can I ask how to define that? In 2011 I didn't pull any.
Q. Did you earn any income whatsoever from Sharp Printing in 2010?
A. I don't think so.
Q. You were down in Florida for '07 to 2010?
A. Sometime in early 2010, yes.
Q. Did you earn any income from Sharp Printing from 2007 to 2010?
A. No.
Q. Were you working in Florida?
A. No.
Q. Is it fair to say you were unemployed

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from 2007 to 2010?
A. Yes. I was not officially collecting unemployment.
Q. You weren't an employee of any business or working for any individual, correct?
A. I did do some work for Mark. I did some traveling back and forth from Florida to Illinois back and forth during that time. When I was up here, I did do some work for Juskie Printing. Not much, though.
Q. What is Juskie Printing?
A. Juskie Printing is another one that I had listed as an employer in the underlying case.
Q. What are they?
A. Another print broker.
Q. Where are they located?
A. I don't know the exact address, but it's off of Chicago Avenue off of 355 going south.
MS. WILLIAMS: I think he's asking what city.
BY THE WITNESS:
A. I don't know how the cities break up down there.
BY MR. FLYNN:
Q. Somewhere in the western suburbs of

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Chicago?
A. Yes.
Q. How long did you have a relationship with Juskie Printing?
A. Since the early 2000s.
Q. What type of printing did Juskie do?
A. Offset, mostly.
Q. What does that mean?
A. Prints on paper.
Q. Did you have a set schedule at any time working for Juskie?
A. I don't know what you mean by "a set schedule."
Q. Did you have a particular number of hours per week?
A. No. The jobs I got were project based.
Q. How many projects did you have from 2007 to 2011 for Juskie?
A. Probably a few hundred quick little things, yeah. At least.
Q. Do you know what you earned from working at Juskie in 2007?
A. Not without looking at the returns, I don't know offhand.

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Q. How often were you in the Chicago area in 2007?
A. I didn't leave here until, I want to say, August or September of '07.
Q. And then thereafter?
A. I was not back that year.
Q. You didn't work for Juskie in 2008, correct?
A. I might have done some stuff.
Q. You're not sure?
A. I'd have to go back and look.
Q. Were you in Florida?
A. Part of the time, yeah.
Q. How often did you come back and forth between –
A. About every three months I tried to get back up here.
Q. For how long?
A. Sometimes a few weeks. Sometimes a month.
Q. Did you come back and work or did you take care of other things?
A. If I'd let Mark know I was back, "I've got something for you or I don't."

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Q. Who is Mark?
A. Mark owns Juskie Printing.
Q. I think your interrogatory answers indicated from 1999 through 2006 you were employed in a barter situation; is that right?
A. With Mark, yes.
Q. What does that mean, exactly?
A. Well, he would owe me money and he would give me printing equipment instead of cash.
Q. He owed you money for working for him?
A. Well, he owed both Sharp Printing and me, personally, money. They are two different things. But he would just pay by saying, hey, I've got this or I've got this paper cutter or this or that. It was a barter.
Q. So you worked for him from 1999 to 2006 but did not earn any income in the traditional sense?
A. No money changed hands.
Q. He gave you things to pay you for projects?
A. Correct.
Q. You gave a deposition in the underlying case on January 24, 2013. Does that sound right?

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A. If it says it on there, yes.
Q. You took an oath that day?
A. Yes.
Q. You told the truth?
A. I tried to, to the best of my knowledge, on that day, yes.
Q. You told the truth in response to all of the questions that day, correct?
A. I tried to, yes.
Q. You testified you were last employed prior to the accident in May of 2011?
A. That would be with Juskie, yes.
Q. It's accurate –
A. Actually, I wasn't employed. I was a 1099 so I was self-employment.
Q. When in May did you stop working for Juskie, whether it be as an employee or an independent contractor?
A. I believe it was the end of May.
Q. Then from the beginning of June until your accident on June 28, 2011, you were not employed; is that an accurate statement?
A. Correct.
Q. You were not even acting as an

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independent contractor for any business from that period of time, correct?
A. Not during that month, no.
Q. Your deposition testimony from 2013 is typed up on 175 pages. I don't intend to go back over each of those details.
A. Okay.
Q. It's fair to say you were injured, your arm was injured on June 28, 2011, correct?
A. Correct.
Q. Which arm was that?
A. My right arm.
Q. As a result of the injury, you hired the Popovich law firm to explore a recovery in the case?
A. I hired them to represent me, yes.
Q. You hired them to represent you and file a lawsuit against David Gagnon who was operating the chainsaw that injured you, correct?
A. He was one of them, yes.
Q. I'm asking you if you hired him to –
listen to the question, please.
David Gagnon was operating the chainsaw, correct?
A. Correct.

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Q. No one else was operating the chainsaw?
A. Correct.
Q. You also hired Popovich to sue Bill and Caroline McGuire, correct?
A. Correct.
Q. They were the land owners where your accident occurred?
A. They did own the land, yes.
Q. The accident occurred at their house, correct?
A. Correct.
Q. This was in the backyard, so to speak?
A. Yes.
Q. Hans Mast was the primary handling attorney at the Popovich firm for your case?
A. That's who I met with, yes.
Q. Did any other lawyer communicate with you while Popovich was handling your case?
A. The lady who sat in on my deposition. Ms. Freeman I think it is. I'm not sure about that.
Q. Generally speaking, Hans Mast, though, was the primary handling attorney?
A. Yes.
Q. Before you hired the Popovich firm in May

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of 2012, is that the correct time period?
A. I don't think so. I don't think they filed it until then, but I might be wrong. I'd have to go back and look.
Q. Was there a retainer agreement executed in May 2012?
A. I don't think I paid a retainer.
Q. Did you execute an attorney engagement agreement in May 2012?
A. I believe it was much earlier than that.
Q. You only executed one engagement letter or engagement agreement with Popovich, correct?
A. Yeah.
Q. Before you executed or came to an arrangement with Popovich, had you talked to any other lawyers about investigating –
A. One.
Q. Let me finish the question.
– investigating or filing the lawsuit?
A. Yes.
Q. Who was that?
A. I went back to the same firm that handled the car accident for me years earlier.
Q. What was the name of that firm?

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A. They changed names when I went back there. It was Weiss – I have to go back through paperwork and get you the actual name.
Q. They are known as a personal injury firm; is that right?
A. Yes.
Q. Why did you not hire them to take your case?
A. The man who handled my case previously with the car accident was no longer with the firm and they said go find somebody else.
Q. I'm not sure what one has to do with the other.
A. I don't either. I just said okay and I went and found somebody else.
Q. Did you meet with an attorney at that firm?
A. Yes.
Q. Did you tell them what happened with your incident?
A. Yes.
Q. They told you that they did not want to take the case; is that right?
A. Yes.

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Q. They declined the case?
A. They declined the case.
Q. Did they tell you why they declined the case?
A. No.
Q. You next went to the Popovich firm?
A. Yes.
Q. They took the case?
A. Yes.
Q. They, ultimately, filed a lawsuit against Gagnon and the McGuires on May 15, 2012; is that right?
A. Yes.
Q. You reviewed the lawsuit and approved it, correct?
A. I didn't – I never got anything to review.
Q. Did you ever read the lawsuit?
A. No. I was never given any paperwork.
Q. Back to the incorporation of Sharp. What interaction did you have with corporate lawyers when they were first retained?
A. McAndrews?
Q. Correct.

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A. What relationship?
Q. What experience did you have with McAndrews when you first retained them?
A. He was good.
Q. How often did you meet with him or speak to him?
A. Once a year.
Q. Did he file corporate returns or other documents for the company?
A. No. I had to file them. He just made sure they were all done right, I believe.
Q. Have you ever had occasion to hire a criminal lawyer?
A. I did in 1990. My mom and dad had to hire one. Not me.
Q. Did you hire a criminal lawyer for your mom and dad?
A. No. They hired one for me.
Q. Who was that?
A. Give me a second. You're digging back far in my memory. Driscoll was the last name.
Q. This was a McHenry County-based criminal lawyer?
A. No. Des Plaines.

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Q. What was the general nature of the reason for the need for a lawyer?
A. Drug possession.
Q. Were you convicted of it?
A. Yes. I pled guilty.
Q. That was a Cook County case, then?
A. No. It was a McHenry County case.
Q. The lawyer was in Des Plaines, though?
A. Yes.
Q. But he represented you in McHenry County in criminal court?
A. Yes.
Q. Throughout the case you met with the lawyer?
A. A few times.
Q. While Popovich represented you in the underlying personal injury case, did you ever communicate with any other lawyers about your case?
A. At the end, yes.
Q. Popovich withdrew sometime in March 2015?
A. Correct.
Q. And Brad Balke entered his appearance on March 19, 2015. Does that sound correct?
A. That is correct.

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Q. Popovich also withdrew that day, right?
A. I don't know if it was on the same day. I'd have to look at the paperwork.
Q. Besides Mr. Balke, had you talked to any other lawyers towards the end of the relationship with Popovich?
A. Yes.
Q. How many?
A. Hundreds.
Q. Hundreds of lawyers?
A. I'm not kidding. Yes.
Q. Did you ask those lawyers to take your case?
A. I asked them to review it.
Q. Did any of them take the case?
A. No.
Q. They all reviewed it, though?
A. Yes. Most took the time to review it.
Q. Did any of them tell you why they didn't want to take the case?
A. There were different reasons I got from various. Some people just didn't get back to me and some people wrote me letters. I think I gave you some of those. But I got various reasons back from

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attorneys.
Q. I don't recall seeing any lawyers, but I would ask you to search for those.
MS. WILLIAMS: We'll search for those. I'll make a note.
BY MR. FLYNN:
Q. As you sit here, do you recall the basis for any attorney declining to take your personal injury case over from Popovich?
A. Say that again.
Q. As you sit here today, do you recall any of the reasons why any attorney declined to take your personal injury case over from the Popovich firm?
A. Yes.
Q. What were those reasons?
A. I remember a few. One I was looking at local lawyers in McHenry County and I was told like -- I can name them. My sister was married to him.
Anyway, I was told if Tom Popovich says you don't have a case, you don't have a case and we're not even going to look at it. That I got a lot of it.

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Q. That's one reason. Any others?
A. That I got locally a lot of. As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that.
Q. Who said that?
A. Sal Ferris.
Q. When did you speak to Sal Ferris?
A. I don't know the exact date.
Q. When did he --
A. He wasn't the only one.
Q. When did he say that to you, that you just described?
A. He said it in a letter and he said it on the phone and he sent me an e-mail, I think. I don't remember the ways that he contacted me. I'd have to go back and look.
MS. WILLIAMS: We'll find it.
BY MR. FLYNN:
Q. Besides Sal Ferris, can you recall any other attorney, specifically, that told you they wouldn't take the case because of your settlement with the McGuires?

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A. Yes.
Q. Who was that?
A. There was at least three firms downtown here right near the Daley Center that I came down to see and I don't remember their names, but they -- I got the same thing out of all three of them.
Q. Did any of the lawyers give you any other reason for declining your case?
A. Mostly it was because they knew Popovich or it was the McGuire settlement.
Q. Did any lawyer tell you that they didn't want to take your case because there was questionable liability against David Gagnon?
A. No.
Q. Did any lawyer tell you that there was questionable liability against the property owners, the McGuires?
A. No.
Q. We're jumping ahead, but did you have different lawyers that handled a binding arbitration or binding mediation for you in the underlying case?
A. Yes.
Q. Their name was Baudin?
A. Yes.

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Q. Why did Brad Balke not handle the binding arbitration?
A. I fired him.
Q. When did you fire Brad Balke?
A. I'd have to look at the dates. I'm not sure, exactly.
Q. Why did you fire him?
A. Because he forced me to undergo the exact mediation at the McHenry County court in front of Judge Meyer that Hans Mast set up that I specifically said no to.
Q. When was this mediation?
A. I'd have to look at the dates again.
Q. Was it a pretrial conference?
A. Yes.
Q. You actually attended this pretrial conference?
A. Yes, I did.
Q. What happened?
A. I said no.
Q. You said no about what?
A. They offered an amount of money and I said no.
Q. The defendants offered an amount of

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money?
A. Yes.
Q. Was this before or after the McGuires settled out of the case?
A. They were settled.
Q. So there was an offer of settlement from David Gagnon or his insurer?
A. Yes.
Q. Do you recall what that amount of money was?
A. $50,000.
Q. You refused the offer?
A. Yes.
Q. Why did that cause you to fire Brad Balke?
A. He wouldn't take it any further than that and he agreed to when I hired him. He agreed that that was not going to be the end of it and then he changed his tune, and I said, you know what – and the other thing was, I finally got through to the Baudins who I wanted to take the case because they had helped my family – his dad helped my family many eons earlier.
Q. Did you ever talk to Brad Balke about the

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liability or lack of liability by the McGuires, the property owners in the case?
A. I don't think so. We were on the Gagnon case.
Q. You didn't discuss the McGuires?
A. There may have been a word or something, but that's not what he was there for.
Q. He never gave you an opinion one way or the other whether the settlement was appropriate?
A. I don't believe Brad did, no. Like I said – I don't think he did.
Q. At some point after your accident did you hire the Daley Disability Law Firm?
A. Yes.
Q. Was that for --
A. I didn't hire.
Q. I know you're anticipating what I'm saying.
A. I was trying to correct myself. I did not hire.
Q. Either way, let me try to get out my question before you raise any kind of response, just so she can take down –
A. Count before I answer.

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Q. That's a good idea.
Did you ever retain the Daley Disability Law Firm?
A. NO.
Q. Did you have any relationship with Daley Disability –
A. Yes.
Q. – Law? Let me finish it before you answer. I know you're anticipating what you think I'm going to say, but it might not come out the way you think. Either way, she can't take down both of us talking over each other.
What relationship did you ever have with the Daley Disability Law Firm?
A. They stepped in as a substitute counsel for the law firm that I did hire.
Q. You originally hired some other law firm to represent you in connection with social security disability?
A. Yes.
Q. What was the name of that original law --
A. The lady's ladies name was Margaret Bradshaw.
Q. You terminated your relationship with her

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one way or another?
A. No.
Q. Why did Daley Disability Law substitute in for her?
A. I was told by – I have to go back and look at the communications exactly how it happened, but I was told that, basically, they are going to be taking over the hearing part of it. I don't know why. I don't know whether they sub out work. I don't know how it works.
Q. Would it be fair to say that you first retained Ms. Bradshaw in 2012 sometime?
A. I'd have to go back and look.
Q. Is that approximately when you applied for social security?
A. It sounds like it.
Q. The Daley Disability Law Firm came in sometime in 2012 as well?
A. I don't know exactly when. I don't know.
Q. Would it be 2012 or 2013?
A. I know that they were there and – I know that something had to be signed when we went in for the hearings. Margaret Bradshaw had to sign something for the judge allowing Daley Disability to

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represent me at the hearings. I don't know when exactly they got involved. That's behind the scenes. I didn't have anything to do with that.
Q. Did you file for bankruptcy while your personal injury case was pending?
A. Yes.
Q. When did you file for bankruptcy?
A. I'd have to look at the paperwork again, but I don't believe that was until, I want to say, about eight or nine months, but I'm guessing, after the McGuire settlement.
MS. WILLIAMS: The question was what month and year.
BY THE WITNESS:
A. I don't know exactly. I'd have to go back and look at the paperwork.
BY MR. FLYNN:
Q. Did you hire a lawyer to represent you in a bankruptcy?
A. Yes.
Q. Who was that lawyer?
A. David Stretch.
MS. WILLIAMS: If it helps, we can stipulate to the date the bankruptcy was filed.

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MR. FLYNN: That's fine. I think we've got some e-mails that may reflect when it was. I just wondered if he knew offhand.
MS. WILLIAMS: I can stipulate, at least, that it was 2014.
BY MR. FLYNN:
Q. You filed for bankruptcy while the Popovich firm was still representing you —
A. Yes.
Q. — in the underlying case, correct?
A. Yes.
Q. Sometimes I'll still pause in my question so if you could please pause before you answer.
In the underlying case you answered written discovery; is that true?
A. I believe so.
Q. Then you later testified at your deposition January 24, 2013, correct?
A. If that's the date, yes.
Q. Ultimately, David Gagnon was also deposed, true?
A. Yes.
Q. Were you present for his deposition?
A. No.

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Q. Did Caroline McGuire give a deposition in that case?
A. I believe so, yes.
Q. Were you present for that dep?
A. No.
Q. What about Bill McGuire's deposition?
A. I was not present.
Q. Did you e-mail back and forth with Hans Mast a fair amount during the Popovich firm's representation of you?
A. By "fair amount," what do you mean?
Q. Did you regularly e-mail with Hans Mast?
A. Yes.
Q. Those e-mail communications have all been produced in this case?
A. Yes.
Q. On to the exhibits. This will be 1.
(WHEREUPON, a certain document was marked Exhibit No. 1, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Let me show you what's been marked as Exhibit 1. These are one set of your Answers to Interrogatories in our case, the current legal

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malpractice case you filed against the Popovich firm and Hans Mast.
Do you recognize this document?
A. Yes.
Q. We've been providing you with various copies of the signature page in the case that's been back and forth between me and your counsel.
I don't, frankly, know if this verification that's attached is the one that went with this document, but I'll just ask you, for the record, if these are your answers, that's your signature, and that this verification is accurate?
A. That is my signature on there, yes.
Q. What was the e-mail address you used in the communication with Hans Mast?
A. Primarily it was pdulberg@comcast.net.
Q. His address was hansmast@comcast.net?
A. And he switched it to at&t.net.
Q. Did you use some other e-mail address as well?
A. I may have accidentally e-mailed him a couple of times from a Yahoo account.
Q. In answering discovery in our case, the legal malpractice case, did you search through both

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of those e-mail accounts of yours?
A. I no longer have the Yahoo account.
Q. Did you search through the Comcast account?
A. Yes.
Q. Did you search for PDFs or attachments to those e-mails that you produced?
A. Everything that I got, I turned over. I had converted the e-mails to PDFs because Comcast started purging the e-mails after so many years, so I turned them all into PDFs.
MS. WILLIAMS: The question was what did you search in your in box.
BY THE WITNESS:
A. What did I search?
BY MR. FLYNN:
Q. Let me ask you a different question. You produced e-mails in this case?
A. Yes.
Q. You turned e-mails into PDFs and sent them to your lawyer; is that right?
A. Yes.
Q. Some of the e-mails I reviewed have an icon that indicates there was a PDF or some other

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attachment to the e-mail. Do you understand that?
A. Yes.
Q. Did you produce the attachments to each of the e-mails in this case?
A. We went through that. I produced the attachments that I still had.
Q. There were some that were not available, correct?
A. Yeah. When I looked at them, 99 percent of them were already part of some other document that we turned over. I think 100 percent of them.
Q. At some point in time while Hans was handling your case, did he start to communicate with you relative to his analysis of the McGuires' liability in the case?
A. Yes.
Q. Did he start to generally advise you that he didn't believe that there was a strong case for liability against the McGuires?
A. Yes.
Q. Is it fair to say that Hans' opinion was that the McGuires did not have liability in the case because they did not control the work that David Gagnon was doing?

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A. Yes.
Q. That's generally a fair summary of Hans' opinion?
A. Not quite exactly those words, but yeah.
Q. The McGuires' liability as property owners was questionable because based on Hans' analysis of the evidence, they did not control the work or the manner of work of David Gagnon on the date of the accident; is that a fair summary?
A. Depends on which time he said that.
Q. Did he say things like that over and over again?
A. He did say things like that, yes.
Q. Again, I don't want to go over the facts you already testified to with regards to the date of the accident. At some point in time was William McGuire swimming in the swimming pool?
A. Yes.
Q. Was that an above ground pool or —
A. Above ground.
Q. Was there a fair amount of time during the day that Mr. McGuire was inside the house watching television?
A. Maybe — he went inside the house for

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probably about 45 minutes before the accident happened. I don't know that he was watching television.
MR. FLYNN: Let's mark the next exhibit as 2.
(WHEREUPON, a certain document was marked Exhibit No. 2, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 2, which is an e-mail chain including e-mails from November 18, 2013, are these e-mails between you and Hans Mast?
A. It looks like it, yes.
Q. I think the time stamps on these e-mails go from the bottom, which would be page 2, to the top of the first page, correct?
A. It's backwards, yes.
Q. In the original e-mail at 1:28 p.m., did Hans Mast relay to you a $5,000 settlement offer from the McGuires?
A. Which — where are you at?
Q. We're on Exhibit 2, which is also labeled as Bates label POP 181. At the bottom of the page, does Hans relay to you a settlement offer for

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$5,000?
A. Yes.
Q. He was telling you that the McGuires' attorney offered to settle the case for $5,000?
A. Yes.
Q. Did you have an understanding that that was a settlement just for the McGuires, not including David Gagnon?
A. Yes.
Q. In the e-mail Hans says, quote, "As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now."
Is that an accurate reading?
A. Of that sentence, yes.
Q. Is it fair to say that he suggested that you take the $5,000 but didn't force you to take it?
A. It says, "So my suggestion is..."
Q. Then did you respond to the e-mail?
A. Yes.
Q. Hans replied again at 8:07 p.m. that same day, right?
A. Yes.

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Q. He said, "Paul, whether you like it or not, they don't have a legal liability for your injury because they were not directing the work."
Is that right?
A. Part of it, yes.
Q. Was my prior summary of Hans' legal analysis a fair summary in view of these e-mails and his opinion that he relayed to you?
A. I think it went further than this, and other things, but yes.
Q. As far as these e-mails, I've accurately –
A. This e-mail, yes.
Q. What else did he tell you about the McGuires and why he didn't think they would be found liable in the case?
A. I'm pulling out of memory because I can't quote which document it's off of.
Q. That's what we're here for.
A. I can only give you the gist.
Q. I'll ask you for the exact language, but if you don't have it –
A. At one point he defined what an independent contractor is for me and he said that

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David was an independent contractor and that the McGuires weren't liable because they had hired somebody outside even though it's their own son, he's an adult, outside to do the work and that they weren't responsible.
Q. By the way, how old was David at the time that this accident occurred?
A. I'm adding. If I was 41 – I don't know what his birthday is, but I'm assuming he would be 44, 45.
Q. Is it fair to say that there were two 40-plus-year-olds, a 41- and a 44-year-old trimming trees with a chainsaw in David's parent's backyard that day, correct?
A. I was not using it. There was one 44-year-old using a chainsaw.
Q. You, the 41-year-old was holding some branches for him?
A. Yes. Just before the accident, yes.
Q. Up until this point in time when Hans is providing this legal analysis to you, you had a fair number of occasions to interact with lawyers, as we've discussed today, correct?
A. At this point, the only lawyer that I

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interacted with was the first one.
Q. I'm talking about in your lifetime. You had a corporate lawyer, you had a criminal lawyer, another personal injury lawyer –
A. I didn't hire –
Q. Let me finish. You had experience with lawyers representing you up to this point in time?
A. Yes.
Q. Did you have an understanding that lawyers evaluate cases differently?
A. Yes.
Q. And judges evaluate cases differently?
A. Sure. That's fair.
Q. Would it be fair to say that some laws in our country are clearer and some are open to interpretation?
A. I think all of them are.
MS. WILLIAMS: Objection. Calls for speculation.
If you understand the question, you can answer it.
BY MR. FLYNN:
Q. Would you say, for example, that the tax code is a little more clearcut than common law

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that's created by cases and case precedent?
A. I'm not real familiar with tax law. I have accountants for that.
Q. How about an easier question. The stop sign means that you stop, and if you go through it, it's pretty clear that you're liable for a traffic violation?
A. I'll agree with that.
Q. The legal liability for a property owner in Illinois might be a little more complicated; is that a fair statement?
A. I don't know.
Q. Would it be fair to say, in your opinion or your knowledge of the law, the property owner isn't necessarily liable because somebody is injured on their property?
A. Are you talking about what I know now or what I knew back when this was?
Q. At any time.
A. What I know now is in the circumstances that we were in, they were very liable.
Q. I'm just asking if – just because somebody is injured on a property owner's property, they are not necessarily liable, correct? Other

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factors are required too.
MS. WILLIAMS: I'm going to object for – he's not an expert and can't testify to legal analysis.
BY MR. FLYNN:
Q. As you sit here today, do you know whether a premises liability case involves multiple factors to prove liability against the property owner?
A. I don't know. I'd say that's fair. You're asking the wrong person for that.
Q. It was Hans' opinion that the McGuires did not control the work based on the evidence, correct?
A. In my opinion?
Q. That's not what I'm asking.
Was it Hans' opinion –
A. I can't –
Q. Let me just finish.
Did Hans tell you that it was his opinion that the McGuires were not liable because they did not control the work?
A. He said that right there, yes.
Q. Do you believe that he truly felt that way? That was his legal opinion?

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A. Do you want the Monday morning quarterbacking version or at the time?
Q. I'm asking if at that time you felt that he truly believed that the McGuires did not have liability?
A. At the time I trusted him, yes. I hired him to represent me, and yeah.
Q. You believed that he was relying his honest legal opinion to you at that time?
A. Yes.
Q. Including on November 18, 2013?
A. Yes.
Q. You did not accept the settlement offer of $5,000 that he relayed to you on that day, correct?
A. Correct.
Q. Did you ultimately meet with Hans to discuss the settlement offer?
A. I think it was the day before this, but I'm not sure. It was either the day before or the day after.
MS. WILLIAMS: I think the question was, did you meet with him, at all, not the date.

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BY THE WITNESS:
A. Yes.
MR. FLYNN: Can we mark this as Exhibit 3, please.
(WHEREUPON, a certain document was marked Exhibit No. 3, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 3. Do you recognize this memorandum?
A. Yes.
Q. You may have seen it from the document production that we made in this case. This is a memorandum drafted by Hans Mast, which purportedly memorializes a meeting that he had with you on November 20, 2013.
Does this refresh your memory as to when you met with him or if you met with him?
A. If he took the memorandum on the same day, then sure.
Q. In the memo Hans says, "I met with Paul and his friend."
Do you see that?
A. Yes.

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Q. Did you meet with Hans and some third person —
A. Yes.
Q. — at or about this time regarding the case?
A. Yes.
Q. Who was that friend?
A. Tom Kost.
Q. Who is Tom Kost?
A. My brother.
Q. Not that it matters necessarily for privilege purposes, but can you tell me how Tom Kost is your brother?
A. We have the same mom.
Q. He was with you and observed the meeting between you and Hans?
A. Yes.
Q. The $5,000 settlement offer was discussed, correct?
A. Yes.
Q. At that time did Hans, again, relay his opinion as to the questionable liability about the McGuires — strike that.
Did he relay to you his opinion about the

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questionable nature of the McGuires' liability?
A. At the meeting with Tom, yes.
Q. He advised you they maintain they were not directing Dave's work. That was the McGuires' position, correct?
A. I don't know that he stayed on that at that meeting. At different times he gave different reasons.
Q. The next line says, "Paul maintains the McGuires controlled everything that Dave was doing."
Is that an accurate reflection of your opinion?
A. Yes.
Q. As you sit here today, do you know if that statement is consistent with your own deposition testimony from the underlying case?
A. Yes.
Q. We'll come back to that. Did you tell Hans that you wanted to read the depositions of the McGuires and David Gagnon's depositions?
A. Say that again.
Q. Did you tell Paul that you wanted to read the depositions of the McGuires and Dave Gagnon's depositions?

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A. Did I tell Paul?
Q. I'm sorry. Did you tell Hans that?
A. That I wanted to read the McGuires and David Gagnon's depositions?
Q. Yes.
A. Yes, I did.
Q. What was the purpose of your wanting to review those depositions?
A. Hans had told me that what they said in their depositions meant that they had no liability.
Q. You wanted to review the testimony to determine whether you wanted to consider the $5,000 settlement offer; is that correct?
A. Right.
Q. Did you do that?
A. Eventually, yes.
Q. Before you accepted the offer?
A. I think so.
Q. So sometime after this meeting on November 20, 2013 and before you accepted the settlement offer on January 29, 2014, did you review those three deposition transcripts?
A. I'll correct you. I did not accept the offer on January 20th. I signed a release on

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January 29th.
Q. Fair point. Did you read the depositions between those two dates, November 20, 2013 and January 29, 2014?
A. Yes.
Q. Those are —
A. I believe I asked him -- I don't know — it may be a little earlier because I don't know that I asked him before or after the meeting. I don't remember. I'd have to go back in the e-mails to give the date.
Q. Some point in time between those two dates you read the deps?
A. I may have asked for them before. I don't know without seeing the e-mail. It was, roughly, in the last quarter of that year, yes. Or the first month. I don't remember the first time that I asked to read them. I don't remember off the top of my head.
Q. At any point in time did you ever grant Hans authority to make a settlement demand in the case?
A. No.
MR. FLYNN: Mark this as Exhibit 4.

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(WHEREUPON, a certain document was marked Exhibit No. 4, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. Showing you what's been marked as Exhibit 4. This is a copy of the original complaint in this instant case. It reflects a filing date of November 28, 2017.

Is this your original legal malpractice complaint against the Popovich firm and Hans Mast?

A. I believe so.

Q. Did you review and approve the allegations in this complaint?

A. For the most part. I wanted to reword some things, but the lawyer, they do their thing.

Q. At the time you were represented by the Gooch firm is when you filed this lawsuit, correct?

A. Yes.

Q. Directing your attention back to Exhibit 1, if you still have it. If you could turn to page 10.

The answer to Interrogatory No. 24 indicates that on November 4, 2013, Mast was granted authority to investigate a settlement but a specific

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dollar amount was never provided. Do you see that?

A. He was verbally granted authority to investigate, yes.

Q. Who did you want him to investigate a settlement with?

A. The McGuires.

Q. Just the McGuires or the McGuires and —

A. He wanted to do it. I didn't. I said, "If you want to look at that, go ahead."

Q. Did you grant him authority to investigate a settlement with David Gagnon as well?

A. I don't know if I did or not, off the top of my head, but that would have been much later.

Q. Eventually did you tell Hans that you would agree to accept the $5,000 settlement offer from the McGuires?

A. Eventually did I tell him that?

Q. Yes.

A. Yes.

Q. When did you tell him that?

A. I want to say just before Christmas in December of 2013.

Q. There's no doubt in your mind that you relayed your acceptance of the $5,000 settlement

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offer to Hans Mast before Christmas Day, which would be December 25, 2013?

A. Right.

Q. Then did Hans mail to you a settlement release by letter dated January 24, 2014?

A. I'd like to see the letter, but yeah, I believe so.

Q. I believe it's —

A. I believe he had to mail it a couple times because I didn't get it.

MR. FLYNN: Let's mark Exhibit 5.

(WHEREUPON, a certain document was marked Exhibit No. 5, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. Showing you what's been marked as Exhibit 5. I'll represent to you that this is a copy of the second amended complaint that you filed in this case by your new lawyers, your current lawyers. If I could direct your attention to Exhibit D attached to this Exhibit 5.

Is Exhibit D a January 24, 2014 cover letter from Hans Mast to you enclosing the general release and settlement agreement from defense

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counsel for Caroline and Bill McGuire?

A. That's what it says.

Q. In the letter did he ask you to — it looks like it might be a typo. It says, "Please release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience."

A. Right, but I believe it was just a release — it was all tied into one.

Q. This letter is unsigned. Did you receive the letter unsigned?

A. Did I receive this unsigned?

Q. Yes.

A. Yes.

Q. Have you ever seen a signed copy of this letter?

A. No.

Q. If I could direct your attention to the next page of Exhibit D. Is that page 1 of the general release and settlement agreement?

A. Exhibit D?

Q. Correct.

MS. WILLIAMS: Turn the page.

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BY MR. FLYNN:
Q. Is this what you received attached to the cover letter?
A. I don't think so. Let me see. Yes, this looks like it because it's got these things I remember.
Q. When did you receive this letter and the attachment?
A. I would say I wrote back on January 29th and I probably got it that day, signed it and sent it back.
Q. The copy of the release is also unsigned. It's attached as exhibit -- part of Exhibit D to your second amended complaint.
Do you see the signature lines and the notary signature here that's missing?
A. Yes.
Q. Is this the document that you signed and sent back to Hans Mast?
A. The document that I signed had my signature.
Q. I'm asking if this is the same document that you signed and sent back to him?
A. Yes.

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Q. Right now we don't have a signed copy. I don't know that I've seen one in the case.
MS. WILLIAMS: Can we go off the record for a second?
MR. FLYNN: Sure.
(WHEREUPON, discussion was had off the record.)
BY MR. FLYNN:
Q. Is there any doubt, in your mind, that Exhibit D is the letter and attachment that you received from Hans Mast?
A. No. I believe that this is it.
Q. You signed some copy of this release and sent it back to Hans on January 29; is that correct?
A. Yes.
Q. You accepted the settlement offer prior to Christmas and presumably defense counsel or Hans drafted the settlement release and then Hans mailed it to you, correct?
A. Yes.
Q. At any point in time from December 25th until you received this settlement release, did you contact any lawyer to discuss whether it would be appropriate to let the McGuires out for 5,000?

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A. I believe I contacted Hans again.
Q. Besides Hans, did you talk to anyone else?
A. No.
Q. Was there anything preventing you from seeking a second opinion from some other lawyer at that time?
A. No.
Q. Directing your attention to Exhibit E attached to the second amended complaint, the second amended complaint, again, being Exhibit 5. Is this an e-mail from you to Hans on January 29, 2014?
A. This is the e-mail chain between me and Hans, yes.
Q. Down below at the bottom of the page, January 29 at 10:51 a.m., it appears that you were questioning Hans regarding some of the language in the release, including social security disability check boxes. Do you see that?
A. Yes.
Q. Hans responded to you and then at the top of the page here at 1:59 p.m. it says, "Okay, it's signed and in the mail."
A. Correct.

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Q. What did you mean by that?
A. I signed it and mailed it.
Q. Did you -- where did you mail it from?
A. My home.
Q. How did you do that?
A. Put a stamp on the envelope and put it in the mailbox, put the flag up and waited for the mailman.
Q. Is the mailbox attached to your home or is it --
A. It's out on the street.
Q. You walked down there and you put the mail -- the envelope in the mailbox, put the flag up and --
A. That is correct.
Q. Your understanding of signing that release and sending it back to your lawyer was that you would agree to take the $5,000 settlement, correct?
A. Yes.
Q. Hans didn't deliver the letter to you personally. He mailed it to you, correct?
A. He mailed it to me?
Q. He mailed it to you.

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A. Correct. U.S. mail.
Q. Do you recall an allegation in your complaint or amended complaint or second amended complaint in this case alleging that you were pressured or alleging undue influence by Hans in urging you to accept the $5,000 settlement from the McGuires?
A. Yes.
Q. How is it, as you sit here today, can you tell me how Hans unduly influenced you to accept the $5,000 settlement offer?
A. I don't know what Hans was thinking. How did I feel influenced?
Q. Unduly influenced.
Let me put it this way. He didn't put a gun to your head?
A. No.
Q. He suggested that you take the settlement?
A. Correct.
Q. He didn't force you to take the settlement?
A. Correct.
Q. It was your decision?

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A. Correct.
Q. You signed it and you sent it back to him in the mail?
A. Yes.
Q. Aside from your e-mails with Hans on January 29, did you call him that day?
A. I believe so.
Q. Did you also discuss whether it was appropriate to accept the McGuires' $5,000 settlement offer at that time?
A. Yes.
Q. You deliberated on it and decided to take it, correct?
A. There wasn't much – it was take it or get nothing.
Q. You had the opportunity to deliberate on it, correct?
A. For that day, yeah.
Q. You had reviewed the transcripts of the McGuire depositions and David Gagnon's depositions in order to provide you with some information in order to determine whether to accept the settlement offer, correct?
A. I believe I did try to read those, yes.

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Q. Did you call Hans or e-mail him and question him with respect to the evidence, the testimony contained in those deposition transcripts?
A. Yes.
Q. What did you say to him and what did he say to you?
A. There were many conversations over the phone and I'm sure some through e-mails.
Q. He continued to tell you that it was his opinion that the liability on the McGuires is questionable because they did not control David Gagnon's work that day, correct?
A. It depends on which time. Sometimes he said because they didn't tell them how to squeeze the trigger. It depends which time you are talking about.
Q. Again, there was nothing preventing you from seeking a second opinion from some other lawyer at the time you signed the settlement release and sent it back to Hans, correct?
A. From the time I received it, signed it and sent it back?
Q. Right.
A. No. It was a matter of hours. I got it

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that morning.
Q. You decided to mail it that day, right?
A. He needed it. He said now or you're not going to get anything.
Q. There was nothing preventing you from seeking the advice of another attorney at that time?
A. At that time it was time. It was now or nothing.
Q. You were in the comfort of your own house when you received the letter, correct?
A. Yes.
Q. You had the ability to go find another lawyer and ask them to discuss the case at that time. You had done it hundreds of times earlier – strike that.
After the settlement with the McGuires, you continued to prosecute the case against Gagnon, correct?
A. Yes.
Q. Did you have an understanding as to what, if any, insurance coverage he had?
A. Yes.
Q. How much was that?
A. What time frame are you talking about?

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Q. What was your initial understanding as to the limits on David Gagnon's insurance coverage?
A. Hans Mast told me he had $100,000.
Q. Was that in an e-mail?
A. There were – not initially, no, but later on he reiterated that in e-mails, yes.
Q. Did you, ultimately, learn that there was some additional amount of coverage with respect to Gagnon's policy?
A. Long after Hans Mast was gone, not part of the case.
Q. How much was the coverage?
A. The Allstate coverage, I believe, was 300,000.
Q. We'll talk about the settlement later, but did you ultimately settle the case again Gagnon for 300,000?
A. I believe it went to binding mediation.
Q. Was there an award of $300,000 based on a high/low agreement?
A. Yes.
Q. Is it fair to say that if Hans made a mistake about the $100,000 in coverage, that that was corrected and there was never any harm done as a

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result of his –
A. No.
Q. Explain to me how you were harmed by the representation that there was $100,000 in coverage.
A. You want me to explain?
Q. Yes.
A. Had I known the value of the case, I would have not filed for bankruptcy.
Q. Explain to me why one has something to do with the other.
A. Is my family and me going to dump money into a black hole that we can't recover or is there a light at the end of the tunnel where I can pay them back.
Q. At the time that you filed for bankruptcy, had any settlement offer been made from David Gagnon or his lawyers to you?
A. At the time of when?
Q. When you filed for bankruptcy.
A. I don't think so. I'd have to check the dates, but I don't think so.
Q. As the case was progressing against David Gagnon, were your doctors deposed?
A. As the case progressed with David Gagnon,

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I believe they were deposed. I don't remember. I'd have to look at the dates.
Q. Discovery continued on in the case?
A. I believe one doctor was deposed after the McGuire settlement. I'm not sure, though.
Q. Did Hans continue to represent you for some period of time?
A. Yes.
MR. FLYNN: I'll have you mark this as Exhibit 6.
(WHEREUPON, a certain document was marked Exhibit No. 6, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 6. Do you recognize this e-mail chain?
A. Yes.
Q. This is from September 23, 2014. If we go from the bottom up, it appears that Hans said to you that he wanted to give you the option of finding other counsel at this point if you really want to take the case to trial, which I think ultimately will be necessary. Correct?
A. Are we at "before I proceed" or "that's

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the very reason"?
Q. "That's the very reason."
Is it fair to say he was suggesting you find another counsel in the case at that point?
A. Yes.
Q. He also said, "I just do not believe strongly that defense counsel will offer much in the way of settlement."
Do you see that?
A. Yes.
Q. That's his opinion regardless of what he believed the coverage limits to be; is that a fair statement?
A. Yes.
Q. You responded to him, he responded to you and then you wrote an e-mail to him at 8:25 p.m. that night?
A. Okay.
Q. Do you see that? Did you say, "First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw"?
A. Yes.
Q. Did you start to look for other lawyers to help you in your case against Gagnon at that

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point in time?
A. I believe I did, that summer. This is fall, September.
Q. You had already started looking for new lawyers?
A. I believe that Hans had told me to start looking for a new lawyer in April of that year.
Q. Did he say why?
A. We'd have to read his thing. He says why.
Q. Do you recall why he said that to you?
A. He did not feel that the case was provable against David. He did not feel the value of the case was worth it. He did not feel -- actually, this is 2014. The dates are rough.
Q. He thought the case against David was difficult, correct?
A. Yes.
Q. Have you ever described the case as a he said, she said with respect to the facts of the accident?
A. He described that to me many times.
Q. Have you also --
A. And I used that back, yes.

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Q. Have you ever described this case as a he said, she said case?
A. I may have. I don't know.
Q. It is your word against David Gagnon's as to what happened and whose fault it was that day?
A. That's what Hans explained to me as what the problem was.
Q. Did you ever describe the accident as a he said, she said?
A. I don't think I called David a "she said" or me a "she said." I don't know. Right here I do.
Q. What do you say there?
A. I said, "I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw."
Q. He was denying that he even cut you, correct?
A. No, he never denied that.
Q. What was your reason for writing this sentence in that way?
A. Because Hans said that he believed David over me.
Q. With respect to what fact at issue?
A. His deposition versus mine. He said that I didn't make a good witness.

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Q. With respect to what points?
A. All of it. He was dumping me and he was coming up with his own excuses.
Q. You and David were the only ones that witnessed this accident?
A. Correct.
Q. Based on your understanding of how the evidence came out in the case, would you agree that there were differences with respect to the version of events?
A. Oh, yeah.
Q. There were differences between what he said happened and what you said happened?
A. Oh, definitely.
Q. Would it be fair to say, then, it would be up to the trier of fact, whether it be a judge or a jury, to determine who they believed?
MS. WILLIAMS: Objection. Calls for a legal conclusion.
You can answer, if you understand.
BY THE WITNESS:
A. I believe it would be up to a judge or jury, sure.

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BY MR. FLYNN:
Q. At the bottom of Exhibit 7 you say, "Bottom line Hans... do the best you can with what you got."
I'm sorry. I didn't mark this one yet. My apologies.
(WHEREUPON, a certain document was marked Exhibit No. 7, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 7. Is this an e-mail chain between you and Hans?
A. I don't think it's a chain. I think it's one.
Q. Point is well taken. It's you writing to Hans?
A. Yes.
Q. At the bottom it sounds like you had been in the hospital with a migraine and then you wrote, "Bottom line, Hans... do the best you can with what you got."
A. Yes.
Q. What did you mean by that?

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A. He wanted to settle, and I can tell you right now this letter was written after a very traumatic experience and – let me read it and refresh myself. I'm melting down in this letter.
Q. You said after a traumatic experience. Are you referring to the bankruptcy filing from that day?
A. That, in combination with migraines, yes.
Q. David Stretch was your lawyer that filed bankruptcy for you?
A. Yes.
Q. Did you meet with Mr. Stretch and discuss the bankruptcy process before you hired him?
A. Yes.
Q. How long did you meet with him?
A. I think I asked about it. I don't know. It may have been a couple of months or a couple weeks before it got filed. I wanted to learn about it.
Q. Did you, ultimately, list the case against David Gagnon as an asset in your bankrupt filing?
A. Yes, I did.
Q. Is that why the bankruptcy trustee became

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involved with the binding mediation?
A. Yes.
Q. Did you ever meet the bankruptcy trustee?
A. Yes. The first one.
Q. What was the name of that person?
A. The first one was Heeg was her last name. H-e-e-g, I think.
Q. Again, we established that Brad Balke became your lawyer in the case on March 19, 2015, correct?
A. Yes.
Q. Is it fair to say that your relationship with Hans Mast was deteriorating over the fall and beginning of the winter of 2015?
A. I would say it had been deteriorating long before that. You can see from the last exhibit I'm melting down and it was already started deteriorating.
Q. By the time you drafted Exhibit 7, had you talked to other lawyers about taking your case?
A. I have to go back and look, but probably. If he told me to look at other lawyers in April before this, yes.
Q. How many lawyers would you say you talked

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to between April and the time you drafted this e-mail on September 26?
A. I couldn't count that high, probably.
Q. Quite a few?
A. Yeah.
Q. Did any of them take your case?
A. No.
MR. FLYNN: Mark this as Exhibit 8.
(WHEREUPON, a certain document was marked Exhibit No. 8, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 8. Is this an e-mail from you to Hans Mast?
A. Yes. It's an e-mail chain, yes.
Q. On February 22, 2015 at 7:42 p.m. you wrote to Hans, correct?
A. Yes.
Q. Halfway down in that e-mail message you said, quote, "Now I'm left wondering... how hard it is to sue an attorney?"
A. That is true.
Q. You wrote that?
A. Yes.

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Q. The next line you wrote, "And yes, I am and have been looking for someone who will take this case..."
A. That is not in reference to suing the attorney. That was in reference to the Gagnon case.
Q. What did the reference to suing an attorney mean?
A. That was me being angry.
Q. With Hans?
A. Yes. I was seeing red.
Q. You're suggesting that you may sue him?
A. Yeah. I didn't know that I could. I'm wondering about it.
Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?
A. Yes.
Q. You, ultimately, sued him for legal malpractice, right?
A. Yes.
Q. Is that what you had in mind when you wrote this?
A. No. This was about dropping Gagnon. The malpractice is about dropping the McGuires.

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Q. This —
A. We're talking — this is 2015.
Q. In this 2015 e-mail you are suggesting to Hans that you may sue him because of the McGuire settlement; is that right?
A. No.
Q. Then what is it that you're saying to him?
A. That if he damaged the Gagnon case, I didn't know if he did or didn't, and I'm threatening because I'm angry. You can see, again, I'm melting down here. These are emotional outbursts, I guess.
Q. Moving up the page a little bit also on February 22, 2015 at 8:14 p.m., you say, "To be honest, you took this case knowing it was my word versus his."
A. Yes.
Q. He said, he said, right?
A. Yes.
Q. Is that a fair characterization of the case, your word against David's?
A. That's how Hans kept describing it. That's the way I put it back to him, yes.
Q. You didn't correct him or dispute his

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characterization, did you?
A. No. I used his characterization.
Q. You agreed with it?
A. He said — how did it go? We had conversations between these e-mails on the phone. Then we would hang up and I would get angry and type it in an e-mail, type whatever it was that bothered me so he had it.
Q. Let me ask another question, if that's okay.
Did you ever correct Hans if he called this a he said, he said case? Did you ever say it's more than that?
A. Do I ever say it's more than that?
Q. Did you ever correct him? If he said it's a he said, he said case, did you say no, that's not right?
A. He said there's no witnesses. I said, "I'm a witness."
Q. You're one of the hes. It's your word against David Gagnon's, as you said in this e-mail?
A. Yes.
MR. FLYNN: If I could have you mark that as Exhibit 9.

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(WHEREUPON, a certain document was marked Exhibit No. 9, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Exhibit 9, is that Brad Balke's substitute appearance that was filed on March 19, 2015 in the case against Gagnon?
A. It looks like it, yes.
Q. Back to Exhibit 5, which is the second amended complaint. If I could direct your attention to Exhibit F. This appears to be a more complete copy of another e-mail we just talked about. Is Exhibit F more of the February 22, 2015 e-mail chain?
A. I'm not sure if that's separate or the same. Oh, it looks like it.
Q. At 7:20 p.m. Hans wrote to you and said, "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case."
Right?
A. Yes.
Q. He says, "I've been telling you over a year now the problems with the case and you just

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don't see them."
Correct?
A. That's what it says.
Q. Obviously, a difference of opinion, right?
A. Yes. Are you talking about difference of opinion as to the value or difference of opinion of the problems within the case?
Q. Let's go on. He says, "You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear, it is not. My guess is that seven out of ten times you will lose the case outright. That means zero. That's why I've been trying to convince you to agree to a settlement. You clearly do not want to."
Did I accurately read that?
A. Just that part of that paragraph, yes.
Q. So Hans is telling you that in his opinion your case against Gagnon you're going to lose it seven out of ten times, correct?
A. In this one, yes.
Q. He's acknowledging that you may have a

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chance.
A. I think later on he says nine out of ten.
Q. In this e-mail he says seven out of ten you will lose.
A. Yes.
Q. He's recognizing three times out of ten you may win, right?
A. I don't know what Hans is thinking.
Q. Is that what he said?
A. He says seven out of ten times you lose.
Q. You understood that there are risks in taking the case to trial that you could lose?
A. There are unforeseen risks, yes.
Q. There are always risks, period, in taking a case to trial?
A. Yes.
Q. Before you hired Brad Balke and after Hans told you he couldn't represent you, did you talk to any other lawyers about taking your case?
A. Yes.
Q. How many?
A. I can't tell you. A lot.
Q. Did any of them tell you that they wouldn't take the case because they didn't think you

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could prevail against Gagnon?
A. No.
Q. Not one?
A. No.
Q. What are the names of any of the lawyers you talked to about taking your case over from Popovich?
A. I can't tell you without looking at documents who it was and what date it was, what it was between these two.
Q. I don't think documents I produced would help you in that regard.
I'll just ask you based on your memory the names of any lawyers you met with from the time Hans wrote this February 22 e-mail —
A. I believe —
Q. Let me finish.
A. I believe —
MS. WILLIAMS: He has not finished his question.
THE WITNESS: Sorry.
BY MR. FLYNN:
Q. From the time that Hans wrote this February 22 e-mail and the time that Brad Balke

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enters an appearance on March 19. Just the name of any lawyer you —
A. I believe that Sal Ferris that I was talking about was one of the lawyers that I talked to.
Q. You're not sure? You believe that he was?
A. In between this time and this time?
Q. Yes.
A. I believe it's right around then.
Q. What type of law practice does Sal Ferris have?
A. I believe personal injury.
Q. Did you ever talk to him about taking your case before that date?
A. Before the date of this e-mail?
Q. Yes.
A. I'd have to look at it.
Q. He wasn't one of the original attorneys that you spoke with at the beginning of the case?
A. No.
Q. Fair to say once Balke entered his appearance on March 19, 2015 that Mast and Popovich were no longer your attorneys, correct?

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A. When Balke enters his appearance?
Q. Yes.
A. I would believe that, yes.
Q. They were terminated and Balke stepped in?
A. Yes.
Q. Can you tell me how the binding mediation which proceeded on December 8, 2015 evolved and came to be.
A. I was ordered into it from a bankruptcy court.
Q. Why is that?
A. I believe that the trustee put a motion up. I don't know who did it. I assume it was the trustee and the court ordered that it be put into binding mediation.
Q. Did you appear at the mediation?
A. Yes.
Q. Do you recall the name of the mediator?
A. Not off the top of my head, no.
Q. One of the exhibits to your second amended complaint indicates it was retired Judge James Etchingham.
A. That sounds familiar.

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Q. Do you recall how long the mediation lasted?
A. All day.
Q. Do you know if the parties submitted mediation briefs or statements to the judge?
A. I believe both sides submitted a whole bunch of things.
Q. The Boudins represented you in this mediation?
A. Yes.
Q. Because you had fired Balke by this point?
A. Oh, yes.
Q. Directing your attention, again, to Exhibit 5, the second amended complaint and Exhibit G. Exhibit G is, apparently, a memorialization of the mediation award. Do you see that?
A. It's how the judge decided to break it down, yes.
Q. Do you see that there's an award for future medical expenses of $200,000?
A. Yes.
Q. Since that date of December 8, 2015, have you received any medical treatment relative to your

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injuries —
A. Yes.
Q. Let me finish. Strike the question.
Since that date, December 8, 2015, have you received any medical treatment for your injuries incurred on January 28, 2011?
A. You're asking since the date of the binding mediation?
Q. That's right.
A. Yes.
Q. What medical treatment have you received?
A. I do an ongoing with the neurologist for the dystonia.
Q. That's in your right arm?
A. Yes.
Q. Have you calculated the medical bills that you've incurred since that day?
A. No, I have not.
Q. Are they anywhere near $200,000?
A. It depends if you calculate with or without insurance. I know what I pay, but then I have to pay for the insurance that pays for that.
Q. How much have you paid out of pocket since that date for medical treatment on your arm?

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A. I don't know, offhand.
Q. Was there any doctor that opined that you would require $200,000 in future medical expenses?
A. I believe so.
Q. Who was that?
A. I believe that was Dr. Patel. I don't know that she said $200,000. She was the doctor that was handling it at the time.
Q. Did you discuss your injury with the mediator at the mediation?
A. He did ask me a few questions.
Q. How much time did you spend with him?
A. On and off. He would come in and ask me questions and then go away and then come in and would ask me questions and then go away.
I don't remember which one was the mediator, which one was the Allstate adjuster, which one was the — I don't remember.
Q. You're not sure which one was the mediator?
A. They came in and they said they are going to ask you some questions and I answered them.
Q. As you sit here today, you don't know how much face time you had with the mediator that day?

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A. I don't remember the face of which one is which.
Q. Did the issue of lost wages ever come up?
A. At the mediation with me?
Q. Yes.
A. I don't remember.
Q. Did you ever make a claim of lost wages of $250,000?
A. I may have.
Q. Do you know what that was based on?
A. Yeah.
Q. What is that based on?
A. Past and future.
Q. What past wages had you ever earned that could lead to an award of $250,000?
A. To me, that's not a very high number. I think I asked for more than that. It would be an average over a certain number of years plus benefits and that's all lost.
Q. Would it be fair to say that your income would be accurately reflected in the tax returns you've produced in this case, so I don't want to ask you about each one of them?
A. I would say my personal income, yeah.

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Q. Have you filed personal tax returns since 2015?
A. Tried.
Q. I didn't ask you if you tried.
A. No. They won't let me. They said I don't make enough anymore.
MR. FLYNN: I believe the next exhibit is 10.
(WHEREUPON, a certain document was marked Exhibit No. 10, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what's been marked as Exhibit 10. This is a six-page binding mediation agreement. The copy I have is unsigned.
Do you recognize this as the mediation agreement that governed your December 8, 2016 mediation?
A. Yes.
Q. If I could direct your attention to — first, let me ask you.
Do you know why the bankruptcy trustee or the bankruptcy court ordered binding mediation as opposed to nonbinding?
A. I have no idea.

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Q. On page 4, section F, subsection B — I'm sorry, 1B. It says, "The parties agree that for this mediation the minimum award to Paul Dulberg will be $50,000. Also, the maximum award to Paul Dulberg will be $300,000."
Do you see that?
A. Yes.
Q. Do you know why the parties agreed to this high/low agreement?
A. No.
Q. Do you recall alleging in your original complaint against Popovich that there was a high/low agreement?
A. There is. There was.
MS. WILLIAMS: Can you repeat the question, please.
(WHEREUPON, the record was read by the reporter as requested.)
BY THE WITNESS:
A. I don't know. I'd have to read it.
MS. WILLIAMS: I asked her to read it. And you had answered it previously.
BY MR. FLYNN:
Q. Directing your attention back to

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Exhibit 4, which is the original complaint in this case. Page 4, paragraph 16.
A. Okay.
Q. There's a sentence that begins with, "Unfortunately, a high/low agreement had been executed by Dulberg reducing the maximum account he could recover to $300,000 based upon the insurance policy available."
Do you see that?
A. Yes.
Q. It's not your position or testimony that Popovich had anything to do with the high/low agreement?
A. That was a mistake in there. No.
Q. You would agree that Popovich had nothing to do with the high/low agreement?
A. I believe that events that unfolded the way they did was due to Hans Mast's initial assessment of the value of the case.
Q. Let me ask it a different way.
Did Popovich have any idea that this high/low agreement existed when it was entered into?
A. I don't know.
Q. Do you have any reason to believe that he

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did?
A. I don't know. I don't know how much the Boudins were in contact with them because they worked together. I don't know.
Q. What do you mean, "they worked together"?
A. They worked together on all different cases. That's a small county out there.
Q. Did you ever write to Hans and accuse Popovich of having a conflict of interest because he may have gone to high school with David Gagnon?
A. I did learn that.
Q. Do you believe the fact that someone went to high school with another person may give rise to a conflict of interest in a lawsuit?
A. I was shooting in the dark and guessing why they didn't see this as a viable case.
Q. Do you think that was appropriate to send to your lawyer at the time?
A. When you're wondering why they are doing what they are doing and you learn that and they were pretty much in the same class and they all knew each other and it's a small town, let me ask you, are you friends with the guy I'm suing? That's an appropriate question.

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Q. You didn't say that. You asked if they went to school together.
A. Correct.
Q. Popovich did not enter into this high/low agreement on your behalf, correct?
A. Popovich, no.
Q. When I say "Popovich," I mean generally the Popovich firm and your lawyers.
A. This was years later. No.
Q. They had nothing to do with it, right?
A. I wouldn't say anything to do with it.
Q. Withdrawn.
Who drafted this high/low agreement that's contained in the mediation agreement?
A. I'm not sure who drafted it.
Q. Would it have been either the mediator, the bankruptcy trustee, your lawyers or the defense attorneys?
A. I assume that this would have been an agreement of all of them.
Q. You don't think Popovich had anything to do with drafting this high/low agreement, do you?
A. I don't know that he did or didn't.
Q. Do you have any reason to believe that he

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did?
A. At this point, no.
Q. Continuing on in Exhibit 4. Directing your attention to the bottom of page 4, paragraph 10.
A. Exhibit 4. Say it again.
Q. The bottom of page 4, paragraph 20. This is your complaint against Popovich and Mast.
A. This has been amended since then.
Q. I understand. Paragraph 20 reads, "Following the execution of the mediation agreement with the high/low agreement contained therein and the final mediation award, Dulberg realized for the first time that the information Mast and Popovich had given Dulberg was false and misleading and that, in fact, the dismissal of the McGuires was a serious and substantial mistake."
Do you see that?
A. Yes.
Q. Can you tell me, as you sit here today, what false and misleading information did Mast and Popovich give you?
A. That I realized on the day of the — following the execution of the mediation agreement?

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Q. Correct.
A. The liability of the McGuires.
Q. What was false about it?
A. What made them liable and what didn't.
Q. What is it you learned to dispute what you were told?
A. I learned from a reliability expert that had the report there that day that the McGuires provided the tools which made Gagnon an agent of the McGuires. He was working at their behest.
Q. Who was this liability expert?
A. What's his name?
Q. He's a doctor?
A. Yes.
Q. Continue on with that paragraph. "Following mediation, Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016."
Do you see that allegation?
A. Yeah.
Q. Who advised you to seek an independent opinion from an attorney handling legal malpractice matters?

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A. I believe that was Boudin.
Q. You believe that or you know that?
A. I know that.
Q. You alleged it in this complaint so it's important that we know who that was.
A. Yes, that was Boudin.
Q. Boudin told you to seek an independent opinion from an attorney that handles malpractice matters?
A. Yes.
Q. It says you received that opinion on or about December 16, 2016.
A. Yes.
Q. That's separate and apart from any opinion you may have received from a liability expert, a doctor, an expert on chainsaws?
A. Yes.
Q. Who was the lawyer that you received a legal opinion from on December 16, 2016?
A. I believe that would be Thomas Gooch.
Q. The drafter of this complaint?
A. I'd have to look at the dates because I think — December 8th was the mediation; is that right?

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Q. Correct.
A. So the 16th would sound about right to be meeting with Gooch, but I can get that date.
Q. You met with Gooch –
A. Soon, within weeks. It was quick.
Q. Now that the door has been opened, you fired Gooch in this case, correct?
A. Yes.
Q. He drafted this complaint and he's also the one that gave you an opinion about legal malpractice liability on the part of my clients?
A. Yes.
Q. What is it that he told you on December 16, 2016?
MS. WILLIAMS: Objection. I don't think we've waived that privilege, but – can we go off the record for a second?
MR. FLYNN: I don't want to go off the record. I've asked this interrogatory in about five different ways and it hasn't been answered appropriately.
The allegation was made in the complaint. That's why I drafted the interrogatory the way I did. I don't think that there's been a square

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answer to it. This is clear that you're talking about a legal opinion.
BY THE WITNESS:
Q. Is this the same wording as we have in the current complaint?
BY MR. FLYNN:
Q. It's not exactly.
A. What would this be valid for, then?
Q. You've raised a response to a statute of limitations defense in this case and placed your knowledge of the malpractice and the date of incurring of an injury at issue.
Because your discovery of malpractice has been placed at issue, it's our position that you've waived privilege anyhow with respect to this conversation on December 16, 2016.
A. I'm not sure –
MS. WILLIAMS: There's not a question pending. I'm going to make a standing objection as to privilege with Gooch.
If we can agree that that objection will stand, we can go through this line of questioning and then if we need to later, have a judge determine whether or not that line of questioning is

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admissible. Are you agreeable to that?
MR. FLYNN: I'm agreeable to continuing on for a few minutes. I want to explore. I'll try to lay foundation for – to confirm this wasn't anyone else, for starters. Why don't we continue on and if you need to raise it again, we can talk.
MS. WILLIAMS: Otherwise, I'm just going to raise it to every single question you ask. I just don't want to have to continue to make the objection as to – if questions are asked about advice given by a legal malpractice attorney, I'm going to raise an objection as to that.
MR. FLYNN: Okay. But this is why we had the 201K conferences, multiple 201K conferences. It was made clear, to me, that there was a waiver with respect to subsequent counsel.
MS. WILLIAMS: Tom Gooch isn't subsequent counsel.
MR. FLYNN: The allegation has been made in this complaint and apparently this is subsequent counsel subsequent to my client's representation.
MS. WILLIAMS: It is a different case. It's not subsequent counsel in the underlying case. It's a new case.

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MR. FLYNN: We'll get to the interrogatory in a few minutes. I'll pull that out.
BY MR. FLYNN:
Q. Let me ask you. Is there any other attorney besides Mr. Gooch that gave you an opinion that's referenced here on December 16?
A. No one that isn't privileged.
Q. Could it have been anyone else?
A. No.
Q. So Gooch is the only person that's being referenced here in this allegation that's in your complaint that's a public record?
I'm not asking you right now what the opinion is. I'm going to do that later. I'm asking you who gave it to you. It's not anyone besides Mr. Gooch, correct?
A. Yes. It was Thomas Gooch.
Q. He drafted the very complaint that that allegation is contained in?
A. Yes.
Q. Dr. Landford was the liability expert that you referenced earlier, correct?
A. Yes.
Q. Back to the allegation that Gooch and –

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that Popovich and Mast provided you false and misleading information. That information was simply their legal opinion on the McGuires' liability; isn't that correct?
A. No. There was nothing simple about that. That's a very complex series of things that go all the way back to before the McGuire settlement.
Q. They didn't lie to you, did they?
A. It depends on how you define lie.
Q. How do you define lie?
A. If you know better and you say something else, that's a lie. Omission is a lie.
Q. Did they provide you with anything other than a legal opinion as to the McGuires' liability?
A. Yes. They provided me with case laws. They provided me with all different stuff. Yes.
Q. Whatever the advice that was given to you on December 16, 2016, you felt that you were mislead by Popovich and Mast at that point in time, correct?
A. At that point in time it was confirmed to me that I had a valid case against Popovich.
Q. You had a valid malpractice case against Popovich?
A. Yes. I did not know before that.

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Q. As of December 16, 2016?
A. Yes.
Q. Why is it that you didn't file that lawsuit until nearly a year later on November 28, 2017?
A. I believe because Thomas Gooch had some health issues and then his wife had some health issues. It took a while.
(WHEREUPON, a certain document was marked Exhibit No. 11, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what has been marked as Exhibit 11. This is one set of your supplemental Answers to Interrogatories.
First, I'll ask you if that is your verification and signature at the end?
A. That is my signature.
Q. Again, I don't know if that verification was attached to this original document. It may have been. But there's been some confusion with respect to these verification pages. This is your signature and you answered these interrogatories, correct?
A. Yeah.

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Q. So this is a valid verification page with respect to this discovery document; is that a fair statement?
A. This is supplemental to original answers.
Q. That's your signature and you agree these are your answers?
A. I've reviewed them and we went over them and yes, I agree.
Q. And they are accurate?
A. As accurate as we can be.
Q. If I could direct your attention to Interrogatory No. 26. Do you see that?
A. Okay. Yes, I see it.
Q. This is similar to what we just talked about a few minutes ago. I'll read the interrogatory to you. "Identify and describe the false and misleading information Mast and Popovich provided to you and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake as alleged in paragraph 56 of your second amended complaint."
Do you see your supplemental answer here?

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A. I see it, yes.
Q. You reference the mediation award and then you state, quote, "At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning."
A. I do.
Q. Can you explain what that means because I don't quite understand it.
A. Hans Mast assured me — I want to go back to 2013, the Fall between October and the signature of the final release for the McGuires.
He assured me that, he said -- at that time he didn't tell me what anybody's policies were. He assured me that if we let the McGuires out of the case, Gagnon has enough insurance, you're going to get everything from him, so it doesn't matter that you're carrying the McGuires in the case.
Q. The next interrogatory is 27. "Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint including the identity of the expert, any opinions and any other information

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provided by the expert which caused you to learn in the summer of 2016 and became reasonably aware that Mast and Popovich did not properly represent you."

What does the summer of 2016 have to do with your discovery of malpractice?

A. Technically, I was sent Dr. Landford's report — I might be off a little by a couple months here, but I think in July of that year. And I read it, but I didn't — you don't catch everything the first time you read it.

It was not until later that I caught the part of the report that was brought to the attention — it caught my eye when I was sitting there and reading it.

Q. You didn't read any of this interrogatory or the original interrogatory as requesting legal opinions that you had alleged that gave you notice that there was a malpractice claim against Mast and Popovich?

A. Excuse me?

MR. FLYNN: Can you read that back.

(WHEREUPON, the record was read by the reporter as requested.)

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BY THE WITNESS:

A. The way she said it, I don't understand.

BY MR. FLYNN:

Q. I'll rephrase it.

We've known about this allegation in the original complaint since it was filed. You received some legal opinion in 2016. That's why you didn't know you had a malpractice case against Mast and Popovich.

We asked you in discovery answers a couple different ways what those legal opinions are. You didn't read 26 and 27 as requesting information about legal opinions?

A. I don't know that an expert witness would be considered a legal opinion. Wouldn't that be more like an attorney?

Q. I'll ask you again. Why is it that you first became aware of a legal malpractice matter against Mast and Popovich on or about December 16, 2016?

A. December 16th I was talking to a legal malpractice attorney.

Q. You were told that there was a case against —

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A. A valid case, yes.

Q. — Mast and Popovich?

A. Yes.

Q. Why is it you didn't know about this valid case prior to that date?

A. Because I hadn't talked to anybody that was a lawyer that specialized in that area.

Q. Whatever it is that he said to you gave you the basis for believing you had a valid case against Mast and Popovich?

A. Very much so, yes.

Q. You're withholding that information from me right now, as we sit here. You won't tell me what that expert said, correct?

MS. WILLIAMS: Repeat the question.

(WHEREUPON, the record was read by the reporter as requested.)

MS. WILLIAMS: I'm asserting attorney-client privilege on behalf of my client for Gooch's advice on December — in December of 2016.

However, because I want to move forward with this deposition, if he can answer the question, I believe we should go ahead and move forward and have him answer the question.

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I'll assert the privilege with the understanding that this may have to be briefed later.

MR. FLYNN: To be stricken later?

MS. WILLIAMS: Right.

MR. FLYNN: The substance of the answer he can put on the record. You're just saying you may move to strike it later?

MS. WILLIAMS: Right. I want to maintain the privilege with the objection, but I don't want to have to call the judge right now. I don't think it's something we should have to call the judge about right now.

MR. FLYNN: Just for the record, I believe it's been placed at issue by virtue of the first amended complaint. The responses to the statute of limitation defenses that were raised in very dispositive motions before Gooch withdrew from the case, the gist of that is the discovery rule has been raised and, therefore, it's our position that the date of discovery has been placed at issue and, accordingly, any legal opinions that were provided to this plaintiff have been exposed and that we're entitled to know what those are.

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MS. WILLIAMS: Can I also note one more thing?
MR. FLYNN: Sure.
MS. WILLIAMS: In the supplemental -- in the request it specifically refers to paragraph 57 of the second amended complaint, which is different.
MR. FLYNN: It is different. I'll acknowledge that. I believe that the prior original interrogatories asked for any opinions relative to the discovery of the malpractice. I could be wrong. There was a reason I asked this and that's why I believe that's what it was about.
MS. WILLIAMS: So --
MR. FLYNN: That particular one I agree with you is not phrased as calling for --
MS. WILLIAMS: Right. That's the question that was asked. We answered the question that was asked, which that particular paragraph does not refer to a legal expert. It just merely -- I'll read it out loud. "It was not until the mediation in December of 2016 based on the expert's opinion that Dulberg retain for mediation that Dulberg became reasonably aware."
I just want it clear that he did answer the question that was asked. I understand your line

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of questioning and we'll agree to move forward.
MR. FLYNN: I believe there were other discovery requests that did point to that and I think we can take a break here and I can find them fairly quickly because I think we're getting close to the end anyway.
MS. WILLIAMS: Okay.
BY MR. FLYNN:
Q. Did you ever receive any money from the mediation award?
A. No. I received money from the bankruptcy itself. It was a surplus bankruptcy.
Q. There was a $300,000 award given in the mediation.
A. That did not go to me. That went to bankruptcy.
Q. It was collected on your behalf and paid to the bankruptcy trustee, correct?
A. Correct.
Q. All $300,000?
A. I don't know that because I think -- I don't know how exactly it works. I heard attorneys have a lien that's special. I don't know how they break it up. I assume it goes to the trustee.

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Q. The Boudins weren't working for free. They got something out of it, right?
A. Yes.
Q. The trustee took the remainder and paid off some of your creditors, correct?
A. Correct. All of them.
Q. But the award was paid to the trustee on your behalf?
A. I believe so. I don't know how it worked.
Q. How much was the surplus after your creditors were paid?
A. After just the creditors?
Q. How much did you get?
A. How much did I get?
Q. Yes.
A. A third.
Q. I'm asking how much money did you get?
A. A third of the award.
Q. Dollars. How much money did you get?
A. Roughly a hundred.
Q. $100,000?
A. I don't know the exact number. It's roughly a hundred.

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Q. Was there a check that was issued to you?
A. By the trustee, yes.
Q. Did you cash it?
A. Yes.
Q. At what bank?
A. McHenry Bank & Trust.
Q. Do you still have an account there?
A. Yes.
Q. Do you have a copy of the canceled check?
A. I'm sure the bank has a photo thing.
Q. You can request a copy of the check, correct?
A. I could. I could see if they got it.
Q. I would ask you to do that. If you have any other documentation relative to the payouts that were made by the bankruptcy trustee on your behalf, we are requesting that information.
MR. FLYNN: Why don't we take a break and I'm going to look for one document and then we're just about done here.
(WHEREUPON, a recess was had.)
MR. FLYNN: Mark these as the next two.

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(WHEREUPON, a certain document was marked Exhibit No. 12, for identification, as of 02/19/2020.)
(WHEREUPON, a certain document was marked Exhibit No. 13, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm going to show you what I've marked as Exhibits 12 and 13. Twelve are your answers to Hans Mast's interrogatories. Thirteen is your responses to Popovich's request for production.
Interrogatory No. 1 from Mast asks, "Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach."
Do you understand that?
A. Yes.
Q. So how is it they committed malpractice?
A. May I see it?
Q. I'm going to show it to you in a second. I only have one copy.
This is basically, how did you first become aware that they committed malpractice?

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That's the essence of that interrogatory.
Here is your response. I can show that to you. It doesn't reflect any discussion with any malpractice lawyer in December of 2016.
Tell me –
A. Let me read it again. We're talking about No. 1 on this?
Q. Correct.
A. Okay.
Q. You understand it?
A. Yes.
Q. Would you agree that the legal opinion you received on December 16, 2016 is responsive to that interrogatory, whatever it is that you were told?
A. Yes.
Q. You didn't identify this December 16, 2016 discussion in the answer to that interrogatory, correct?
A. Say that again.
Q. Your discussion with Mr. Gooch on December 16, 2016, that's referenced in your original complaint, you didn't respond and identify it in this answer to the interrogatory, correct?

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A. This asks for every way Popovich or Mast breached the duty of care. It didn't ask for Gooch's opinion.
Q. How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?
A. Yes.
Q. That's what you've alleged here in this complaint.
A. Yes.
Q. Here I'm asking you, each and every way that they ever breached a duty of care to you. I covered the waterfront. You didn't answer --
A. On the McGuire case it was between October 2013 and January 2014. Yes. There's a multitude of things and that's why I listed a range.
Q. I'm asking when you became aware of it, in that interrogatory. Do you see that?
A. I became aware of that when Thomas Gooch read them and said there's a problem here.
Q. That's not the way you answered the interrogatory, correct?
A. I answered the first part. I did not answer after the comma and the and.

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Q. There's no objection and indication that any information is being withheld, correct?
A. Excuse me?
Q. There's no objection and an indication that you're withholding –
A. I was not withholding.
Q. I'll show you Exhibit 13. It asks – Exhibit 13 are the production requests to you. Number 8 asks for you to produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created and the date the recipient received the document.
The answer is, "The plaintiff is only withholding attorney-client communication between his successor counsel."
Is that your answer to the production request and did I accurately read No. 8?
A. May I consult with her for a minute?
Q. Sure.
THE WITNESS: Can we go off the record?
MS. WILLIAMS: If you can answer the question, answer the question first.

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BY THE WITNESS:
A. It's been a while since I've done this, so I'm not sure who the successor counsel is. Is it her or is it the Boudins or Balke?
BY MR. FLYNN:
Q. I think successor counsel, we can both agree, the successor counsel in the underlying case which would be Balke and then Boudin.
You didn't identify any documents withheld other than documents between you and successor counsel, correct?
THE WITNESS: I believe we waived those, didn't we, for Balke and Boudin?
MS. WILLIAMS: For Balke and Boudin we can represent that we waived those.
BY MR. FLYNN:
Q. Let me ask a different question.
Did Gooch communicate with you in writing relative to his opinion that you had a legal malpractice case against Mast and Popovich?
A. In writing?
Q. Yes.
A. I suppose the agreement between us that he would represent me because I had the case is a

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document in writing.
Q. Did he tell you -- strike that.
The discussion that you reference in the complaint, paragraph 20 of December 16, 2016, was that a face-to-face communication with Gooch?
A. What number is that?
Q. Exhibit 4, paragraph 20. The legal opinion you received, was it verbal, was it written?
A. I believe it was verbal.
Q. Now, I'm going to ask you what he said. There was an objection and that will be addressed by the Court later. Please tell me what Gooch told you.
A. He read what I brought him, looked through some things, and I don't remember if it was the same day that we talked to him or he took a day or two. I don't remember. He got back to me and he said, "You have a case here. You have a valid case."
Q. Did he say why?
A. On the basis of what I brought to him. Yes.
Q. Specifics, though. I don't want to talk about generalities. Did he tell you what Mast and

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Popovich did wrong and how it injured you?
A. How it injured me? Yeah.
Q. The first part of my question was, did he tell you exactly what they did wrong in connection with your -- their representation of you?
A. He probably did. I'm not recalling it right now. I'm pulling a blank.
The parts of the conversation I'm remembering, and for some reason I'm not pulling it. We've been at this a while and this is a long thing. Yes, he said based on what he saw, he saw reason for malpractice.
Q. You don't remember any details, as you sit here? Did you discuss the liability of property owners in Illinois?
A. Well, if they were just property owners in the case, that would be one thing, but they weren't just property owners.
Q. That wasn't my question. I'm asking if you discussed it?
A. Certainly.
Q. You and Gooch discussed the liability of the McGuires in the case?
A. Yes.

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Q. What did you say to him and what did he say to you?
A. I showed him the expert opinion.
Q. The chainsaw expert?
A. Yes.
Q. Did you show him any deposition transcripts?
A. Yes.
Q. Which ones?
A. All of them.
Q. And he read them before you talked?
A. I don't remember. Like I said, it may have been a few days between our initial meeting and bringing the whole file that I had and trying to get what the Boudins had and letting him go through it. I don't remember how long that took.
Q. How did you transmit the documents to him --
A. My brother carried them.
Q. Let me finish.
How did you transmit the documents to Mr. Gooch, including the deposition transcripts?
A. I believe we brought him a box.
Q. So you physically handed the documents to

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him?
A. I didn't physically hand them. My brother did.
Q. Did you communicate with Mr. Gooch by e-mail, at all, leading up to this meeting?
A. No.
Q. Did he ever write you any letters?
A. An e-mail or regular mail or what are you talking about?
Q. Any letters whatsoever.
A. Throughout the course of his representation, yes.
Q. What about in December of 2016?
A. I believe we started communicating in December, yes.
Q. But in writing?
A. In e-mails, sure.
Q. Did he discuss —
A. We may have. I'm not — whenever we started — whenever he started sending me things and going back and forth, I don't remember the exact date, but it was right after he started representing me, sure, we exchanged e-mails and started, yes.
Q. When did Gooch begin representing you?

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A. The day that he agreed to represent me. I believe it would have been the day that he decided that he had a case.
Q. On or about December 16?
A. Yes.
Q. At that point in time, or shortly thereafter, he communicated with you in writing the details of the breach of the standard of care committed by Popovich and Mast; is that correct?
A. I believe he started to detail those out in the complaint and we were working it back and forth trying to get it right.
Q. When did you first exchange drafts of the complaint?
A. I'd have to look back in the e-mails. I don't remember the dates.
Q. Did you look for any of these e-mails in connection with my discovery requests in this case?
A. At the time I think we thought they were privileged.
Q. That privilege objection wasn't exactly made. My question is, did you look for them?
A. Did I look for them? I have them.
Q. I would ask that you preserve each and

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every communication between you and Mr. Gooch, all written communications, even phone records that might reflect the dates and times of your phone communications, if any. Did you use a cell phone back then?
A. I used VOIP over a data line.
Q. Who was your carrier?
A. Comcast.
Q. Is that still your carrier?
A. Yes.
Q. Do you have the same phone that you utilized?
A. Same phone number for 50 years, yes.
Q. What else could you remember that Gooch told you on or about the 16th of December 2016 about Mast and Popovich breaching the standard of care and how it damaged you?
A. Say that again.
Q. What, if anything, else do you recall about your discussions with Gooch on December 16 regarding the breach of the standard of care by Popovich and Mast and how it injured you?
A. We discussed the whole scenario between October and January and what happened. It was

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pretty detailed. We discussed everything that you see that's been communicated in the e-mails. He didn't have much else to go on other than the documents and the e-mails.
Q. You're talking about the e-mails between you and Hans from the fall of 2013?
A. Yes.
Q. Ultimately leading to the $5,000 settlement?
A. Yes.
Q. Other than you have a case, what did Gooch say to you?
A. He said that they definitely committed malpractice.
Q. Did he ever put this in writing?
A. Did he ever put it in writing? I think he backed it up by filing a suit. That's documented.
Q. Again, the suit wasn't filed until November of 2017.
A. Yes, he had some health problems and then his wife had some health problems. Believe me, I was pushing for him to get that done.
Q. From December of 2016 until the complaint

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was filed, you exchanged some drafts of complaints with him?
A. I believe he let me see what he wanted to put in the complaint. I got to review some things. Of course I had, do this or that's not right. In fact, a couple of these things in here we had to definitely – you caught one. He totally worded it wrong. It was wrong. We had to amend.
MS. WILLIAMS: His question was, did he give you drafts for you to review?
THE WITNESS: Yes.
BY MR. FLYNN:
Q. These were exchanged by e-mail?
A. I believe so, yes.
Q. So you would have records of them?
A. Yes.
Q. Any comments with respect to the pleadings, as well, did you ever ask him questions? Did he explain to you the basis for the allegations in the draft complaints, similar to what you did with Hans?
A. Over many times, yes.
Q. This is all reflected in e-mails?
A. Yes.

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Q. Ultimately, you didn't file until November of 2017?
A. Correct.
Q. Popovich ceased being your lawyer March 19 of 2015, correct?
A. That sounds about right.
Q. Until December 16, 2016, you didn't have any reason to believe there was a malpractice case against –
A. Say the date again.
Q. Until December 16, 2016, you didn't have any other reason to believe there was a malpractice case against Popovich and Mast?
A. I did not know that I had a case, no.
Q. You threatened one with respect to the Gagnon case –
A. Yes.
Q. – at another point in time, correct?
A. I think I threatened him a few times in there. Yeah. I was actually nice to what I really wanted to say.
Q. Subject to the ruling on these objections, you don't recall any other specific details that you discussed with Popovich – I'm

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sorry – Gooch on December 16, other than what we already talked about?
A. I discussed the exact same things that you – the same documents that you already have. We went over the case that Mast and Popovich had against the McGuires. He followed through all the way to the end. We went over the whole case. You see as much as he did.
Q. Did Gooch ever explain to you why the McGuires would have been liable any more than Mast explained to you that they wouldn't be liable?
A. He said he agreed right away. He said that's obvious.
Q. Did Gooch ever provide you with any cases or statutes?
A. Provide to me, maybe. Maybe. I don't know.
Q. Would that be by e-mail?
A. It could be. I was in his office quite a few times. He may have.
Q. As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to

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the McGuires' liability?
A. That they were definitely liable. He tried to say that – like Popovich and Mast were first- or second-year lawyers and that they may have made a mistake here.
I said they've got 20 years in this. You think they'd know the difference. That's the kind of thing. He agreed with me. Twenty years, yeah, they should have known better.
Q. Did you ever discuss the specifics of the McGuires' potential liability with Gooch?
A. Liability with Gooch?
Q. With Gooch, did you ever discuss the specifics of the McGuires' liability other than he thinks you have a case?
A. Yes.
Q. Did he ever tell you why? What was it?
A. Because he agreed with the expert's opinion.
Q. The expert on the chainsaw?
A. Yes. The liability expert.
Q. The expert said you should use safety goggles and gloves and things like that?
A. He said more than that, but yes.

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Q. Do you know who commissioned that expert report?
A. Boudins.
Q. Do you know when the first draft of that doctor's expert report was circulated?
A. I heard that Boudin got it in February, maybe. I don't think I got it until July, but I'm not sure about that.
Q. July of what year?
A. The same year as the mediation.
Q. Of 2016?
A. Yeah.
Q. So you actually read it in advance of the mediation?
A. I talked about this earlier. I said yes. You don't catch everything the first time you read it. I was sitting there at the mediating table and I was reading it and I caught it and I turned to Randy and I said, after it was over, does this mean — that means.
Q. Means what?
A. Does this mean the McGuires are liable? Yeah, that means they are liable. He said, call my office after everything and I'll give you a name for

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an attorney you should go see.
MR. FLYNN: Any follow-up, Julia?
MS. WILLIAMS: I have two follow-up questions.
EXAMINATION
BY MS. WILLIAMS:
Q. Did you ever give Hans authority to make a settlement demand regarding Mr. Gagnon?
A. I think at one time in one of my meltdown letters I said get whatever you can, but no, I never actually signed anything saying you have the right to offer a settlement.
Q. Did you ever give Hans authority to make a settlement demand with regard to the McGuires?
A. A demand, no. He said he was going to probe and see what was out there, and I said, if you want to do that, that's fine.
MS. WILLIAMS: I have no further questions.
MR. FLYNN: Signature?
MS. WILLIAMS: We can waive signature.
THE REPORTER: Are you ordering this?
MR. FLYNN: Yes.
THE REPORTER: Regular delivery, e-tran?
MR. FLYNN: Yes.
THE REPORTER: Copy?

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MS. WILLIAMS: Yeah.
THE REPORTER: Regular delivery, e-tran?
MS. WILLIAMS: PDF.
(WHEREUPON, at 4:00 p.m., the deposition of PAUL DULBERG was concluded.)
* * * * *

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STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)

I, KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify:

That previous to the commencement of the examination of the witness, the witness was duly sworn to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction, and constitutes a true record of the testimony given and the proceedings had;

That the said deposition was taken before me at the time and place specified;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto

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set my hand and affix my seal of office at Chicago, Illinois this 3rd day of March, 2020.

Karen Pileggi

Notary Public, DuPage County, Illinois.

My commission expires 1/2/24.

CSR Certificate No. 84-3404

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EXAMINATION

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

DULBERG'S ANSWERS TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S INTERROGATORIES TO PLAINTIFF PAUL DULBERG

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds to Defendant, The Law Offices of Thomas J. Popovich, P.C.'s Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

1. Identify the person(s) answering and/or providing assistance in the answering of these interrogatories.

ANSWER: Paul Dulberg, available through counsel. The Clinton Law Firm, as counsel for Paul Dulberg.

2. Identify all persons who have knowledge of any matters relating to any of the facts, claims, damages, or defenses at issue in this case.

ANSWER: Paul Dulberg is the Plaintiff in this matter and is expected to testify in accordance with any deposition testimony he provided or provides. He has knowledge regarding the circumstances leading to the injury he sustained, the actual injury, the harm he suffered, including financial injury.

William McGuire ("William") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

EXHIBIT # 1

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Caroline McGuire ("Caroline") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

David Gagnon ("Gagnon") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

Barbara Dulberg. 4606 Hayden Ct., McHenry, IL 60051. Retired. Barbara is expected to testify to the facts and circumstances of the November 4, 2013 meeting with Hans Mast. Barbara is also expected to testify as to the facts and circumstances of Paul Dulberg's pain and suffering, and Dulberg's loss of use of his arm.

Thomas Kost. 423 Dempster Ave., Mt Prospect, IL 60056. Electrician. Thomas Kost is expected to testify as to the legal advice given to Dulberg from Mast and The Popovich Firm on the McGuires' liability, or lack of it, and how the judge would rule in the December 2013 meeting, as well as Dulberg's pain and suffering and loss of use of arm.

Mike McArtor, 4606 Hayden Ct., McHenry, IL 60051. McArtor was Dulberg's business partner at Sharp Printing, Inc. He is expected to testify regarding the facts and circumstances as to Dulberg's ability to work, loss of use of arm, and the facts and circumstances of the pain and suffering after the accident.

Scott Dulberg, 8245 Cunat Blvd, Apt. 2B, Richmond, IL 60071. Scott Dulberg is Paul Dulberg's family member and was Paul Dulberg's business partner at Sharp Printing, Inc. He is expected to testify regarding the facts and circumstances as to Dulberg's ability to work, loss of use of arm, and the facts and circumstances of the pain and suffering after the accident.

Investigation continues.

3. Identify the address of the McGuire's property described in paragraph 6 of your second amended complaint, and your address identified in paragraph 7 of the second amended complaint.

ANSWER: McGuires' real property is located at 1016 W. Elder Ave., McHenry, IL 60051.

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Dulberg's home is located at 4606 Hayden Ct., McHenry IL 60051

4. Identify and describe how you were invited to the McGuires' property to see if you wanted any of the wood from the tree, as alleged in paragraph 12 of your second amended complaint.

ANSWER: Dulberg received a call from Gagnon on June 27, 2011. Over the phone, Gagnon asked Dulberg if he wanted wood from the tree that the McGuires were removing and invited Dulberg to come see the wood.

5. Identify how William McGuire physically assisted in cutting down the tree, including the date, time, and location of his assistance, and describe how and when he supervised David Gagnon's actions in cutting down the tree, as alleged in paragraph 13 of your second amended complaint.

ANSWER: On June 28, 2011, Dulberg went to the McGuires' home and arrived between 8:30-9:00 am. He observed William McGuire working with Gagnon between that time and approximately noon that same day to remove tree branches from the tree. Gagnon continued to work throughout the day, after William stopped working. Caroline was present observing the work and supervising the work.

William and Caroline McGuire purchased and provided the chainsaw that was used to cut the branches. William and Caroline McGuire provided the ropes and straps that Gagnon used to climb the tree. Caroline had the chain saw owner's manual in her possession and instructed Gagnon what fuel/oil ratio to use for the chain saw.

William and Caroline McGuire instructed Gagnon as to which trees and branches that they wanted removed and where they wanted the trees and branches to fall during the removal process. Gagnon climbed into the tree and cut the branches utilizing the chain saw that the McGuire's provided. The branches would fall to the ground and William would pile the branches in the yard. He also started a fire and burnt some of the branches. At times, William started the chainsaw for Gagnon.

Throughout the entire day, Caroline observed the work and instructed Gagnon to "be careful"

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on several occasions. She also provided water to both William and Gagnon.

William, Caroline, and Gagnon had several conversations throughout the morning as to which trees and branches to cut, how to best remove the trees and branches, where the trees and branches would fall, and how to clean them up. William and Caroline instructed Gagnon regarding those matters.

At approximately noon on that same date, William stopped working on cutting down the tree and went into the house. He then came out of the house and entered the McGuires' pool that is located on the same property.

Gagnon continued to work through the afternoon and early in the afternoon complained to Caroline that he was "working alone" and couldn't complete the work that day without help. Caroline and Gagnon then asked Dulberg to assist. Dulberg agreed to assist.

Dulberg assisted William McGuire by moving branches to the garden and started the chainsaw for Gagnon once while Gagnon was in the tree.

Dulberg then assisted Gagnon by moving the large branches that had already been cut and holding the large limbs steady so that Gagnon could cut them. Dulberg would hold the large branch while Gagnon would cut the smaller branches off the larger branch with the chain saw.

Gagnon would tell Dulberg which branches to pick up and move to the location where Gagnon was cutting them into smaller pieces by cutting off smaller limbs with the chain saw. Gagnon would also instruct Dulberg as to how and where to hold the limbs so that he could cut the branch with the chain saw. Gagnon placed the larger limb, which was now stripped of the smaller branches in a pile and instructed Dulberg to grab the next limb, which still had the smaller branches, to start the process again.

The chain saw was very loud and little conversation occurred during the time the chain saw was on. Instead, Gagnon would gesture to communicate with Dulberg as to how he wanted the branch

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held or moved.

No one cut down the entire tree that day, instead branches were removed from the tree and cut down into smaller pieces.

6. Identify and describe how Caroline McGuire supervised David Gagnon and William McGuire's actions, as alleged in paragraph 14 of the second amended complaint.

ANSWER: See answer to 5.

7. Identify the date, time, the location, and the exact words exchanged between Gagnon and the McGuires on the one hand and you on the other as alleged in paragraph 15 of your second amended complaint, in which it is alleged that were asked to assist the trimming and removal of the tree.

ANSWER: See answer to 5. Dulberg does not recall the "exact words exchanged" but does recall the incident as outlined in his answer to 5.

8. Identify what safety information was readily available to Caroline and William McGuire as alleged in paragraph 18 of your second amended complaint, and how you know this information.

ANSWER: Caroline and William McGuire had the owner's manual to the chain saw. Caroline was reading parts of it aloud to Gagnon in the morning of June 28, 2011. Dulberg observed Caroline in possession of the owner's manual and saw her reading it in the morning of June 28, 2011.

The owner's manual had safety instructions and warnings that would have prevented the accident.

9. Did you request any protective equipment or other safety devices from the McGuires or Gagnon while you provided assistance to Gagnon in operating the chainsaw?

ANSWER: No, Gagnon instructed Dulberg as to what to do and Dulberg never operated the chain saw or read the owner's manual.

10. Did you assist Gagnon with trimming and removal of the tree? If so, describe

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each and every action you took in assisting Gagnon with the cutting down or removal of the tree.

ANSWER: See answer to 5.

11. Identify and describe each and every conversation between and David Gagnon while you were assisting him with trimming or cutting down the tree.

ANSWER: See answer to 5.

12. Identify and describe each of your employers in the ten year period prior to the accident of June 28, 2011, including any self-employment. For each employer, identify your wage rate or salary, your title, your job description, your required duties, and your income for the ten year period prior to the accident in question.

ANSWER:

1. 1999-2011 Sharp Printing, Inc., 4606 Hayden Ct., McHenry, IL 60051

Paul Dulberg was an owner and operator of Sharp Printing, Inc. along with his two partners Scott Dulberg and Michael McArtor.

Paul Dulberg was the President, salesperson, graphic designer, 8 color screen print pressman, handled fulfillment, shipping & receiving, as well as other day to day operations of the company.

For income, see tax returns.

Sharp Printing, Inc. operated out of the lower floor of Paul Dulberg's personal residence and paid all utilities bills, including garbage, water, natural gas, electric, internet, phone, and cable. The approximate value is $650 per month.

2. 1999-2011 Juskie Printing

Paul Dulberg served as an independent contractor for Juskie Printing performing graphic design and prepress functions.

From 1999-2006, this was a barter arrangement.

From 2007-2011, Paul Dulberg earned approximately $18,000 per year.

See tax documents.

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3. Intermatic Incorporated

1998-2002 Intermatic Incorporated, Offset Press Operator I

2002-2007 Intermatic Incorporated, Graphic Designer

2010 Intermatic Incorporated, Independent Contractor for Graphic Design

See tax documents for income information.

See job description provided with documents.

4. 2011 Art Material Services. Material Handler

Operated and maintain thread roller.

See tax documents for income information.

13. Did you suffer any serious personal injury and/or illness within ten years prior to the date of the occurrence? If so, describe where and how you were injured and/or became ill and describe the injuries and/or illness suffered.

ANSWER:

1. Migraine Headaches, treated at home.

2. 2002. Rear end collision at Hayden Dr and Johnsburg/Wilmot Rd., in McHenry, IL.

See medical records produced.

3. Approx. 2004, Chest Infection. Treater: Dr. Sek. Treated with inhaler and antibiotics

4. 2005. Broken Foot. Treated at Centegra Hospital in McHenry. Scott Dulberg stepped on Paul Dulberg's bare right foot.

14. Have you suffered any serious injury and/or illness since the date of the occurrence? If so, state when, where, and how you were injured and/or became ill and describe the injury and/or illness suffered.

ANSWER:

1. 2011 to present. Migraines.
   Treaters: Dr. Levin
   Dr. Terrance Lee
   Investigation Continues.
2. 2013 Hemorrhoid related to stress. Treater: Dr. Conway

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3. 2016 Dog Bite to Left Leg. Treater: Centegra, McHenry.

a. Dulberg broke up a fight between his dog and the neighbors' dog when he was bitten by a neighbor's dog.

4. Enlarged Prostate Treaters: Dr. Berger, The Uro Center, Lake Zurich, Illinois.

Dr. Elterman and Dr. Tarnauskas, Elterman Center, Skokie, Illinois.

Investigation continues. No other major illness or injuries relevant to this case.

15. Have you filed any claim for workers compensation benefits in the ten years prior to the underlying accident of June 28, 2011? If so, state the name and address of your employer, the date(s) of the accidents, the identity of the insurance company that paid you such benefits and the case nos. and jurisdictions where filed.

ANSWER: No.

16. State the personal injuries sustained by you as the result of the underlying occurrence.

ANSWER: Chainsaw injury to the right arm. See medical records.

17. With regard to your injuries, state:

(a) The name and address of each attending physician and/or health care professional;
(b) The name and address of each consulting physician and/or health care professional;
(c) The name and address of each person and/or laboratory taking an x-ray, MRI and/or other radiological tests of you;
(d) The date or inclusive dates on which each of them rendered you service;
(e) The amounts to date of respective bills for services; and
(f) From which of them you have written reports

ANSWER: See medical records provided.

18. As a result of your personal injuries from the underlying case, were you a patient or outpatient at any hospital and/or clinic? If so, state the names and addresses of all hospitals and/or clinics, the amounts of their respective bills and the date or inclusive dates of their services.

ANSWER: See medical records provided.

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19. As a result of your personal injuries from the underlying case, were you unable to work? If so, state:

(a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;
(b) The date or inclusive dates on which you were unable to work;
(c) The amount of wage and/or income lost by you; and
(d) The name and address of your present employer and/or wage and/or salary.

ANSWER: Paul Dulberg was self-employed and unable to work after the accident. He has not been employed since the date of the accident. See tax returns for lost wages. See SSDI documents for current income.

20. State any and all other expenses and/or losses you claim as a result of the occurrence in the underlying case or resulting from any alleged legal malpractice committed by Popovich or Mast. As to each expense and/or loss, state the date or dates it was incurred, the name of the person, firm, and/or company to whom such amounts are owed, whether the expense and/or loss in question has been paid, and if so, by whom it was so paid and describe the reason and/or purpose for each expense and/or loss.

ANSWER: Investigation continues. Medical costs, lost wages, loss of use, permanent disability resulting from injury, and pain and suffering.

21. Were any photographs, movies, and/or videotapes taken of the scene of the occurrence or the persons and/or equipment involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, and the name, address, occupation and employer of the person taking them.

ANSWER: Photograph of Mr. Gagnon. See all photographs produced with request to produce.

22. Had you consumed any alcoholic beverage within the 12 hours immediately prior to the occurrence or had you used any drugs or medications within 24 hours immediately prior to the occurrence. If so, state the name(s) and address(es) of those from whom it was obtained, where it was used, the particular kind and amount of drug, medication, or alcohol so used by you, and the names and current residence addresses of all persons known by you to have knowledge concerning the use of said drug or medication or alcohol.

ANSWER: Dulberg may have taken Naproxen sodium prior to the accident. Naproxen

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sodium is a pain reliever available over the counter. Dulberg does not recall whether he took the drug the night before or the day of the accident, but he did take it on a regular basis at that time. He did not consumer any other drugs or alcohol during that time.

23. Describe why you agreed to a binding mediation in the summer of 2016 as alleged in paragraph 52 of your second amended complaint.

ANSWER: At that time, a bankruptcy trustee was appointed by the bankruptcy court and the bankruptcy trustee filed a motion for binding mediation that was granted.

24. Identify the date on which you provided any settlement authority to Hans Mast or the Popovich firm, and the amount of any specific settlement authority to make any settlement demand upon the defendants in the underlying case.

ANSWER: Specific settlement authority was never given. On November 4, 2013, Mast was granted authority to investigate a settlement, but a specific dollar amount was never provided. On or around January 29, 2014, Dulberg signed the settlement agreement.

25. Identify and describe the date on which you received a copy of the settlement agreement from Mast in the underlying case, the date on which you executed the settlement agreement and the date on which you mailed the executed settlement agreement to Mast.

ANSWER: January 29, 2014, received, signed and mailed back to Mast.

26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.

ANSWER: Mast told Dulberg that Illinois law does not permit a recovery against the McGuires in the circumstances of Dulberg's case and that Dulberg would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to

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seek and receive a full recovery from Gagnon.

27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.

ANSWER:

Dr. Landford is a chain saw expert who was retained by Dulberg. See documents produced.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

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MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the $5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans

EXHIBIT # 3
2-19-20

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VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true, correct, and complete, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Paul Dalberg

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE
THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM.
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT # 4
2-19-20

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as Exhibit B reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as Exhibit C.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. *MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by* violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Client

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT

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COPY

MAY 16 2012

KATHERINE M. KEEFE, McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs. No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT B

ALLSTATE LEGAL

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ____ ON
_____ 20__ AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 202 ON
9/28 20 22 AT 8:30 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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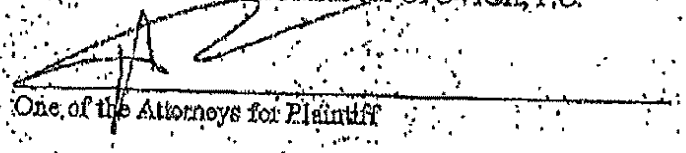
WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



One of the Attorneys for Plaintiff

Hans A. Most
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203084

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kohrak

Mark J. Vogg
James P. Tutai
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT C
ALLSTATE LEGAL

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No: 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740.ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____ _____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation	
Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.S	75,000.
L N L	75,000.

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT 1 ALL-STATE LEGAL

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McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF, v. THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	)	Case No. 17 LA 377

NOTICE OF FILING

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on December 6, 2018, the undersigned caused the enclosed Second Amended Complaint to be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, a non-attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Mary Winch
Mary Winch

EXHIBIT # 5
2-19-20

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McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendant.	)	No. 17 LA 377

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

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15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

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27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A.**

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

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44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

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53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing

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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

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Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Client

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT A

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FILED
MAY 15 2012
KATHRYNE M. KEEPS
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count 1

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 7/28 2012, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____ 20__, AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and know that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
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Lake, Illinois 60050
(815) 544-3797
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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5. That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

EXHIBIT GROUP C

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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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C 1031 V2

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Konrad

Mark J. Vogo
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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C 1032 V2

GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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C 1033 V2

o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____ _____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2018 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: **Re: McGuire settlement**

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI

EXHIBIT
E
dibbler

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C 1035 V2

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap..
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.

EXHIBIT
F

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C 1036 V2

ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

On December 6, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation	
Medical	$ 60,000.
Future medical	$ 300,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

EXHIBIT

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C 1037 V2

Pamela Walker

From: McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
Sent: Monday, December 10, 2018 1:37 PM
To: George K. Flynn; Pamela Walker
Subject: 17LA000377 - 2 Documents Filed

17LA000377

DULBERG, PAUL VS MAST, HANS, ET AL

Doc Type	COAA
Description	COMPLAINT - AMENDED
Date Filed	12/6/2018
Image Link	View Document Image

Doc Type	NOTF
Description	NOTICE - FILING
Date Filed	12/6/2018
Image Link	View Document Image

NOTE: E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

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C 1038 V2

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Just received your mailed letter**
Date: December 27, 2016 7:10:43 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: September 23, 2014 at 9:06:46 PM CDT
To: Hans Mast <hansmast@comcast.net>
Subject: **Fwd: Just received your mailed letter**

Hans,
if I use a chainsaw and cut you badly who is going to believe me when I say it's not my fault, Hans just fell into it?

Who in their right mind is going to believe me when your pointing your finger at me saying I did it?

Who?

Begin forwarded message:

From: Paul Dulberg <pdulberg@comcast.net>
Date: September 23, 2014 at 8:25:03 PM CDT
To: Hans Mast <hansmast@comcast.net>
Subject: **Re: Just received your mailed letter**

First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw. I was but a lowly printer/graphic designer my whole life and never asked for anyone's sympathy till now.

Secondly, I'm sorry I must live among a bunch of potential jurors that you don't trust to just do the right thing.

Thirdly, I'm most sorry for agreeing to lend David Gagnon a hand when he needed some help, I had no idea he was going to try and lop it off.

Fourth, I'm sorry you don't feel good about pushing for a trial. I wish whatever mysterious evidence you seek would be shared with me because without a video camera I can only say what I've seen from direct experience. And I guess in this case "me" the victim isn't credible enough but the one wielding a chainsaw that hurt me is.

A few questions from a layman,

How much could a trial actually cost?
What,
$50,000
$150,000
Does it even cost as much as a car?
What number?

How much would you hope to get for us in a settlement?

How much could be expected if the trial does proceed and we have a favorable outcome?

Hans, if your heart is not in this I'm sorry

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

EXHIBIT # 6
2-19-20

On Sep 23, 2014, at 7:39 PM, Hans Mast <hansmast@comcast.net> wrote:

Hi Paul. My view hasn't changed. I think each time we've talked I've always tried to be open about my reservation to take this

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C 1039 V2

case to trial. I just don't think we have enough evidence to prove our case and to invest the time and cost and preparing for trial and moving to trial just in my mind does not make sense to me. I have to be very realistic about things and honest with my opinion. It doesn't do you any good if I do not feel strongly about the case.

That's the very reason why I wanted to have this discussion. I want to give you the option of finding other counsel at this point if you really want to take the case to trial which I think ultimately will be necessary. I just do not believe strongly that defense counsel will offer much in the way of a settlement. Although I will ask him if he is going to make an offer and maybe that will allow you to make a better judgment on this.

Sent from my iPhone

> On Sep 23, 2014, at 7:17 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>
> Before I proceed,
> Why the change of heart?
> I mean, last month your response was we are setting a date for trial or something like that but Now it's settle or find new council again.
> Paul
>
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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C 1040 V2

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Bad night**
Date: December 27, 2016 7:07:16 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: September 26, 2014 at 6:32:40 PM CDT
To: Hans Mast <hansmast@comcast.net>
Subject: Bad night

Hans,

Last evening I was in the hospital with the most severe migraine I've ever had.

This morning I filed for bankruptcy with David Stretch.

This afternoon I spent with my regular physician Dr Zaide doing a follow up from yesterday.

And right now, I have to email you. All when I still have a slight residual headache and should be in bed.

At first I thought the migraine was brought on by the medications I'm taking but it wasn't, it was brought on after our discussions. Now I can't prove that but it seems pretty obvious to me. Joke no pun intended there!

That migraine made me realize I need the stress of this situation over with. All the stress on top of losing everything is too much and I'd rather live than die from it all before my body does something worse.

My body is not reacting well and the migraines are getting more frequent and worse. Have you ever vomited at the same time as deficating while being in some of the most excruciating pain in your life?

If not, neither did I till the chainsaw went through my arm. That's when the migraines became more frequent, stronger and faster coming on. And now for the first time during the day.

Ever since I awoke this morning, all I can I think is the stress of it all is killing me more and more as the reality sets in and I just can't afford to care about it anymore.

My health means more than some lawsuits and the lure of money.

All because some idiot named David Gagnon forgot to tell me to move out of the way and he can't seem to admit it.

Yes, after reading his deposition and hearing it was my fault I was pissed.

In my anger I suspected all sorts of things. Including it being intentional especially after my discussions at his home only trying to get his homeowners policy number and him wanting money and threatening me for it.

Yes, my arm and elbow were hurt from his stupidity irregardless if some dr can link the two together or not.

Yes, there will be ongoing medical as a result of all this because it still hurts and doesn't work right.

Yes, I am now disabled irregardless of what SSDI appeal goes because of this.

Yes. I understand I'm screwed because of a system that allows one person to hurt another and even after a trial and judgement entered all they have to do is go file for bankruptcy in the same courthouse on the same day.

Yes, it just took me almost an hour just to type this.

Yes, yes, yes...

but none of it matters anymore!

Bottom line Hans... Do the best you can with what you got, I've got nothing more to lose or give. I need it all to just go away.

EXHIBIT # 7
2-19-20

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C 1041 V2

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:01:21 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 9:38:57 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

No answer, that's what I thought...
Your not very quick when cornered and your not excused from this case until I say you are whether or not your firm agrees.
Got it?

> On Feb 22, 2015, at 9:05 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>
> Is your wanting out a personal issue with me or is it strictly financial?
>
> > On Feb 22, 2015, at 9:01 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Oh, and unless I'm wrong, David did admit to having control over the chainsaw. David, in his lie, admitted to seeing me move my arm and continued along his path with the chainsaw at cutting rpm's.
> > In effect he did admit it was his fault.
> >
> > > On Feb 22, 2015, at 8:52 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > You do not have my consent to quit.
> > >
> > > > On Feb 22, 2015, at 8:23 PM, Hans Mast <hansmast@att.net> wrote:
> > > >
> > > > Paul, honesty hurts. I am honest to a fault sometimes. You told me at the start that David would admit his fault. That proved not to be true. Still your threats and putdowns don't change anything. Just find another attorney and we can part ways.
> > > >
> > > > Sent from my iPhone
> > > >
> > > > > On Feb 22, 2015, at 8:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > >
> > > > > To be honest, you took this case knowing it was my word vs. his.
> > > > > Now you back out because the value of the case isn't worth your time?
> > > > > You got some nerve and your earning the reputation of a shady lawyer
> > > > >
> > > > > > On Feb 22, 2015, at 7:42 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > > >
> > > > > > To believe David's version of events you must believe I was committing suicide.
> > > > > > Who in their right mind puts his arm into a chainsaw?
> > > > > >
> > > > > > I figured you would cop out again...
> > > > > >
> > > > > > Now I'm left wondering...
> > > > > > How hard is it to sue an atty?
> > > > > >
> > > > > > And yes I am and have been looking for someone who will take this case...
> > > > > >
> > > > > > The issue of my word vs David Gagnons... Did he cut me or did I cut myself?
> > > > > >
> > > > > > Of coarse he cut me.
> > > > > >
> > > > > > Next issue please?

EXHIBIT # 8
2-19-20

Dulberg 001384

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C 1042 V2

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY

FILED APE
MAR 19 2019
KATHERINE M. KECK
McHENRY CTY. CIR. CLK.

PAUL DULBERG

vs. Case Number 12 LA 178

DAVID GAGNON, ET AL.

APPEARANCE

I HEREBY ENTER THE APPEARANCE OF

PAUL DULBERG
(Insert the name of the party for whom you are entering your appearance)

AND MY OWN AS

☐	REGULAR COUNSEL	☐	TRIAL COUNSEL
☐	SPECIAL & LIMITED APPEARANCE	☒	SUBSTITUTE COUNSEL
☐	PRO-SE	☐	COUNSEL IN FORCIBLE ENTRY
☐	ADDITIONAL COUNSEL	☐	APPELLATE COUNSEL
☐	GUARDIAN AD LITEM	☐	COURT APPOINTED COUNSEL

AND AS (HIS) (HER) (THEIR) COUNSEL IN THE ABOVE ENTITLED CASE.

SIGNED BB
(Signature of Attorney filing appearance)

Name BRAD J. BALKE, P.C. BRAD J. BALKE
Printed Name

ARDC Number 6273509

Attorney for PLAINTIFF

Address 542 S. DEARBORN ST., STE. 310

City, State Zip CHICAGO, IL 60605

Phone 312-986-8063

CC-APPI (Revised 12/01/06)

EXHIBIT # 9
2-19-20

Dulberg 002646

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C 1043 V2

Binding Mediation Agreement
ADR Systems File # 33391BMAG

Revised for Special Billing

I. Parties

A. Paul Dulberg, by attorneys, Kelly N. Baudin and Randall Baudin, II

B. David Gagnon, by attorney, Shoshan Reddington

SPECIAL BILLING – Section V.B.5 – Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.

II. Date, Time and Location of the Binding Mediation

Date: Thursday, December 8, 2016
Time: 1:30 P.M.
Location: ADR Systems of America, LLC
20 North Clark Street
Floor 29
Chicago, IL 60602
Contact: Alex Goodrich
312-960-2267

III. Rules Governing the Mediation

Each party ("Party") to this agreement ("Agreement") hereby agrees to submit the above dispute for binding mediation ("Mediation") to ADR Systems of America, L.L.C., ("ADR Systems") in accordance with the following terms:

A. **Powers of the Mediator**

1. The Parties agree that The Honorable James P. Etchingham (Ret.) shall serve as the sole Mediator in this matter (the "Mediator").
2. The Mediator shall have the power to determine the admissibility of evidence and to rule upon the law and the facts of the dispute pursuant to Section III(D)(1). The Mediator shall also have the power to rule on objections to evidence which arise during the hearing.
3. The Mediator is authorized to hold joint and separate caucuses with the Parties and to make oral and written recommendations for settlement purposes.
4. **The Parties agree that the Mediator shall decide all issues concerning liability and damages arising from the dispute if this matter cannot be settled, unless any of the above is waived. Any other issues to be decided must be agreed upon by the Parties, and included in this contract.**
5. Any failure to object to compliance with these Rules shall be deemed a waiver of such objection.

EXHIBIT # 10
2-19-20

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B. **Amendments to the Agreement**

1. No Party shall amend the Agreement at any time without the consent and approval of such changes by the opposing Party, and ADR Systems of America.
2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR Systems case manager by telephone. The agreed proposal must also be submitted to the ADR Systems case manager in writing, by fax or email, if necessary, and the contract changes MUST be made by ADR Systems. No changes made outside these guidelines will be accepted. Furthermore, if the amended contract made by ADR Systems is not signed by both Parties, the Agreement shall be enforced in its original form, without changes.

C. **Pre-Hearing Submission**

1. Mediation statements are permitted provided that the statement is shared among the other parties. The Mediation Statement may include: statement of facts, including a description of the injury and a list of special damages and expenses incurred and expected to be incurred; and a theory of liability and damages and authorities in support thereof.

D. **Evidentiary Rules**

1. The Parties agree that the following documents are allowed into evidence, without foundation or other proof, provided that said items are served upon the Mediator and the opposing Party at least **17 (seventeen)** days prior to the hearing date:
   a. Medical records and medical bills for medical services;
   b. Bills for drugs and medical appliances (for example, prostheses);
   c. Property repair bills or estimates;
   d. Reports of lost time from employment, and / or lost compensation or wages;
   e. The written statement of any expert witness, the deposition of a witness, the statement of a witness, to which the witness would be allowed to express if testifying in person, if the statement is made by affidavit sworn to under oath or by certification as provided in section 1-109 of the Illinois Code of Civil Procedure;
   f. Photographs;
   g. Police reports;
   h. Any other document not specifically covered by any of the foregoing provisions that a Party believes in good faith should be considered by the Mediator; and
   i. Each Party may introduce any other evidence, including but not limited to documents or exhibits, in accordance with the rules of evidence of the State of Illinois.
2. The Parties agree that they will not disclose any and all dollar figures relating to the high/low agreement; last offer and last demand; policy limits; and /or set-offs orally or in written form, to the Mediator at any time before or during the conference, or while under advisement, prior to the Mediator's final decision.

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a. Violation of this rule set forth in (D)(2) shall constitute a material breach of this Agreement. The non-disclosing Party must formally object to the Mediator upon learning of the breach, or the breach will be considered waived. The non-disclosing Party shall then have the option to continue the Mediation from the point of objection to its completion; or to terminate the Mediation at the point of objection as null and void. The ADR Systems case manager must be made aware of this breach at the time of the objection, so the objection is addressed in accordance with the Agreement; and

b. If the Mediation is terminated as null and void, all costs of the Mediation will be charged entirely to the disclosing Party. A new Mediation shall then take place with a new Mediator on a new date. If the Mediation is not terminated, the costs of the Mediation shall remain the responsibility of each Party or in accordance with the Agreement.

3. The Parties agree if a Party has an objection to the evidence or material submitted by any other Party pursuant to Paragraph (D)(1), notice of the objection shall be given to the ADR Systems case manager and opposing counsel by telephone and in writing at least seven days prior to the Mediation. If resolution cannot be obtained, the case manager will forward the objection to the Mediator to be ruled upon before or at the Mediation. The case manager will notify each of the Parties of the objection. The objection may result in a postponement of the proceedings. **If the objection is because of new material being disclosed with the submission for the first time (for example, new or additional reports, additional medical/wage loss claims, etc.) then the disclosing party shall be charged for the total cost associated with the continuance.**

4. The Parties agree that any Party desiring to introduce any of the items described in Paragraph (D)(1) without foundation or other proof, must deliver said items to the Mediator and to the other Parties no later than **Monday, November 21, 2016**.

5. The items are considered delivered as of the date that one of the following events occur:

   a. If mailed, by the date of the postmark;

   b. If delivered by a courier or a messenger, the date the item is received by the courier or messenger; and

   c. The date transmitted by facsimile or email.

6. The Parties agree to deliver any of the items described in Paragraph (C)(1) and (D)(1) to the following addresses:

   If emailing Submissions, please send to submissions@adrsystems.com, however, please do not send anything over 50 pages, including exhibits.

   The Honorable James P. Etchingham, (Ret.) (Mediator)
   C/O ADR SYSTEMS
   20 North Clark Street
   Floor 29
   Chicago, IL 60602

   Kelly N. Baudin, Esq. / Randall Baudin, II, Esq. (Plaintiff Attorneys)
   BAUDIN LAW GROUP
   304 McHenry Avenue
   Crystal Lake, IL 60039

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Shoshan Reddington, Esq. (Defense Attorney)
LAW OFFICES OF STEVEN LIHOSIT
200 N. La Salle Street
Suite 2550
Chicago, IL 60601

E. **Conference Procedure**

1. The Parties may present opening statements but there will be no live testimony.
2. The Parties will attempt to reach a voluntary settlement through negotiation with the assistance of the Mediator.
3. If the Parties cannot voluntarily reach a settlement, the Mediator will advise the Parties that settlement cannot be reached. The Mediator will then take the matter under advisement and render an award that will be binding to all Parties, (the "Award"), subject to the terms of any high/low agreement that the Parties may have as described below in Paragraph (F)(1).

F. **Award Limits**

1. The Parties may agree prior to the Mediation that a minimum and maximum amount will serve as parameters for the Award (sometimes referred to as a "high/low agreement"), such that the actual amount that must be paid to the plaintiff or claimant shall not exceed a certain amount (the "high" or "maximum award") and shall not be less than a certain amount (the "low" or "minimum award").

   a. If liability is disputed and comparative fault or negligence is asserted as an affirmative defense, the Mediator shall make a finding regarding comparative fault or negligence, if any. In the event that there is a finding of comparative fault or negligence of the plaintiff that is greater than 50% (fifty percent), the plaintiff shall receive the negotiated minimum award. In the event that there is a finding of comparative fault or negligence of 50% (fifty percent) or less against the plaintiff, then any damages awarded in favor of the plaintiff shall be reduced by the amount of the plaintiff's comparative fault or negligence, but shall be no less than the minimum parameter or more than the maximum parameter.

   b. All award minimum and maximum parameters are subject to applicable set-offs if any, as governed by policy provisions if not specified in the Agreement.

      The Parties agree that for this Mediation the minimum award to Paul Dulberg will be **$50,000.00**. Also, the maximum award to Paul Dulberg will be **$300,000.00**. These amounts reflect the minimum and maximum amounts of money that David Gagnon shall be liable to pay to Paul Dulberg.

IV. Effect of this Agreement

A. After the commencement of the Mediation, no Party shall be permitted to cancel this Agreement or the Mediation and the Mediator shall render a decision that shall be in accordance with the terms set forth in this Agreement. When the Award is rendered, the Mediation is resolved, and any Award arising from this Mediation shall operate as a bar and complete defense to any action or proceeding in any court or tribunal that may arise from the same incident upon which the Mediation is based.

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B. The Parties further agree that any pending litigation will be dismissed, with prejudice, as to those Parties participating in this Mediation upon the conclusion thereof. Any and all liens, including contractual rights of subrogation owed are subject to existing Illinois law. By agreement of the Parties, the Mediator's Award will be final and binding and not subject to appeal or motion for reconsideration by any Party.

V. Mediation Costs

A. ADR Systems Fee Schedule

1. A deposit is required for the Administrative Fee, Mediator's estimated review, session, and follow-up time ("Mediation Costs"). Binding-Mediations are billed at a four hour per day minimum. **The required deposit amount is $2,590.00 from Party B and is due by November 21, 2016.** Any unused portion of the deposit will be refunded based on the four hour minimum. If the Mediator's review, session and follow-up time go over the estimated amount, each Party will be invoiced for the additional time.
2. Mediation Costs are usually divided equally among all Parties, unless otherwise agreed upon by the Parties. **ADR Systems must be notified of special fee arrangements.**
3. All deposits are due two weeks prior to the session. ADR Systems reserves the right to cancel a session if deposits are not received from all Parties two weeks prior to the session.
4. ADR Systems requires **14-day notice in writing or via electronic transmission** of cancellation or continuance. For Binding-Mediations **cancelled or continued** within 14 days of the session, the Party causing the cancellation will be billed for the Mediation Costs of all the Parties involved, which includes the four hour per day minimum, additional review time, and any other expenses incurred("cancellation fees"). If the cancellation is by agreement of all Parties, or if the case has settled, the cancellation fees will be split equally among all Parties, unless ADR Systems is instructed otherwise. The cancellation fees may be waived if the Mediator's lost time can be filled by another matter.

Administrative Fee	$390.00 (Non-refundable)
Mediator's Review Time	$450.00 per hour
Session Time	$450.00 per hour
Mediator's Decision Writing Time	$450.00 per hour
Mediator's Travel Time (if any)	$75.00 per hour

B. Responsibility for Payment ****Special Billing**

1. Each Party and its counsel (including that counsel's firm) shall be jointly and severally responsible for the payment of that Party's allocated share of the Mediation Costs as set forth above.
2. All expenses and disbursements made by ADR Systems in connection with the Mediation, including, but not limited to, outside room rental fee, meals, express mail and messenger charges, and any other charges associated with the Mediation, will be billed equally to the Parties at the time of the invoice.

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3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney's fees, incurred by ADR Systems in connection with the collection of any amount due and owing. Payment of additional costs incurred by ADR Systems in connection with the collection of any amount due and owing shall be made within 15 days of invoice.

4. In the event ADR Systems' session rooms are completely booked on your selected session date, ADR Systems will attempt to find another complimentary venue for your session. If ADR Systems cannot find a complimentary venue or the parties cannot agree on the complimentary venue, ADR Systems reserves the right to schedule your case in a location that may involve a facilities charge. The facilities charge will be split equally among the parties unless ADR Systems is instructed otherwise.

5. ****Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.**

VI. Acknowledgment of Agreement

A. By signing this Agreement, I acknowledge that I have read and agree to all the provisions as set forth above.

B. Each Party is responsible for only his/her own signature where indicated and will submit this signed Agreement to ADR Systems within 10 days of receipt of the Agreement. Counsel may sign on behalf of the Party.

By: _____
Paul Dulberg / Plaintiff Date

By: _____
Kelly N. Baudin / Attorney for the Plaintiff Date

By: _____
Randall Baudin, II / Attorney for the Plaintiff Date

By: _____
Shoshan Reddington / Attorney for the Defendant Date

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

DULBERG'S SUPPLEMENTAL ANSWERS TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S INTERROGATORIESTO PLAINTIFF PAUL DULBERG

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds, in supplement, to Defendant, The Law Offices of Thomas J. Popovich, P.C.'s Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

12. Identify and describe each of your employers in the ten year period prior to the accident of June 28, 2011, including any self-employment. For each employer, identify your wage rate or salary, your title, your job description, your required duties, and your income for the ten year period prior to the accident in question.

SUPPLEMENT TO ORIGINAL ANSWER:

1. 1999-2011 Sharp Printing, Inc., 4606 Hayden Ct., McHenry, IL 60051

Paul Dulberg was an owner and operator of Sharp Printing, Inc. along with his two partners Scott Dulberg and Michael McArtor. Dulberg provided full time employment services to Sharp Printing, Inc. and thus was "employed" by Sharp Printing, Inc. However, Dulberg did not draw a salary from Sharp Printing, Inc. and did not receive any profits from the company.

Paul Dulberg was the President, salesperson, graphic designer, 8 color screen print pressman, handled fulfillment, shipping & receiving, as well as other day to day operations of the company.

For income, see tax returns.

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Sharp Printing, Inc. operated out of the lower floor of Paul Dulberg's personal residence and paid all utilities bills, including garbage, water, natural gas, electric, internet, phone, and cable. The approximate value is $650 per month.

19. As a result of your personal injuries from the underlying case, were you unable to work? If so, state:

(a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;
(b) The date or inclusive dates on which you were unable to work;
(c) The amount of wage and/or income lost by you; and
(d) The name and address of your present employer and/or wage and/or salary.

SUPPLEMENT TO ORIGINAL ANSWER:

Paul Dulberg was self-employed by Sharp Printing and unable to work after the accident. He was also an independent contractor with Juskie Printing. He has not been employed since the date of the accident. See tax returns for lost wages. See SSDI documents for current income.

26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.

SUPPLEMENT TO ORIGINAL ANSWER:

On December 8, 2016, the mediator issued a net award to Dulberg of $561,000. Dulberg discovered he could not recover the entire mediation award from Gagnon. At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect, because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning.

27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.

SUPLEMENT TO ORIGINAL ANSWER:

Dr. Landford is a chainsaw expert who was retained by Dulberg during the mediation which occurred in 2016. Landford's expert opinion demonstrates that contrary to Mast's advice, the McGuires were liable for Gagnon's actions with the chainsaw. The expert report came out in February of 2016 and the mediation award was issued in December of 2016.

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Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street
Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
cd@clintonlaw.net
juliawilliams@clintonlaw.net

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VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true, correct, and complete, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Paul Dulberg

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

DULBERG'S ANSWERS TO DEFENDANT HANS MAST'S INTERROGATORIESTO PLAINTIFF PAUL DULBERG

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds to Defendant Hans Mast's Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER: Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

ANSWER: Various dates between October 2013 to January 2014. The advice was

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provided via email, text messages, telephone calls, and in person meetings.

Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg would that he would retain his claim against Gaganon and be able to seek and receive a full recovery from Gagnon.

All documents in Plaintiff's possession and control produced.

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

ANSWER: The McGuire's owned their home and vehicles. McGuire's also held bank accounts in their name. Investigation continues.

4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than $100,000?

ANSWER: The McGuire's produced insurance information to Dulberg on the day of the accident and also were represented by insurance counsel.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street, Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

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5ttIN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

DULBERG'S RESPONSES TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPVICH, P.C., s REQUESTS FOR PRODUCTION TO PLAINTIFF

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 214, responds to Defendants, The Law Offices of Thomas J. Popovich, P.C.'s Requests for Production To Plaintiff as follows:

PRODUCTION REQUESTS

1. Produce any and all records regarding the legal representation provided to you by the Law Offices of Thomas J. Popovich, P.C. ("Popovich") and/or Hans Mast ("Mast") in connection with the underlying case, against William McGuire, Caroline McGuire, and David Gagnon.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

2. Produce any and all correspondence, agreements, draft agreements, emails, letters, and any other documents between you and Popovich or Mast in connection with the legal representation in the underlying case.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

3. Produce any and all correspondence between you and any defendant from the underlying case, including Caroline McGuire, William McGuire, and David Gagnon, from June 28, 2011 to the present time.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

4. Produce any and all documentation relating to legal representation of you by any successor counsel in the underlying case.

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RESPONSE: Objection. Attorney Client Privilege.

5. Any and all engagement or disengagement letters or agreements between you and any attorney relative to legal services in the underlying case.

RESPONSE: Objection. Attorney Client Privilege.

6. Any and all pleadings and discovery (including deposition transcripts) created, filed, served, and received in the underlying case prior and subsequent to Popovich and Mast's withdrawal as your attorneys, including but not limited to any "high/low" agreement and any arbitration award, arbitration agreement, and any other documentation relating to any arbitration in the underlying case.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

7. Produce any and all documents relating in any way to your claimed damages in the instant case, including but not limited to any special damages, such as medical bills, medical records, costs, invoices, and lost wages.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

8. Produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created, and the date any recipient received the document.

RESPONSE: Plaintiff is only withholding attorney client communication between his successor counsel.

9. Produce any and all state and federal tax returns you filed in the ten year period prior to the accident of June 28, 2011.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

10. Produce any and all documentation of lost wages as alleged in paragraph 30 of your second amended complaint, including but not limited to any employment agreement, wage records, paystubs, cancelled checks, and any other documentation reflecting income in the ten year period prior to the date of the accident.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

11. Produce copies of any and all settlement documents, settlement agreements, cancelled checks or other payments made in connection with any settlement reached in the underlying case, including payment of approximately $300,000 as alleged in paragraph 54 of your supplemental complaint.

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RESPONSE: All relevant documents in Plaintiff's possession will be produced.

12. An affidavit signed you (and not your attorney) pursuant to Illinois Supreme Court Rule 214, certifying that your response is complete in accordance with each request contained herein.

RESPONSE: Produced.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street
Suite 1437
Chicago, IL 60602
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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:01:21 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 9:38:57 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

No answer, that's what I thought...
Your not very quick when cornered and your not excused from this case until I say you are whether or not your firm agrees.
Got it?

> On Feb 22, 2015, at 9:05 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>
> Is your wanting out a personal issue with me or is it strictly financial?
>
> > On Feb 22, 2015, at 9:01 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Oh, and unless I'm wrong, David did admit to having control over the chainsaw. David, in his lie, admitted to seeing me move my arm and continued along his path with the chainsaw at cutting rpm's.
> > In effect he did admit it was his fault.
> >
> > > On Feb 22, 2015, at 8:52 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > You do not have my consent to quit.
> > >
> > > > On Feb 22, 2015, at 8:23 PM, Hans Mast <hansmast@att.net> wrote:
> > > >
> > > > Paul, honesty hurts. I am honest to a fault sometimes. You told me at the start that David would admit his fault. That proved not to be true. Still your threats and putdowns don't change anything. Just find another attorney and we can part ways.
> > > >
> > > > Sent from my iPhone
> > > >
> > > > > On Feb 22, 2015, at 8:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > >
> > > > > To be honest, you took this case knowing it was my word vs. his.
> > > > > Now you back out because the value of the case isn't worth your time?
> > > > > You got some nerve and your earning the reputation of a shady lawyer
> > > > >
> > > > > > On Feb 22, 2015, at 7:42 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > > >
> > > > > > To believe David's version of events you must believe I was committing suicide.
> > > > > > Who in their right mind puts his arm into a chainsaw?
> > > > > >
> > > > > > I figured you would cop out again...
> > > > > >
> > > > > > Now I'm left wondering...
> > > > > > How hard is it to sue an atty?
> > > > > >
> > > > > > And yes I am and have been looking for someone who will take this case...
> > > > > >
> > > > > > The issue of my word vs David Gagnons... Did he cut me or did I cut myself?
> > > > > >
> > > > > > Of coarse he cut me.
> > > > > >
> > > > > > Next issue please?

EXHIBIT # 8
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EXHIBIT F

Dulberg 001384

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STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,
Plaintiff,
-vs-
THE LAW OFFICES OF THOMAS POPOVICH and HANS MAST,
Defendants.
No. 17 LA 377

The remote videoconference deposition of HANS MAST, appearing remotely from McHenry County, Illinois, called by the Plaintiff for examination, pursuant to subpoena and pursuant to the Code of Civil Procedure of the State of Illinois, and the Rules of the Supreme Court thereof, pertaining to the taking of depositions, for the purpose of discovery, taken before Barbara G. Smith, appearing remotely from Will County, Illinois, Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, commencing at the hour of 10:00 a.m. on the 25th day of June, A.D., 2020.

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On behalf of the Plaintiff;

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On behalf of the Defendants.

ALSO PRESENT: Mr. Paul Dulberg

I N D E X

WITNESS	EXAMINATION
HANS MAST	
By Ms. Williams	5
By Mr. Flynn	76

E X H I B I T S

HANS MAST DEPOSITION EXHIBIT	MARKED FOR ID
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(All exhibits provided electronically to the reporter.)

THE REPORTER: The attorneys participating in this deposition acknowledge that I am not physically present in the deposition room and that I will be reporting this deposition remotely. They further acknowledge that, in lieu of an oath administered in person, the witness will verbally declare his testimony in this matter is under penalty of perjury. The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting. Please indicate your agreement by stating your name and your agreement on the record.

MS. WILLIAMS: Julia Williams. I agree.

MR. FLYNN: George Flynn. I agree.

THE REPORTER: Will the witness kindly present his government-issued identification by holding it up to the camera for verification?

(Witness presents government-issued identification and identity is verified.)

THE REPORTER: Thank you.

HANS MAST,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. WILLIAMS:

MS. WILLIAMS: Okay, so this is the discovery deposition of Hans Mast taken pursuant to all applicable rules and notice in the case of Dulberg versus The Law Offices of Thomas Popovich, et al. This deposition is being taken for the purposes of discovery.

Q. Hans, can you state your name for the record, please?

A. Hans Mast.

Q. Have you had your deposition taken before?

A. Yes.

Q. And how many times?

A. I think two.

Q. And for what purpose?

A. Long, long time ago I think there was a malpractice case I was a witness on and a legal -- a medical malpractice case that turned into a legal malpractice case, not against me but against the office I was with.

Q. Okay. So you weren't named in the lawsuit as a defendant?

A. I might have been named. I might have been

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named, but I was somebody that appeared on a motion. I think I got out eventually.

Q. Okay, and then -- And then -- Sorry. And then you said you think twice, so do you know approximately what year that medical malpractice case that turned into a legal malpractice case, do you know roughly what year that was?

A. '94 or something.

Q. Okay, and then the second time, what would have that been?

A. It's not coming to me. It was another legal case. I don't remember the details.

Q. Okay --

A. There -- Go ahead.

Q. More than 10 years? I'm sorry, I didn't mean to interrupt you.

A. Yes.

Q. We can go over the -- I'm going to try not to interrupt you, you're going to try not to interrupt me. You've taken depositions before, I'm sure we can get into that and appreciate you answering orally, all of those typical things that apply, and I'll try not to interrupt you too much. Have you ever -- Other than the one time you just

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identified, have you ever been sued other than this suit for legal malpractice?

A. No.

Q. Do you recall any other details about that medical malpractice lawsuit that turned into a legal malpractice suit? Do you know what the basis of the suit was?

A. It was a medical malpractice case that I think lost on a summary judgment motion and they were -- the client was suing the office and I think I got involved in it because I was on a motion.

Q. Were you the one that drafted the summary judgment motion?

A. I don't think so. I don't really remember clearly back then, but I don't think I did.

Q. Okay.

A. I think I argued -- I might have argued it. I don't remember.

Q. Okay. Have you -- Have you taken depositions before?

A. Yes.

Q. Roughly how many depositions do you think you've taken in your legal career?

A. Lots. Lots.

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Q. Hundreds?

A. Probably.

Q. Oh, I'm sorry, I forgot to do this, but I think we saw your room. It's just you and George Flynn in the room with you, correct?

A. Yes.

Q. And there's no one else in the room and if there were, you would identify them, correct?

A. Yes.

Q. And you don't have any devices or anything with you? You're not communicating with anyone during this deposition other than the attorney in the room with you, correct?

A. And you and who else is on this meeting.

Q. Okay. I'm sorry, let me rephrase. Is there anyone that I don't know that you are communicating with that I wouldn't know?

A. Not that I'm aware of.

Q. Okay. If you take any notes or otherwise communicate with people during the deposition, we just ask that those notes be produced. Okay. Did you do anything to prepare for the deposition today?

A. Well, I just saw some exhibits you sent George. I didn't really prepare them. I looked them

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over briefly.

Q. Did you review any of the other files that have been produced in this case?

A. No.

Q. Did you review any notes?

A. No.

Q. Any other documents?

A. No.

Q. Did you meet with anyone --

A. Other than George?

Q. -- to prepare? Other than George.

A. No.

Q. And you did meet with George, I'm assuming. I don't want to know the contents of that meeting, but you met with George to prepare?

A. Not very long.

Q. Okay. Did you talk to anyone else about today's deposition prior to the deposition today?

A. No.

Q. Where did you go to law school?

A. Kent.

Q. And what year did you graduate?

A. '91.

Q. And were you admitted to practice in

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Illinois that same year?
A. Yes.
Q. And have you -- Are you admitted to practice anywhere else?
A. No.
Q. Have you ever been reprimanded or disciplined by any courts?
A. No.
Q. Have you ever been publicly reprimanded or disciplined by any oversight body, such as the ARDC?
A. No.
Q. When did you start practicing?
A. '91.
Q. And where did you start?
A. In Rockford.
Q. With a firm?
A. Yeah, Cacciatore.
Q. And how long were you there?
A. About a year and a half.
Q. And what kind of work did you do there?
A. Personal injury, plaintiff.
Q. Have you done personal injury your entire career?
A. No, I did some defense work.

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Q. Okay. So you were at Cacciatore for a year and a half and you were doing plaintiff's personal injury work. What did you do after that?
A. I went to the Loggans firm in Chicago for about 6 months.
Q. And what did you do there?
A. Plaintiff's.
Q. PI again, personal injury?
A. Yeah.
Q. And after that?
A. Judge and James in Park Ridge.
Q. And how long were you there?
A. 7 years, I think.
Q. Did you do plaintiff's personal injury there as well?
A. No, that was defense.
Q. What kind of defense work?
A. Lots -- All kinds, municipal, tort.
Q. Did you defend personal injury cases while you were there as well?
A. Yes.
Q. And then after that, where did you go?
A. Kemper, I think.
Q. And how long were you with Kemper?

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A. I think a couple years. Maybe a little more than that.
Q. And what kind of work did you do at Kemper?
A. Defense.
Q. Defense of what type of cases?
A. Lots of different kinds, auto accidents, premises.
Q. Mostly torts though, negligence-type cases?
A. Yes.
Q. And then after Kemper?
A. I think Popovich was next.
Q. And how long were you with the Popovich firm?
A. About 18 years, I think.
Q. And do you know what year you -- roughly what year you joined Popovich?
A. 2001 maybe.
Q. And you were there for roughly 18 years you think?
A. Yes.
Q. So you left maybe just last year?
A. In '18.
Q. 2018?
A. Yeah.

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Q. And why did you leave Popovich?
A. To start on my own.
Q. And where are you now?
A. With Compton Law Group.
Q. I'll give you just a second to come back.
A. Yeah.
Q. And what types of -- I'm sorry, I'm going to go back to the Popovich firm. What kind of cases did you handle at Popovich's firm?
A. Plaintiff's personal injury, all kinds.
Q. And then at Compton, what kind of work do you do?
A. Same thing, same kind of cases, plaintiff's personal injury.
Q. So is it fair to say you've been doing plaintiff's personal injury cases steadily throughout your career?
A. Yeah, except for the time I was with the defense offices.
Q. Okay. But you were still doing personal injury, just on the defense side, not on the plaintiff side?
A. Right.
Q. Okay. Did you answer discovery in this

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case, in the malpractice case that we're -- the Dulberg versus Thomas Popovich case?
A. I think I did.
Q. Do you remember -- Did you review discovery in this case, do you recall?
A. Like I said, I think I answered some and signed off on some, I just don't remember. I haven't seen them recently.
Q. Okay. Okay. If you recall, do you remember reviewing the documents that were produced in this case?
A. I don't know what was produced.
Q. Okay.
A. I assume the file.
Q. Right. Okay, if I represented that the file was produced, would that make sense to you? Can we kind of agree that the file was produced?
A. Well, if you told me that.
Q. Okay. So when the file was produced, I don't know if you recall, there were black -- some black pages between the file. Do you remember any discussions about that?
A. I didn't produce anything so and I haven't reviewed what was produced, that wasn't my -- I was

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in a different office when it was produced, I think.
Q. Okay. So Thomas Popovich would have had possession of the file?
A. Right.
Q. You did not have possession of any documents from the underlying case, from the Dulberg versus Gagnon-McGuire case?
A. I didn't.
Q. Okay. So you would not have had access to that file since you were with Thomas Popovich in 2018?
A. Once I left the firm, I have not had the file.
Q. Okay. In this case did you produce emails that you possessed or did you not have access to those either?
A. I would -- I don't know what was produced, again, by the Popovich firm. I don't know if they had my emails, but I have a new email address. I don't think it's the same as it was back then.
Q. Okay.
A. So I didn't produce anything.
Q. So you didn't produce any emails or communications that -- in the -- from the underlying

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case?
A. Not that I'm aware of. Unless I produced it to Popovich and he produced it. I don't know how that worked.
Q. Okay. When were you retained by Paul Dulberg?
A. I don't recall. I'm assuming there's paperwork that shows that.
Q. Yes. Let me upload a file here. Just give me a second.
A. I don't think he retained me. I think he retained Tom Popovich's office.
Q. Okay. I just uploaded a file that's titled Dulberg Mast Dep Exhibit 1, if you can -- And, George, you should have that as well -- and it should be the retainer contract.
A. Yeah, I see it.
Q. Okay. So it's a contract for legal services and it's marked POP, P O P, 000586 on the bottom, just for reference, so this will be the first exhibit in this deposition. Do you recognize this document?
A. I recognize what it looks like, yeah.
Q. Yeah, and it's the contract for legal services and it's undated, it looks like.

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A. That's what it looks like.
Q. Okay. I'm going to upload another exhibit. So I'm uploading Exhibit 2, it's titled Dulberg Mast Dep Exhibit 2, and this should be the original complaint filed in the case of Dulberg versus Gagnon, et al., 12 LA 178, filed in McHenry County. Do you see that document?
A. Yeah. What I'm going off are an email I got with all the exhibits attached, so I'm not — that's what I'm looking at.
Q. Okay.
A. It's a complaint and it says Exhibit 2.
Q. Right, okay. So our numbers may be a little off, but the description should be correct. In that complaint shows file stamp May 15, 2012?
A. Yeah, that's what it says.
Q. Okay, and so Mr. Dulberg would have hired you sometime -- hired the Popovich firm sometime prior to that, correct?
A. I'm assuming. I --
Q. Okay. Do you have any idea?
A. I'm sorry.
Q. I'm sorry, I didn't mean to interrupt you. Go ahead.

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A. Go ahead.
Q. Do you have any idea about -- Do you have any idea about what timeframe he would have hired -- retained you?
A. I really, again, I don't have an independent recollection of it. I think there's probably a memo out there of me meeting with him, too.
Q. Okay. Actually, I think there is. Okay, I just uploaded Dulberg Mast Dep Exhibit No. 3 and the top says -- it's titled, "Intake Memo." At the top it says, "Memorandum," it's Popovich, it says POP00961 and 000962. Do you recognize this document?
A. I -- It looks familiar.
Q. And it indicates that it's from you, so you would have drafted this document, correct?
A. I would have dictated it, yeah.
Q. Okay, and it looks like you had a new client meeting with Paul on December 1st of 2011?
A. That's what it says.
Q. Okay. Does that seem like that timeframe would have been roughly correct?
A. I have no reason not to believe that's accurate.
Q. Okay. So Paul retained you probably

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sometime in December of 2011 and then you filed a complaint around May 15, 2012?
A. That's what it appears.
Q. Okay. So can you just tell me what the case against Mr. -- I'm sorry. Can you describe the case between Paul Dulberg and David Gagnon, Caroline and William McGuire?
A. What do you mean describe it? What it's about?
Q. Yeah, basically what was it about?
A. An injury, a chain saw injury.
Q. Okay. Was there anything about the case that was unique to you?
A. Other than it was a chain saw injury.
Q. Okay. What was your theory of that case? What was your theory of liability in the case?
A. I think the -- Paul had claimed Dave struck him with the chain saw.
Q. So was it just a negligence theory or was it a strict liability or --
A. I believe it was negligence, if I recall correct.
Q. Negligence against Gagnon, David Gagnon?
A. Yeah, and I think the McGuires actually were

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named as well.
Q. And what was the theory as to the McGuires?
A. I think Paul had said that they were the ones that owned and looked over the work that was being done.
Q. Okay. So if they owned the chain saw and were overseeing the work, what's the legal theory for liability on that? Why would they be liable?
A. Under case law potentially there's liable -- liability for people that oversee and direct the work.
Q. Okay, and is that a strict liability or is it some other form of liability?
A. It would be negligence.
Q. So negligent oversight?
A. Potentially.
Q. Okay. Were there any other theories that you were going to pursue or could be pursued?
A. Not that I recall.
Q. Okay. So a negligence claim against Gagnon for negligently utilizing the chain saw and then a negligence claim against McGuires for not -- for not controlling his use of the chain saw, is that accurate?

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A. I don't recall the exact allegations, but I think in a general theme that was what we were going to try to prove.
Q. Okay. In the intake memo, do you want to go back to that? There are some notes on this exhibit that state -- it looks to me like it says, "Hans BC the accident occurred on their premises, their HO med pay will cover the bills," and then it's signed. Do you recognize that handwriting?
A. Yeah, that would be Tom.
Q. Okay, and what does that note mean?
A. Medical coverage, medical payments coverage.
Q. So there -- So the McGuires -- When he says their, is he referring to Caroline and Bill McGuire?
A. Well, I don't know what he's referring to. I think what he's -- Well, he circled their names, so that probably indicates what he's referring to.
Q. Okay. Would their -- Would their insurance cover medical bills in an instance like this?
A. Possibly.
Q. Okay. Did you reach out to their insurance company about covering any medical bills?
A. I don't recall if that was applicable or I don't know -- I don't recall that issue.

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Q. Okay.
A. Oh, uh, I think -- It just kicked me off.
MR. FLYNN: I got disconnected, too. It's the Wi-Fi.
BY MS. WILLIAMS:
Q. Okay, we'll just wait a minute here.
A. I can hear you. I just can't see you.
Q. We'll wait a minute until you can get your video back on.
MR. FLYNN: Julia, we think the Wi-Fi may have dropped here in the office.
MS. WILLIAMS: Okay. Well, let's just give it a minute and see.
MR. FLYNN: Okay.
(Whereupon, a break was taken, after which the following proceedings were had:)
MS. WILLIAMS: Okay. I think we're back on the record. Barb, are you doing all right?
THE REPORTER: Yes.
BY MS. WILLIAMS:
Q. Okay. So we just went through the memo that Tom made a note about insurance and your testimony was that you don't recall whether you made any

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requests to the McGuires' insurance to pay Paul's medical bills; is that correct?
A. I don't remember, right.
Q. Okay. Back to the actual claims made. Do you remember -- Do you recall what the defense was for first Gagnon and then Bill -- William and Caroline McGuire?
A. What do you mean by defense?
Q. What was their theory of defense in the case, do you recall? As you understood it.
A. I mean, that's a big question. I mean, they, like every case, they were denying what we were alleging.
Q. Were they denying the facts? Did they dispute the facts of the case?
A. Definitely.
Q. Okay. Do you recall what they were alleging as far as the facts that were different from what you were alleging?
A. I mean, I can probably answer that for -- with an hour -- an hour answer. There's a lot that they were denying. There was a lot that, you know, I mean, I'd have to -- I could look at their answer. I could look at their deposition testimony, but, I

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mean, that brings up a lot of issues.
Q. Okay. Let's -- Let me narrow it down a little bit and try to get more to a point that will be useful for our discussion. At some point, you had recommended that Paul settle the case as to the McGuires; is that correct?
A. Yeah.
Q. And what was the reasoning for settling the case as to William and Bill McGuire?
A. Just risk, like you always discuss with any settlement.
Q. Can you be a little more specific about what type of risk?
A. Again, that's a long question but, I mean, it's like any settlement, you're taking a risk if you don't settle the case when you have issues that could be problematic.
Q. Okay. When you say issues that can be problematic, and I know it could be a very long answer, but as much as you can, can you summarize what you think those risks were?
A. Understanding it's a summary that, I mean, I could probably answer that in a couple hours, but the chance of recovery was in my view very slim if at all

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because of lots of reasons, one, because of Paul's testimony, Gagnon's testimony, the McGuires' testimony. The evidence didn't seem to be something that was going to allow us to prove the case against the McGuires.
Q. Okay. What -- And, again, I understand this is -- these are very long questions, but just in summary, what were you going to need to prove the case against the McGuires?
A. Now, again, understanding I would have to put myself in my place where I was back at the time that I fully evaluated this with Paul, but if I'm just trying to come up with some thoughts now years later the case law, I think, was against us. The defense was going to file a motion for summary judgment if we didn't work out some sort of settlement that I felt they were going to win and the testimony from all parties was not helpful to us.
Q. Okay. I'm going to move forward and then we may come back to this a little bit. Do you recall when the first time was that you talked to Paul about settling the claims with the McGuires?
A. No, whenever -- You know, the defense attorney would have reached out to me to ask for some

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sort of demand, I assume.
Q. Did you make a demand at some point?
A. I think -- I think some of your paperwork showed that I did.
Q. Okay. I just uploaded Dulberg Mast Exhibit 4 and it says letter -- it's "Letter Re Settlement," and that should be -- still be Exhibit 4 that was emailed around to Counsel so that you would have it. And it is labeled POP192 and POP193. Do you recognize those documents?
A. Wait. I think the Internet, maybe because we were having problems, is the Internet went down, so now my exhibits aren't pulling up. Can you try it again? Do you have that, George?
MR. FLYNN: Yeah, here's the hard copy.
THE WITNESS: I'll look at the hard copy, so what are you asking?
BY MS. WILLIAMS:
Q. Great. So it should be the document it has letterhead on the top, Popovich letterhead on the top, and at the bottom it's POP000192 and POP000193.
A. Right.
Q. Do you recognize those documents?

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A. I mean, they look familiar. Documents from the Popovich firm, if that's what you're asking.
Q. Is that your signature?
A. Yes.
Q. So you would have drafted or caused this letter to be drafted and sent?
A. It appears that way, yeah.
Q. And this is a demand letter where you make a demand of $7,500; is that correct?
A. Yes.
Q. Do you recall making that demand?
A. No.
Q. Do you recall if you talked to Paul prior to making the demand?
A. I'm sure I would have.
Q. Okay. Do you recall -- Do you have any memos or notes regarding that conversation with Paul?
A. I don't personally.
Q. Okay. If there were memos and notes, would they be in Thomas Popovich's file?
A. It should.
Q. Okay. Do you recall any emails about the demand -- the 7,500 demand?
A. I know there were lots of emails. I don't

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know if this number is identified in those emails, but, again, it would have been something I would have talked to him about before making it.
Q. Okay. But at this time you don't know if there are any memos, notes or emails memorializing any conversation with Paul prior to sending the October 22, 2013 demand?
A. Not that I recall.
Q. Okay, and if they did exist, they would be in the possession of Thomas Popovich, correct?
A. I would think so.
Q. Okay, and if you had those in your possession, you would produce them in discovery, correct?
A. If I had them.
Q. Okay. Just uploaded Exhibit 5, and this is email dated October 30, 2013, and it's marked at the bottom POP000195.
A. Okay.
Q. Okay, and here in this email it looks like you started this email chain to Paul on October 25, 2013. Do you see that?
A. It looks like there's a couple emails here. There's several pages. You just mean the first page?

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Q. I think -- It should only be, I believe it's only one page and it looks like --
A. Oh, these aren't part of it? Just one page?
Q. The document that I have is just one page. Are we looking at the same thing?
A. Okay.
Q. It's POP00195 on the bottom.
A. Yeah, he had a couple other pages on it, but okay.
Q. Okay. I just want to make sure that I didn't -- Okay. And on the bottom there of the first sheet, if you have several, I've only published one sheet for the purposes of this deposition, it states, "Friday, October 25, 2013," do you see that?
A. Where does it say that?
Q. So about halfway down the page it looks like it says, "Original message from Paul"?
A. Yeah.
Q. Okay. So that looks like Paul reached out to you about medical deposition and then on the top it appears to be your reply of October 30, 2013. Does that seem like that's accurate?
A. That's what it shows.
Q. Okay. Okay. And here you first -- Am I

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correct in summarizing this is an email where you talk to Paul about liability for Mr. Gagnon?
A. Look likes I did cover that issue.
Q. Okay, and do you recall at the time what your purpose was behind this email?
A. I mean, every purpose is just to have open communication. That's all the purpose --
Q. Okay. Would you have been trying to explain to Paul the liability issues in his case that you described earlier?
A. Yeah, I definitely was discussing several issues for him so he knows what's going on.
Q. Okay, and this email response is dated October 30th, so that was after you sent that initial letter. Do you recall whether there would have been anything prior to this?
A. Whether what was prior to this?
Q. Would there have been any communications about liability either to Gagnon or the McGuires prior to the October 30, 2013 email?
A. Every time we talked, there were issues about liability, I mean, for whatever I first -- he first came to the office I recall he was lots of questions and I gave him lots of answers as is

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reflected in my emails.
Q. Okay. Did you meet with Paul after you sent that October 22nd demand letter?
A. Did I meet with him?
Q. Yes. In person.
A. I'm sure I did.
Q. Okay. Do you recall -- Do you recall meeting -- the dates of those meetings?
A. No, I don't recall the dates.
Q. Okay. So I'm going to upload another file here.
A. Yeah, our Internet is down. That's why I can't bring these up.
Q. Okay.
MR. FLYNN: Julia, just so you know, I've got hard copies of the majority of the exhibits you sent with the exception of the larger files, like the insurance policy and the dep transcripts.
MS. WILLIAMS: Okay. Okay, great.
MR. FLYNN: I've got some of the deposition transcripts, but I didn't want to waste a lot of paper and ink at home.
MS. WILLIAMS: Okay. I think we'll be -- For the most part, I think we'll be fine and we'll

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deal with it if and when we get to that point.
Q. Okay. So the document that I'm looking at now is another email on the -- it's now titled Exhibit 6. I don't think it was entitled Exhibit 6 in what I sent to George, but it's an email that the first date on the email is November 4, 2013, and the last date on the email is November 5, 2013 email chain and it's -- at the bottom it's stamped Dulberg001531.
A. What exhibit is it?
Q. I think it might have been 5-A to George. It's now Exhibit 6 for the purposes of this deposition.
A. Yeah, that wasn't part of the download then. Do you have --
MR. FLYNN: Yeah, I don't think that was included.
THE WITNESS: What's the Bates stamp or what's the stamp?
MS. WILLIAMS: The Bates stamp is Dulberg001531.
THE WITNESS: Yeah, I don't recall --
MR. FLYNN: I don't recall seeing a 5-A on the download. I think it just went straight from

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5 to 6.
MS. WILLIAMS: Okay, let me see if I can do something else. I'm going to try to share my screen. I don't know if I'm going to be able to do it. So bear with me. Okay. I can't -- I can't share the screen. Can I email -- George, can you pull up an email if I email it to you?
MR. FLYNN: I should be able to eventually.
MS. WILLIAMS: Okay, let me see if that will --
THE WITNESS: Let me run to the washroom real quick while you guys do --
MS. WILLIAMS: We'll take a quick break, that's fine, we'll try to work this out. If anybody else needs a break, obviously take a break now.
(Whereupon, a break was taken, after which the following proceedings were had:)
BY MS. WILLIAMS:
Q. Okay, back on the record. This is the Exhibit 6 for the deposition and it's marked at the bottom Dulberg001531 and it's an email chain between Paul Dulberg and Hans Mast dated November 4th through about November 5th, is that accurate, Hans?

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A. That's what it appears.
Q. Okay, and it appears at the bottom that Paul is asking you if he should bring anything to a meeting.
A. Okay.
Q. And that meeting appears to be at 3:00 p.m. on November 4th of 2013.
A. Okay.
Q. Is that an accurate description? Okay? Do you recall having --
A. Go ahead, I'm sorry.
Q. Do you recall having a meeting on November 4th of 2013 with Paul Dulberg?
A. I don't have an independent recollection.
Q. Okay. Okay.
MR. FLYNN: Julia, now I recall, this is a separate exhibit you sent a little bit later than the original download, so I did have this.
MS. WILLIAMS: Okay. Okay. We got it worked out.
MR. FLYNN: Yeah, okay.
BY MS. WILLIAMS:
Q. Okay. So you don't recall calling a meeting for November 4th?

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A. We had lots of meetings so --
Q. Okay.
A. -- I don't have an independent recollection of that one particular date.
Q. Okay. Okay, I'm going to stop screen sharing. Okay. I'm going to upload another file. This is Deposition Exhibit 7. George, you probably had it as Exhibit 6, but for the purposes of this deposition right now it's going to be 7 and it's an email chain dated --
A. I have these on the computer. You don't need to, unless you want to, but I'm just saying I have these on the computer.
Q. Okay, but Barb needs them, so that's why I keep uploading them, otherwise she doesn't have them. Okay. So Exhibit 7, and it's POP00181 and POP00182, and it's two pages of an email chain, November 15th, looks like on the second page it starts November 15th and ends November 19th, is that accurate?
A. Yes.
Q. Okay, great. So here it looks like Paul started this email chain, but then on November 18th you note that, "The McGuires' attorney has offered us, you, $5,000 in full settlement of the claim

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against the McGuires only," do you see that?
A. Yes.
Q. Okay. Do you recall that offer being made?
A. I do have some recollection of having a conversation with them.
Q. Okay. So I'm going to upload another document and then we can keep going here. And then this is Exhibit 8 and for -- it is a letter from Ronald Barch to you, Hans, and it's POP000667. Do you have that?
A. What's it dated?
Q. I'm sorry, dated November 18, 2013.
A. Yeah, I have that.
Q. Okay. And that's a settlement letter from Barch offering the settlement of $5,000, correct?
A. Right.
Q. Do you recall receiving this letter?
A. I mean, I don't today recall getting the letter, but I'm familiar with the transaction, yes.
Q. Okay. Okay. So you would have received the $5,000 offer from Barch and you communicated it to Paul via the email on November 18th?
A. As well as when we talked, yes.
Q. Okay. Okay. And when did you talk?

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A. Again, I don't know the dates. I just know generally how this all transpired.
Q. Would you have talked to Paul on the 18th when the letter came in?
A. It's dated the 18th. I doubt I got it on the 18th. Whenever I got it, I would have told Paul.
Q. Okay. And it looks like the email you sent, which is Exhibit 7, communicated that offer?
A. Okay.
Q. Would you have talked to the McGuires' attorney prior to receiving the letter about the offer?
A. I don't recall. It might have -- that might have happened.
Q. Okay. Do you recall whether you met with Paul sometime after -- on or after November 18 to discuss the settlement offer?
A. I'm sure we did. I know we had several conversations and meetings about that.
Q. Okay. In this email chain that's Exhibit 7 about halfway down the page it says on November 18, 2013, at 7:40 p.m., Paul responds to your email. Can you see that?
A. Are we going back to the email now?

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Q. Yep, it's POP00181.
A. What exhibit?
Q. It's Exhibit 7.
A. 7, that's the letter.
Q. If may be 6 for you. It may be 6 for you.
A. Let's take a look. What page is the email?
Q. The date at the top of the email chain is Tuesday, November 19, 2013.
A. Yeah, I have that.
Q. Okay. And then about maybe halfway down the page it's dated on November 18, 2013, at 7:40 p.m., do you see that?
A. Yep.
Q. And there it says, "Only five? That's not much at all," do you see that?
A. That's his response, yes.
Q. Right. Right. Do you recall talking to Paul about the $5,000 and that not being much?
A. Like I said, yes, we've had plenty of conversations and meetings on that.
Q. Okay. When you originally offered the 7,500, did you talk about what the possible outcomes as far as counteroffers, what they may demand, something like that, did you talk about that prior to

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making that $7,500 offer?
A. I mean, I think I generally understand what you're asking. Did we just have general conversations of numbers? Yes.
Q. Okay. In this email and this is -- I understand this is speculation, but in this email it appears that Paul is surprised that it's $5,000 was the offer, correct? Would that be fair to characterize it that way?
A. Is he surprised at it or is he surprised at the amount? It looks like he didn't think it was much.
Q. Right. So if you originally offered 7,500 and they came back at 5,000, in your experience, does that seem like much of a difference when it comes to counteroffers?
MR. FLYNN: I'll object to the form.
THE WITNESS: Yeah, I'm not real sure what you mean by that.
BY MS. WILLIAMS:
Q. I guess let me rephrase because I don't think I'm getting to the point. Prior to making the $7,500 offer, did you discuss with Paul that the McGuires may come back with an offer that was lower

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than the 7,500?
A. Again, I'm -- I understand the question. I'm just not trying to play games, but you're asking me do I recall specific words that are used or topics. All I can tell you about this is we talked about the whole gamut of options, that I didn't feel it was a strong case, that they were reaching out to us for $5,000, and that balancing everything, the risks, costs, even though it wasn't much, it was something that would have been desirable for him if he wants to end up with money versus the McGuires.
Q. I'm going to add another exhibit here. Okay, for the purposes of this deposition it's Deposition Exhibit 9. This is a memorandum. At the top it will say, "Memorandum," and the date is November 20, 2013, and at the bottom it's identified as POP and then 3 — there's 000003, I believe. Do you have that?
A. What exhibit is it?
Q. I think you're probably going to have it as Exhibit 8, but for the purposes of this deposition it's actually going to be Exhibit 9.
A. Okay.
Q. And it's Dulberg Mast Memo,

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2013 November 20.
A. Okay, yeah.
Q. Okay. It looks from this memo that you had a meeting with Paul and his friend on November 20th, is that accurately reflected what's stated in the memo?
A. Yes.
Q. Do you remember this document? Do you recall this?
A. As I said before, I understand what you're asking, but we've had lots of meetings. Do I remember that particular date, no, but I remember the meetings.
Q. Do you recognize this memorandum?
A. I recognize the discussion that's referenced in the memo. I haven't seen the memo for 7 years.
Q. Okay. Do you recall the advice that you gave in that meeting of November 20th?
A. Yeah, like I said, it's summarized a little bit in there. Yeah.
Q. Okay. And what was the -- Why don't -- What was the advice that you gave?
A. Do you want me to read the memo or you want me to just tell you generally what the topics were or

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what?
Q. Generally to the best that you can recall.
A. Looks like on that day he brought his friend in because before he wanted to consider the offer, he wanted to have his friend come with him to talk about these issues with me. So we went over --
Q. So --
A. Go ahead.
Q. No, I'll let you finish. Go ahead. I'm sorry.
A. Well, we went over all the issues, all the risks, all the money issues, all of the issues.
Q. Do you recall who the friend was?
A. Not as I sit here today.
Q. From this memo it says, "Paul maintains the McGuires controlled everything that they were doing and you told him that wasn't what the evidence seemed to show." So can you expound on what -- This is really going to be a complicated question, but to the best of your ability, can you explain what the theory of your case was against the McGuires and what the evidence was that was going to -- what evidence was your reason for believing that you couldn't prove your theory?

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A. We already talked a little bit about that earlier, but every time we met, we talked about this because this was a subject at the time with the McGuires and given the testimony of the McGuires, given Paul's testimony, given the lack of any evidence that they were controlling any work or even knew what Paul was doing, I felt it was a big, high risk of moving forward on that claim.
Q. So I'm going to try to summarize this. Maybe in parts. So in order for the McGuires to be liable for Gagnon's work, Paul would have to prove in his case that the McGuires controlled Gagnon's work, is that accurate?
A. Are you asking me if that's an accurate statement of the law?
Q. Yes.
A. I think that's partially right. There's a lot more to it. It's different branches and elements that you have to prove, control was a factual matter, and he would have to be able to establish there was some oversight. It goes down into some factual issues that you have to be able to show.
Q. Okay. So can you -- To the best of your ability, can you kind of walk me through for the

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negligence claim against the McGuires what the legal elements were that you would have to show?
A. I haven't brushed up recently on that area, but I can tell you that under the case law they have to have some oversight and control over what was going on and some involvement in the work and some knowledge higher and above what Paul was doing, and if you look at their testimony, they were not out there, they were not looking at it, they didn't even really know what Paul was doing frankly.
Q. And what about David? Did they have to control what David was doing as well?
A. I meant David, I'm sorry.
Q. Okay. So the McGuires would have to have oversight and control over David Gagnon?
A. Over the work.
Q. Okay. Over the work. Okay. So William and Caroline did buy the chain saw, correct?
A. I believe that is true.
Q. Okay. But then David Gagnon was the one operating the chain saw?
A. Right.
Q. And you would have to show in Paul's case that Bill and Caroline, one or the other, had control

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over David's operation of the chain saw?
A. Control could mean a lot of things. They would have to be in a position to instruct him, tell him what to do, be aware of the work that was being done and have some control over what he was doing.
Q. Okay. So in your -- Your opinion of the case was that it was insufficient for them to have simply purchased the chain saw and provided it to Gagnon?
A. Yeah.
Q. And what about if they were paying him? Would that make any difference?
A. No.
Q. I'm sorry, I don't know or no?
A. No.
Q. Just bear with me for a second here. And you informed Paul -- I'm sorry, let me back up. In exhibit -- Deposition Exhibit 7, so it's probably 6 for you, the email chain between you and Paul, roughly November 18th through the 19th, Popovich 000181, on the bottom of that first page, November 18, 2013, at 1:28 p.m. there's an email from you. Do you see that?
A. Yes.

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Q. "In addition, the McGuires' attorney," so it's ATTY, "has offered us, you, 5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners so they likely will get out of the case on a motion." Did I read that correctly?
A. Yes.
Q. So this is where you told Paul that you didn't believe the McGuires had any liabilities for the reasons -- in part for the reasons we just discussed?
A. Right.
Q. Ultimately Paul accepted that $5,000 offer, correct?
A. Yes.
Q. And you communicated that to the other side later in 2013, does that sound correct to you?
A. Yes.
Q. I'm uploading Exhibit 10, and it should be Exhibit 10 for you as well, and it's a memorandum dated December 20, 2013, and at the bottom it's POP000884, do you see that?
A. Yes.

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Q. And that's a memorandum that you wrote to the legal file; is that correct?
A. It looks like that.
Q. I think I already said this, it's dated December 20, 2013?
A. Yes.
Q. Okay. And the substance of it, it appears that you had a conversation on December 18th with Paul and that he was authorizing you to accept the $5,000 settlement?
A. Yes.
Q. Okay. Do you recall that conversation of December 18?
A. I recall having lots of conversations, this is one of them, and generally I do recall the conversations in a general sense, not the exact dates.
Q. Okay. So you don't remember anything specific to this December 18th call what you would have discussed?
A. Not other than what I've already said we discussed over the time.
Q. Okay.
A. Paul was weighing his options. He knew the

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risk and he had -- he wanted some time to think about it and consider it.
Q. Okay. All right, just bear with me here. Okay, I just uploaded Deposition Exhibit 11, it's a settlement acceptance letter, letterhead from Thomas Popovich's office dated December 26, 2013. Hans, your signature appears on there and it's POP00670. Do you recognize this document?
A. That appears to be a letter from Popovich's office to defense counsel.
Q. Do you recognize your signature on here?
A. Yes.
Q. And this is the letter where you accepted the offer on behalf of Paul, is that accurate?
A. It appears, yeah.
Q. Okay. So the Defendants made the original offer around November 18 and Paul -- November 18, 2013, and Paul accepted it around December 20, 2013. Is that statement accurate?
A. I don't have, like I said, independent recollection of the dates. I would just have to go off the documents.
Q. Okay. Was there -- If that timeframe is roughly correct, was there anything that occurred

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during that timeframe that indicated to you, you know, why Paul changed his mind from originally thinking it was too little to now accepting it. Was there anything that stuck out in your mind about that?
A. Yeah.
Q. Can you expound on that?
A. Well, he had his friend with him during our meeting and he reviewed the depositions.
Q. Okay. Did he not have the depositions prior to that?
A. I remember he asked for copies of them, so I provided them to him.
Q. Okay, and when you say the depositions, do you mean just the party depositions, the McGuires and the Gagnon?
A. I don't remember if I gave him the doctors. I don't remember which ones I gave him, but I know specifically it was Gagnon and the McGuires.
Q. Okay, I'm uploading Dulberg Mast Dep Exhibit 12. This is titled, "Legal Research." And this is hard because there's -- it's 27 pages. Some of them have Bates numbers, but some of them are black on the bottom, so I think the Bates numbers

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didn't -- didn't take, but it's roughly -- looks like roughly 204, maybe 205, Dulberg204, 205 through roughly Dulberg00304 -- Actually, I'm sorry, these aren't going to be continuous. But do you have that packet of legal research in front of you? It appears to be copies out of a -- copies of case law out of the Northeastern Digest.

A. I just have the one case here.

Q. Just one case? Which -- What's the case title?

A. The first one, it's L A J A T O.

Q. Okay. Do you -- Did you copy this case law?

A. I don't know.

Q. Do you recall providing any case law to Paul?

A. I don't know if I did or didn't. I don't know if he asked.

Q. Okay. Do you recall doing case law research?

A. I'm sure I did, yeah.

Q. Would have there been a memo or something regarding that research?

A. Not necessarily. I was familiar with the law.

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Q. Okay. Okay. Was there any -- Was there any case law that stuck out to you, any particular cases that stuck out to you?

MR. FLYNN: Object to the form.

THE WITNESS: You mean stuck out to me with regard to Paul and his case?

BY MS. WILLIAMS:

Q. No. Were there any applicable cases that stuck out to you one way or the other as to whether the McGuires would be liable? Was there any specific cases that made you think that the McGuires may not be liable given the facts in Paul's case?

A. I mean, you deal with this issue a lot and I can't think of one particular name of a case, but these cases all go along the same line, so there were lots of cases on this one particular issue. It wasn't a complicated issue.

Q. So particularly the issue of control of Gagnon.

A. Of a premises owner's liability for an independent contractor.

Q. Okay. So can you explain generally what an independent contractor is?

A. I'll give you have an answer if you want,

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but just, I mean, we're talking now, what is it, 7 years later? I haven't been asked to do any research before today's deposition, but so, I mean, if you're asking me for what the case law says, I'd have to look at the case law, if that's what you're asking.

Q. I'm asking based on your -- on your experience and knowledge as a personal injury attorney and not necessarily related to Dulberg's case specifically.

A. Okay.

Q. But based on your knowledge and experience in premises liability cases, what is an independent contractor?

A. Someone that works on their own.

Q. And can you explain what you mean by on their own?

A. Somebody that's hired, like, somebody that's hired to paint the house.

Q. Okay. So somebody that's hired by a homeowner or maybe a business?

A. Yes.

Q. But someone that's hired by a homeowner but the homeowner doesn't -- doesn't tell them how to do

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their job?

A. Right.

Q. Did you ever obtain a copy of the McGuires' insurance policy, do you recall?

A. I don't have an independent recollection.

Q. Did you ever advise Paul as to the limits of the McGuires' policy?

A. I'm sure we talked about it.

Q. Okay. I just uploaded Dulberg Mast Deposition Exhibit 13 McGuire Interrogatory Answers and they're Bates stamped Dulberg000162 is the first page and there's roughly 14 pages. Do you see that document?

A. Yes.

MR. FLYNN: This is 14?

MS. WILLIAMS: It should be Exhibit 13 -- 13 or 14. I think I have it as 13. Yes, okay. And this -- I'm looking at paragraph 15 or at least I'm trying to look at paragraph 15.

Q. Okay. In paragraph 15 it looks like there was a question about the homeowner's insurance and the McGuires respond with their personal liability and their medical liability, do you see that?

A. Yes.

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Q. Okay. Now that you see that, do you recall whether you ever got a copy of that policy?
A. I don't -- You mean the dec pages or the whole policy?
Q. Either. Did you get a copy of the dec pages?
A. I have no idea.
Q. And you have no idea whether you got a copy of the whole policy?
A. Yeah, don't know.
Q. But they are representing what their insurance was and the liability there, correct, or their liability coverage there?
A. That's what it appears.
Q. Okay. And these -- This was -- looks like this was responded to based on the McGuires' signature on roughly the 12th page of the document. It looks like it was August 6th of 2012.
A. That's what it appears.
Q. Yeah. So prior to when they would have made the settlement offers, correct?
A. That's what it appears.
Q. Okay. Did you ever talk to Paul about those -- the limits of the insurance policy and how

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that may be important in his case?
A. I suspect we talked about the policy, yeah.
Q. Okay. Prior to any settlement discussions?
A. Yeah.
Q. Okay. But you've already testified you didn't -- You don't know if you -- You don't know if you obtained a copy. What about Gagnon's insurance policy, did you ever obtain a copy of that?
A. I don't know. I don't know.
Q. Okay. Did you issue interrogatories to Mr. Gagnon?
A. I'm sure I did.
Q. Let me upload this. Would they have been in Popovich's file if you --
A. Yes.
Q. Okay. So I can tell you, I don't recall seeing any documents issued by you. I'm going to upload a document that appears to be interrogatories issued by McGuires' counsel in the case. I'm going to upload it right now. It's Exhibit 14 and Answers to Co-Defendant Interrogatories and it is stamped Dulberg00178. Do you see that document?
A. Yes.
Q. It appears that these were issued by

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Co-Defendants, in other words, the McGuires, does that seem accurate to you?
A. Yes.
Q. So would you have issued interrogatories in addition to what the McGuires' counsel issued?
A. It's probable.
Q. Okay. Do you recall one way or the other today as we sit here?
A. Not other than it's probable I did.
Q. I have not seen those in discovery, so if they exist, we'd ask that they be produced. Do you ever recall talking to Paul about the policy limits of the Gagnon insurance policy?
A. It's a topic that frequently comes up. I don't have an independent recollection.
Q. Would you have any memos or notes on that?
A. I could. I may. I don't have an independent recollection of that.
Q. Okay. And, again, that would have been in the file that -- in Thomas Popovich's file?
A. Correct.
Q. In your knowledge and experience not related to the Dulberg case but just in your general knowledge and experience, are there any situations

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where a homeowner may be strictly liable for someone doing work on their property?
MR. FLYNN: I'm just going to object to the hypothetical being inaccurate and incomplete, also calls for an expert opinion. While this witness is a lawyer, I won't necessarily -- I don't expect to call him as an F-2 or F-3 witness in the case.
THE WITNESS: So you're asking if a homeowner can be strictly liable for an injury?
BY MS. WILLIAMS:
Q. Right.
A. In general terms, not with regard to this case?
Q. No, in general terms. I'm just asking in general terms in your -- based on your experience and knowledge of injury cases.
A. I mean, I think -- Not in Paul's case, but I think I could probably think of something that maybe could be -- as products strict liability, there's hazardous materials strict liability, there's different issues that potentially factually if they're applicable could apply, but not in Paul's case.
Q. Okay. Just in general, what kind of

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hazardous -- When you say hazardous, are you talking about hazardous chemical-type cases?

A. There's a string of cases when you're dealing with hazardous chemicals and hazardous materials, like a bomb or something like that, things like that.

Q. Okay. Okay. Are there any, like, hazardous actions? Could something be considered, like, some type of action be considered hazardous?

A. What do you mean by action? Activity?

Q. Yeah, like, I'm trying to give you an example because I'm just trying to understand it more than anything else. Yeah, is there an activity that you could be doing on your property, I don't know, like, what about tearing down your home, would that be considered -- would that be something that could be hazardous?

A. There would have to be statutory authority for that and there isn't.

Q. Okay. Okay. Okay. So generally for strict liability there has to be some type of statutory authority for that?

A. Or common law. Yeah. They have a particular fact pattern.

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Q. Okay. But this case particularly is simply a negligence case. Paul's case against the McGuires was a simple negligent failure to control case in your opinion?

A. That's what was pled.

Q. Okay. Did you ever make any -- ever consider pleading any other allegations?

MR. FLYNN: Object to the form.

THE WITNESS: I don't -- No. Not that I recall.

MS. WILLIAMS: Okay. Can we take about a 4-minute break?

MR. FLYNN: Sure.

MS. WILLIAMS: Let's just take -- I just want to take a quick break and review my notes and I want to give everybody an opportunity to kind of stretch for a second. I'm going to go on mute.

MR. FLYNN: Okay.

(Whereupon, a break was taken, after which the following proceedings were had:)

MS. WILLIAMS: Let's go back on the record. Okay, thank you everyone. Okay, just a little bit more here.

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Q. On -- When you were talking to Paul about settlement in the general timeframe of November-December 2013, did you ever suggest at that time that he seek alternative counsel or any recommendation related to that?

A. I think that did come up.

Q. Do you recall what your advice to him was or what the discussion was?

A. I think, you know, we always talk about the risks of not settling and further down the road what, you know, having to try the case and having to try prove the case or getting a motion for summary judgment, having the costs exceed the benefits and all that, and I think my position with Paul, since he didn't give a relatively very good deposition, my thought was we were going to have a tough time, an uphill battle, and he can always seek other counsel if he doesn't agree with me.

Q. And you just stated that you thought Paul didn't give a very good deposition, that may not have been your exact language, but roughly that the deposition wasn't great. Can you explain what -- as you recall it, what about the deposition was problematic?

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A. I mean, he even agreed with me, but he just doesn't do a very good job.

Q. You mean -- Can you expand on that a little bit?

A. As a witness, as I recall, again, it's been quite some time, as I recall he was -- his testimony wasn't given -- wasn't strong, it wasn't definite, it didn't have credible points and some points were incredible when compared to other -- other testimony. I mean, there's just a lot -- there was a lot of problems with his testimony.

Q. Okay. Do you recall the circumstances that Paul described as to why he came to the McGuires'?

A. I think he was either going to pick up something or drop something off.

Q. Okay.

A. I don't really recall. I'm just thinking back now.

Q. Okay. Do you recall whether he was asked to come over to help with the tree, to help take down the tree? Was that the purpose of his visit?

A. I don't recall that.

Q. Would it matter as for liability whether it was or wasn't?

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A. As by who? As to whose liability?
Q. I'm sorry, his and McGuires' liability.
A. As to how he got there?
Q. Whether he was -- Whether he was invited for the purpose of assisting with the removal of the tree.
MR. FLYNN: Object to the form. Just invited by whom?
THE WITNESS: Yeah, that's a complicated question, but I don't think --
BY MS. WILLIAMS:
Q. Let me clarify if I can. Okay. So my question was does it matter if the McGuires invited Paul to their residence to remove the tree on that -- on the June -- roughly June, I believe, 2011 date?
MR. FLYNN: Object to the hypothetical.
THE WITNESS: I don't think it matters.
BY MS. WILLIAMS:
Q. Okay. Would it matter if they were paying Paul?
A. That's not the issue. The issue is Dave.
Q. Okay. So the relationship between the McGuires and Paul is somewhat irrelevant?
A. I'm just saying the issue really that --

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about liability is Dave's relationship with them.
Q. Because Dave is the one that controlled the chain saw that injured Paul, is that accurate?
A. He was the one hired to do the work or asked to do the work, however, whatever that background was.
Q. And Caroline and William McGuire both testified that they had never used a chain saw; is that correct?
A. I think that's accurate. I'd have to refresh my memory, but that sounds right.
Q. Okay. Do you remember discussing bankruptcy with Paul?
A. I don't remember that.
Q. Do you remember that Paul filed for bankruptcy? Do you recall that?
A. I saw a -- Maybe I didn't see one. I remember there was some sort of bankruptcy matter. I don't know the dates or when it came up.
Q. Okay. Do you recall if you advised Paul to file for bankruptcy?
A. I don't advise people to file for bankruptcy.
Q. All right. So you would not have advised

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Paul to file for bankruptcy?
A. Would not.
Q. Okay. And then sometime after the McGuire settlement but before the -- but while the Gagnon -- the claims against David Gagnon were still pending you withdrew from the case; is that correct?
A. The law firm did. I -- Again, he hired the law firm.
Q. Sure. Sure. I'm sorry. The Popovich firm withdrew?
A. Right.
Q. And I -- Let's see -- I think we're on Exhibit 14.
THE REPORTER: 15.
MS. WILLIAMS: 15, okay.
Q. I have, I think, one more and then -- Okay, I am uploading Exhibit 15, Dulberg Mast Dep Exhibit 15. It's a motion to withdraw and it's four pages and on the first page it has a Dulberg versus Gagnon case caption and file stamped March 13, 2015. Do you have that document?
A. Yeah.
Q. And this is the Popovich's firm motion to withdraw as counsel for Paul Dulberg in the Dulberg

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versus Gagnon-McGuire case, correct?
A. Yes.
Q. And you drafted or caused this motion to be drafted and filed?
A. Yes.
Q. And was it granted that same day it was filed?
A. I'm sure it had to be noticed up.
Q. Okay. On the notice of motion it looks like it was noticed for March 13, filed on March 13, but sent to the service list on March 5th, does that seem accurate?
A. That's what it says.
Q. But at any rate, you withdrew sometime in roughly March of 2015?
A. It appears that way. Again, I don't have an independent recollection of the date.
Q. Okay. Okay. That's fine. And I didn't see it -- an order actually showing the exact date of when you withdrew. Can you explain why you withdrew from the case?
A. The short version is just we had a difference of opinion.
Q. Can you give me the long version or slightly

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longer?
A. Well, we have difference of opinion but Paul was a bit difficult, so I just had to -- there were a couple times that I told him I was going to withdraw and then he begged me not to and so I didn't, but then ultimately he -- it got pretty -- it got pretty tough. He was saying some unfavorable, unflattering things and I just decided we're not going to get anywhere, I'm going to move on.
Q. Okay, so you -- the client relationship broke down and you withdrew?
A. Yes.
Q. Okay. Was there anything about Gagnon's liability or your thoughts on his liability that would have caused you to withdraw?
A. That was another aspect of it. Paul was looking for the stars and the moon and I didn't see it.
Q. And when you say Paul was looking for the stars and the moon, you mean -- Well, what do you mean by that?
A. He was looking for a lot of money.
Q. Okay, and what was your opinion as to David Gagnon's liability in the case?

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A. I didn't think much of the liability issue. I thought it was going to be a long, tough haul given that --
Q. And --
A. -- Paul was going to be our only witness on our side pretty much.
Q. Okay, and there were no other witnesses other than Paul and David; is that correct?
A. Correct.
Q. And what about -- Anything related to, like, the actual injury, the doctors' depositions or anything like that?
A. That all -- It was the whole ball of wax. The doctors weren't supporting his claim. Dave was saying he's a liar, he tried to bribe him. There was just a lot of -- a lot of bad stuff, not enough good stuff.
Q. Okay, and then at that point you and Paul disagreed and Paul retained alternative counsel?
A. Right.
Q. Okay. Was there anything else about the case that you can recall right now that gave you pause as to the liability either to the McGuires or David Gagnon?

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A. Anything other than what? Pretty much everything was not good.
Q. Okay. I mean, anything that we haven't really discussed here today. We've talked about Paul's testimony, Gagnon's testimony a little bit, the McGuires, the premises liability. We talked -- You mentioned the doctors' depositions. Is that sort of the general gamut of it?
A. That's the whole case.
Q. Okay. Have you ever had any other chain saw liability cases other than this particular case?
A. I'm sure I have. I don't -- If you're going to ask me to name a date, I don't know. I mean, it's not a common issue, but it comes up from time to time.
Q. Okay. Did you state -- Did you seek out a liability expert, a chain saw liability expert, during the time you were representing Paul?
A. No.
Q. Is there a reason for that?
A. That's always a possibility. It's always a consideration, but I had to consider even more whether we could even get to prove a credible case and that was my first object, my first -- my first

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tier. It doesn't do any good to hire an expert if you don't have a good case.
Q. Okay. Okay. If you were going to take the case to trial, at that point would you have hired an expert, chain saw expert?
A. For this case, I don't know. I'd have to look at it again and see what we need to prove, what they're arguing. There's -- As I recall, they weren't arguing the chain saw -- They weren't arguing. He didn't get hit with the chain saw. So I'm not real sure. I'd have to think whether we need to prove -- what we need to prove, anything more than that.
Q. Okay.
A. It was more what happened, who caused it to happen, not that it happened.
Q. Okay. Is there a difference between an independent contractor and an employee?
A. In terms of what? In terms of duty or what?
Q. Right. In terms of the supervisor's duty. So if the Gagnons -- If Gagnon was, and this is a hypothetical, if Gagnon was an employee of his parents as opposed to an independent contractor, would there be a liability difference?

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MR. FLYNN: Object to the hypothetical. It's inaccurate and incomplete.
THE WITNESS: That's a very complicated question, even though it doesn't sound like one. It depends on lots of things.
BY MS. WILLIAMS:
Q. Okay. We've already talked about an independent contractor. So just in your experience and knowledge, what is a supervisor's duty as to an employee? That's actually a really terrible question. Let's strike that question.
Is there a difference -- Is there a difference between the control aspect of -- Would an -- Let me start again. This is a complicated question, more complicated than I'm anticipating right now. Okay.
We've generally established that in order for an -- someone who hires an independent contractor to be liable for the actions of that independent contractor, they would have to control the work. In a situation, an employer-employee situation, is that control element also present when considering liability? Does the employer have to control the work of the employee in the same way?

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A. I think there are --
MR. FLYNN: I just want to raise an objection for the record. I object to the form. I think that the premise of the question indicated that we already established some legal precedent. I don't think that's the case. I don't think that he's testified to that, so, again, I'll just object to the form. But if you can --
THE WITNESS: You're asking me to compare two different theories without a fact pattern, but there's a lot to each issue and it's hard to just say, well, if you have this, then you have that. There's a lot of different facts that apply, but now I'm forgetting what you asked initially about the employer-employee question.
BY MS. WILLIAMS:
Q. So I guess my question to the point of is an employer liable for their employees in a different way than a homeowner would be liable for an independent contractor?
A. I think --
Q. Based on -- You go ahead.
A. I think under the law there are different elements to those actions.

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Q. And there are --
A. Go ahead.
Q. So there would be different elements if something was an employer-employee situation, that would be different law, different case law?
A. Yeah, there's a different cause of action.
Q. Okay.
A. Different elements potentially have to be pled and proved.
Q. Okay. But in this case you were trying to prove -- In Dulberg's case against the McGuires and Gagnon you were trying to show that -- The theory of the case was that Gagnon was not an employee, but an independent contractor, and the McGuires had to control him in order to be liable?
A. Well, that's ultimately what it appeared. You followed the evidence, you follow the facts, so if it turned out it was employee-employer-employee relationship, that's a different evaluation.
Q. Okay. So but, for the most part, you were -- your evaluations of the liability were based on an independent contractor analysis?
A. Well, that's where it went because of the evidence.

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MS. WILLIAMS: Okay. I'm going to go on mute for just a second so you guys don't hear me shuffling papers, but I think I'm almost finished here or may be finished.
MR. FLYNN: Okay.
BY MS. WILLIAMS:
Q. Okay. Just a couple more questions and then we'll wrap things up here. When did you first advise Paul that you didn't think the claims against Gagnon were going to be very strong?
A. Probably day one.
Q. Before the settlement with the McGuires?
A. Yeah.
Q. And did you discuss that several times prior to that McGuire settlement?
A. Like I said, we discussed those issues every time we'd meet, liability issues, damages issues.
Q. Do you recall any particular instances, like maybe after Paul's deposition, after David's deposition, did that stick out in your mind at all?
A. Discussing what, the issues of liability against Gagnon?
Q. Yes.
A. Those are probably something we talked about

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every visit.
Q. Okay. So we discussed this a little bit before, but I believe the testimony was that the McGuires testified that they purchased the chain saw and I believe you said yes, that was your recollection as well; is that correct?
A. That sounds right. I just don't have an independent recollection at this point.
Q. Okay. If the McGuires -- Let's assume that -- Just for the purposes of this, let's assume that the McGuires did -- it was their chain saw, they purchased it and let Gagnon use it on their property. Would they have any duties to share the manual of that chain saw with Gagnon or provide any other education as to the use of the chain saw to Gagnon?
A. All right, so you're asking me to make a judicial decision whether they had a duty or not?
Q. No, I'm asking you in your experience with these types of cases is there any duty there for them.
A. All right, so a legal duty?
Q. Right. Right. And -- Go ahead, George.
MR. FLYNN: Yeah, I'll just object. I mean, there isn't any evidence that Gagnon asked for a

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manual, for one, but as far as him providing legal opinions not based on the facts of this case, I'm just going to caution him not to provide what could be considered an expert opinion.
THE WITNESS: You don't want me to answer?
MR. FLYNN: It's up to you. I don't know if you can.
THE WITNESS: I don't remember the question. You're asking me should the McGuires have given Gagnon the manual to the chain saw?
BY MS. WILLIAMS:
Q. Yes.
A. Sure, if he asked for it or if they wanted to give it to him.
Q. Are there any other warnings that they should have provided?
A. See, I mean, you're asking me to -- I get the question, but I'm saying you're asking me to evaluate the conduct of both parties and interpret something and I don't know that that's my position as a witness, but should they have warned him? You know, sure, go ahead and warn him, but obviously when you take on a piece of equipment that you're skilled and experienced in operating, you should be able to

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operate it effectively yourself safely.
Q. Sure. Okay. And --
A. So I mean --
Q. Okay. But today you're not giving an opinion one way or the other whether they had a duty to provide warnings, whether they had a duty to provide the manual, fair enough?
A. Yeah, legal wise, no, I'm not giving you a legal opinion on that.
MS. WILLIAMS: Okay. Okay, I don't think I have anything further.
MR. FLYNN: I actually have just a few follow-ups to that.
MS. WILLIAMS: Sure.
EXAMINATION
BY MR. FLYNN:
Q. Hans, is your understanding based on the evidence that there were only two eyewitnesses to Mr. Dulberg's accident, correct?
A. Correct.
Q. That was Mr. Dulberg himself and David Gagnon?
A. Correct.
Q. And did you have an understanding as to how

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the evidence and testimony shook out as to each gentleman's version of the accident and how it occurred?
A. Well, as I said before, I thought Paul's case was going to be very difficult to prove based on the testimony of everybody, credibility issues, and the lack of evidence to support and prove.
Q. David Gagnon's testimony regarding the facts surrounding the accident differed from Paul Dulberg's version of the facts, correct?
A. Correct.
Q. You took that into account in your evaluation and analysis of the case?
A. Definitely.
Q. Did you also take into account your professional analysis of Paul Dulberg's performance as a witness at his discovery deposition?
A. Definitely.
Q. You didn't think he made a very good witness for himself, did he?
A. He even admits he didn't and I don't think he -- I think -- that was one of the worst -- that was one of my worst fears with this case. I had lots of cases and on a scale of weak witnesses, he's

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probably up at the top, and I'm not putting him down, that's just a reality and I think he even acknowledged that reality.

Q. Okay. Not everyone is a professional witness?

A. Right.

Q. Okay. Generally speaking, your evaluation of the case hinged in part on whether the McGuires controlled the manner and method of the use of the chain saw, correct?

A. Right.

Q. Do you have any recollection as to what the McGuires were doing while the work was being done?

A. They were inside the house, just another day to them. They weren't even -- I don't think even paying attention to what was going on outside.

Q. Did Mr. McGuire testify that he was watching television inside the house while David was working on the tree?

A. They were both inside as I recall.

Q. Your recommendation or suggestion that Mr. Dulberg settle the case for $5,000 was based on your analysis of the entire case, including the risks and benefits of going forward and potentially losing

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the case at trial, correct?

A. Yes.

Q. Did you have any way to predict whether the case would result in a verdict on behalf of the plaintiff in the case against the McGuires?

A. I'm sorry?

Q. Did you have any -- Did you have any certainty as to whether Mr. Dulberg could prevail at trial on liability against the McGuires?

A. I would have staked a lot that we would not have recovered in the case and just something that didn't come up with the direct is they didn't offer the arbitrator to me. That was something that was later decided. I talked to them about that. They did not offer that to me, so that was not an option to me.

Q. So you were -- Based on your professional judgment, you suggested that you attempt to settle the matter as opposed to taking it to trial versus the McGuires, correct?

A. Right.

MR. FLYNN: Okay. That's all I have.

MS. WILLIAMS: I have no follow-up.

THE REPORTER: Signature?

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THE WITNESS: I'll waive signature.

MS. WILLIAMS: We'll order the original, E-tran.

MR. FLYNN: I'll take a regular and a mini copy.

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DECLARATION UNDER PENALTY OF PERJURY

I, HANS MAST, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on June 25, 2020; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this _____ day of _____, 20__, at _____, Illinois.

_____

HANS MAST

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STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

I, Barbara G. Smith, Certified Shorthand Reporter and Notary Public in and for the County of Cook, State of Illinois, do hereby certify that on the 25th of June, A.D., 2020, the deposition of the witness, HANS MAST, called by the Defendants, was taken remotely before me, reported stenographically and was thereafter reduced to typewriting through computer-aided transcription.

The said witness, HANS MAST, was first duly sworn to tell the truth, the whole truth, and nothing but the truth, and was then examined upon oral interrogatories.

I further certify that the foregoing is a true, accurate and complete record of the questions asked of and answers made by the said witness, at the time and place hereinabove referred to.

The signature of the witness was waived by agreement.

The undersigned is not interested in the within case, nor of kin or counsel to any of the parties.

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Witness my official signature and seal as Notary Public, in and for Cook County, Illinois on this 7th day of July, A.D., 2020.

Barbara G. Smith, CSR, RPR
Notary Public
200 West Jackson Boulevard, Suite 600
Chicago, Illinois 60606

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__ .

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ___ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

X Paul Dulberg
Client

_____
Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

Exhibit 1
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

EXHIBIT G.1 - EXS. 1-15 TO MAST TRANSCRIPT

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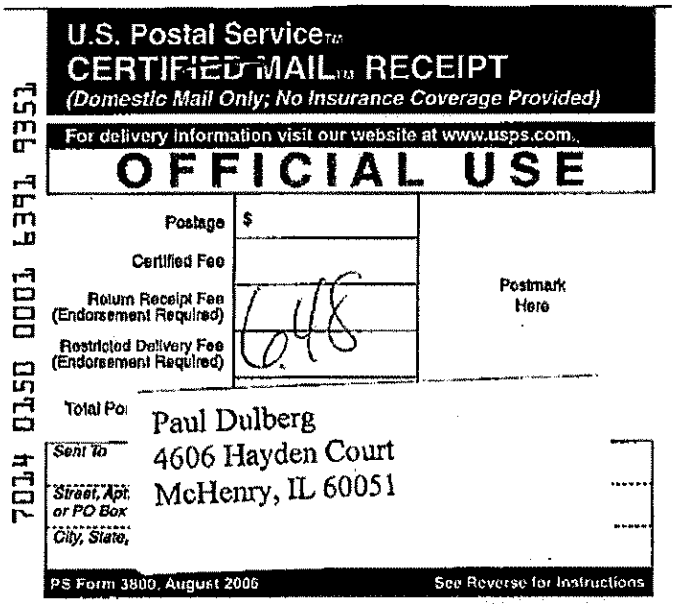

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Sent To Paul Dulberg
Street, Apt. or PO Box 4606 Hayden Court
City, State, McHenry, IL 60051

PS Form 3800, August 2006 See Reverse for Instructions

7014 0150 0001 6391 9353

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IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, Individually, Defendants.	)	No. 12 LA 178

FILED
McHenry County, Illinois
MAR 13 2015
KATHERINE M. KEEFE
Clerk of the Circuit Court

MOTION TO WITHDRAW AS COUNSEL

NOW COME the LAW OFFICES OF THOMAS J. POPOVICH, P.C., attorneys for the Plaintiff, PAUL DULBERG, and hereby move to withdraw as counsel for the Plaintiff in this cause pursuant to Supreme Court Rule 13. In support of said Motion, the attorneys hereby state as follows:

1. Communication between Plaintiff and Plaintiff's counsel has broken down resulting in an unworkable situation for both attorney and client.

2. By copy of this motion, Plaintiff is hereby advised that, to ensure notice of any further action in this cause, she should retain new counsel or within 21 days of the hearing of this motion and withdrawal of counsel, retain other counsel or file her own supplementary appearance with the clerk of the circuit court, stating an address at which service of notices or other papers may be had upon her.

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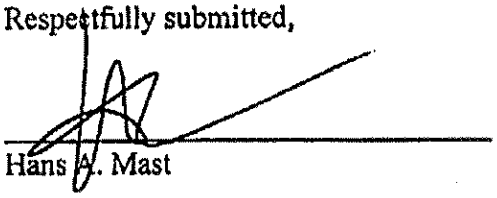
WHEREFORE, the LAW OFFICES OF THOMAS J. POPOVICH, P.C. respectfully requests that this Court enter an Order granting the LAW OFFICES OF THOMAS J. POPOVICH, P.C. leave to withdraw as counsel for the Plaintiff, PAUL DULBERG.

Respectfully submitted,



Hans A. Mast

LAW OFFICES OF THOMAS J. POPOVICH
3416 West Elm Street
McHenry, IL 60050
(815) 344-3797
Attorney No. 06208070

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Exhibit 2
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

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FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 204 ON
11/8 20 12, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ON
20 , AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20 That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
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(815) 344-3797
ARDC No. 06203684

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STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No.:
	)	
DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,	)	
	)	
Defendants.	)	

AFFIDAVIT

I, HANS A. MAST, being first duly sworn on oath, depose and state as follows:

1. That I am one of the attorneys responsible for the prosecution of the above-entitled case.

2. That on behalf Plaintiff, PAUL DULBERG, I am hereby requesting money damages in an amount not to exceed $50,000.00, together with the costs of this action, against each of the above-named Defendants.

FURTHER, Affiant sayeth naught.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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MEMORANDUM

TO: Tom, Marla, Diana and Alarie

FROM: Hans

DATE: December 5, 2011

SUBJECT: **PAUL DULBERG - NEW CLIENT**

HAM
B/C the accident occurred on their premises, their H.O. will pay the bills.

On December 1, 2011, I met Paul Dulberg and his mother, concerning a recent injury that Paul suffered at a friend's house due to a chainsaw accident on June 28, 2011. Paul was referred to our office by a former client, Hubert McArtor. Paul had previously been with Francisco Botto in Woodstock but they rejected the case. He did sign a contract with Botto but we have correspondence in the file that they rejected him and sent him away. They did not refer him to us. Apparently, they rejected the case because they did not think that they would be able to prove that the defendant was more than 50% negligent causing the accident. I disagree.

Exhibit 3
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Paul's contact information is as follows:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051
847/497-4250
SSN 323-76-4001
DOB 03-19-70
DOA 06/28/11

Paul describes that he was at a friend's house, Caroline and Bill McGuire who live at 1016 W. Elder Avenue, McHenry, IL 60051, phone 815/344-4274. The McGuire's son, Dave was at the home and Dave was cutting up some tree limbs in the yard. Caroline had called Paul over to the house earlier to see if he wanted the wood for firewood. Dave asked Paul to hold some tree limbs while he cut them up. He had held two tree branches previously and then about an hour after he arrived he was holding another branch and Dave suddenly swung around with the chainsaw rising it in the air and cutting his Paul's forearm severely while holding on to a branch. Paul said that the chainsaw went about 40% through his forearm. Dave took him immediately to NIMC where they stitched him up. It was a very deep and open wound. Unfortunately, he did not take any photos of the wound. Instead, he followed up with his family physician, Dr. Frank Sek on Route 120 in McHenry who removed the stitches about a week later. Dr. Sek thought there was going to be possible nerve damage due to his arm being very painful. About two weeks later he went to a doctor at the Associates in Neurology in Libertyville and they took and EMG test which found that there were some branch nerves that had been severed which may be the cause of his ongoing pain. They thought that the pain was probably more ligamentous and they referred him to Dr. Paul Papierski, phone 847/247-0547. That was in August. He has not returned to see Dr. Papierski because apparently they needed an MRI and he did not have money to pay for an MRI. I urged him to return

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to see Dr. Papierski and to have the MRI done even if they have to hold a lien on our case. His arm is very painful when he lifts anything and he drops things continuously. He said that he will follow up with Dr. Papierski and advise me further what needs to be done as far as treatment.

At the time of the accident he was not employed but he had been just recently hired when the accident occurred by AMS Screw Products in Spring Grove. He was going to earn $12 an hour for 40 hours per week. He had talked to Karen over at AMS Screw and she agreed to hire him, but unfortunately, he was injured before he could start work. Their phone number is 732/545-8888x231.

The central issue in my view in this case is whether there is insurance coverage. Since the son was not living with the McGuire's at the time of the accident, it may be that David Gagnon is not going to be insured for the accident. However, Paul and his mother advised me that Dave also had a home and lived at 39010 90th Place in Genoa City, Wisconsin. Therefore, hopefully he has homeowner's insurance that will apply to this claim as well as med-pay coverage to help pay for the MRI that needs to be done.

The McGuire's were insured by:

Auto Owners Insurance
Tom Malatia, Adjuster
6000 Tallgate Road, Suite D
Elgin, IL 60123
847/587-3077
847/531-5420
847/531-8063x3808 gen. #
Claim No. 13-2779-11

By copy of this memo, I ask **Alarie** to set up a new file.

By copy of this memo, I ask **Marla** to order the medical records and bills from NIMC, Dr. Frank Sek and Associates in Neurology in Libertyville. Please also diary the 1 and 2 year SOL deadlines in this case.

Thanks,

Hans

S:\Main\DULBERG, PAUL\Memos\Memo re new client 12-5-11.wpd

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

FAXED

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for $7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Exhibit 4
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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** Transmit Conf.Report **

P.1 Oct 22 2013 12:24pm
LAW OFFICE T POPOVICH Fax 1-815-344-5280

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
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The Law Offices of Thomas J. Popovich P.C.

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Thomas J. Popovich
Hans A. Mast
John A. Kokinak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for $7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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hansmast@comcast.ne

+ Font Size -

Re: Medical depositions

From : Hans Mast <hansmast@comcast.net>

Wed, Oct 30, 2013 02:34 PM

Subject : Re: Medical depositions

To : Paul Dulberg <pdulberg@comcast.net>

Cc : Hans Mast <hansmast@comcast.net>

Paul, here are my thoughts regarding your case. There are two issues. The first liability, or whether Mr. Gagnon is liable for your injury. If he is not proven liable, then it does not matter how badly you were hurt since he will not be found responsible for your damages. The second issue is your damages, or to what extent you were injured due to Mr. Gagnon’s acts.
Both of these issues are strongly contested in your case.
As to liability, there were no witnesses to the accident. So, whether Mr. Gagnon will be held responsible for your damages is uncertain and a gamble. That is because it is your word against his word. Our argument is that you were simply holding a limb when he caused the chain saw to strike you. His argument is that you moved your arm in the path of the chain saw unexpectedly. If the jury determines that we did not prove your "version" of the accident, then they can find against you and in favor of Mr. Gagnon at trial.
As to damages, the issue is complicated. That is because your treating physicians do not all agree on exactly what injury you suffered or whether your had a fully recovery or not.
Dr. Talerico at MidAmerica Hand and Shoulder, saw you twice. The first time was in December, six months after your injury. He was not supportive of your claim in most respects. He didn’t really feel there was anything wrong with you - as to the forearm. He said that you complained mostly of pain radiating down the forearm from the laceration site with numbness and tingling. On exam he noted no tenderness and it was mostly a normal presentation. Strength was good. He did not see any nerve problem. He prescribed physical therapy due to a muscular sort of symptomology - not nerve related. Apparently you did only 2 sessions of therapy and returned January, 2012. No new complaints at the time. The EMG was normal. He did not believe you were disabled. He continued you on therapy. He saw no evidence of nerve problems. The only symptoms were subjective - not represented by any abnormal exam finding.
Dr. Sagerman has also been deposed. I will summarize his testimony for your soon. His was more favorable, but still limited in what he related to the chain saw accident. Apparently he does not believe you presently have any symptoms relatable to the chain saw injury.
Think about these issues. I will provide you Dr. Sagerman’s summary soon.
Hans

----- Original Message -----From: Paul Dulberg <pdulberg@comcast.net>To: Hans Mast <hansmast@comcast.net>Sent: Fri, 25 Oct 2013 13:18:24 -0000 (UTC)Subject: Medical depositions

Morning Hans,Wanted to touch base this morning because the call from you about something not being medically linked has been on my mind.I'm not sure what was said during that deposition with the drs that prompted the call but I have been thinking about what it could be. Most likely it was the right elbow procedure. During my deposition I remember being asked if the two were linked and I answered yes. Let me explain my answer to you. If the chainsaw had not gone through my arm then the procedure on my elbow wouldn't have happened. That procedure was exploratory to find what was bothering the arm from the chainsaw. Upon opening up the arm they did find some compressions which from my understanding was nothing unusual for a male of my age and very well may or may not have happened during my retreat from the chainsaw when I ended up half way across the yard on the ground. Incidental finding or not it still would not have been found if I hadn't had the chainsaw incident. So as I see it they are linked good or bad and cannot be separated. The exploratory procedure was to find and possibly fix issues relating to the chainsaw incident. They also removed a ton of scar tissue in the forearm on the same day during the same exploratory procedure that was a direct result of the chainsaw.

Hope this helps explain things better.Let me know,Thanks,Paul

Paul Dulberg847-497-4250Sent from my iPad

Exhibit 5
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: 3 pm meeting**
Date: December 28, 2016 10:39:25 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 5, 2013 at 9:46:33 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: 3 pm meeting

Hans,

Below is a link to an article talking about the integration of digital cameras at the centegra facilities.

A friend of mine who works at NIMC for well over a decade just replied to me and she says everything is recorded and available exactly for the purposes we discussed.

http://www.sdmmag.com/articles/print/success-stories-in-integrating-video-surveillance

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 5, 2013, at 9:00 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> no chance, sorry
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Mon, 04 Nov 2013 22:54:28 -0000 (UTC)
> Subject: Re: 3 pm meeting
> Also,
> Any chance the hospital (centegra) has video of their parking lots?
> This could disprove David's claim of talking before entering the ER.
> Thanks,
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 4, 2013, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > No need to bring anything, your mom is welcome...
> > ----- Original Message -----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Mon, 04 Nov 2013 17:31:20 -0000 (UTC)
> > Subject: 3 pm meeting
> > Hi Hans,
> > Curious if I should bring anything with me at 3 pm?
> > Mind if my Mom comes along?
> > Thanks and see you soon,
> > Paul
> > Paul Dulberg
> > 847-497-4250
> > Sent from my iPad

Exhibit 6
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

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XFINITY Connect

hansmast@comcast.ne

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Re: Dave's Best and oldest friend John

From : Paul Dulberg <pdulberg@comcast.net> Tue, Nov 19, 2013 02:29 AM

Subject : Re: Dave's Best and oldest friend John

To : Hans Mast <hansmast@comcast.net>

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>
> Sent from my iPhone
>
>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>
>> Only 5, That's not much at all.
>> Is this a take it or leave it or do we have any other options?
>>
>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>
>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.
>>
>> They all left me out in the yard screaming for help while they were busy making sure they were covered.
>>
>> She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.
>>
>> How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.
>>
>> I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.
>>
>> I'm not happy with the offer.
>>
>> As far as John Choyinski, he knows he has to call you and said he will tomorrow.
>>
>> Paul
>>
>> Paul Dulberg
>> 847-497-4250
>> Sent from my iPad
>>
>>> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>>>
>>> Im waiting to hear from John. I tried calling him last week, but no one answered.
>>>
>>> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at

Exhibit 7
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

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some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>>>
>>> Let me know what you think..
>>>
>>> Hans
>>> ----- Original Message -----
>>> From: Paul Dulberg <pdulberg@comcast.net>
>>> To: Hans Mast <hansmast@comcast.net>
>>> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
>>> Subject: Dave's Best and oldest friend John
>>> Hans,
>>> Just spoke with John Choyinski again about talking with you.
>>> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
>>> I believe he will try and call sometime tomorrow.
>>> Paul
>>> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
>>> Sorry for the rant but Dave was a complete ass all the way and deserves this.
>>> Paul Dulberg
>>> 847-497-4250
>>> Sent from my iPad

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CICERO, FRANCE, BARCH & ALEXANDER, P.C.
A Professional Corporation
Attorneys at Law
6323 EAST RIVERSIDE BOULEVARD
ROCKFORD, ILLINOIS 61114

PAUL R. CICERO
JOHN W. FRANCE
RONALD A. BARCH
CHARLES P. ALEXANDER

CHANTEL R. BIELSKIS
ANDREW T. SMITH

TEL: (815) 226-7700
FAX: (815) 226-7701

November 18, 2013

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich, PC
3416 West Elm Street
McHenry, IL 60050

Case: *Paul Dulberg v. David Gagnon, Caroline McGuire and Bill McGuire*
(McHenry County Case No. 12 LA 178)

Issued For Settlement Purposes Only

Dear Mr. Mast:

I am writing to confirm our telephone conversation earlier this morning, wherein I advised you that I was authorized to propose settlement of Mr. Dulberg's claim against Carolyn and Bill McGuire for a lump-sum total of $5,000.00. The settlement would of course be contingent upon customary settlement documents, including a release, a good faith settlement finding and dismissal.

Pursuant to your request, I searched my file materials for lien notices. The only notice of lien contained in my file at this time is your Attorney's Lien (enclosed). I have asked my contact at Auto-Owners Insurance Company to confirm no lien notices have arrived on his end since Mr. Dulberg's case was assigned to me for the defense of Mr. and Mrs. McGuire. I do not anticipating any lien notices, but just wanted to be safe.

I understand that you intend to run my settlement proposal by Mr. Dulberg. I look forward to hearing from you once you have had a chance to confer with him.

Very truly yours,

RONALD A. BARCH

RB:mj\37ltr.HAM
cc Tom Malatia (Claim No. 13-2779-11)
Encl.

Exhibit 8
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

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MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

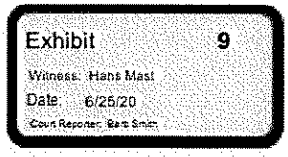
SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the $5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans



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MEMORANDUM

TO: File

FROM: Hans

DATE: December 20, 2013

SUBJECT: **PAUL DULBERG**

On December 18, 2013, I called Paul today after an email and we had a long discussion about the McGuire's liability and he seemed to concede and understand that probably based on the testimony there is nothing we can prove against the McGuric's and he is willing to take their $5,000 settlement offer.

Exhibit 10
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Bart Smith

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Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

FAXED 12/27

December 26, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

Please be advised that we will accept your $5,000 settlement offer on behalf of you clients, Caroline and Bill McGuire. Please forward your settlement agreement to my attention. Also, please present a motion for good faith finding with regard to the settlement.

As I understand it, you have no liens on the file other than our attorney's lien.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Exhibit 11
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Bea Smith

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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debridement and skin grafting. In *Fomond*, a two-and-one-half-year-old girl sustained third-degree burns that required at least seven surgeries, including two skin grafts and continued physical therapy even several years after receiving the burns. In *Negrete*, a 17-month-old baby boy sustained burns from hot water, resulting in permanent scarring across 60% of his body and, due to the burning of his genital area, possible permanent damage to his reproductive capacity. In *Rogers*, the defendant poured grain alcohol on top of the female victim's head and then threw a lit match at her, causing her head, face, chest and pants to ignite.

In light of the above-cited case law, I would reverse defendant's conviction for heinous battery.

Defendant was properly convicted of aggravated battery against a child, however, no sentence was imposed for that crime. If a reviewing court reverses a conviction on which the sentence was imposed, it can remand for sentencing on a conviction on which no sentence was imposed. Such process has been approved in *People v. Dixon*, 91 Ill.2d 346, 63 Ill.Dec. 442, 438 N.E.2d 180 (1982) and *People v. Frantz*, 150 Ill.App.3d 296, 300, 103 Ill.Dec. 649, 501 N.E.2d 966 (1986) ("[i]f the reviewing court acts to affirm the incomplete judgment of conviction, the reviewing court then must remand the cause for imposition of sentence").



283 Ill.App.3d 126
669 N.E.2d 645

Fernando LAJATO, Plaintiff-Appellant,

v.

AT & T, INC., Defendant-Appellee, and Third Party Plaintiff (Quinn Delivery Service, Inc., Third Party Defendant).

No. 1-95-0447.

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Independent contractor who was injured when loading telephone company's battery hoist for transport brought negligence action against telephone company. The Circuit Court, Cook County, Anthony J. Bosco, J., granted summary judgment for telephone company. Contractor appealed. The Appellate Court, Gordon, J., held that: (1) contractor's motion for reconsideration was timely; (2) telephone company had not voluntarily undertaken duty to properly maintain and secure battery hoist for transport; (3) telephone company was not liable as gratuitous bailor; and (4) trial court did not abuse its discretion by denying contractor's motion to amend his complaint.

Affirmed.

1. Judgment ⇐321, 386(1)

Posttrial motion must be filed within 30 days of final judgment or trial court will lose jurisdiction to modify or vacate final order which it entered after lapse of 30 days. S.H.A. 735 ILCS 5/2-1203.

2. Motions ⇐39

Motion to reconsider is posttrial motion, and therefore falls within purview of post-judgment motions which must be filed within 30 days after challenged judgment is entered. S.H.A. 735 ILCS 5/2-1203.

3. Appeal and Error ⇐344

Only if posttrial motion is timely filed will it extend time for filing notice of appeal. Sup.Ct.Rules, Rule 303(a)(1).

4. Judgment ⇐186

Motion to reconsider filed within 30 days of entry of summary judgment was timely, although no certificate of service was filed until well after 30 days of entry of summary judgment. S.H.A. 735 ILCS 5/2-1203; Sup. Ct.Rules, Rule 104.

5. Appeal and Error ⇐893(1), 1073(1)

Although trial court did not entertain motion for reconsideration of summary judgment in erroneous belief that it did not have jurisdiction to hear motion, appellate court

Exhibit 12
Witness: Hans Mist
Date: 6/25/20

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d not need to remand to allow trial court to nsider merit of motion, as grant of sum- ary judgment required de novo review by ppellate court to determine question of law.

Negligence ⇐36

Independent contractor could not base rsonal injury action against defendant on eory of premises liability, where he was ured in bed of his truck and not due to any ndition of defendant's premises.

Appeal and Error ⇐893(1)

Appellate review of order granting sum- ary judgment is de novo.

Judgment ⇐185(2)

Negligence ⇐1

To withstand motion for summary judg- ent in action based in negligence, plaintiff ust allege facts sufficient to show that de- ndant owed him a duty, that defendant reached that duty, and that his injury proxi- ately resulted from that breach.

Negligence ⇐20

Telephone company did not voluntarily ndertake duty to properly maintain and se- re its battery hoist for transport, where dependent contractor, who was injured by ist when loading it for transport as result loosening of strap securing motor, had al discretion in preparing and moving ist, and there was no evidence that tele- one company had strapped motor, that apping was undertaken as protection for ntractor, or that contractor relied upon fety of strapping. Restatement (Second) Torts § 323.

Negligence ⇐136(14)

Whether a duty has been voluntarily ndertaken is question of law to be deter- ined by court. Restatement (Second) of orts § 323.

Bailment ⇐35

Telephone company was not liable as ratuitous bailor for injuries sustained by dependent contractor when strap securing otor on battery hoist loosened when con- ractor was loading hoist for transport, here contractor presented no evidence oth- r than inadmissible hearsay rumors to show either defect in hoist or that telephone company knew or should have known of any dangerous propensities in hoist.

Appeal and Error ⇐169

Contentions not raised in trial court are waived on appeal, even in summary judgment case.

Bailment ⇐9, 21

Gratuitous bailor may be liable for physical harm caused by use of chattel when he knows or has reason to know that chattel is or is likely to be dangerous when put to use for which it was supplied, has no reason to believe that those for whose use chattel is supplied will realize its dangerous condition, and fails to exercise reasonable care to inform user of its dangerous condition or of facts which make it likely to be dangerous.

Judgment ⇐185(1)

Unsubstantiated hearsay statements cannot be considered in ruling on motion for summary judgment.

Pleading ⇐236(6)

Trial court did not abuse its discretion by denying motion of independent contractor, who was injured when loading telephone company's battery hoist for transport, to amend his complaint to allege more specifically facts that there was voluntary undertaking by telephone company, after trial court granted summary judgment for telephone company, where issue was not that complaint was deficient in its framing of issues but that evidence presented in support of voluntary undertaking theory failed to establish genuine issue of material fact, and amendment would be prejudicial to telephone company in that amendment was sought on eve of trial and five years after inception of lawsuit, with no explanation as to why contractor never before attempted to develop facts necessary to withstand telephone company's summary judgment motion.

Beerman, Swerdlove, Woloshin, Barezky, Becker, Genin & London, Harvey L. Walner & Associates, Chicago (Alvin R. Becker, Harvey L. Walner, Christopher A. White, of counsel), for Appellant.

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William F. DeYoung, Loretto M. Kennedy, Carole C. Tubbesing Burke, Weaver & Prell, Chicago, for American Telephone & Telegraph.

Justice GORDON delivered the opinion of the Court:

This is an action for damages brought by the plaintiff, Fernando Lajato, arising from injuries he incurred while working as an independent contractor for third-party defendant Quinn Delivery Service, Inc. (Quinn) to move a battery hoist owned by defendant AT & T. AT & T filed a contingent third-party complaint against Quinn, not at issue in this appeal, seeking indemnification pursuant to the delivery service contract between Quinn and AT & T, in the event plaintiff recovered a judgment in his tort action against AT & T. AT & T subsequently filed a motion for summary judgment against plaintiff which the trial court granted. In that order, the court also denied plaintiff's oral motion requesting leave to amend his complaint. Subsequently, plaintiff filed a motion to reconsider, which the court ultimately struck by reason of its alleged lack of jurisdiction to hear it. Plaintiff appeals from the orders granting summary judgment to AT & T, denying his motion to amend his complaint, and refusing to hear his motion to reconsider. AT & T has moved to dismiss this appeal for lack of appellate jurisdiction.

In November 1989, plaintiff filed a complaint against AT & T, wherein he alleged that on July 1, 1988, he was on the premises of AT & T on behalf of Quinn in order to move an AT & T battery hoist. The complaint further alleged that while performing that task, the hoist fell upon him, causing him injuries for which he sought damages. The complaint averred that AT & T was negligent in its failure to maintain, inspect, and repair the battery hoist, and for AT & T's failure to warn plaintiff of the propensity of the hoist to fall. In April 1990, AT & T filed its answer, specifically denying each basis for recovery alleged in plaintiff's complaint. The matter was scheduled for trial in June 1995.

On April 25, 1994, AT & T filed a motion for summary judgment, alleging that, based upon the undisputed facts, it was clear that [illegible] owed no duty of care to plaintiff with respect to his injuries. In support of its motion, AT & T submitted excerpts of the deposition testimony of plaintiff and a copy of the delivery services contract between AT & T and Quinn. In his deposition, plaintiff testified that on the date of the accident, July 1, 1988, he was making pick-ups and deliveries of telephone equipment at various AT & T locations as an independent contractor for Quinn. He stated that he had received instructions from Quinn via radio to go to an AT & T property in Rolling Meadows, Illinois, the scene of the accident, to pick up a battery hoist and to transport it to another AT & T location in Rockford, Illinois. Approximately 99% of plaintiff's delivery work for Quinn involved pick-ups and deliveries of AT & T equipment. The plaintiff stated that AT & T did not direct him in his moving work, but rather, allowed him to use his own expertise to determine how each move would be accomplished.

Plaintiff further testified that the battery hoist, which weighs approximately [illegible] pounds, was used to lift batteries weighing approximately 300 pounds up onto shelves. Plaintiff described the hoist as being rectangular in shape, on wheels, and consisting of a large, black metal frame with a motor and hoist accessories suspended from the middle of the frame. The hanging motor and accessories could be pulled to one side of the hoist frame and secured thereto with a nylon strap and a chain, both of which were always attached to the hoist, in order to stabilize the hoist during transport and when not in use to perform its battery-lifting function. It was plaintiff's customary practice to inspect the hoist to ensure that the motor and accessories were firmly secured with the strap and the chain prior to moving the hoist. Plaintiff had moved this particular hoist on at least 10–15 different occasions.

Plaintiff's deposition further revealed that when he reached the AT & T Rolling Meadows location, an AT & T employee directed him to the hoist, and that after that brief conversation, plaintiff had no further discussions with anyone, AT & T employees or otherwise, until after the accident.

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intiff approached the hoist, he observed t its motor and accessories were already apped and secured to the hoist's frame. also testified that he personally examined strap to ensure that the hanging appara- was firmly secured to the frame of the st with the nylon strap and the motor ain before attempting to move the hoist. intiff then wheeled the hoist to the back his truck and onto his truck's hydraulic lift form, which he had lowered to ground- el in order to lift the hoist into his truck. er raising the lift and the hoist from und-level up to the truck's bed, plaintiff bed into the truck bed and began to pull hoist into the bed.

Plaintiff further testified that while pulling hoist into the truck, the strap around the or and hoist accessories loosened for rea- beyond his knowledge, permitting the or and the accessories to swing free and weight of the hoist to shift towards him. ediately thereafter, the hoist fell onto tiff, causing him various injuries. Plain- stated that there were no known wit- es to the accident. He also stated that t two months after the accident, he d from an AT & T installer that certain laborers at AT & T had told him that plaintiff's accident, they would not use hoist because it was unsafe, and that AT ultimately shipped the hoist back to the facturer.

addition to plaintiff's deposition testimo- AT & T submitted the Quinn–AT & T ery contract in support of its motion for mary judgment. That contract reveals Quinn, through its own independent con- tors, performed moving services for de- nt AT & T. The contract required n to

ceive, pick up, load, transport, unload, d deliver telephone equipment and other terial (the "Material"), and perform the her services provided for in this agree- ent as ordered by [AT & T] from April 1, 87 to March 31, 1989."

contract further provided that Quinn or gents

hall have the sole and exclusive care, ustody and control of the Material from the time it is tendered to [Quinn], [Quinn's] agents or servants, until it is delivered to and accepted by [AT & T] * * *."

In his response to AT & T's motion for summary judgment, plaintiff argued that AT & T had voluntarily assumed and breached a duty to him to keep its premises safe and to maintain the hoist such that it would not do harm to those moving it. In support of his position, plaintiff attached additional excerpts from his own deposition, pointing to his testimony that the AT & T hoist's motor and accessories were already secured to the frame of the hoist by the nylon strap and the motor chain when he arrived at the site to move the hoist. He also referred to his testimony that there was no motor lock securing the motor to the frame, and that the motor and accessories would not have swung free after the strap loosened if there had been such a motor lock.

In a hearing on July 27, 1994, the trial court granted AT & T's motion for summary judgment with prejudice. Later at that same hearing, the trial court heard plaintiff's oral request for leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)), where plaintiff argued that he should be allowed to amend his complaint to show that AT & T voluntarily undertook to secure the hoist and did so negligently. The court denied plaintiff's motion to amend, stating as its reason that "[i]t's an '89 case."

On August 25, 1994, within 30 days of the July 27 order granting summary judgment and denying leave to amend, plaintiff filed a motion to reconsider. However, plaintiff did not serve AT & T with that motion until September 18, 1994, at which time he transmitted that motion to AT & T via facsimile at AT & T's request. No notice of motion was served upon AT & T until November 9, 1994, and plaintiff did not file a certificate of service for that motion until November 17, 1994.

AT & T subsequently filed a motion objecting to plaintiff's motion to reconsider, arguing that the trial court had no jurisdiction to hear it based on plaintiff's failure to file a proof of service within 30 days of the July 27 order. On January 13, 1995, the trial court

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sustained AT & T's objection, finding that it had no jurisdiction to hear plaintiff's motion to reconsider, and therefore did not address the merits of that motion. On January 25, 1995, within 30 days of the trial court's January 13 order, plaintiff filed his notice of appeal, both from that order and from the July 27, 1994 order granting summary judgment and denying plaintiff leave to amend.

Plaintiff contends on appeal that the trial court erred in granting summary judgment because by improperly securing the battery hoist for transport, AT & T negligently performed a voluntary undertaking, and because as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that the trial court abused its discretion in denying him leave to amend his complaint after the grant of summary judgment.

I. JURISDICTION:

Before reaching plaintiff's contentions on appeal, we must first address defendant's motion to dismiss this appeal for want of appellate jurisdiction. *Bell Federal Savings & Loan Ass'n v. Bank of Ravenswood*, 203 Ill.App.3d 219, 148 Ill.Dec. 559, 560 N.E.2d 1156 (1990). In its motion to dismiss, AT & T contends that plaintiff's failure to file a proof of service with its August 25, 1994 motion to reconsider prevents this court from reviewing either of the trial court's July 27 or January 13 orders. Defendant argues, somewhat obliquely, that plaintiff's motion to reconsider should not be considered as being timely filed, because it was not accompanied by a proof of service, and as a result, the trial court was correct in stating that it had no jurisdiction to consider it. Consequently, defendant would urge that the motion to reconsider did not have the effect of extending the time for filing plaintiff's notice of appeal beyond the initial 30 day period following entry of the summary judgment order. See Illinois Supreme Court Rule 303(a)(1) (155 Ill.2d R. 303(a)(1)) (discussed more fully below). We disagree.

[1–3] Under Supreme Court Rule 303(a)(1), a notice of appeal must be filed within 30 days after the entry of the final judgment from which the appeal is taken, or, if a timely post-trial motion directed at the judgment is filed, within 30 days after entry of the order disposing of the last pending post-trial motion. (134 Ill.2d R. 303(a)(1)). Under section 2–1203 of the Illinois Code of Civil Procedure, a post-trial motion must be filed within 30 days of a final judgment. 735 ILCS 5/2–1203 (West 1994). Otherwise, the trial court will lose jurisdiction to modify or vacate the final order which it entered after the lapse of 30 days. *Archer Daniels Midland Co. v. Barth*, 103 Ill.2d 536, 83 Ill.Dec. 332, 470 N.E.2d 290 (1984); *In Matter of Application of County Treasurer*, 208 Ill.App.3d 561, 153 Ill.Dec. 528, 567 N.E.2d 486 (1990). A motion to reconsider is a post-trial motion (*Elmhurst Auto Parts v. Fencl–Tufo Chevrolet*, 235 Ill.App.3d 88, 175 Ill.Dec. 771, 600 N.E.2d 1229 (1992)), and therefore "falls within the purview of post-judgment motions which must be filed within 30 days after the challenged judgment is entered." *Sho–Deen, Inc. v. Michel*, 263 Ill.App.3d 288, 290, 200 Ill.Dec. 729, 732, 635 N.E.2d 1068, 1071 (1994). Only if a post-trial motion is timely filed pursuant to section 2–1203 will it extend the time for filing the notice of appeal under Rule 303(a). *In Matter of Application of County Treasurer.*

[4] Thus, the question as to whether the appellant's notice of appeal was filed beyond the 30 day period allowed under Rule 303(a), thereby depriving this court of its jurisdiction, depends upon whether the failure to file a certificate of service vitiated the filing of the plaintiff's motion to reconsider. If we determine that the filing of plaintiff's motion to reconsider on August 25 within 30 days after the July 27 summary judgment order was timely, notwithstanding the failure to file an accompanying certificate of service within that 30–day period, then plaintiff's notice of appeal from both the July 27 and the January 13 orders was timely. This would follow under Rule 303(a), since the notice of appeal was filed on January 25, within 30 days after the trial court's disposition on January 13 of plaintiff's motion to reconsider. On the other hand, if the trial court was correct in its determination that under section 2–1203, the timely filing of a certificate of service is

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[5] Defendant next would urge that if we determine that the January 13 order is reviewable, we should confine our review solely to the correctness of the trial court's denial of its jurisdiction over the motion to reconsider. Defendant contends that if we find that the trial court's jurisdictional determination was erroneous, we should remand the matter to the trial court to allow the trial court to first consider the merit of that motion. We disagree for the same reasons as articulated in *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 167 Ill.Dec. 225, 587 N.E.2d 494 (1992). There, the court stated as follows:

> "Defendant initially urges us, without citation to authority, to remand this matter to the circuit court because that court did not address the merits of plaintiff's motion. This argument betrays a misperception of the nature both of the question presented and of our review. As noted above, we consider summary judgment orders *de novo*: we, like the circuit court, must decide only whether the parties' pleadings and other submissions present an issue of triable fact and if not, whether plaintiff is entitled to judgment as a matter of law. This is a question of law, not of fact." *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 76, 167 Ill.Dec. 225, 231, 587 N.E.2d 494, 500 (1992).

Here, too, the grant of summary judgment is subject to *de novo* review, requiring our *de novo* determination whether the submissions of the parties presented triable issues of fact and if not whether defendant was entitled to a judgment as a matter of law. Thus, here, as in *Myers*, we may consider this appeal on its merits without the necessity of a remand.

II. MERITS:

[6] As noted earlier, plaintiff contends on appeal that the trial court erred in granting summary judgment because the facts are sufficient to create an inference that AT & T voluntarily assumed a duty to properly secure the battery hoist for transport, a duty which was breached as a result of AT & T's negligence. Additionally, plaintiff contends, for the first time on appeal, that there was error in granting summary judgment because the facts are sufficient to create an inference that as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that even if summary judgment was properly entered in favor of AT & T under the issues framed by the existing complaint, the trial court abused its discretion in denying him leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)).[1]

[7, 8] We first address plaintiff's contention that the trial court erred in entering summary judgment pursuant to the issues framed by the existing complaint. Summary judgment is proper when the pleadings, depositions and affidavits on file, construed in the light most favorable to the nonmoving party, establish that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. See generally 735 ILCS 5/2–1005 (West 1994); *First State Insurance Co. v. Montgomery Ward & Co.*, 267 Ill.App.3d 851, 204 Ill.Dec. 814, 642 N.E.2d 715 (1994); *Torres v. City of Chicago*, 261 Ill.App.3d 499, 197 Ill.Dec. 985, 632 N.E.2d 54 (1994); *Giannoble v. P & M Heating & Air Conditioning, Inc.*, 233 Ill.App.3d 1051, 175 Ill.Dec. 169, 599 N.E.2d 1183 (1992). Appellate review of an order granting summary judgment is *de novo*. *E.g., Hesselink v. R.L. Perlow Corp.*, 265 Ill.App.3d 473, 202 Ill.Dec. 36, 637 N.E.2d 575 (1994); *La Salle National Bank v. Skidmore, Owings & Merrill*, 262 Ill.App.3d 899, 200 Ill.Dec. 225, 635 N.E.2d 564

1. As previously noted, at the trial level, plaintiff urged liability both on the basis of premises liability and the law governing voluntary undertakings. Plaintiff has conceded on appeal that he cannot base his action against AT & T upon a theory of premises liability as a matter of law, due to the holding in *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994), insofar as he incurred his injuries in the bed of his truck, and not due to any condition of AT & T's premises. See also *Jackson v. Hilton Hotels Corp.*, 271 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995) (in action based on premises liability, no duty to plaintiff existed where plaintiff failed to show that his injuries were caused by any condition of the premises).

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jurisdictional, without which the motion to reconsider cannot be deemed to have been timely filed, then the notice of appeal in this case, filed more than three months after the entry of the summary judgment order, would be untimely pursuant to Rule 303(a) and leave this court without appellate jurisdiction.

The rule is clear that the absence of a certificate of service will not vitiate the filing of a motion to reconsider. This matter has been specifically preempted by Illinois Supreme Court Rule 104 (134 Ill.2d Rule 104), which provides at parts (b) and (d) as follows:

"(b) Filing of Papers and Proof of Service. Pleadings subsequent to the complaint, written motions, and other papers required to be filed shall be filed with the clerk with a certificate of counsel or other proof that copies have been served on all parties who have appeared * * *.

* * * * * *

(d) Failure to deliver or serve copies as required by this rule *does not in any way impair the jurisdiction of the court* over the person of any party, but the aggrieved party may obtain a copy from the clerk and the court shall order the offending party to reimburse the aggrieved party for the expense thereof." 134 Ill.2d R. 104(b), (d) (Emphasis added).

Thus, under Rule 104(d), the failure to deliver or serve copies does not impair the jurisdiction of the court. This rule has been applied to post-trial motions in *In re Marriage of Collins*, 154 Ill.App.3d 655, 107 Ill.Dec. 109, 506 N.E.2d 1000 (1987) and in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d 353, 321 N.E.2d 344 (1974), which held that the failure to include proof of service with a post-trial motion will not invalidate the motion or render it untimely.

Defendant contends that Rule 104(d) only addresses the failure to actually serve copies of the motion but does not address the failure to file a certificate of service. This contention is devoid of any rationale since a failure to serve will preclude the filing of a certificate, unless the movant seeks to perjure himself. Thus, if the failure to actually serve notice does not impair jurisdiction, then *a fortiori*, the failure to serve a certificate of service will not impair the validity or timeliness of the motion. See *In re Marriage of Collins*.

Defendant's reliance on *Vlahakis v. Parker*, 3 Ill.App.3d 126, 278 N.E.2d 523 (1971) (abstract of op.) and *Ingrassia v. Ingrassia*, 156 Ill.App.3d 483, 109 Ill.Dec. 68, 509 N.E.2d 729 (1987) is misplaced. Although *Vlahakis* reached a contrary result, it is clear that that opinion did not purport to in any way consider or confront the impact of Rule 104(d) in its determination. That opinion has therefore been distinguished and rejected on that basis in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d at 357–58, 321 N.E.2d at 348 ("Rule 104(d) renders a failure to comply with Rule 104(b) * * * non-jurisdictional * * * [and] the only cases decided since enactment of rule 104(d) which reached a contrary result [, including *Vlahakis v. Parker*,] did not consider that provision at all"). Likewise, the opinion in *Ingrassia* does not purport to consider rule 104(d) in its determination. Moreover, *Ingrassia* does not purport to deal with the validity or timeliness of the filing of a post-trial motion, but, rather, with the sufficiency of the notice of that motion when given to the opposing party only a few hours before the hearing on the motion. Hence, *Ingrassia* is not in point, since here there is no question that defendant had actual knowledge of the pendency of plaintiff's motion to reconsider well in advance of the scheduled hearing date on that motion.

Consequently, plaintiff's August 25 motion to reconsider, and therefore his January 25 notice of appeal, were seasonably filed, notwithstanding that no certificate of service was filed until long after 30 days had passed since summary judgment was entered on July 27. Since the August 25 motion was timely, the notice of appeal filed on January 25 complied with Rule 303(a) since it was filed within 30 days after the trial court disposed of the motion to reconsider, albeit on jurisdictional grounds, on January 13. Accordingly, our jurisdiction to review both the July 27 and January 13 orders of the trial court remains unimpaired.

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(1994). To withstand a motion for summary judgment in an action based in negligence, a plaintiff must allege facts sufficient to show that the defendant owed him a duty, that defendant breached that duty, and that his injury proximately resulted from that breach. See *DiBenedetto v. Flora Township*, 153 Ill.2d 66, 178 Ill.Dec. 777, 605 N.E.2d 571 (1992); *Ziemba v. Mierzwa*, 142 Ill.2d 42, 153 Ill.Dec. 259, 566 N.E.2d 1365 (1991).

[9, 10] With respect to plaintiff's contention concerning AT & T's duty arising from its purported voluntary undertaking, section 323 of the Restatement (Second) of Torts provides as follows:

"One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking." Restatement (Second) of Torts § 323, at 135 (1965).

See generally, *Cross v. Wells Fargo Alarm Services*, 82 Ill.2d 313, 45 Ill.Dec. 121, 412 N.E.2d 472 (1980); *Jackson v. Hilton Hotels Corp.*, 277 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995). Whether a duty has been voluntarily undertaken is a question of law to be determined by the court. *Gouge v. Central Illinois Public Service Co.*, 144 Ill.2d 535, 163 Ill.Dec. 842, 582 N.E.2d 108 (1991); *Jackson v. Hilton Hotels Corp.*

In the instant case, plaintiff has failed to allege facts sufficient to establish in the first instance that defendant voluntarily assumed or undertook any duty to properly maintain and secure the battery hoist for transport. First, it is undisputed that AT & T had neither control nor influence over the manner in which plaintiff, an independent contractor retained by Quinn (who was also an independent contractor), readied or moved the hoist, and that plaintiff had total discretion in preparing and moving the hoist. Moreover, plaintiff did not submit any evidence that AT & T strapped the motor to the hoist, nor any evidence regarding whether the strapping was undertaken as protection for the plaintiff. Lastly, and more overridingly, even if we were to presume that the strapping was effected by AT & T, there is no evidence whatsoever submitted by plaintiff that he relied upon the safety of that strapping. In fact, the record is clear that plaintiff himself checked the strapping of the motor to ensure it was fastened securely prior to moving the hoist, as was his customary practice when moving that particular hoist.

[11-13] Plaintiff urges that even if there is no basis for liability under a theory of voluntary undertaking, there is a basis established for liability under a theory of gratuitous bailment. In that regard, he contends that there is a genuine issue of material fact that AT & T, as a gratuitous bailor of the hoist, breached a duty to plaintiff to provide a safe hoist or to warn plaintiff of its dangers. We first note that contentions not raised in the trial court are waived on appeal, even in a summary judgment case. *Witek v. Leisure Technology Midwest, Inc.*, 39 Ill.App.3d 637, 640, 350 N.E.2d 242, 245 (1976) ("This rule of waiver applies even in a summary judgment case"); *Wilson v. Gorski's Food Fair*, 196 Ill.App.3d 612, 143 Ill.Dec. 477, 554 N.E.2d 412 (1990). However, even if the argument were preserved, we note that there was no evidence presented that AT & T breached a duty to plaintiff as a gratuitous bailor of the hoist.

"[A] gratuitous bailor may be liable for physical harm caused by the use of his chattel when he knows or has reason to know that the chattel is or is likely to be dangerous when put to the use for which it is supplied; has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition; and fails to exercise reasonable care to inform the user of its dangerous condition or of the facts which make it likely to be dangerous." *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994).

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[14] Plaintiff has not produced evidence as to any specific defect either in the design or manufacture of the hoist itself which would indicate that AT & T had actual or constructive knowledge that the hoist was unsafe when it was handed over to plaintiff. Plaintiff himself did not testify as to the condition of the hoist except to say that the strap loosened. The only other evidence that plaintiff has presented consists of unsubstantiated hearsay statements. In that regard, plaintiff testified in his deposition to a conversation which took place after the accident with an AT & T installer who told plaintiff that certain other fellow employees had stated that after plaintiff's accident they refused to use the hoist because it was unsafe, and that AT & T ultimately returned the hoist to its manufacturer. However, plaintiff was unable to identify those other AT & T employees, and he did not provide any further detail regarding the specific contents of their statements. Such unsubstantiated hearsay statements cannot be considered in a ruling on a motion for summary judgment. See *Certified Mechanical Contractors, Inc. v. Wight & Co., Inc.*, 162 Ill.App.3d 391, 113 Ill.Dec. 888, 515 N.E.2d 1047 (1987) (in deciding a motion for summary judgment, court should ignore personal conclusions, opinions and self-serving statements and consider only facts admissible in evidence under the rules of evidence); *Seefeldt v. Millikin National Bank of Decatur*, 154 Ill.App.3d 715, 107 Ill.Dec. 161, 506 N.E.2d 1052 (1987) (although a complaint may purport to raise an issue of material fact, summary judgment is appropriate if such issue is not further supported by evidentiary facts, and in determining the genuineness of a fact, a court should ignore personal conclusions and opinions and consider only admissible facts).

Plaintiff's reliance on *Pagano* is not well taken. There, the court on appeal did find an issue of fact as to whether a defective dolly supplied by the defendant to help move certain barrel drums of ink rendered the defendant liable under a theory of gratuitous bailment. However, in that case, plaintiff gave direct testimony as to specific, observable defects in the dolly which, if believed, would establish that the dolly was defective. Here, aside from the inadmissible hearsay rumors which were reported, the plaintiff himself presented no evidence to show either a defect in the hoist or that AT & T knew or should have known of any dangerous propensities in the hoist. Consequently, the evidence presented here was not effective to support a counterinference for purposes of summary judgment.

[15] Plaintiff next contends that the trial court erred in its refusal in its July 27 order to allow him leave to amend his complaint to more specifically allege facts that there was a voluntary undertaking and that it was implemented negligently. We disagree.

Section 2-1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(g) (West 1994)) provides as follows:

> "(g) Amendment of pleading. Before or after the entry of a summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms."

The allowance of an amendment to the pleadings is in the trial court's discretion, and reversible error can only be found if there is a manifest abuse of discretion. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992). See also *Misselhorn v. Doyle*, 257 Ill.App.3d 983, 195 Ill.Dec. 881, 6[illegible] N.E.2d 189 (1994); *Eyman v. McDonough District Hospital*, 245 Ill.App.3d 394, 184 Ill.Dec. 502, 613 N.E.2d 819 (1993).

As noted, on July 27, immediately after the trial court entered summary judgment against him, plaintiff made an oral motion to amend his complaint, as follows:

> "MR. JOHNSON [Plaintiff's attorney]: I'll set it out to specifics that they undertook the duty to secure the hoist and they negligently performed that duty and as a result Plaintiff was injured based upon the *Nelson v. Pippen, Phillips* [*sic*] case, that one undertakes a duty to do something, they do so negligently, and someone is injured they are absolutely liable.
>
> * * * * * *
>
> If the fact that the Court feels that the premises liability count cannot stand does not mean then that a negligent voluntary [*sic*] undertaking is not proper here

There will be no
[illegible]
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The court denied pl
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NSON [Plaintiff's attorney]
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There will be no new deps. That's what the evidence is through the Plaintiff's deposition."

The court denied plaintiff's motion to amend, stating that "It's an '89 case. I'll deny the motion [to amend]."

We first note that plaintiff never made the proposed amended complaint a part of the record on appeal, except for his oral proposal before the trial judge which, without any offers of new evidence, essentially duplicates the voluntary undertaking theory which has already been argued and rejected. Plaintiff's failure to include the proposed amendment and supporting facts therefor in the record could be found to constitute a waiver in this court of his right to have the denial of his request for leave to amend reviewed. See *Mendelson v. Ben A. Borenstein & Co.*, 240 Ill.App.3d 605, 181 Ill.Dec. 114, 608 N.E.2d 87 (1992) (plaintiff's failure to tender amended complaint or to include it in the appellate record diminished the appellate court's ability to determine whether the proposed amendment would provide a viable theory against defendant, and constituted waiver of right to a review of the denial of his request for leave to amend). See also *Ignar v. Norbut*, 271 Ill.App.3d 522, 207 Ill.Dec. 648, 648 N.E.2d 285 (1995) (no abuse of discretion in denying motion for leave to amend complaint where movant orally moved to amend yet failed to submit proposed amendment to trial court).

Notwithstanding waiver, even if we were to review the amendment which plaintiff orally proposed, we would find no abuse of discretion by the trial court in denying plaintiff leave to amend. As already discussed, there was ample evidence before the trial court to support its conclusion that the facts in this case as revealed in the summary judgment submissions would not permit a pleading which could allege a valid cause of action. Moreover, by the same token, even if the complaint were amended to more specifically allege a voluntary undertaking as requested by the plaintiff, the allegations of the complaint would be superseded by the extrinsic facts already submitted which as noted would dictate for summary judgment. See *Werckenthein v. Bucher Petrochemical Co.*, 248 Ill.App.3d 282, 188 Ill.Dec. 332, 618 N.E.2d 902 (1993) (where allegations in nonmovant's complaint are contravened by movant's extrinsic submissions in summary judgment proceedings, extrinsic submissions control); *East Side Fire Protection District v. City of Belleville*, 221 Ill.App.3d 654, 164 Ill.Dec. 192, 582 N.E.2d 755 (1991) (nonmovant must controvert proofs offered by movant in support of motion for summary judgment and cannot merely rest on pleadings); *Seefeldt v. Millikin National Bank of Decatur*. The issue here is not simply that plaintiff's complaint is deficient in its framing of the issues, but that, as discussed, the testimony and evidence presented in support of his negligent voluntary undertaking theory are deficient, and fall short of establishing a genuine issue of material fact such that judgment should not be entered as a matter of law on that theory of action.

Plaintiff's reliance on *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992) is not well taken. In *Loyola*, the court on appeal set forth four factors to determine whether the trial court had abused its discretion in denying a section 2–1005(g) amendment, including whether the proposed amendment would cure the defective pleading, whether it would cause prejudice or surprise to other parties, whether it was timely, and whether previous opportunities to amend the pleading could be identified.

Applying these factors in order, in the instant case the question of whether plaintiff's proposed amendment would cure the defective pleading is not relevant, because as already discussed, AT & T succeeded in its motion for summary judgment not because plaintiff's complaint was improperly pleaded, but because the evidence presented at summary judgment shows no genuine issue of material fact regarding the allegations in the complaint. *Werckenthein v. Bucher Petrochemical Co.*; *East Side Fire Protection District v. City of Belleville*. Taking the second and third *Loyola* factors together (whether there would be prejudice or surprise to AT & T and whether the proposed amendment was timely), the record is ample to support the trial court's determination that the allowance

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of an amendment would in fact be prejudicial to AT & T, insofar as the amendment was being sought on the eve of trial, five years after the inception of this lawsuit, with no explanation from plaintiff as to why he never before attempted to develop the facts which would be necessary to withstand AT & T's motion for summary judgment. See *Mendelson v. Ben A. Borenstein & Co.* (no abuse of discretion in denying leave to amend following grant of summary judgment where proposed amendment was sought beyond the pleading stages). See also *Ignarski v. Norbut.*

The final *Loyola* factor is whether plaintiff had sufficient prior opportunities to amend. To that extent, we note that plaintiff indeed had substantial opportunities to amend. Although plaintiff complains that AT & T never gave him notice of any deficiency in his complaint which would require amendment because AT & T never filed a motion to dismiss prior to filing its motion for summary judgment, it is axiomatic that a party can amend its pleading on its own motion. See 3 R. Michael, Illinois Practice, ch. 26, at 446 (West 1989). The case of *Evans v. United Bank of Illinois, N.A.*, 226 Ill.App.3d 526, 168 Ill.Dec. 533, 589 N.E.2d 933 (1992), upon which plaintiff relies, does give credence to plaintiff's contention under the fourth *Loyola* factor that the failure of AT & T to challenge his pleadings prior to its motion for summary judgment deprived plaintiff of any prior opportunity to amend. However, we note that in *Evans* the court on appeal did not rely on that factor alone in finding that the trial court abused its discretion in denying the plaintiff in that case leave to amend, but found that *all* of the *Loyola* factors supported that plaintiff's motion for leave to amend.

In any event, even if plaintiff were correct in his reliance upon *Evans*, we need not consider its application here. As already discussed, the issue here is not whether the allegations of the complaint were sufficient to state a cause of action based upon a voluntary undertaking theory, but whether the facts adduced were sufficient to create an inference to support such allegations. See *Werckenthein v. Bucher Petrochemical Co.; East Side Fire Protection District v. City Belleville.* As previously noted, the fa submitted here are insufficient to raise su an inference. Hence, we find that the tr court's denial of the motion to amend was an abuse of discretion. See *Regas v. Asso ated Radiologists, Ltd.*, 230 Ill.App.3d 9 172 Ill.Dec. 553, 595 N.E.2d 1223 (19 (where a cause of action cannot be sta even after amendment, leave to ame should be denied).

For the foregoing reasons, the judgment the Circuit Court of Cook County is affirm

McNULTY, P.J., and HOURIHANE, J., concur.

283 Ill.App.3d 112
669 N.E.2d 655

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Vernetta CASSELL, Defendant-Appellant.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Curlee SIMMONS, Defendant-Appellant.

Nos. 1-94-2782, 1-95-1380.

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Rehearing Denied Sept. 11, 1996.

Defendants were convicted in the Circ Court, Cook County, John J. Moran, J., aggravated criminal sexual assault, and defendant was convicted of additional crim of home invasion and aggravated kidnappi Defendants appealed. The Appellate Cou McNulty, P.J., held that: (1) circuit co had adequate basis for its determination th victim was not entitled to assert privile

against self-incrimination; ficient evidence that defor threat of force in order to course with victim to sup aggravated criminal sexua was sufficient evidence th confined victim to supp supping conviction; (4) denied effective assistan defendant who drove vehi assault occurred was cri for the assault; and (6) e emergency room nurse that victim identified d who dragged her fr harmless error.

Affirmed.

1. Witnesses ⇐297(13.1)

Trial court had adequ tion for aggravated crir for its determination th entitled to assert Fifth A against self-incrimination court did not conduct he whether victim's testimon her, where, in response t as to why she wan victim never expres of being charged wit she could not remem clearly. U.S.C.A. Const.

2. Witnesses ⇐297(1)

Privilege against guards against compulsor tending to establish U.S.C.A. Const.Amend. 5

3. Witnesses ⇐297(1)

Although witness i privilege to refuse to an tend to incriminate him secured by Fifth Amend those instances where wi cause to believe he or himself or herself to pro answers. U.S.C.A. Cons

4. Witnesses ⇐297(1)

Once witness asser amendment privilege no self or herself, trial cou

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laintiff approached the hoist, he observed t its motor and accessories were already apped and secured to the hoist's frame. also testified that he personally examined strap to ensure that the hanging appara- was firmly secured to the frame of the st with the nylon strap and the motor ain before attempting to move the hoist. laintiff then wheeled the hoist to the back his truck and onto his truck's hydraulic lift form, which he had lowered to ground- el in order to lift the hoist into his truck. er raising the lift and the hoist from ound-level up to the truck's bed, plaintiff nbed into the truck bed and began to pull hoist into the bed.

Plaintiff further testified that while pulling hoist into the truck, the strap around the or and hoist accessories loosened for rea- beyond his knowledge, permitting the or and the accessories to swing free and weight of the hoist to shift towards him. ediately thereafter, the hoist fell onto ntiff, causing him various injuries. Plain- stated that there were no known wit- es to the accident. He also stated that two months after the accident, he d from an AT & T installer that certain laborers at AT & T had told him that plaintiff's accident, they would not use hoist because it was unsafe, and that AT ultimately shipped the hoist back to the facturer.

addition to plaintiff's deposition testimo- AT & T submitted the Quinn–AT & T ry contract in support of its motion for ary judgment. That contract reveals Quinn, through its own independent con- tors, performed moving services for de- nt AT & T. The contract required n to

eceive, pick up, load, transport, unload, d deliver telephone equipment and other terial (the "Material"), and perform the her services provided for in this agree- nt as ordered by [AT & T] from April 1, 87 to March 31, 1989."

contract further provided that Quinn or gents

hall have the sole and exclusive care, ustody and control of the Material from the time it is tendered to [Quinn], [Quinn's] agents or servants, until it is delivered to and accepted by [AT & T] * * *."

In his response to AT & T's motion for summary judgment, plaintiff argued that AT & T had voluntarily assumed and breached a duty to him to keep its premises safe and to maintain the hoist such that it would not do harm to those moving it. In support of his position, plaintiff attached additional excerpts from his own deposition, pointing to his testimony that the AT & T hoist's motor and accessories were already secured to the frame of the hoist by the nylon strap and the motor chain when he arrived at the site to move the hoist. He also referred to his testimony that there was no motor lock securing the motor to the frame, and that the motor and accessories would not have swung free after the strap loosened if there had been such a motor lock.

In a hearing on July 27, 1994, the trial court granted AT & T's motion for summary judgment with prejudice. Later at that same hearing, the trial court heard plaintiff's oral request for leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)), where plaintiff argued that he should be allowed to amend his complaint to show that AT & T voluntarily undertook to secure the hoist and did so negligently. The court denied plaintiff's motion to amend, stating as its reason that "[i]t's an '89 case."

On August 25, 1994, within 30 days of the July 27 order granting summary judgment and denying leave to amend, plaintiff filed a motion to reconsider. However, plaintiff did not serve AT & T with that motion until September 18, 1994, at which time he transmitted that motion to AT & T via facsimile at AT & T's request. No notice of motion was served upon AT & T until November 9, 1994, and plaintiff did not file a certificate of service for that motion until November 17, 1994.

AT & T subsequently filed a motion objecting to plaintiff's motion to reconsider, arguing that the trial court had no jurisdiction to hear it based on plaintiff's failure to file a proof of service within 30 days of the July 27 order. On January 13, 1995, the trial court

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debridement and skin grafting. In *Fomond*, a two-and-one-half-year-old girl sustained third-degree burns that required at least seven surgeries, including two skin grafts and continued physical therapy even several years after receiving the burns. In *Negrete*, a 17-month-old baby boy sustained burns from hot water, resulting in permanent scarring across 60% of his body and, due to the burning of his genital area, possible permanent damage to his reproductive capacity. In *Rogers*, the defendant poured grain alcohol on top of the female victim's head and then threw a lit match at her, causing her head, face, chest and pants to ignite.

In light of the above-cited case law, I would reverse defendant's conviction for heinous battery.

Defendant was properly convicted of aggravated battery against a child, however, no sentence was imposed for that crime. If a reviewing court reverses a conviction on which the sentence was imposed, it can remand for sentencing on a conviction on which no sentence was imposed. Such process has been approved in *People v. Dixon*, 91 Ill.2d 346, 63 Ill.Dec. 442, 438 N.E.2d 180 (1982) and *People v. Frantz*, 150 Ill.App.3d 296, 300, 103 Ill.Dec. 649, 501 N.E.2d 966 (1986) ("[i]f the reviewing court acts to affirm the incomplete judgment of conviction, the reviewing court then must remand the cause for imposition of sentence").

283 Ill.App.3d 126
669 N.E.2d 645

Fernando LAJATO, Plaintiff-Appellant,

v.

AT & T, INC., Defendant-Appellee, and Third Party Plaintiff (Quinn Delivery Service, Inc., Third Party Defendant).

No. 1-95-0447.

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Independent contractor who was injured when loading telephone company's battery hoist for transport brought negligence action against telephone company. The Circuit Court, Cook County, Anthony J. Bosco, J., granted summary judgment for telephone company. Contractor appealed. The Appellate Court, Gordon, J., held that: (1) contractor's motion for reconsideration was timely; (2) telephone company had not voluntarily undertaken duty to properly maintain and secure battery hoist for transport; (3) telephone company was not liable as gratuitous bailor; and (4) trial court did not abuse its discretion by denying contractor's motion to amend his complaint.

Affirmed.

1. **Judgment** ⇐321, 386(1)

Posttrial motion must be filed within 30 days of final judgment or trial court will lose jurisdiction to modify or vacate final order which it entered after lapse of 30 days. S.H.A. 735 ILCS 5/2-1203.

2. **Motions** ⇐39

Motion to reconsider is posttrial motion, and therefore falls within purview of post-judgment motions which must be filed within 30 days after challenged judgment is entered. S.H.A. 735 ILCS 5/2-1203.

3. **Appeal and Error** ⇐344

Only if posttrial motion is timely filed will it extend time for filing notice of appeal. Sup.Ct.Rules, Rule 303(a)(1).

4. **Judgment** ⇐186

Motion to reconsider filed within 30 days of entry of summary judgment was timely, although no certificate of service was filed until well after 30 days of entry of summary judgment. S.H.A. 735 ILCS 5/2-1203; Sup. Ct.Rules, Rule 104.

5. **Appeal and Error** ⇐893(1), 1073(1)

Although trial court did not entertain motion for reconsideration of summary judgment in erroneous belief that it did not have jurisdiction to hear motion, appellate court

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d not need to remand to allow trial court to nsider merit of motion, as grant of sum- ary judgment required de novo review by ppellate court to determine question of law.

. Negligence ⇐36

Independent contractor could not base ersonal injury action against defendant on eory of premises liability, where he was jured in bed of his truck and not due to any ndition of defendant's premises.

. Appeal and Error ⇐893(1)

Appellate review of order granting sum- ary judgment is de novo.

. Judgment ⇐185(2)

Negligence ⇐1

To withstand motion for summary judg- ent in action based in negligence, plaintiff ust allege facts sufficient to show that de- ndant owed him a duty, that defendant reached that duty, and that his injury proxi- ately resulted from that breach.

. Negligence ⇐20

Telephone company did not voluntarily dertake duty to properly maintain and se- re its battery hoist for transport, where dependent contractor, who was injured by ist when loading it for transport as result loosening of strap securing motor, had al discretion in preparing and moving ist, and there was no evidence that tele- one company had strapped motor, that apping was undertaken as protection for ntractor, or that contractor relied upon fety of strapping. Restatement (Second) Torts § 323.

. Negligence ⇐136(14)

Whether a duty has been voluntarily dertaken is question of law to be deter- ined by court. Restatement (Second) of orts § 323.

. Bailment ⇐35

Telephone company was not liable as ratuitous bailor for injuries sustained by dependent contractor when strap securing otor on battery hoist loosened when con- actor was loading hoist for transport, here contractor presented no evidence oth- than inadmissible hearsay rumors to show either defect in hoist or that telephone company knew or should have known of any dangerous propensities in hoist.

12. Appeal and Error ⇐169

Contentions not raised in trial court are waived on appeal, even in summary judgment case.

13. Bailment ⇐9, 21

Gratuitous bailor may be liable for physical harm caused by use of chattel when he knows or has reason to know that chattel is or is likely to be dangerous when put to use for which it was supplied, has no reason to believe that those for whose use chattel is supplied will realize its dangerous condition, and fails to exercise reasonable care to inform user of its dangerous condition or of facts which make it likely to be dangerous.

14. Judgment ⇐185(1)

Unsubstantiated hearsay statements cannot be considered in ruling on motion for summary judgment.

15. Pleading ⇐236(6)

Trial court did not abuse its discretion by denying motion of independent contractor, who was injured when loading telephone company's battery hoist for transport, to amend his complaint to allege more specifically facts that there was voluntary undertaking by telephone company, after trial court granted summary judgment for telephone company, where issue was not that complaint was deficient in its framing of issues but that evidence presented in support of voluntary undertaking theory failed to establish genuine issue of material fact, and amendment would be prejudicial to telephone company in that amendment was sought on eve of trial and five years after inception of lawsuit, with no explanation as to why contractor never before attempted to develop facts necessary to withstand telephone company's summary judgment motion.

Beerman, Swerdlove, Woloshin, Barezky, Becker, Genin & London, Harvey L. Walner & Associates, Chicago (Alvin R. Becker, Harvey L. Walner, Christopher A. White, of counsel), for Appellant.

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William F. DeYoung, Loretto M. Kennedy, Carole C. Tubbesing Burke, Weaver & Prell, Chicago, for American Telephone & Telegraph.

Justice GORDON delivered the opinion of the Court:

This is an action for damages brought by the plaintiff, Fernando Lajato, arising from injuries he incurred while working as an independent contractor for third-party defendant Quinn Delivery Service, Inc. (Quinn) to move a battery hoist owned by defendant AT & T. AT & T filed a contingent third-party complaint against Quinn, not at issue in this appeal, seeking indemnification pursuant to the delivery service contract between Quinn and AT & T, in the event plaintiff recovered a judgment in his tort action against AT & T. AT & T subsequently filed a motion for summary judgment against plaintiff which the trial court granted. In that order, the court also denied plaintiff's oral motion requesting leave to amend his complaint. Subsequently, plaintiff filed a motion to reconsider, which the court ultimately struck by reason of its alleged lack of jurisdiction to hear it. Plaintiff appeals from the orders granting summary judgment to AT & T, denying his motion to amend his complaint, and refusing to hear his motion to reconsider. AT & T has moved to dismiss this appeal for lack of appellate jurisdiction.

In November 1989, plaintiff filed a complaint against AT & T, wherein he alleged that on July 1, 1988, he was on the premises of AT & T on behalf of Quinn in order to move an AT & T battery hoist. The complaint further alleged that while performing that task, the hoist fell upon him, causing him injuries for which he sought damages. The complaint averred that AT & T was negligent in its failure to maintain, inspect, and repair the battery hoist, and for AT & T's failure to warn plaintiff of the propensity of the hoist to fall. In April 1990, AT & T filed its answer, specifically denying each basis for recovery alleged in plaintiff's complaint. The matter was scheduled for trial in June 1995.

On April 25, 1994, AT & T filed a motion for summary judgment, alleging that, based upon the undisputed facts, it was clear that it owed no duty of care to plaintiff with respect to his injuries. In support of its motion, AT & T submitted excerpts of the deposition testimony of plaintiff and a copy of the delivery services contract between AT & T and Quinn. In his deposition, plaintiff testified that on the date of the accident, July 1, 1988, he was making pick-ups and deliveries of telephone equipment at various AT & T locations as an independent contractor for Quinn. He stated that he had received instructions from Quinn via radio to go to an AT & T property in Rolling Meadows, Illinois, the scene of the accident, to pick up a battery hoist and to transport it to another AT & T location in Rockford, Illinois. Approximately 99% of plaintiff's delivery work for Quinn involved pick-ups and deliveries of AT & T equipment. The plaintiff stated that AT & T did not direct him in his moving work, but rather, allowed him to use his own expertise to determine how each move would be accomplished.

Plaintiff further testified that the battery hoist, which weighs approximately [illegible] pounds, was used to lift batteries weighing approximately 300 pounds up onto shelves. Plaintiff described the hoist as being rectangular in shape, on wheels, and consisting of a large, black metal frame with a motor and hoist accessories suspended from the middle of the frame. The hanging motor and accessories could be pulled to one side of the hoist frame and secured thereto with a nylon strap and a chain, both of which were permanently attached to the hoist, in order to stabilize the hoist during transport and when not in use to perform its battery-lifting function. It was plaintiff's customary practice to inspect the hoist to ensure that the motor and accessories were firmly secured with the strap and the chain prior to moving the hoist. Plaintiff had moved this particular hoist on at least 10–15 different occasions.

Plaintiff's deposition further revealed that when he reached the AT & T Rolling Meadows location, an AT & T employee directed him to the hoist, and that after that brief conversation, plaintiff had no further discussions with anyone, AT & T employees or otherwise, until after the accident.

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sustained AT & T's objection, finding that it had no jurisdiction to hear plaintiff's motion to reconsider, and therefore did not address the merits of that motion. On January 25, 1995, within 30 days of the trial court's January 13 order, plaintiff filed his notice of appeal, both from that order and from the July 27, 1994 order granting summary judgment and denying plaintiff leave to amend.

Plaintiff contends on appeal that the trial court erred in granting summary judgment because by improperly securing the battery hoist for transport, AT & T negligently performed a voluntary undertaking, and because as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that the trial court abused its discretion in denying him leave to amend his complaint after the grant of summary judgment.

I. JURISDICTION:

Before reaching plaintiff's contentions on appeal, we must first address defendant's motion to dismiss this appeal for want of appellate jurisdiction. *Bell Federal Savings & Loan Ass'n v. Bank of Ravenswood,* 203 Ill.App.3d 219, 148 Ill.Dec. 559, 560 N.E.2d 1156 (1990). In its motion to dismiss, AT & T contends that plaintiff's failure to file a proof of service with its August 25, 1994 motion to reconsider prevents this court from reviewing either of the trial court's July 27 or January 13 orders. Defendant argues, somewhat obliquely, that plaintiff's motion to reconsider should not be considered as being timely filed, because it was not accompanied by a proof of service, and as a result, the trial court was correct in stating that it had no jurisdiction to consider it. Consequently, defendant would urge that the motion to reconsider did not have the effect of extending the time for filing plaintiff's notice of appeal beyond the initial 30 day period following entry of the summary judgment order. See Illinois Supreme Court Rule 303(a)(1) (155 Ill.2d R. 303(a)(1)) (discussed more fully below). We disagree.

[1-3] Under Supreme Court Rule 303(a)(1), a notice of appeal must be filed within 30 days after the entry of the final judgment from which the appeal is taken, or, if a timely post-trial motion directed at the judgment is filed, within 30 days after entry of the order disposing of the last pending post-trial motion. (134 Ill.2d R. 303(a)(1)). Under section 2-1203 of the Illinois Code of Civil Procedure, a post-trial motion must be filed within 30 days of a final judgment. 735 ILCS 5/2-1203 (West 1994). Otherwise, the trial court will lose jurisdiction to modify or vacate the final order which it entered after the lapse of 30 days. *Archer Daniels Midland Co. v. Barth,* 103 Ill.2d 536, 83 Ill.Dec. 332, 470 N.E.2d 290 (1984); *In Matter of Application of County Treasurer,* 208 Ill.App.3d 561, 153 Ill.Dec. 528, 567 N.E.2d 486 (1990). A motion to reconsider is a post-trial motion (*Elmhurst Auto Parts v. Fencl-Tufo Chevrolet,* 235 Ill.App.3d 88, 175 Ill.Dec. 771, 600 N.E.2d 1229 (1992)), and therefore "falls within the purview of post-judgment motions which must be filed within 30 days after the challenged judgment is entered." *Sho-Deen, Inc. v. Michel,* 263 Ill.App.3d 288, 290, 200 Ill.Dec. 729, 732, 635 N.E.2d 1068, 1071 (1994). Only if a post-trial motion is timely filed pursuant to section 2-1203 will it extend the time for filing the notice of appeal under Rule 303(a). *In Matter of Application of County Treasurer.*

[4] Thus, the question as to whether the appellant's notice of appeal was filed beyond the 30 day period allowed under Rule 303(a), thereby depriving this court of its jurisdiction, depends upon whether the failure to file a certificate of service vitiated the filing of the plaintiff's motion to reconsider. If we determine that the filing of plaintiff's motion to reconsider on August 25 within 30 days after the July 27 summary judgment order was timely, notwithstanding the failure to file an accompanying certificate of service within that 30-day period, then plaintiff's notice of appeal from both the July 27 and the January 13 orders was timely. This would follow under Rule 303(a), since the notice of appeal was filed on January 25, within 30 days after the trial court's disposition on January 13 of plaintiff's motion to reconsider. On the other hand, if the trial court was correct in its determination that under section 2-1203, the timely filing of a certificate of service is

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sdictional, without which the motion to consider cannot be deemed to have been ely filed, then the notice of appeal in this e, filed more than three months after the try of the summary judgment order, would untimely pursuant to Rule 303(a) and ve this court without appellate jurisdic-n.

The rule is clear that the absence of a tificate of service will not vitiate the filing a motion to reconsider. This matter has n specifically preempted by Illinois Su-me Court Rule 104 (134 Ill.2d Rule 104), ch provides at parts (b) and (d) as follows:

"(b) Filing of Papers and Proof of Service. Pleadings subsequent to the complaint, written motions, and other papers required to be filed shall be filed with the clerk with a certificate of counsel or other proof that copies have been served on all parties who have appeared * * *.

* * * * * *

(d) Failure to deliver or serve copies as required by this rule *does not in any way impair the jurisdiction of the court* over the person of any party, but the aggrieved party may obtain a copy from the clerk and the court shall order the offending party to reimburse the aggrieved party for the expense thereof." 134 Ill.2d R. 104(b), (d) (Emphasis added).

Thus, under Rule 104(d), the failure to liver or serve copies does not impair the isdiction of the court. This rule has been plied to post-trial motions in *In re Mar-ge of Collins*, 154 Ill.App.3d 655, 107 Ill. ec. 109, 506 N.E.2d 1000 (1987) and in *llath v. Chicago Title and Trust Co.*, 24 Ill.App.3d 353, 321 N.E.2d 344 (1974), which eld that the failure to include proof of ser-ce with a post-trial motion will not invali-ate the motion or render it untimely.

Defendant contends that Rule 104(d) only addresses the failure to actually serve copies of the motion but does not address the fail-ure to file a certificate of service. This con-tention is devoid of any rationale since a failure to serve will preclude the filing of a certificate, unless the movant seeks to per-jure himself. Thus, if the failure to actually serve notice does not impair jurisdiction, then *a fortiori*, the failure to serve a certifi-cate of service will not impair the validity or timeliness of the motion. See *In re Mar-riage of Collins*.

Defendant's reliance on *Vlahakis v. Par-ker*, 3 Ill.App.3d 126, 278 N.E.2d 523 (1971) (abstract of op.) and *Ingrassia v. Ingrassia*, 156 Ill.App.3d 483, 109 Ill.Dec. 68, 509 N.E.2d 729 (1987) is misplaced. Although *Vlahakis* reached a contrary result, it is clear that that opinion did not purport to in any way consider or confront the impact of Rule 104(d) in its determination. That opinion has therefore been distinguished and rejected on that basis in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d at 357–58, 321 N.E.2d at 348 ("Rule 104(d) renders a failure to comply with Rule 104(b) * * * non-jurisdictional * * * [and] the only cases decided since enactment of rule 104(d) which reached a contrary result [, including *Vlahakis v. Parker*,] did not consider that provision at all"). Likewise, the opinion in *Ingrassia* does not purport to consider rule 104(d) in its determination. Moreover, *Ingrassia* does not purport to deal with the validity or timeliness of the filing of a post-trial motion, but, rather, with the sufficiency of the notice of that motion when given to the opposing party only a few hours before the hearing on the motion. Hence, *Ingrassia* is not in point, since here there is no question that defendant had actual knowledge of the pendency of plaintiff's motion to reconsider well in advance of the scheduled hearing date on that motion.

Consequently, plaintiff's August 25 motion to reconsider, and therefore his January 25 notice of appeal, were seasonably filed, notwithstanding that no certificate of service was filed until long after 30 days had passed since summary judgment was entered on July 27. Since the August 25 motion was timely, the notice of appeal filed on January 25 complied with Rule 303(a) since it was filed within 30 days after the trial court disposed of the motion to reconsider, albeit on jurisdictional grounds, on January 13. Accordingly, our jurisdiction to review both the July 27 and January 13 orders of the trial court remains unimpaired.

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[5] Defendant next would urge that if we determine that the January 13 order is reviewable, we should confine our review solely to the correctness of the trial court's denial of its jurisdiction over the motion to reconsider. Defendant contends that if we find that the trial court's jurisdictional determination was erroneous, we should remand the matter to the trial court to allow the trial court to first consider the merit of that motion. We disagree for the same reasons as articulated in *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 167 Ill.Dec. 225, 587 N.E.2d 494 (1992). There, the court stated as follows:

> "Defendant initially urges us, without citation to authority, to remand this matter to the circuit court because that court did not address the merits of plaintiff's motion. This argument betrays a misperception of the nature both of the question presented and of our review. As noted above, we consider summary judgment orders *de novo*: we, like the circuit court, must decide only whether the parties' pleadings and other submissions present an issue of triable fact and if not, whether plaintiff is entitled to judgment as a matter of law. This is a question of law, not of fact." *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 76, 167 Ill.Dec. 225, 231, 587 N.E.2d 494, 500 (1992).

Here, too, the grant of summary judgment is subject to *de novo* review, requiring our *de novo* determination whether the submissions of the parties presented triable issues of fact and if not whether defendant was entitled to a judgment as a matter of law. Thus, here, as in *Myers*, we may consider this appeal on its merits without the necessity of a remand.

II. MERITS:

[6] As noted earlier, plaintiff contends on appeal that the trial court erred in granting summary judgment because the facts are sufficient to create an inference that AT & T voluntarily assumed a duty to properly secure the battery hoist for transport, a duty which was breached as a result of AT & T's negligence. Additionally, plaintiff contends, for the first time on appeal, that there was error in granting summary judgment because the facts are sufficient to create an inference that as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that even if summary judgment was properly entered in favor of AT & T under the issues framed by the existing complaint, the trial court abused its discretion in denying him leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)).[1]

[7, 8] We first address plaintiff's contention that the trial court erred in entering summary judgment pursuant to the issues framed by the existing complaint. Summary judgment is proper when the pleadings, depositions and affidavits on file, construed in the light most favorable to the nonmoving party, establish that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. See generally 735 ILCS 5/2–1005 (West 1994); *First State Insurance Co. v. Montgomery Ward & Co.*, 267 Ill.App.3d 851, 204 Ill.Dec. 814, 642 N.E.2d 715 (1994); *Torres v. City of Chicago*, 261 Ill.App.3d 499, 197 Ill.Dec. 985, 632 N.E.2d 54 (1994); *Giannoble v. P & M Heating & Air Conditioning, Inc.*, 233 Ill.App.3d 1051, 175 Ill.Dec. 169, 599 N.E.2d 1183 (1992). Appellate review of an order granting summary judgment is *de novo*. *E.g., Hesselink v. R.L. Perlow Corp.*, 265 Ill.App.3d 473, 202 Ill.Dec. 36, 637 N.E.2d 575 (1994); *La Salle National Bank v. Skidmore, Owings & Merrill*, 262 Ill.App.3d 899, 200 Ill.Dec. 225, 635 N.E.2d 564

1. As previously noted, at the trial level, plaintiff urged liability both on the basis of premises liability and the law governing voluntary undertakings. Plaintiff has conceded on appeal that he cannot base his action against AT & T upon a theory of premises liability as a matter of law, due to the holding in *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994), insofar as he incurred his injuries in the bed of his truck, and not due to any condition of AT & T's premises. See also *Jackson v. Hilton Hotels Corp.* 273 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995) (in action based on premises liability, no duty to plaintiff existed where plaintiff failed to show that his injuries were caused by any condition of the premises).

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(1994). To withstand a motion for summary judgment in an action based in negligence, a plaintiff must allege facts sufficient to show that the defendant owed him a duty, that defendant breached that duty, and that his injury proximately resulted from that breach. See *DiBenedetto v. Flora Township*, 153 Ill.2d 66, 178 Ill.Dec. 777, 605 N.E.2d 571 (1992); *Ziemba v. Mierzwa*, 142 Ill.2d 42, 153 Ill.Dec. 259, 566 N.E.2d 1365 (1991).

[9, 10] With respect to plaintiff's contention concerning AT & T's duty arising from its purported voluntary undertaking, section 323 of the Restatement (Second) of Torts provides as follows:

"One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking." Restatement (Second) of Torts § 323, at 135 (1965).

See generally, *Cross v. Wells Fargo Alarm Services*, 82 Ill.2d 313, 45 Ill.Dec. 121, 412 N.E.2d 472 (1980); *Jackson v. Hilton Hotels Corp.*, 277 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995). Whether a duty has been voluntarily undertaken is a question of law to be determined by the court. *Gouge v. Central Illinois Public Service Co.*, 144 Ill.2d 535, 163 Ill.Dec. 842, 582 N.E.2d 108 (1991); *Jackson v. Hilton Hotels Corp.*

In the instant case, plaintiff has failed to allege facts sufficient to establish in the first instance that defendant voluntarily assumed or undertook any duty to properly maintain and secure the battery hoist for transport. First, it is undisputed that AT & T had neither control nor influence over the manner in which plaintiff, an independent contractor retained by Quinn (who was also an independent contractor), readied or moved the hoist, and that plaintiff had total discretion in preparing and moving the hoist. Moreover, plaintiff did not submit any evidence that AT & T strapped the motor to the hoist, nor any evidence regarding whether the strapping was undertaken as protection for the plaintiff. Lastly, and more overridingly, even if we were to presume that the strapping was effected by AT & T, there is no evidence whatsoever submitted by plaintiff that he relied upon the safety of that strapping. In fact, the record is clear that plaintiff himself checked the strapping of the motor to ensure it was fastened securely prior to moving the hoist, as was his customary practice when moving that particular hoist.

[11–13] Plaintiff urges that even if there is no basis for liability under a theory of voluntary undertaking, there is a basis established for liability under a theory of gratuitous bailment. In that regard, he contends that there is a genuine issue of material fact that AT & T, as a gratuitous bailor of the hoist, breached a duty to plaintiff to provide a safe hoist or to warn plaintiff of its dangers. We first note that contentions not raised in the trial court are waived on appeal, even in a summary judgment case. *Witek v. Leisure Technology Midwest, Inc.*, 39 Ill.App.3d 637, 640, 350 N.E.2d 242, 245 (1976) ("This rule of waiver applies even in a summary judgment case"); *Wilson v. Gorski's Food Fair*, 196 Ill.App.3d 612, 143 Ill.Dec. 477, 554 N.E.2d 412 (1990). However, even if the argument were preserved, we note that there was no evidence presented that AT & T breached a duty to plaintiff as a gratuitous bailor of the hoist.

"[A] gratuitous bailor may be liable for physical harm caused by the use of his chattel when he knows or has reason to know that the chattel is or is likely to be dangerous when put to the use for which it is supplied; has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition; and fails to exercise reasonable care to inform the user of its dangerous condition or of the facts which make it likely to be dangerous." *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994).

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[14] Plaintiff has not produced evidence as to any specific defect either in the design or manufacture of the hoist itself which would indicate that AT & T had actual or constructive knowledge that the hoist was unsafe when it was handed over to plaintiff. Plaintiff himself did not testify as to the condition of the hoist except to say that the strap loosened. The only other evidence that plaintiff has presented consists of unsubstantiated hearsay statements. In that regard, plaintiff testified in his deposition to a conversation which took place after the accident with an AT & T installer who told plaintiff that certain other fellow employees had stated that after plaintiff's accident they refused to use the hoist because it was unsafe, and that AT & T ultimately returned the hoist to its manufacturer. However, plaintiff was unable to identify those other AT & T employees, and he did not provide any further detail regarding the specific contents of their statements. Such unsubstantiated hearsay statements cannot be considered in a ruling on a motion for summary judgment. See *Certified Mechanical Contractors, Inc. v. Wight & Co., Inc.*, 162 Ill.App.3d 391, 113 Ill.Dec. 888, 515 N.E.2d 1047 (1987) (in deciding a motion for summary judgment, court should ignore personal conclusions, opinions and self-serving statements and consider only facts admissible in evidence under the rules of evidence); *Seefeldt v. Millikin National Bank of Decatur*, 154 Ill.App.3d 715, 107 Ill.Dec. 161, 506 N.E.2d 1052 (1987) (although a complaint may purport to raise an issue of material fact, summary judgment is appropriate if such issue is not further supported by evidentiary facts, and in determining the genuineness of a fact, a court should ignore personal conclusions and opinions and consider only admissible facts).

Plaintiff's reliance on *Pagano* is not well taken. There, the court on appeal did find an issue of fact as to whether a defective dolly supplied by the defendant to help move certain barrel drums of ink rendered the defendant liable under a theory of gratuitous bailment. However, in that case, plaintiff gave direct testimony as to specific, observable defects in the dolly which, if believed, would establish that the dolly was defective. Here, aside from the inadmissible hearsay rumors which were reported, the plaintiff himself presented no evidence to show either a defect in the hoist or that AT & T knew or should have known of any dangerous propensities in the hoist. Consequently, the evidence presented here was not effective to support a counterinference for purposes of summary judgment.

[15] Plaintiff next contends that the trial court erred in its refusal in its July 27 order to allow him leave to amend his complaint to more specifically allege facts that there was a voluntary undertaking and that it was implemented negligently. We disagree.

Section 2-1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(g) (West 1994)) provides as follows:

> "(g) Amendment of pleading. Before or after the entry of a summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms."

The allowance of an amendment to the pleadings is in the trial court's discretion, and reversible error can only be found if there is a manifest abuse of discretion. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992). See also *Misselhorn v. Doyle*, 257 Ill.App.3d 983, 195 Ill.Dec. 881, 6[illegible] N.E.2d 189 (1994); *Eyman v. McDonough District Hospital*, 245 Ill.App.3d 391, 184 Ill.Dec. 502, 613 N.E.2d 819 (1993).

As noted, on July 27, immediately after the trial court entered summary judgment against him, plaintiff made an oral motion to amend his complaint, as follows:

> "**MR. JOHNSON** [Plaintiff's attorney]: I'll set it out to specifics that they undertook the duty to secure the hoist and they negligently performed that duty and as a result Plaintiff was injured based upon the *Nelson v. Pippen, Phillips* [*sic*] case, that one undertakes a duty to do something, they do so negligently, and someone is injured they are absolutely liable.
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> If the fact that the Court feels that the premises liability count cannot stand does not mean then that a negligent voluntary [*sic*] undertaking is not proper here

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There will be no new deps. That's what the evidence is through the Plaintiff's deposition."

The court denied plaintiff's motion to amend, stating that "It's an '89 case. I'll deny the motion [to amend]."

We first note that plaintiff never made the proposed amended complaint a part of the record on appeal, except for his oral proposal before the trial judge which, without any offers of new evidence, essentially duplicates the voluntary undertaking theory which has already been argued and rejected. Plaintiff's failure to include the proposed amendment and supporting facts therefor in the record could be found to constitute a waiver in this court of his right to have the denial of his request for leave to amend reviewed. See *Mendelson v. Ben A. Borenstein & Co.*, 240 Ill.App.3d 605, 181 Ill.Dec. 114, 608 N.E.2d 97 (1992) (plaintiff's failure to tender amended complaint or to include it in the appellate record diminished the appellate court's ability to determine whether the proposed amendment would provide a viable theory against defendant, and constituted waiver of right to a review of the denial of his request for leave to amend). See also *Ignar v. Norbut*, 271 Ill.App.3d 522, 207 Ill.Dec. 9, 648 N.E.2d 285 (1995) (no abuse of discretion in denying motion for leave to amend complaint where movant orally moved to amend yet failed to submit proposed amendment to trial court).

Notwithstanding waiver, even if we were to review the amendment which plaintiff orally proposed, we would find no abuse of discretion by the trial court in denying plaintiff leave to amend. As already discussed, there was ample evidence before the trial court to support its conclusion that the facts in this case as revealed in the summary judgment submissions would not permit a pleading which could allege a valid cause of action. Moreover, by the same token, even if the complaint were amended to more specifically allege a voluntary undertaking as requested by the plaintiff, the allegations of the complaint would be superseded by the extrinsic facts already submitted which as noted would dictate for summary judgment. See *Werckenthein v. Bucher Petrochemical Co.*, 248 Ill.App.3d 282, 188 Ill.Dec. 332, 618 N.E.2d 902 (1993) (where allegations in nonmovant's complaint are contravened by movant's extrinsic submissions in summary judgment proceedings, extrinsic submissions control); *East Side Fire Protection District v. City of Belleville*, 221 Ill.App.3d 654, 164 Ill.Dec. 192, 582 N.E.2d 755 (1991) (nonmovant must controvert proofs offered by movant in support of motion for summary judgment and cannot merely rest on pleadings); *Seefeldt v. Millikin National Bank of Decatur*. The issue here is not simply that plaintiff's complaint is deficient in its framing of the issues, but that, as discussed, the testimony and evidence presented in support of his negligent voluntary undertaking theory are deficient, and fall short of establishing a genuine issue of material fact such that judgment should not be entered as a matter of law on that theory of action.

Plaintiff's reliance on *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992) is not well taken. In *Loyola*, the court on appeal set forth four factors to determine whether the trial court had abused its discretion in denying a section 2–1005(g) amendment, including whether the proposed amendment would cure the defective pleading, whether it would cause prejudice or surprise to other parties, whether it was timely, and whether previous opportunities to amend the pleading could be identified.

Applying these factors in order, in the instant case the question of whether plaintiff's proposed amendment would cure the defective pleading is not relevant, because as already discussed, AT & T succeeded in its motion for summary judgment not because plaintiff's complaint was improperly pleaded, but because the evidence presented at summary judgment shows no genuine issue of material fact regarding the allegations in the complaint. *Werckenthein v. Bucher Petrochemical Co.*; *East Side Fire Protection District v. City of Belleville*. Taking the second and third *Loyola* factors together (whether there would be prejudice or surprise to AT & T and whether the proposed amendment was timely), the record is ample to support the trial court's determination that the allowance

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of an amendment would in fact be prejudicial to AT & T, insofar as the amendment was being sought on the eve of trial, five years after the inception of this lawsuit, with no explanation from plaintiff as to why he never before attempted to develop the facts which would be necessary to withstand AT & T's motion for summary judgment. See *Mendelson v. Ben A. Borenstein & Co.* (no abuse of discretion in denying leave to amend following grant of summary judgment where proposed amendment was sought beyond the pleading stages). See also *Ignarski v. Norbut.*

The final *Loyola* factor is whether plaintiff had sufficient prior opportunities to amend. To that extent, we note that plaintiff indeed had substantial opportunities to amend. Although plaintiff complains that AT & T never gave him notice of any deficiency in his complaint which would require amendment because AT & T never filed a motion to dismiss prior to filing its motion for summary judgment, it is axiomatic that a party can amend its pleading on its own motion. See 3 R. Michael, Illinois Practice, ch. 26, at 446 (West 1989). The case of *Evans v. United Bank of Illinois, N.A.*, 226 Ill.App.3d 526, 168 Ill.Dec. 533, 589 N.E.2d 933 (1992), upon which plaintiff relies, does give credence to plaintiff's contention under the fourth *Loyola* factor that the failure of AT & T to challenge his pleadings prior to its motion for summary judgment deprived plaintiff of any prior opportunity to amend. However, we note that in *Evans* the court on appeal did not rely on that factor alone in finding that the trial court abused its discretion in denying the plaintiff in that case leave to amend, but found that *all* of the *Loyola* factors supported that plaintiff's motion for leave to amend.

In any event, even if plaintiff were correct in his reliance upon *Evans*, we need not consider its application here. As already discussed, the issue here is not whether the allegations of the complaint were sufficient to state a cause of action based upon a voluntary undertaking theory, but whether the facts adduced were sufficient to create an inference to support such allegations. See *Werckenthein v. Bucher Petrochemical Co.; East Side Fire Protection District v. City of Belleville.* As previously noted, the fa submitted here are insufficient to raise su an inference. Hence, we find that the tr court's denial of the motion to amend was an abuse of discretion. See *Regas v. Asso ated Radiologists, Ltd.*, 230 Ill.App.3d 9 172 Ill.Dec. 553, 595 N.E.2d 1223 (19 (where a cause of action cannot be sta even after amendment, leave to am should be denied).

For the foregoing reasons, the judgment the Circuit Court of Cook County is affirm

McNULTY, P.J., and HOURIHANE, J. concur.

283 Ill.App.3d 112
669 N.E.2d 655

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Vernetta CASSELL, Defendant-Appellant.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Curlee SIMMONS, Defendant-Appellan

Nos. 1-94-2782, 1-95-1380.

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Rehearing Denied Sept. 11, 1996.

Defendants were convicted in the Cir Court, Cook County, John J. Moran, J., aggravated criminal sexual assault, and defendant was convicted of additional cri of home invasion and aggravated kidnappi Defendants appealed. The Appellate Co McNulty, P.J., held that: (1) circuit co had adequate basis for its determination t victim was not entitled to assert privil

669 N.E.2d 656

Cite a

against self-incrimination: sufficient evidence that defe threat of force in order to course with victim to sup aggravated criminal sexua was sufficient evidence tha to confined victim to supp napping conviction; (4) denied effective assistan defendant who drove vehi assault occurred was cri for the assault; and (6) e of emergency room nurse that victim identified d and who dragged her fr harmless error.

Affirmed.

1. Witnesses ⇐297(13.1)
Trial court had adequ tion for aggravated cri for its determination th decided to assert Fifth A against self-incrimination court did not conduct he whether victim's testimon later, where, in response t tions as to why she wan charge, victim never expres fear of being charged wit that she could not remem clearly. U.S.C.A. Const.

2. Witnesses ⇐297(1)
Privilege against guards against compulsor pleading to establish U.S.C.A. Const.Amend. 5

3. Witnesses ⇐297(1)
Although witness ir privilege to refuse to an tend to incriminate him secured by Fifth Amend those instances where wi cause to believe he or himself or herself to pro answers. U.S.C.A. Cons

4. Witnesses ⇐297(1)
Once witness asser Amendment privilege no self or herself, trial cou

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appointed to you and we will not ask questions until he has been appointed—"I told him, without his attorney I wouldn't talk to him and that would be it. That he didn't have to say anything." (He said he didn't want a lawyer.) (5) If you decide to answer now with or without a lawyer, you have the right to stop questioning at any time or stop questioning and consult a lawyer—"I told him, if I start talking to you and it becomes apparent to you that you suddenly think you want an attorney to tell me and we will stop right there and we won't ask any further questions at that point. In other words, he could stop me from asking anything, at any time and I will just stop and leave the room." (He said he still wanted to talk to me.)

Dickett testified that she gave defendant the *Miranda* warnings one at a time, speaking slowly. After each one she asked defendant if he understood and he said he did. She testified that she told him the word attorney meant lawyer and instead of the phrase, "appoint a lawyer", she told him the court would give him a lawyer.

In contrast to this questioning by Kill and Dickett, Smith testified that she interviewed defendant on December 15, 1989, six months after the fire. In questions she posed which were intended to determine whether or not he could intelligently waive what are commonly known as "Miranda rights or Miranda warnings" she would ask him "what does this mean, and then I would say what the particular right was" and his reaction would be to "look around, scratch his head and draw a blank. He didn't say anything." From these reactions she concluded that "he didn't understand what these rights meant."

The contrast in the manner in which the police officer and assistant State's Attorney advised the defendant and the form of the questions posed to the defendant by the psychologist lead us to the conclusion that the record does not support the trial court's conclusion that defendant did not understand his rights and therefore did not knowingly and intelligently waive them. The court's grant of defendant's motion to suppress is not supported by the record.

Here we find the defendant was advised of his right to remain silent and his right to have an attorney present in language he could understand. He was advised that anything he told the officer could be used against him in court. Defendant then stated that he wanted to tell the police about the fire. He repeated the story to the officer and to the assistant State's Attorney in a coherent manner. Although he was asked to do so, he chose not have his statement taken down verbatim in writing. Since he was unable to read, he could not verify what a written statement contained.

While the State has a heavy burden to show that a defendant has waived his constitutional rights in a knowing, intelligent and voluntary manner, (*Brownell*, 79 Ill.2d at 516, 88 Ill.Dec. 757, 404 N.E.2d 181) we find the State has met that burden. We find the weight of the evidence establishes that defendant waived his *Miranda* rights in a knowing and intelligent manner. For all of the foregoing reasons the order of the trial court granting defendant's motion to suppress his statements is reversed.

REVERSED.

RAKOWSKI, P.J., and EGAN, J., concur.



217 Ill.App.3d 952

578 N.E.2d 33

Byong K. CHOI, Plaintiff–Appellant,

v.

COMMONWEALTH EDISON COMPANY, Defendant–Appellee.

No. 1–89–2177.

Appellate Court of Illinois, First District, Third Division.

July 10, 1991.

Rehearing Denied Aug. 26, 1991.

Independent contractor's employee brought action against owner of nuclear

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power plant to recover for injuries sustained when he slipped and fell on wet concrete floor. The Circuit Court, Cook County, Dean Sodaro, J., granted summary judgment for owner, and employee appealed. The Appellate Court, Cerda, P.J., held that owner's duty to maintain safe workplace did not include mopping up water that accumulated on floor when snow and ice from pipes used in construction project melted onto floor, causing puddles of water.

Affirmed.

1. Judgment ⇐185(2)

Although plaintiff does not have to try his case on defendant's motion for summary judgment, he must provide factual basis which would arguably entitle him to judgment.

2. Appeal and Error ⇐949

Determination that summary judgment is appropriate will not be reversed absent abuse of trial court's discretion such that plaintiff's right to fundamental justice is violated.

3. Negligence ⇐32(2.10)

Landowner owed duty to independent contractor's employee to maintain reasonably safe workplace.

4. Negligence ⇐50

Landowner's duty to independent contractor's employee to maintain reasonably safe workplace did not extend to taking precautions against water tracked inside from natural accumulation outside.

5. Negligence ⇐2, 10

Duty is determined by considering number of factors, including foreseeability of harm, likelihood of injury, magnitude of burden of guarding against it, consequences of placing that burden on defendant, public policy, and social considerations.

6. Negligence ⇐29, 44

Landowner owes no duty where natural accumulation of snow, ice or water exists on outside or is tracked into building by pedestrian traffic.

7. Negligence ⇐28

Property owner has duty and may be liable in negligence when injuries are result of unnatural or artificial accumulation of snow, ice or water, or natural condition aggravated by owner's use of area and creation of condition.

8. Negligence ⇐50

Duty owed by owner of nuclear power plant to independent contractor's employee to provide reasonably safe workplace did not include duty to mop up water that accumulated on concrete floor when snow and ice from pipes being brought in from outside for use in construction project melted onto floor, causing puddles of water, where there was no evidence that owner did anything to aggravate that condition, but instead condition was continuation of natural accumulation.

Lane and Munday, Thomas J. Nathan, Chicago, for plaintiff-appellant.

Johnson, Cusack and Bell, Ltd., John W. Bell, Michael B. Gunzburg and Thomas H. Fegan, Chicago, for defendant-appellee.

Presiding Justice CERDA delivered the opinion of the court:

Plaintiff, Byong K. Choi, brought this action against defendant Commonwealth Edison Company seeking recovery for injuries sustained when plaintiff fell on a concrete floor while working at a construction site. The trial court granted defendant's motion for summary judgment. On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary judgment because a genuine issue of material fact exists. In addition, he argues that the trial court erred by failing to recognize defendant's duty to provide a safe workplace for workmen engaged in construction work on its premises and by failing to extend that duty to include taking precautions against the accumulation of water inside the building.

On January 10, 1979, plaintiff Choi was employed by Universal Power Piping, Inc. (UPP) as a welder at the Dresden Nuclear Power Plant, which is owned by defendant

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Commonwealth Edison Company. UPP was a subcontractor hired by Commonwealth Edison to complete installation of a decontamination flushing system in the Reactor 1 building. Plaintiff was working on the third-floor turbine deck receiving pipes brought in from the outside by UPP employees. While stored outside, the pipes became encrusted with snow and ice. Once inside, the pipes were raised from the ground floor to the third-floor turbine deck area by an overhead crane, which was operated by a Commonwealth Edison employee. Then, the pipe was taken from the crane, placed on a cart, and moved through the interlock hatch to the reactor building by UPP employees, including plaintiff. Snow and ice melted from the frozen pipes, forming puddles of water on the deck wherever the pipes were transported. Plaintiff was working in this manner all day prior to the accident.

As plaintiff and a co-worker were carrying a pipe, approximately 20 feet long and 10 inches in diameter, plaintiff slipped on water that was on the concrete floor. He fell backward, hitting his back on a pipe, and a floor spacer fell across his mid-section, causing injuries.

Previously, the appellate court upheld the trial court's summary judgment order for defendant regarding a Structural Work Act (Ill.Rev.Stat.1983, ch. 48, pars. 60 through 69). (*Choi v. Commonwealth Edison Co.* (1984), 129 Ill.App.3d 878, 85 Ill.Dec. 17, 473 N.E.2d 385.) In plaintiff's second amended complaint, he alleged that defendant was guilty of several negligent acts in its supervision of the construction work. Defendant filed a motion for summary judgment, arguing that under Illinois law, it had no duty to take precautions against natural accumulations of snow, ice or water that were tracked into a building. Defendant noted that the UPP foreman's deposition stated that he did not inform Edison of the condition because it was the duty of the contractor's own employees to clean up after themselves. Defendant pointed out that the snow came from pipes that plaintiff and his co-workers had brought in and carried to the area.

In response to defendant's motion for summary judgment, plaintiff argued that defendant owed him a duty to maintain a reasonably safe work place because it retained control over the construction work performed by UPP employees and could stop the work in progress for safety or other reasons. Plaintiff also argued that defendant breached that duty by failing to provide a reasonably safe workplace and by failing to stop work that was being performed in an unsafe manner. In addition, plaintiff contended that the melted snow and ice that caused the unsafe condition did not accumulate naturally, was not transported into the building by pedestrian traffic, and was caused by defendant's refusal to allow the pipes to be brought into the building and cleaned off before being transported to the work area. Plaintiff notes that the deposition of Commonwealth Edison's superintendent stated that Commonwealth Edison employees had the responsibility to clean snow and ice which came into the building, had the authority to stop work being performed in an unsafe manner, and regularly inspected the area.

Concluding that the facts were essentially undisputed, the trial court ordered summary judgment for defendant. The trial court stated that there was a common law duty of an occupier of land to exercise reasonable care for the safety of people lawfully on the premises, but that duty did not extend to a building owner being required to mop up water from an accumulation of snow, ice or water brought inside a building construction site. The trial court indicated that it would be an impossible burden placed on an owner of a building construction site to require following the independent contractor's employees around, mopping up every drip of water brought in from the outside. The trial court further ruled that Commonwealth Edison did not create the dangerous condition, but merely failed to clean up a mess which is common whenever building materials from the outside of a building are moved into a building.

The trial court analogized this case to *Lohan v. Walgreens Co.* (1986), 140 Ill.App.3d 171, 173, 94 Ill.Dec. 680, 488 N.E.2d 679, which ruled that a landowner has no duty to clean up snow, ice or water that is

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tracked into a building from a natural accumulation on the outside. The trial court made no finding whether the accumulation inside the building was natural or unnatural, but did state that the water began as a natural accumulation of snow and ice on the pipes outside, and was brought into the building the same way as people tracking it on their feet. The trial court did not consider the expert's affidavit and deposition because it was not factually based. The expert did not actually examine the premises, the court noted, but merely looked at photographs.

After the trial court denied plaintiff's motion to reconsider, plaintiff appealed the summary judgment order. Plaintiff's argument emphasizes that Commonwealth Edison owed him a duty to maintain a safe workplace even though he was employed by an independent contractor hired by Commonwealth Edison. He asserts that the duty included mopping up water that accumulated on the building's floor when snow and ice from the pipes melted onto the floor, causing puddles of water. Plaintiff relies on cases holding that the landowner owes a duty to the employee of an independent contractor if the owner retains sufficient control over the contractor's work. *Claudy v. City of Sycamore* (1988), 170 Ill.App.3d 990, 120 Ill.Dec. 812, 524 N.E.2d 994; See *Haberer v. Village of Sauget* (1987), 158 Ill.App.3d 313, 110 Ill.Dec. 628, 511 N.E.2d 805; *Tsourmas v. Dineff* (1987), 161 Ill.App.3d 897, 113 Ill.Dec. 758, 515 N.E.2d 743; *Weber v. Northern Illinois Gas Co.* (1973), 10 Ill.App.3d 625, 295 N.E.2d 41; *Pasko v. Commonwealth Edison Co.* (1973), 14 Ill.App.3d 481, 302 N.E.2d 642. These cases state that the duty owed is to maintain a reasonably safe workplace.

Even if the water began as a natural accumulation on the outside, plaintiff asserts, Commonwealth Edison's intervening acts caused the water to be unnaturally accumulated on the inside of the building. In the alternative, plaintiff states, the condition was aggravated by Commonwealth Edison because it would not allow the pipes to be stored inside where the snow and ice could be safely removed after it melted. Furthermore, plaintiff argues, the pipes were brought in from the outside and loaded onto an overhead crane operated by a Commonwealth Edison employee. The overhead crane then took the pipes to the third floor of the building, where UPP employees transported the pipes through a tunnel into the reactor building. By the time the pipes reached the third floor, the snow and ice was melting, and water from the pipes was dripping on the floor. It is on that water that plaintiff fell and injured himself.

Defendant responds that the water was a natural accumulation tracked in from the outside by UPP employees, including plaintiff. It asserts that this situation should be treated the same as a natural accumulation tracked in from the outside by pedestrian traffic, thus creating no duty by the landowner.

Defendant relies on two types of cases: those concerning natural accumulations of snow, ice or water outdoors and those concerning snow, ice or water tracked into a building from the outside, whether tracked in by pedestrians' shoes, coats or umbrellas. In *Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679, the plaintiff slipped and fell on water that had been tracked from the outside into the common hallway of the defendants' stores. The appellate court ruled that the owners did not have a duty to continuously remove the tracks left by customers who had walked through the natural accumulations of snow or water outside, tracking them inside. Even if the owner has knowledge that the accumulation caused a dangerous condition, the court stated, there is no duty if the accumulation is natural. (*Lohan*, 140 Ill.App.3d at 173, 94 Ill.Dec. 680, 488 N.E.2d 679.) See also *Handy v. Sears, Roebuck & Co.* (1989), 182 Ill.App.3d 969, 131 Ill.Dec. 471, 538 N.E.2d 846 (summary judgment in favor of defendant store affirmed where plaintiff slipped and fell on water located within store); *Shoemaker v. Rush–Presbyterian–St. Luke's Medical Center* (1989), 187 Ill.App.3d 1040, 135 Ill.Dec. 446, 543 N.E.2d 1014 (hospital had no duty to clean up natural accumulation of water tracked into hospital on pedestrians' coats and umbrellas); *Serritos v. Chicago Transit Authority* (1987), 153 Ill.App.3d 265, 106 Ill.Dec. 243, 505 N.E.2d 1034 (city transit authority had no duty where plain-

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tiff fell on snow and slush covered steps of bus owned and operated by defendant).

[1, 2] The purpose of summary judgment is to determine whether a triable issue of fact exists. (*Haberer*, 158 Ill.App.3d at 316, 110 Ill.Dec. 628, 511 N.E.2d 805.) It may be granted if the pleadings, exhibits, affidavits, and depositions on file establish that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (Ill.Rev. Stat.1985, ch. 110, par. 2–1005(c); *Branson v. R & L Investment, Inc.* (1990), 196 Ill.App.3d 1088, 1090, 143 Ill.Dec. 689, 554 N.E.2d 624.) Although the plaintiff does not have to try his case, he must provide a factual basis which would arguably entitle him to judgment. (*Handy*, 182 Ill.App.3d at 972, 131 Ill.Dec. 471, 538 N.E.2d 846.) The determination that summary judgment is appropriate will not be reversed absent an abuse of the trial court's discretion such that the plaintiff's right to fundamental justice is violated. *Breeze v. Payne* (1989), 181 Ill.App.3d 720, 727, 130 Ill.Dec. 386, 537 N.E.2d 453.

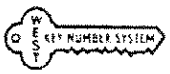
[3–5] Commonwealth Edison owed plaintiff the duty to maintain a reasonably safe workplace, but it did not extend to taking precautions against water tracked inside from a natural accumulation outside. Duty is determined by considering a number of factors: the foreseeability of harm (*Breeze*, 181 Ill.App.3d at 727, 130 Ill.Dec. 386, 537 N.E.2d 453), the likelihood of the injury, the magnitude of the burden of guarding against it, the consequences of placing that burden on the defendant, public policy, and social considerations. *Dealers Service & Supply Co. v. St. Louis National Stock.* (1987), 155 Ill.App.3d 1075, 1080, 108 Ill.Dec. 664, 508 N.E.2d 1241.

[6, 7] In Illinois, a landowner owes no duty where a natural accumulation of snow, ice or water exists on the outside or is tracked into a building by pedestrian traffic. (*Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679.) However, a property owner does have a duty and may be liable where the injuries are a result of an unnatural or artificial accumulation, or a natural condition aggravated by the owner's use of the area and creation of the condition. (*Handy v. Sears, Roebuck & Co.* (1989), 182 Ill.App.3d 969, 971, 131 Ill. Dec. 471, 538 N.E.2d 846.) To establish a duty, the plaintiff must make an affirmative showing of an unnatural accumulation or an aggravation of a natural condition before recovery will be allowed. (*McCann v. Bethesda Hospital* (1979), 80 Ill.App.3d 544, 549, 35 Ill.Dec. 879, 400 N.E.2d 16.) Plaintiff made no such showing in this case.

[8] Therefore, summary judgment for defendant was proper. The water in the nuclear power plant was a continuation of a natural accumulation. There was no evidence presented that Commonwealth Edison did anything to aggravate the condition. To require an owner of a construction site to follow workmen around and immediately clean up any melting snow, ice or water that had been brought in from the outside would be too high a burden.

Affirmed.

WHITE and GREIMAN, JJ., concur.



217 Ill.App.3d 958
578 N.E.2d 37

FISTER/WARREN, successor in interest to Charles L. Fister and Associates, Inc., a corporation; Charles L. Fister and Robert J. Warren, Plaintiffs–Appellants/Counter–Defendants–Appellees,

v.

BASINS, INC., a Wyoming corporation, and Georgia Marble Company, a Georgia corporation, Defendants–Appellees/Counter–Plaintiffs–Appellants.

Nos. 1–90–2260, 1–90–2882.

Appellate Court of Illinois,
First District, Sixth Division.

July 12, 1991.

Rehearing Denied Aug. 30, 1991

Stock sellers brought action against buyer of corporation and corporation, seek-

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	Case No. 12 LA 178

ANSWER TO PLAINTIFF'S INTERROGATORIES TO DEFENDANTS BILL McGUIRE AND CAROLYN McGUIRE

TO: Paul Dulberg
c/o Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

Defendants, BILL McGUIRE AND CAROLYN McGUIRE (improperly named Caroline), by and through their attorneys, Cicero, France, Barch & Alexander, PC, and for their Answer to Plaintiff's Interrogatories, state as follows:

1. State the full name of the defendant(s) answering, as well as your current residence address, date of birth, marital status, and social security number, and, if different, give the full name, as well as the current residence address, date of birth, marital status, and social security number of the individual(s) signing these Answers.

ANSWER:

William "Bill" McGuire	Carolyn McGuire
1016 W. Elder Avenue	1016 W. Elder Avenue
McHenry, IL 60051	McHenry, IL 60051
Married: Carolyn	Married: Bill
DOB: July 29, 1952	November 26, 1946

Defendants object to providing Social Security Numbers. Such information is highly sensitive and private and is furthermore irrelevant to any issues in the pending lawsuit.



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2. State the full name and current residence address of each person who witnessed or claims to have witnessed the accident to the Plaintiff on the premises as described in the complaint.

ANSWER: David Gagnon
39010 90th Place
Genoa City, WI 53128

Paul Dulberg
4606 Hayden
McHenry, IL 60051

3. State the full name and current residence address of each person who witnessed or claims to have witnessed the work and/or conditions existing as described in the complaint at the location of the accident on the date of the accident described.

ANSWER: See answer to Interrogatory No. 2.

4. State the name and address of the person(s) or entity that owned the property premises whereat the accident occurred as alleged, as of the date in question.

ANSWER: Bill and Carolyn McGuire
1016 W. Elder Avenue
McHenry, IL 60051

5. State the name and address of the person(s) or entity that was involved in the work and/or maintenance of the exterior of the premises as alleged on the date in question.

ANSWER: See response to Interrogatory No. 2.

6. State the name and address of the person(s) or entity that decided or chose to undertake the work and/or maintenance of the exterior of the premises as alleged on the date in question, including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

7. State the name and address of the person(s) or entity that was to supervise or oversee the work and/or maintenance at the exterior of the premises as alleged on the date in question including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

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8. State the full name and current residence address of each person, who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after said occurrence.

ANSWER:

Before:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
At Time Of Occurrence:	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
After:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051

9. State the name and address of each witness that knows or claims to know the circumstances of the alleged accident, how it occurred or how the Plaintiff became injured – as alleged in the Complaint.

ANSWER: On information and belief, David Gagnon and Paul Dulberg were present at the time of the alleged occurrence and therefore know the circumstances surrounding the occurrence. Answering further, Defendants Bill McGuire and Carolyn McGuire were not present at the time of the occurrence but knew that David Gagnon and Paul Dulberg were present on the date of the occurrence. From conversations with David Gagnon, the answering Defendants believe that Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Investigation continues.

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10. With respect to the chain saw that was being operated on the premises at the time of the alleged injury, state as follows:

a. Who was operating the chain saw at the time of the Plaintiff's alleged injury;

b. Who owned the chain saw at the time of Plaintiff's alleged injury;

c. who requested that the chain saw be used to perform work at the time of Plaintiff's injury.

ANSWER:

a. On information and belief, David Gagnon was operating the chain saw at the time Mr. Dulberg was injured.

b. Bill McGuire was the owner of the chain saw on the date of the occurrence.

c. David Gagnon had Bill McGuire's permission to use the chain saw.

11. With respect to David Gagnon's experience in use of a chain saw prior to the date of the alleged accident, state as follows:

a. How many times had David Gagnon operated the same or similar chain saw prior to the date of alleged accident;

b. What formal training did David Gagnon receive in use or operation of a chain saw prior to the occurrence alleged;

c. Who, if any, (names and addresses) trained David Gagnon in use or operation of a chain saw prior to the occurrence.

ANSWER:

a. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, and to the best of the answering parties' knowledge, David Gagnon has used chain saws in the past but the answering parties do not known how often he has used chain saws in the past.

b. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering parties do not know whether David Gagnon has been formally trained the use or operation of a chain saw. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

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c. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering party do now know whether or by whom David Gagnon was trained in the use of chain saws. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

12. What was the scope of work or task David Gagnon was engaged in with use of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent "scope of work" or "engaged" constitute legal conclusions, the answering Defendants object to Interrogatory No. 12. Answering subject to objection, at the time of the alleged occurrence, the answering Defendants were in the process of replacing an old shed on their property. Paul Dulberg helped David Gagnon tear down the old shed. The answering Defendants further believe that Mr. Dulberg took the components of the old shed to his property for eventual reassembly. On the date of the occurrence, Mr. Dulberg was helping David Gagnon take down several trees to make room for a new shed. On information and belief, prior to the occurrence Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Answering further, the answering Defendants did not engage, hire or pay either individual for their activities on site. Nor did either answering Defendant dictate, control or otherwise supervise the methods and means by which Mr. Gagnon and Mr. Dulberg performed the tree and branch cutting at issue.

13. Who (names and addresses) requested or chose to engage Gagnon in the "task" of use and operation of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent the words "chose" and "engage" constitute legal conclusions, the answering Defendants object to Interrogatory No. 13. Answering subject to objection, David Gagnon undertook the tree cutting and trimming in question as a favor to his parents. He was not engaged, hired or paid for the activities in question.

14. What instructions or guidance, if any, was given to Gagnon prior to Plaintiff's alleged injury/accident with regard to how he was to perform the chain saw work at the premises.

ANSWER: See response to Interrogatory No. 11.

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15 Were you (Defendant) covered under any policy of insurance at the time of the occurrence. If so, were you named or covered under any policy, policy, or policies, of liability insurance effective on the date of said occurrence, and: State the name of each such company or companies, the policy number of numbers, the effective period(s) occurrence, including umbrella or excess insurance coverage, property damage and medical payment coverage.

ANSWER: Yes.
Auto-Owners Insurance Company
Policy No. 48-010-965-01
Eff.: May 9, 2011 thru May 9, 2012
Personal Liability (Each Occurrence): $300,000.00
Medical Payments (Each Person): $1,000.00

16. Do you have any information:

(a) That any plaintiff was, within the 5 years immediately prior to said occurrence, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than person injury? If so, state each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or other health care professional, the approximate date of such confinement or service and state the reason for such confinement or service;

(b) That any plaintiff has suffered any serious personal injury and/or illness prior to the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(c) That any plaintiff has suffered any serious personal injury and/or illness since the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(d) That any plaintiff has ever filed any other suit for his or her own personal injuries? If so, state each plaintiff so involved, state the court, and caption in which filed, the year filed, the title and docket number of said case.

ANSWER:

a. On information and belief, the answering parties believe that Paul Dulberg was involved in a motor vehicle accident that resulted in a shoulder injury of some sort. The answering parties do not know of any other details about the auto accident or injuries, if any.
b. See answer to Interrogatory No. 16(a).
c-d. No.

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17. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, the name, address and occupation and employer of the person taking them.

ANSWER: None, other than those furnished as part of Plaintiff's discovery response.

18. Have you (or anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with regard to the injuries complained of by plaintiff or the manner in which the occurrence complained of occurred? If the answer to this Interrogatory is in the affirmative, state the following:

(a) The date or dates of such conversations and/or statements;
(b) The place of such conversations and/or statements;
(c) All persons present for the for the conversations and/or statements;
(d) The matters and things stated by the person in the conversations and/or statements;
(e) Whether the conversation was oral, written and/or recorded; and
(f) Who has possession of said statement if written and/or recorded.

ANSWER: (a) thru (f): See summary of oral communication received from David Gagnon set forth in response to Interrogatory No. 9. Answering further, on information and belief, a few weeks after the subject occurrence Paul Dulberg did roofing work and moved heavy pieces of lumber for Mike Thomas, 460 Walbeck Drive, Twin Lakes, WI 53181 (312/961-9655). Investigation continues.

19. Do you know of any statements made by any person relating to the occurrence complained of by the plaintiff? If so, give the name and address of each such witness, the date of said statement, and state whether such statement was written and/or oral.

ANSWER: See answers to Interrogatories No. 9 and 18.

20. State the name and address of each person having knowledge of Plaintiff's activities on the premises PRIOR to the accident in question.

ANSWER: Paul Dulberg and David Gagnon.

21. State the name and address of each person having knowledge of Plaintiff's activities on the premises AFTER the accident in question.

ANSWER: Paul Dulberg, David Gagnon, Bill McGuire and Carolyn McGuire.

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22. Had the Plaintiff ever used or operated a chain saw on the premises or for the Defendant's prior to his alleged accident. If so, state the dates and times such occurred.

ANSWER: Yes. In June 2011 Carolyn and Bill McGuire had a contractor take down a large tree on their property. The contractor left the fallen limbs. Shortly thereafter, Paul Dulberg brought his own chain saw down to the property. He cut the limbs into logs. David Gagnon helped him cut and load the logs.

23. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial, and state the subject of each witness' testimony, giving the following information:

(a) The subject matter on which the opinion witness is expected to testify;
(b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of said witness, if any;
(c) The qualifications of each opinion witness, including a Curriculum Vitae and/or resume, if any; and
(d) Identify any written reports of the opinion witness regarding this occurrence.

ANSWER:

Illinois Supreme Court Rule 213(f)(1) – Lay Witnesses:

The answering party has not yet determined the identity of the witnesses that might be called upon to offer lay witness testimony and opinions at trial. However, each of the following individuals are possible trial witnesses:

a. Paul Dulberg. Presumably, Mr. Kemp will testify about his age, education and work experience. He may testify concerning all the events and occurrences alleged in his complaint. He may also testify concerning his state of health before the events and occurrences alleged in his complaint, the injuries he attributes to the events and occurrences alleged in his complaint, and his current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

b. David Gagnon. The answering party does not know the specifics of Mr. Gagnon's potential trial testimony. Presumably, however, Mr. Gagnon will testify about his age, education and work experience. He may testify concerning his connection to Bill McGuire and Carolyn McGuire. He may testify concerning the events and occurrences alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health before the events and occurrences alleged in Plaintiff's Complaint, observations he made about the injuries Mr.

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Dulberg attributes to the events and occurrences alleged in Plaintiff's Complaint, and observations he made about Mr. Dulberg's current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

c. Bill McGuire. If called upon to testify, Mr. McGuire will testify about his age, education and work experience. He will testify concerning his connection to David Gagnon and Carolyn McGuire. He may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations he made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

d. Carolyn McGuire. If called upon to testify, Mrs. McGuire will testify about her age, education and work experience. She will testify concerning her connection to David Gagnon and Bill McGuire. She may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. She may also testify concerning observations she made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations she made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that she will testify concerning all matters covered by her discovery responses and discovery deposition, if taken. Investigation continues.

e. Mike Thomas. If called upon to testify, Mr. Thomas may testify about his age, education and work experience. He may testify concerning his connection to Paul Dulberg. He may also testify concerning observations he made about Mr. Dulberg's state of health after the occurrence alleged in Plaintiff's Complaint, including observations he made of Mr. Dulberg performing roofing work and moving lumber. Lastly, it is anticipated that he will testify concerning all matters covered in his discovery deposition, if taken. Investigation continues.

f. Investigation continues.

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Illinois Supreme Court Rule 213(f)(2) – Independent Opinion Witnesses.

To the extent any of the individuals disclosed above as potential Rule 213(f)(1) witnesses also qualify for disclosure as an independent expert witness within the meaning of Illinois Supreme Court Rule 213(f)(2), the responding Defendants incorporate the above Rule 213(f)(1) disclosure as though fully and completely set forth herein as a Rule 213(f)(2) disclosure. Answering further, the responding Defendants further incorporate the identity and opinions of any medical provider that treated Plaintiff for injuries he claims are associated with the occurrence alleged in his Complaint. For additional detail, see the medical records and materials produced by Plaintiff as part of his production response. Investigation continues.

Illinois Supreme Court Rule 213(f)(3) – Controlled Opinion Witnesses.

None at this time. Answering further, Defendants reserve the right to retain and disclose controlled opinion witnesses and will do so, if necessary, in accordance with all applicable court orders and discovery rules.

24. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of said occurrence and/or of the injuries and damages claimed to have resulted therefrom.

ANSWER: None, other than as disclosed in response to the interrogatories above.

25. Identify any statements, information and/or documents known to you and requested by any of the foregoing Interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each Interrogatory, specify the legal basis for the claim as required by Supreme Court Rule 201(n).

ANSWER: None at this time.

26. State the name and address of each person at the premises (although maybe at different location or not a witness to the incident) described at the time of the occurrence.

ANSWER: See response to Interrogatory Nos. 1 and 2.

27. Was the Plaintiff struck and injured by the chain saw while in operation on the date and time alleged. If so, what caused the chain saw to strike the Plaintiff.

ANSWER: On information and belief, yes. Answering further, Defendants were not present at the time of the occurrence. See answer to Interrogatory No. 9.

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28. Describe what, if any, of the Plaintiff's conduct caused or contributed to his injury on the date and time in question.

ANSWER: See answer to Interrogatory No. 9.

29. Did the chain saw malfunction at any time during its use prior to Plaintiff's alleged injury.

ANSWER: To the best of the answering parties' knowledge, no.

30. Prior to Plaintiff's alleged injury, was the subject chain saw operating safely and properly.

ANSWER: To the best of the answering parties knowledge, yes.

CAROLYN MCGUIRE and BILL MCGUIRE,
Defendants, by their attorneys,
CICERO, FRANCE, BARCH & ALEXANDER, P.C.,

By _____
RONALD A. BARCH (6209572)

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

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STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

BILL McGUIRE, being first duly sworn on oath, deposes and states that he is one of the defendants herein; that he has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of his knowledge and belief.

Bill McGuire

Subscribed and sworn to before
me on the 6TH day August, 2012.

Notary Public

OFFICIAL SEAL
RONALD A BARCH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 08/07/14

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STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

CAROLYN McGUIRE, being first duly sworn on oath, deposes and states that she is one of the defendants herein; that she has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of her knowledge and belief.

Carolyn McGuire
Carolyn McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

Notary Public

OFFICIAL SEAL
RONALD A BARCH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 05/07/14

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon:

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid, at Rockford, Illinois, at 5:00 o'clock p.m. on 9/6/12.



Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

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0245281968.1/SKO/ACCARDO/PAA

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff(s),

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendant(s).

CASE NO. 12LA000178

Exhibit 14
Witness: Hana Mast
Date: 6/25/20
Court Reporter: Bert Smith

ANSWERS TO CO-DEFENDANT INTERROGATORIES

The Defendant, DAVID GAGNON, in response to the Interrogatories propounded states as follows:

1. State the full name, present residence address and birth date of the person answering these Interrogatories.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128
DOB: 4/3/1697

2. State your marital status on the date of the occurrence in question and, if married, your spouse's name and age on said date.

ANSWER: Married; Pamela Gagnon, 39010 90th Place, Genoa City Wisconsin 53128.

3. State the full name and present or last known address (indicating which) of each person who:

(a) Witnessed or claims to have witnessed the occurrence in question.
(b) Was present or claims to have been present at the scene immediately before said occurrence.
(c) Was present or claims to have been present immediately after said occurrence.
(d) Otherwise has or claims to have any knowledge of the facts or possible causes of the occurrence to include any damages or injuries alleged to have resulted from said occurrence.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128; Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050; Carolyn McGuire, 1016 W. Elder

EXHIBIT
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Gagnon 3
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Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051.

4. State specifically and with certainty the personal injuries and property damage, if any, sustained by PAUL DULBERG as a result of said occurrence.

ANSWER: Defendant has no knowledge regarding the plaintiff's personal injuries and/or property damage claims.

7. State whether PAUL DULBERG was hospitalized or had suffered any illness or personal injury prior to or subsequent to the date of said occurrence, and if so, state the nature and date of each such hospitalization, illness or personal injury.

ANSWER: I do not know.

8. State whether PAUL DULBERG suffered any permanent scarring as a result of the accident alleged in the complaint. If so, state the location of such scar, the width and length of such scar or scars. (Pursuant to Supreme Court Rule 214, please attach any photos of any such scar to your answers hereto.)

ANSWER: I do not know.

9. State whether prior to the accident alleged in the complaint PAUL DULBERG suffered any physical disability or impairment of any kind whatsoever. If so, state the nature of such physical disability or impairment and how PAUL DULBERG came to have such physical disability or impairment.

ANSWER: I do not know.

10. State the location of the alleged occurrence, pinpointing such location in feet, inches and direction from fixed objects or boundaries at the scene of the occurrence.

ANSWER: The accident occurred in ~~front~~ BACK of my parent's home at 1016 W. Elder Avenue, McHenry Illinois 60051.

11. State with particularity the nature of the alleged defect, object substance or condition which caused the alleged occurrence giving the exact dimensions and physical description of such including the size, shape, color, height, length and depth of such defect or object.

ANSWER: Chainsaw, EFCO, Model # MT3500, 2.38 Cubic Inch, 16" blade.

12. State with particularity what PAUL DULBERG was doing at the time of the accident alleged in the complaint.

ANSWER: He was helping me trim a tree by holding a branch.

13. State with particularity what DAVID GAGNON was doing at the time of the accident alleged in the complaint.

ANSWER: I was cutting through a branch with the chainsaw.

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14. State with particularity the address for David Gagnon on June 28, 2011.

ANSWER: 39010 90th Place, Genoa City Wisconsin 53128.

15. State with particularity all the reasons why PAUL DULBERG was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I asked him to help me trim the tree at my parents' home.

16. State with particularity all the reasons why DAVID GAGNON was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I was trimming a tree for my parents.

17. State with particularity your basis for alleging that David Gagnon was working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

18. State with particularity your basis for alleging that Defendants Bill McGuire and Carolyn McGuire instructed and/or advised David Gagnon in the use of a chain saw on or before the date of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

19. State with particularity your basis for alleging that David Gagnon was under the supervision and control of Defendants Bill McGuire and Carolyn McGuire and working as their apparent and actual agent on the date of and at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

20. State with particularity any and all defects associated with the chain saw you believe or claim was involved in the occurrence alleged in Plaintiff's Complaint.

ANSWER: None.

21. State whether any photographs or videos were taken of the scene of the occurrence or of the persons, objects or premises involved, and if so, state the number of photographs or videos taken, their subject matter and who now has custody of them.

ANSWER: No.

22. Pursuant to Supreme Court Rule 213(f), furnish the identity and addresses of witnesses who will testify at trial and the following information:

(a) For each lay witness, identify the subjects on which the witness will testify.

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(b) For each independent expert witness, identify the subjects on which the witness will testify and the opinions the party expects to elicit.

(c) For each controlled expert witness, identify:

(i) the subject matter on which the witness will testify;

(ii) the conclusions and opinions of the witness and the bases therefor;

(iii) the qualifications of the witness; and

(iv) any reports prepared by the witness about the case.

ANSWER: **David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128**— This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his insurance policy and coverage; maintenance, repair and inspection of the chainsaw; as to any dangerous or defective area on the premises. This witness is also expected to testify regarding his observations of the plaintiff before, during and after the alleged occurrence; his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050—This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his relationship to the tenants of the building; his observations prior, during and after his alleged injury; the nature of his injury, medical bills, medical records and recovery; his understanding of his injury and recovery. This witness is also expected to testify to his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Carolyn McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051— These witnesses are expected to testify as to their ownership of the property in question; their insurance policy and coverage; their knowledge of the area, chainsaw and tree; maintenance, repair and inspection of the chainsaw; as to any violations the premises; as to any dangerous or defective area on the premises. These witnesses are also expected to testify regarding their observations of the plaintiff before, during and after the alleged occurrence; their understanding as to the facts of the accident; their observations of the scene and they are expected to testify as to any conversations which took place between the parties and witnesses. These witnesses are also expected to testify consistent with any testimony they may have given and/or may give at a discovery deposition.

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Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

David A. Gagnon

DAVID GAGNON

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I HEREBY CERTIFY that on 1/31/13, a true and correct copy of the foregoing Answers to Interrogatories were filed with the Clerk of the Circuit Court of McHenry County and a copy of same was also mailed to:

Hans A. Mast
Law Offices of Thomas J. Popovich, P.C.
3416 W Elm St
McHenry IL 60050

Attorney for Plaintiff(s) Paul Dulberg

Cicero, France, Barch & Alexander PC
6323 East Riverside Blvd
Rockford, IL 61114

Attorney for Co-Defendants, Caroline and Bill McGuire

LAW OFFICE OF M. GERARD GREGOIRE
200 N LaSalle St Ste 2650
Chicago, IL 60601-1092
Telephone: 312-558-9821

By: _____
PERRY A. ACCARDO
Firm No.: 46878
E-MAIL ADDRESS:
ILLINOISLEGAL@ALLSTATE.COM
Attorney Bar No.: 6228720
Attorney for Defendant(s):
David Gagnon

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IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
McHenry County, Illinois
MAR 13 2015
KATHERINE M. KEEFE
Clerk of the Circuit Court

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, Individually, Defendants.	)	No. 12 LA 178

COPY

NOTICE OF MOTION

TO: *VIA FIRST CLASS MAIL:*
Perry Accardo
Law Office of Steven A. Lihosit
200 N. LaSalle Street, Suite 2550
Chicago, IL 60601-1092

VIA CERTIFIED MAIL:
Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

On **March 13, 2015 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Thomas A. Meyer** or any judge sitting in his stead, in courtroom 201 in the Circuit Court of McHenry County in Woodstock, Illinois and shall then and there present **MOTION TO WITHDRAW AS COUNSEL**, a copy of which is hereby served upon you

AFFIDAVIT OF SERVICE

I certify that I served this Notice by mailing to whom it is directed at approximately 5:00 p.m. on March 5, 2015 in McHenry, IL and further that the statements set forth in this Affidavit of Service are true and correct.

Hans A. Mast, Attorney for Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, IL 60050
815-344-3797
Attorney ID No. 06208070

Exhibit 15
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Sara Smith

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ORD

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	Case No. 12 LA 178

FILED
McHenry County, Illinois
JAN 2 2 2014

GOOD FAITH FINDING AND ORDER OF DISMISSAL

THIS CAUSE coming on to be heard on the Motion for Good Faith Finding and for Order of Dismissal with Prejudice filed by Defendants Bill McGuire and Carolyn McGuire, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That settlement between Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire (improperly named Caroline) constitutes a fair and reasonable and good faith settlement within the meaning of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 0.01 et seq.

2. That the good faith settlement shall henceforth constitute a bar to any and all claims that Plaintiff Paul Dulberg and Defendant David Gagnon and other known or unknown tortfeasors may have against Defendants Bill McGuire and Carolyn McGuire on account of or arising out of the injuries, if any, sustained by Plaintiff Paul Dulberg as a result of the alleged chain saw accident that occurred on June 28, 2011, whether by way of original action, third party claim, cross-claim, counterclaim, claim for contribution or otherwise.

EXHIBIT
tabbies
D

EXHIBIT H

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3. That Defendants Bill McGuire and Carolyn McGuire be and are hereby dismissed from the above-captioned lawsuit as party defendants and cross-claimants, with prejudice, and in bar of further suit.

4. That that there is no just reason to delay the enforcement or appeal of this good faith finding and order of dismissal.

DATED: _____

JUDGE Thomas A. Meyer

Prepared by:
Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700

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February 17, 2016

To: Mr. W. R. Baudin II, Plaintiff Attorney
PO Box 1678
Crystal Lake, IL 60039-1678
lawbaudin@gmail.com
(815) 307-6197

From: Dr. Bobby L. Lanford, PhD
2066 Girls Ranch Road
Camp Hill, AL 36850
bob@lanfordintl.com
(406) 531-3541

Subject: Findings and Conclusions for Dulberg v. Gagnon and McGuire

After reviewing the Depositions of Mr. Dulberg and Mr. Gagnon and the chainsaw owner's manual, the following observations and conclusions were made:

Mr. Dulberg was cut on the forearm (bottom) by a chainsaw while helping Mr. Gagnon limb a pine tree on the property of Mr. Gagnon's parents – Bill and Carol McGuire. While power tools such as this chainsaw make work more efficient, they carry hazards such as experienced in this incident. Manufacturers and retailers of power equipment go to great lengths to reduce the dangers associated with such equipment through training and warnings listed in owner's manuals. The chainsaw in this incident appears from a photograph to be a EFCO MT3500 purchased by the McGuires close to the date of the incident and probably was a new saw and probably equipped with an owner's manual. Depositions from both Mr. Gagnon and Mr. Dulberg indicated that they received no additional chainsaw training. Therefore, the owner's manual and their field experience were the primary sources of instructions for the safe use of the saw.

Mr. Gagnon was the only operator of the saw and, therefore, was responsible for its use. While the saw was appropriate for the tasks involved, there are safe and unsafe activities that could have taken place. The owner's manual shows 2 bar lengths for this saw – 14 and 16 inches. It appears that the McGuires chose the 16 inch bar. For the work involved, the shorter bars would have been safer and might have prevented or reduced the injury. It appears that Mr. Gagnon performed some unsafe acts which lead to Mr. Dulberg being cut. Also, Mr. and Mrs. McGuire who owned the saw apparently did not heed the warnings posted on page 2 of the owners manual which states: "Allow persons only who understand this manual to operate your chainsaw."

Cuts with chainsaws cause more damage than those caused by power or hand tools having a thinner blade such as that of a table saw. Chainsaws are designed to take out a "kerf" of about ¼ -inch, so if someone is cut, the sides of the cut are separated by this gap (or kerf) removing a chunk of meat and causing excessive bleeding and organ damage.

From the depositions, there is no mention of safety apparel – hard hat with ear and eye protection, safety chaps or pants nor safety gloves. (See page 7 of the owners manual for proper safety apparel.)

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Proper safety apparel may have eliminated or reduced the severity of the injury.

Mr. Gagnon and the McGuires' goal was to remove a tall pine tree (40 – 50 feet in height) in their yard without damaging their buildings. From depositions, Mr. Gagnon chose to delimb this tree as it stood in a vertical position. According to Mr. Dulberg, Mr. Gagnon did this by climbing and cutting off limbs as he climbed the tree using limb stubs as a ladder where he placed his feet. In the owner's manual on page 9, it tells to never cut limbs from a ladder or a tree and always cut from a firm foundation or platform. Not having seen the exact circumstances, it cannot be stated unequivocally, but my recommendations would have been to fell the tree first before trying to remove any limbs higher than could be reached safely from the ground. Once the tree has been felled on the ground, the secondary limbs could have been removed while the primary limbs were still attached to the main bole. Bucking the primary limbs into firewood lengths could also be done in a safer fashion with them attached to the bole. Doing the work in this fashion would have eliminated the conditions of where Mr. Dulberg was cut. From Mr. Gagnon's deposition, there was room to fell the pine tree with its described height.

The EFCO MT3500 has a number of features designed to operate it safely. The handle where the accelerator trigger is located has a throttle trigger lockout device that must be depressed before the engine can accelerate which means that Mr. Gagnon had a tight hold on the trigger handle when the saw accelerated before cutting Mr. Dulberg. Mr. Dulberg states in his deposition that he was holding the butt end of a primary limb, and Mr. Gagnon was removing the secondary limbs moving from the tip of that primary limb toward the butt. The accident occurred after Mr. Gagnon removed the last secondary limb and was moving toward him with the saw. The saw accelerated with the bar and chain moving upward contacting the bottom of Mr. Dulberg's arm.

There was no mention of the chain brake being used. The MT3500 has a lever mounted just forward of the front handle. This lever serves to stop and lock the cutting chain movement when pushed forward; when in the rear position, the chain travels freely on the bar. On page 8 of the owners manual, it is recommended that the chain brake be set whenever the operator moves from place to place. Also, the bar should be facing to the rear of the direction of travel so that the sawyer would not fall on the bar and chain if he were to trip and fall. This applies directly to this incident. If Mr. Gagnon had set his chain brake and/or put the bar in a rearward position as he finished cutting the last secondary limb, Mr. Dulberg would not have been cut.

The MT3500 comes with a saw chain designed to reduce kickback. Kickback is a violent upward action of a chainsaw bar when the chain on the upper quadrant of the bar's tip comes in contact with an object. While this chain does not completely eliminate kickback, it helps. It is assumed here that the chain supplied by the manufacturer had not been replaced. In addition, if the saw chain had come in contact with some object that caused a kickback, the chain brake would have instantly stopped the chain as the bar traveled vertically and Mr. Gagnon's hand activated the chain brake. This brake activation would probably have protected Mr. Dulberg. Therefore, it is doubtful that a kickback occurred.

Page 7 of the owner's manual recommends that other people (bystanders) be kept at least 35 feet from someone operating a chainsaw. This is because the chainsaw operator should be focusing his attention on his task, not bystanders. Chainsaws are noisy and anyone around them should be wearing ear protection thus muffling emergency calls for help. It is recommended that bright clothing be worn by all bystanders and operators to help operators see people who might inadvertently move into the danger

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zones. This distance of 35 feet may be a bit overcautious, but the intent is to keep bystanders beyond the reach of the saw, limbs or trees being cut. The operator is the person in control of his saw and responsible for whatever results from his cutting. When trees are being felled, bystanders should be beyond the height of the tree; 2 tree heights is the recommended distance. If this rule had been followed, Mr. Dulberg would not have been cut.

Page 7 of the owner's manual has some additional recommendations that might apply to this incident. Cutting with chainsaws is fatiguing even for professional sawyers who use their saws everyday. For the occasional operator, chainsaw work can be very exhaustive. In this incident, Mr. Gagnon not only used a chainsaw when he was not accustomed to using one, but he also climbed a tree and delimbed it as he climbed. By the time Mr. Gagnon stop limbing and started removing secondary limbs from the primary limbs, he must have been very fatigued even with frequent breaks as described by Mr. Dulberg. The warning of the owner's manual not to cut when fatigued is very important in that fatigue impairs judgment, reduces response time and probably impairs reflexive actions. Simply put, we make mistakes when we are tired.

Another factor of this incident may have been a loose chain. New saw chains stretch when first used. This saw was probably new; this may have been its first application. The owner's manual discussed how to tension the chain on page 17 and describes proper break-in of the chain. The chain should have been tightened after the engine had become warm and later after some use. A loose chain might jump off the bar. Pertinent to this incident was that a loose chain will not decelerate as fast as a properly tightened one. Without the chain brake engaged, the chain continues to travel along the bar until it naturally comes to a stop. Mr. Dulberg said he tried to move away from the saw chain but could not escape its travel path. With a properly tensioned chain, it may have stopped before contacting his arm or at least been traveling at a slower speed and caused less damage to his arm.

After the review of the above evidence, it is my opinion that Mr. Gagnon was fully responsible for this accident and his parents – the McGuires – were also somewhat responsible by letting their son, Mr. Gagnon, use their chainsaw – a potentially dangerous tool – without enforcing the warnings and instructions available in the owner's manual. Mr. Gagnon was in full control of the saw and Mr. Dulberg was his assistant. Mr. Gagnon could have prevented this accident by following the instructions given in the owner's manual. The instructions in the owner's manual are quite clear and unambiguous, and if followed, would have prevented this accident. Mr. Gagnon admits that he was relatively inexperienced in the use of chainsaws, and therefore, should have been more careful while using such a potentially dangerous tool.

Respectfully submitted,

Bobby L Lanford

Dr. Bobby L. Lanford, PhD

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McHenry County, Illinois
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Date: 10/5/2020 3:27 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast ("Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, for their motion to compel Plaintiff to answer written discovery, state as follows:

1) On November 28, 2017, Plaintiff Paul Dulberg ("Dulberg") filed a complaint for legal malpractice against Defendants, more than two years after Defendants withdrew their appearance for Dulberg in his personal injury action against Defendant David Gagnon in *Dulberg v. Gagnon*, Case No. 12 LA 178 in the Circuit Court of McHenry County, Illinois (the underlying complaint), which arose out of a chainsaw accident.

2) At the time of the original filing in the instant matter, Plaintiff was represented by the Gooch Law Firm, and the complaint against Popovich was signed by Thomas W. Gooch, III. (Complaint, Ex. A)

3) In ¶20 of Exhibit A, Dulberg invoked the "discovery rule" in an attempt to toll the two year statute of limitations for legal malpractice claims under 735 ILCS 5/13-214.3. He alleged that Mast and Popovich had provided Dulberg false and misleading information in

GROUP EXHIBIT J

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connection with his settlement in the premises liability case with Gagnon's co-defendants, Bill and Carolyn McGuire in the premises liability case, and that Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016.

4) The Gooch firm withdrew from representing Dulberg in the instant case, and the Clinton Law Firm substituted as his counsel, with attorney Julia Williams as the primary handling attorney.

5) On December 6, 2018, Dulberg filed his second amended complaint in this case (Ex., B) filed by the Clinton Law Firm. As compared to Exhibit A, Dulberg's allegations regarding the "discovery" on his cause action against Popovich are slightly different. In ¶¶ 56 and 57 of his second amended complaint, Dulberg alleges that he did not learn that false and misleading information had been provided to him until the mediation in December 2016 based on the expert opinions that Dulberg retained for the mediation.

6) Dulberg gave a discovery deposition in this case on February 19, 2020 (Ex. C). Dulberg was questioned about the "discovery" of his cause of action against Popovich and his law firm beginning on page 106 of his deposition (See also, page 108 where plaintiff Dulberg testified that his attorney at the time, Randy Boudin had told him to seek an independent opinion from an attorney that handles malpractice matters, and that Dulberg received that opinion on or about December 16, 2016 from Thomas Gooch.) Dulberg again confirmed that Gooch provided him with the legal opinion on December 16, at page 112 of his deposition. See also, pp. 113 and 114.

7) At Dulberg's deposition, Ms. Williams asserted the attorney-client privilege on behalf of her client relative to Gooch's advice in December 2016, but over the objection allowed

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Dulberg to testify concerning the substantive the discussions. The substantive testimony was sparse and vague. At p. 126 of his deposition, Dulberg agreed that his discussion with any malpractice lawyer in December 2016 is responsive to interrogatory no. 1 from Hans Mast (Ex. D). At p. 127 of his deposition, Dulberg responded to the following question:

Q: How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?

A: Yes.

Q: That's what you've alleged here in this complaint.

A: Yes.

8) On July 2, Popovich served supplemental production requests aimed at Dulberg's discovery of the malpractice as alleged in December of 2016, including the following production requests. (Ex. E)

9) On July 30, 2020, Julia Williams, then Dulberg's counsel requested 28 days to respond to Popovich's supplemental request for production. Counsel for Popovich agreed, but then received notice of the Clinton Law Firm's motion to withdraw on August 18, 2020.

10) On September 10, 2020, this Honorable Court granted the Clinton Law firm's motion to withdraw as Dulberg's counsel. Dulberg currently has a *pro se* appearance filed on his own behalf.

11) The attorney-client privilege exists to encourage and promote full and frank consultation between a client and legal advisor by removing the fear of compelled disclosure of information. *Waste Management, Inc. v. International Surplus Lines Ins. Co.*, 144 Ill. 2d 178, 190 (1991); *Daily v. Greensfelder, Hemker & Gale, P.C.*, 2018 IL App (5th) 150384, ¶1122-23. However, it is not unconditional, and it is the privilege, not the duty to disclose, that is the exception. Id. Illinois adheres to a strong policy of encouraging disclosure, with an eye toward

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ascertaining that the truth which is essential to the proper disposition of a lawsuit. *Center Partners, Ltd. v. Growth Head GP, LLC*, 2012 IL 113107, ¶ 35; Daily, 2018 IL App (5th) 150384 at ¶ 23. Accordingly, "the privilege ought to be strictly confined within its narrowest possible limits." *Waste Management, Inc.*, 144 Ill. 2d at 190; Daily, 2018 IL App (5th) 150384, ¶ 23.

While the Illinois Supreme Court has not had occasion to find an "at issue" exception to the attorney-client privilege, it has clearly recognized that such an exception exists where the client voluntarily injects into a case either a factual or legal issue, the truthful resolution of which requires examination of confidential communications. *Center Partners, Ltd.*, 2012 IL 113107 at ¶ 35; Daily, 2018 IL App (5th) 150384 at Irri 24-25. The Illinois Supreme Court in *Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc.* illustrated that the test in determining whether the exception exists is whether or not the communications in question are necessary to resolve the truthfulness of a factual or legal issue that was introduced by the client holding the privilege. 189 Ill. 2d 579 (2000). Furthermore, when a plaintiff places at issue in a case the extent to which multiple attorneys representing it proximately caused its alleged damages, all communications between the plaintiff and its attorneys are discoverable "to truthfully resolve the factual and legal issues necessary to adjudicate the causation element of plaintiff's claims." *Daily*, 2018 IL App (5th) 150384 at ¶¶31- 32 (finding that the "at-issue" exception applied because "there is an issue of whether [plaintiffs' attorneys] contributed to the cause . . . and the relative contribution of each to the plaintiffs' damages").

12) In *Lama v. Preskill*, 353 Ill. App. 3d 300 (2nd Dist. 2004), the Plaintiff's husband met with an attorney 4 days after her medical procedure (in March 1999) that was the subject of a medical malpractice claim. The claim was untimely filed, and the doctor sought production of

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records relative to the husband's meeting with the attorney. The patient asserted that production would violate the attorney-client privilege. The court affirmed the trial court's finding that the privilege was waived when she voluntarily injected the statute of limitations issue into her case, alleging she did not discover her medical malpractice claim until June 1999. This case is on point and binding.

13) At pages 133-142 of his deposition, Dulberg admitted that he communicated in writing with Gooch regarding Popovich's breaches of the standard of care, and the bases for same.

14) Based on all of the above, Dulberg has placed the discovery of his malpractice claim "at issue" and must produce any and all communications which form the basis for his "discovery" of his malpractice claims, and the bases for his argument that the 2 year statute of limitations should be tolled.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court grant their motion to compel Plaintiff to answer written discovery and produce requested documents and that Plaintiff be required to answer the outstanding written discovery and produce all documents requested in Exhibit D within 14 days of the presentation of this motion, deny any and all objections to said production, including any objection based on the attorney-client privilege, and for any and all further relief this Court deems just and appropriate.

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/26/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT A

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT

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FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CNTY CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, Individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT B
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NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 206 ON
9/28, 20 12, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM
ON ____ 20__ AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER
DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 26, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
9416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06209684

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kobliak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT
C
ALL-STATE LEGAL

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, hairs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

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** FILED ** Env: 3126388
McHenry County, Illinois
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Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendant.	)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT B

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4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

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15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

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27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.)**

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.)**

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

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44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

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53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing

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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

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Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
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juliawilliams@clintonlaw.net

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20___.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

X Paul Dulberg
Client

LAW OFFICES OF THOMAS J. POPOVICH

_____
Client

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
A

COPY
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 9/28/2012, AT 9:00 AM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____ 20__ AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Shelia today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> —— Original Message ——
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>>
>> Sent from my iPhone
>>
>>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>>
>>> Only 5, That's not much at all.
>>> Is this a take it or leave it or do we have any other options?
>>>
>>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>>
>>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

EXHIBIT GROUP C

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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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The Law Offices of Thomas J. Popovich P.C.

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McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Konrad

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
Exhibit D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No: 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
> > ----- Original Message -----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
> > Subject: McGuire settlement
> > Here is a copy of the first page.
> > It has check boxes and one of the check boxes says;
> > I am not eligible to receive SSI or SSDI.
> > Another says;
> > I am not receiving SSI or SSDI.
> > As you know, I have applied for SSDI and SSI

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F

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.



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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33381BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

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Pamela Walker

From: McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
Sent: Monday, December 10, 2018 1:37 PM
To: George K. Flynn; Pamela Walker
Subject: 17LA000377 - 2 Documents Filed

17LA000377

DULBERG, PAUL VS MAST, HANS, ET AL

Doc Type	**COAA**
Description	**COMPLAINT - AMENDED**
Date Filed	**12/6/2018**
Image Link	View Document Image

Doc Type	**NOTF**
Description	**NOTICE - FILING**
Date Filed	**12/6/2018**
Image Link	View Document Image

NOTE: E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

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IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

The deposition of PAUL DULBERG, called for examination, taken pursuant to the provisions of the Code of Civil Procedure and the rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Realtime Reporter of said state, at 150 South Wacker Drive, Chicago, Illinois, February 19, 2020, at the approximate hour of 1:00 p.m.

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PRESENT:
THE CLINTON LAW FIRM,
111 West Washington Street, Suite 1437,
Chicago, Illinois 60602,
312-357-1515, by:
MS. JULIA C. WILLIAMS,
juliawilliams@clintonlaw.net,
appeared on behalf of the Plaintiff;

KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC,
150 South Wacker Drive, Suite 1700,
Chicago, Illinois 60606,
312-431-3700, by:
MR. GEORGE K. FLYNN,
gflynn@karballaw.com,
appeared on behalf of the Defendants.

REPORTED BY: Karen Pileggi, CSR, RPR, RMR, CRR,
CSR License No. 84-3404

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(WHEREUPON, the witness was duly sworn.)
PAUL DULBERG,
called as the plaintiff herein, having been first duly sworn, was examined and testified as follows:
EXAMINATION
BY MR. FLYNN:
Q. Let the record reflect that this is the discovery deposition of Paul Dulberg taken by agreement of the parties and pursuant to notice.
This deposition is being taken pursuant to the Rules of the Illinois Supreme Court, the Illinois Code of Civil Procedure and any applicable local rules in McHenry County.
Sir, could you state your name and spell your last name for the record.
A. Palm Dulberg, D-u-l-b-e-r-g.
Q. What is your address?
A. 4606 Hayden Court, McHenry, Illinois 60051.
Q. How long have you lived there?
A. Forty-nine years.
Q. Who do you live there with now?
A. Mike McArtor.

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Q. Did your mother live there at some point throughout the history of this case?
A. Yes.
Q. I'm just going to go over a few rules for the deposition. I know you've testified at least one time in a deposition before because you testified in the underlying personal injury case, correct?
A. Correct.
Q. Have you testified in any other depositions before?
A. No.
Q. I'll just remind you of a few rules that I'm sure you were aware of back then when you gave your deposition.
The court reporter is here to take down everything that you and I say. She can only take down one at a time so I'd ask that before you answer a question, let me finish the entire question. Okay?
A. Yes.
Q. I'll try to do the same. I'll try to let you respond before I ask a follow-up question.
You just nodded your head. That's

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another good point to make. She can't take down nods of the head, shrugs of the shoulders or other hand gestures. Your answers need to be verbal.

From time to time we forget those rules and I may just point to the court reporter as a reminder, if that's okay.

A. Yes.

Q. If you need to take a break at any time, feel free to stop me. I just ask that it's not while a question is pending that has not been answered. Fair enough?

A. I'll try to do that.

Q. If you've answered a question, I will assume you understood it. Okay?

A. Yes.

Q. I was asking you about your mother. She lived at the house during the pendency of the underlying case?

A. Yes.

Q. Is she still alive?

A. Yes.

MS. WILLIAMS: Can we define "underlying case"?

BY MR. FLYNN:

Q. The underlying case is a personal injury

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case that you filed against Bill and Caroline McGuire and David Gagnon.

A. That sounds correct.

Q. We'll get into the dates of the filing a little bit later. We'll call that, generally, the underlying case.

Your mother lived at the house at that time?

A. Yes.

Q. Did she own the house?

A. No.

Q. Do you own the house currently?

A. Yes.

Q. Does anyone else own the house?

A. No.

Q. How long have you owned it?

A. I think I first purchased it off my parents in '97, '98, something like that.

Q. Did you hire a lawyer in connection with that transaction?

A. No.

Q. Were your parents represented by a lawyer?

A. No.

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Q. The building, as I understand it, is a duplex; is that right?

A. No.

Q. Were there two apartments in the building at one time?

A. No.

Q. Was there a point in time where you and your mother lived in one half of the house and Mike McArtor lived in the other half?

A. Yes.

Q. How was that arrangement with respect to the location of the living spaces, if you can describe it?

A. It has a walkout basement. He had the downstairs with an exit out the back. We had the upstairs with an exit out the front.

Q. Have you ever been convicted of a crime of fraud, dishonesty or deceit?

A. No.

Q. Besides the hiring of the Popovich firm in connection with the underlying personal injury case, up to that point in time had you ever had an occasion to hire a lawyer?

A. I did during a traffic accident, and I

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don't remember the year.

Q. Were you injured in about 2002? Does that sound right?

A. Roughly.

Q. Who did you hire?

A. I might get the name wrong because it's been a long time. I think it was Weiss and Michling and something else. It was a lawyer right outside the courthouse in Woodstock.

Q. A McHenry County lawyer?

A. Yeah.

Q. It was a personal injury case?

A. Yeah. It was a car accident.

Q. Did you file a lawsuit in that case?

A. I don't think we needed to.

Q. You just filed an insurance claim?

A. They did, yes.

Q. You settled it?

A. Yes.

Q. Any other occasions to hire a lawyer between that time and the time you hired the Popovich firm?

A. May I consult for a minute because I'm not sure how to answer that.

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Q. Why don't you just tell me why you can't answer it.
A. Because I've hired lawyers, but they were for the company that I had. That's different.
Q. I'm asking general questions about any interaction you've had with hiring lawyers. Any experience you've had with hiring lawyers.
A. I had a corporate lawyer. My mom and dad hired a lawyer for me when I was a kid. It was something. And myself, just the corporate lawyer, the car accident lawyer and the Popovich firm.
Q. Have you ever been married?
A. No.
Q. So you never hired a divorce lawyer. Good. How old are you now?
A. Forty-nine.
Q. The underlying case arose out of an injury that occurred on June 28, 2011, correct?
A. That sounds correct.
Q. How old were you at that time?
A. Forty-one.
Q. Besides the underlying lawsuit against the McGuires and Mr. Gagnon, had you ever filed any other lawsuit up until that point in time?

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A. No.
Q. Have you filed any lawsuits since that time besides the lawsuit against Popovich and Mast?
A. No.
Q. Do you have any military experience?
A. Yes.
Q. Please tell me about that.
A. Army National Guard. Illinois Army National Guard.
Q. How long have you been in the National Guard?
A. I'm not currently in it.
Q. When were you, from when to when?
A. I may not get the year correct. '88 or '89 to '92 or '93, somewhere in there.
Q. What was your highest rank when you were discharged from the National Guard?
A. When I was discharged?
Q. Correct.
A. I don't know. I've gotten moved up and moved down. I don't know where I ended up.
Q. How was it that you were discharged?
A. Less than honorable.
Q. What was the cause?

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A. I missed morning call, roll call. If you're not there, you're AWOL.
Q. Absent without leave?
A. Yes.
Q. What is the highest level of education that you've attained?
A. I do not have a degree. Two years of college.
Q. You graduated from high school?
A. Yes.
Q. Was that in Johnsburg in 1988?
A. Yes.
Q. Did you know Mr. Gagnon from Johnsburg High School?
A. Not from high school but just after high school.
Q. Just coincidentally you attended the same high school?
A. He was three years older than I was. I didn't know who he was until after high school.
Q. You had some education after high school but did not receive a degree, correct?
A. Correct.
Q. Where did you study?

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A. I had a couple classes at McHenry County College and McMurray College.
Q. What did you study?
A. The first two years. The basics.
Q. General studies?
A. Yeah. I did a criminal justice course. I did a macro/microeconomics. I did psychology, sociology. The normal stuff.
Q. How did you meet David Gagnon?
A. Through a mutual friend.
Q. When was that?
A. I want to say, roughly, 1990.
Q. Was your home located somewhere fairly close to his parents' home or his mom and stepdad's home?
A. Two streets away.
Q. That's where you were injured on June 28, 2011, was at David Gagnon's mom's house and his stepdad's house?
A. Yes.
Q. And their name is McGuire?
A. Yes.
Q. Generally speaking, you were injured assisting David with a chainsaw trying to cut down a

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tree?
A. He was cutting a branch.
Q. Cutting branches off a tree, correct?
A. Cutting up the branches after they were off the tree.
Q. Could you tell me a little bit about your work history. Do you have any licenses or certifications?
A. I'm certified to run printing presses. Or at least I was.
Q. You worked for Sharp Printing, Inc. from '91 to 2011; is that right?
A. Ninety-one? No. I would say 1999.
Q. Did you own that corporation?
A. Yes. Well, partner. I was a partner. I didn't own like...
Q. It was an Illinois corporation?
A. Yes.
Q. Were you –
A. A stockholder.
Q. Let me just finish my question so she can take us down.
You were a stockholder in Sharp Printing, Inc.?

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A. Yes.
Q. Who else were the stockholders?
A. Mike McArtor and Scott Dulberg and at that time it was Herbert Dulberg.
Q. What does that mean? Do you mean Scott's name was Herbert?
A. No. Scott Dulberg was an owner and Herbert Dulberg was an owner. Three different Dulbergs: me, my brother, my dad.
Q. And Mike McArtor?
A. Yes.
Q. There were four owners at what time?
A. Until my dad died and then it went to three.
Q. Was that business incorporated?
A. Yes.
Q. Did a lawyer assist the corporation with setting up the corporation?
A. Yes.
Q. When did that happen?
A. 1999.
Q. Did you hire the lawyer yourself?
A. All three of us did. All four of us. Sorry.

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Q. What was the name of that attorney?
A. McAndrews, and I don't remember the rest of it. It was McAndrews in McHenry. I can get you the rest of that information.
Q. They are based in Crystal Lake, Illinois?
A. It used to be in McHenry when we did that.
Q. Patrick McAndrews, he was also identified as the registered agent of that corporation?
A. Yes.
Q. It was voluntarily dissolved on April 8, 2011; is that right?
A. That's what the Secretary of State's Office has, yes.
Q. Is that your understanding as well?
A. I was corrected. My partners – I was corrected. It was actually after the accident. How it got to end up with that date, I'm not sure.
Q. What was corrected, exactly?
A. Well, do you want me to – Mike read my deposition and he said, "You got that wrong." I said, "What do you mean?" because I answered it twice in that deposition.
I was thinking that Juskie happened

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before the accident. Sharp Printing wasn't actually dissolved until after the accident when we decided to sell off the equipment and end it all. That's the honest truth.
Q. I will represent to you that the Illinois Secretary of State's Website as of today shows that the company was involuntarily dissolved on April 8, 2011. So it's your testimony that that is not true?
A. I don't know how they come up with that.
Q. Why don't we break it down and start with why the corporation was involuntarily dissolved. Do you know that?
A. Involuntarily? I don't know. It may be that I was late on paying the corporate licensing thing, which we just pay a fine and did it. We didn't renew it because we decided to end it.
We had a ten-year thing, I think, on it. I may be wrong. I've got to go back and look at the records.
Q. Is it possible that the corporation was actually involuntarily dissolved by the Illinois Secretary of State on April 8, 2011?
A. Sure.
Q. Did Sharp Printing, Inc. file corporate

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tax returns while it was a going concern?
A. We had a problem the couple of years before the accident because I was not up in Illinois and I usually did that with the lawyer and the accountant and things got screwed up while I was taking care of a loved one who was dying down in Florida.
Q. Did the corporation ever file tax returns?
A. Oh, yes.
Q. When did they file?
A. Quarterly and annually.
Q. Until what year?
A. Roughly somewhere in 2008. I was missing things because I was not here. I know we missed a few.
Q. I believe you testified in your underlying deposition that Sharp Printing, Inc. was not dissolved as a result of your June 28, 2011 chainsaw accident, correct?
A. Yes, I did. I stood corrected by my partners.
Q. So is it your testimony that the corporation was dissolved because of your personal

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injury?
A. I don't know how to answer that without going back and looking at records.
Q. Was the company winding down up until about the time you were hurt?
A. The company books got screwed up when I was down in Florida and I was back up in Illinois in 2010 getting back on my feet and I was going to pick things back up, get everything paid up, the fines and everything.
Q. Who were you taking care of in Florida?
A. My grandmother.
Q. You were gone from when until when?
A. I want to say from the mid to end of 2007 until somewhere in the beginning of 2010.
Q. Was anyone running Sharp Printing during that period of time?
A. Mike McArtor.
Q. Did Sharp Printing have any customers for that three-year period?
A. Yes, they did.
Q. How many?
A. I'm not sure, without looking at the books.

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Q. Can you estimate what the yearly revenues were for Sharp Printing in the year 2007?
A. In 2007? I'd have to look at the books, to be honest with you.
Q. Was it more than $5,000?
A. Yes.
Q. Was it more than $100,000?
A. No.
Q. Was it more than $20,000?
A. Yes.
Q. Same line of questioning with respect to 2008. Do you know what the revenues were for Sharp Printing in '08?
A. Are you asking me what we reported or what we made and put into accounts for equipment?
Q. I'm asking you about revenues.
A. Total sales?
Q. Total revenues.
A. In two thousand...?
Q. 2008.
A. I'd have to go back and look.
Q. Can you estimate what they were?
A. No, because I wasn't there.
Q. Do you know how many customers the

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company had in 2008?
A. We had a few, I know that. I don't know how many. Mike was handling it and it got messed up.
Q. What types of customers did Sharp Printing have in 2007 and 2008?
A. What kind of customers?
Q. Right. What did you do?
A. We printed on t-shirts. We printed on CDs. We printed on anything that wasn't wet. We printed on glass, all different stuff.
Q. Were there any full-time employees of Sharp Printing in '07 and '08?
A. In '07 and '08, no.
Q. Just the owners?
A. Just the owners.
Q. Did all the owners operate the business?
A. Yes.
Q. Including your brother?
A. Yes.
Q. What were the yearly revenues of Sharp Printing in 2009?
A. I don't know.
Q. What about 2010, do you know?

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A. No.
Q. When did Sharp Printing start selling its equipment?
A. I put up the ad in August. I think August. I might be off by a month or two. August of 2011.
Q. Did you sell any equipment prior to August 2011?
A. No.
Q. What type of equipment did Sharp Printing, Inc. have or own?
A. Mostly textile screen printing equipment, but we had other screen printing stuff too. Paper.
Q. Where was the equipment located?
A. My home.
Q. Did you require a license to conduct this business out of your home?
A. We had what was called a temporary -- we're in a rural area so we didn't have to have that.
Q. In any event, you didn't have a license, correct?
A. We had a license to do business there, yes.

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Q. In that location?
A. Yes.
Q. Did customers ever come to the shop?
A. Yes.
Q. Do you recall how many customers the business had in 2010?
A. Not in 2010.
Q. Was it more than five?
A. Yes.
Q. Was it more than 100?
A. It might be around that. I don't know, specifically.
Q. In 2010 you may have had 100 customers that you did t-shirt screen prints for?
A. Possibly. I'm not saying that is the number, but it's possible.
Q. Did Sharp Printing have any customers in 2011?
A. Mike was finishing up one customer's thing in the spring of 2011, yes. We don't -- I'll give you -- we don't typically get much work between January 1st and the first warm days of Spring. We sell t-shirts and not a lot of people buy during that period. They just don't.

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Q. You did not earn a salary from Sharp Printing, correct?
A. No.
Q. You did not earn an hourly wage, correct?
A. No.
Q. I think your interrogatory answers indicate you didn't take a profit or a draw, correct?
A. Correct.
Q. How much, if any, money did you earn from Sharp Printing in 2011?
A. Can I ask how to define that? In 2011 I didn't pull any.
Q. Did you earn any income whatsoever from Sharp Printing in 2010?
A. I don't think so.
Q. You were down in Florida for '07 to 2010?
A. Sometime in early 2010, yes.
Q. Did you earn any income from Sharp Printing from 2007 to 2010?
A. No.
Q. Were you working in Florida?
A. No.
Q. Is it fair to say you were unemployed

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from 2007 to 2010?
A. Yes. I was not officially collecting unemployment.
Q. You weren't an employee of any business or working for any individual, correct?
A. I did do some work for Mark. I did some traveling back and forth from Florida to Illinois back and forth during that time. When I was up here, I did do some work for Juskie Printing. Not much, though.
Q. What is Juskie Printing?
A. Juskie Printing is another one that I had listed as an employer in the underlying case.
Q. What are they?
A. Another print broker.
Q. Where are they located?
A. I don't know the exact address, but it's off of Chicago Avenue off of 355 going south.
MS. WILLIAMS: I think he's asking what city.
BY THE WITNESS:
A. I don't know how the cities break up down there.
BY MR. FLYNN:
Q. Somewhere in the western suburbs of

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Chicago?
A. Yes.
Q. How long did you have a relationship with Juskie Printing?
A. Since the early 2000s.
Q. What type of printing did Juskie do?
A. Offset, mostly.
Q. What does that mean?
A. Prints on paper.
Q. Did you have a set schedule at any time working for Juskie?
A. I don't know what you mean by "a set schedule."
Q. Did you have a particular number of hours per week?
A. No. The jobs I got were project based.
Q. How many projects did you have from 2007 to 2011 for Juskie?
A. Probably a few hundred quick little things, yeah. At least.
Q. Do you know what you earned from working at Juskie in 2007?
A. Not without looking at the returns, I don't know offhand.

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Q. How often were you in the Chicago area in 2007?
A. I didn't leave here until, I want to say, August or September of '07.
Q. And then thereafter?
A. I was not back that year.
Q. You didn't work for Juskie in 2008, correct?
A. I might have done some stuff.
Q. You're not sure?
A. I'd have to go back and look.
Q. Were you in Florida?
A. Part of the time, yeah.
Q. How often did you come back and forth between –
A. About every three months I tried to get back up here.
Q. For how long?
A. Sometimes a few weeks. Sometimes a month.
Q. Did you come back and work or did you take care of other things?
A. If I'd let Mark know I was back, "I've got something for you or I don't."

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Q. Who is Mark?
A. Mark owns Juskie Printing.
Q. I think your interrogatory answers indicated from 1999 through 2006 you were employed in a barter situation; is that right?
A. With Mark, yes.
Q. What does that mean, exactly?
A. Well, he would owe me money and he would give me printing equipment instead of cash.
Q. He owed you money for working for him?
A. Well, he owed both Sharp Printing and me, personally, money. They are two different things. But he would just pay by saying, hey, I've got this or I've got this paper cutter or this or that. It was a barter.
Q. So you worked for him from 1999 to 2006 but did not earn any income in the traditional sense?
A. No money changed hands.
Q. He gave you things to pay you for projects?
A. Correct.
Q. You gave a deposition in the underlying case on January 24, 2013. Does that sound right?

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A. If it says it on there, yes.
Q. You took an oath that day?
A. Yes.
Q. You told the truth?
A. I tried to, to the best of my knowledge, on that day, yes.
Q. You told the truth in response to all of the questions that day, correct?
A. I tried to, yes.
Q. You testified you were last employed prior to the accident in May of 2011?
A. That would be with Juskie, yes.
Q. It's accurate –
A. Actually, I wasn't employed. I was a 1099 so I was self-employment.
Q. When in May did you stop working for Juskie, whether it be as an employee or an independent contractor?
A. I believe it was the end of May.
Q. Then from the beginning of June until your accident on June 28, 2011, you were not employed; is that an accurate statement?
A. Correct.
Q. You were not even acting as an

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independent contractor for any business from that period of time, correct?
A. Not during that month, no.
Q. Your deposition testimony from 2013 is typed up on 175 pages. I don't intend to go back over each of those details.
A. Okay.
Q. It's fair to say you were injured, your arm was injured on June 28, 2011, correct?
A. Correct.
Q. Which arm was that?
A. My right arm.
Q. As a result of the injury, you hired the Popovich law firm to explore a recovery in the case?
A. I hired them to represent me, yes.
Q. You hired them to represent you and file a lawsuit against David Gagnon who was operating the chainsaw that injured you, correct?
A. He was one of them, yes.
Q. I'm asking you if you hired him to –
listen to the question, please.
David Gagnon was operating the chainsaw, correct?
A. Correct.

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Q. No one else was operating the chainsaw?
A. Correct.
Q. You also hired Popovich to sue Bill and Caroline McGuire, correct?
A. Correct.
Q. They were the land owners where your accident occurred?
A. They did own the land, yes.
Q. The accident occurred at their house, correct?
A. Correct.
Q. This was in the backyard, so to speak?
A. Yes.
Q. Hans Mast was the primary handling attorney at the Popovich firm for your case?
A. That's who I met with, yes.
Q. Did any other lawyer communicate with you while Popovich was handling your case?
A. The lady who sat in on my deposition. Ms. Freeman I think it is. I'm not sure about that.
Q. Generally speaking, Hans Mast, though, was the primary handling attorney?
A. Yes.
Q. Before you hired the Popovich firm in May

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of 2012, is that the correct time period?
A. I don't think so. I don't think they filed it until then, but I might be wrong. I'd have to go back and look.
Q. Was there a retainer agreement executed in May 2012?
A. I don't think I paid a retainer.
Q. Did you execute an attorney engagement agreement in May 2012?
A. I believe it was much earlier than that.
Q. You only executed one engagement letter or engagement agreement with Popovich, correct?
A. Yeah.
Q. Before you executed or came to an arrangement with Popovich, had you talked to any other lawyers about investigating –
A. One.
Q. Let me finish the question.
– investigating or filing the lawsuit?
A. Yes.
Q. Who was that?
A. I went back to the same firm that handled the car accident for me years earlier.
Q. What was the name of that firm?

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A. They changed names when I went back there. It was Weiss – I have to go back through paperwork and get you the actual name.
Q. They are known as a personal injury firm; is that right?
A. Yes.
Q. Why did you not hire them to take your case?
A. The man who handled my case previously with the car accident was no longer with the firm and they said go find somebody else.
Q. I'm not sure what one has to do with the other.
A. I don't either. I just said okay and I went and found somebody else.
Q. Did you meet with an attorney at that firm?
A. Yes.
Q. Did you tell them what happened with your incident?
A. Yes.
Q. They told you that they did not want to take the case; is that right?
A. Yes.

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Q. They declined the case?
A. They declined the case.
Q. Did they tell you why they declined the case?
A. No.
Q. You next went to the Popovich firm?
A. Yes.
Q. They took the case?
A. Yes.
Q. They, ultimately, filed a lawsuit against Gagnon and the McGuires on May 15, 2012; is that right?
A. Yes.
Q. You reviewed the lawsuit and approved it, correct?
A. I didn't – I never got anything to review.
Q. Did you ever read the lawsuit?
A. No. I was never given any paperwork.
Q. Back to the incorporation of Sharp. What interaction did you have with corporate lawyers when they were first retained?
A. McAndrews?
Q. Correct.

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A. What relationship?
Q. What experience did you have with McAndrews when you first retained them?
A. He was good.
Q. How often did you meet with him or speak to him?
A. Once a year.
Q. Did he file corporate returns or other documents for the company?
A. No. I had to file them. He just made sure they were all done right, I believe.
Q. Have you ever had occasion to hire a criminal lawyer?
A. I did in 1990. My mom and dad had to hire one. Not me.
Q. Did you hire a criminal lawyer for your mom and dad?
A. No. They hired one for me.
Q. Who was that?
A. Give me a second. You're digging back far in my memory. Driscoll was the last name.
Q. This was a McHenry County-based criminal lawyer?
A. No. Des Plaines.

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Q. What was the general nature of the reason for the need for a lawyer?
A. Drug possession.
Q. Were you convicted of it?
A. Yes. I pled guilty.
Q. That was a Cook County case, then?
A. No. It was a McHenry County case.
Q. The lawyer was in Des Plaines, though?
A. Yes.
Q. But he represented you in McHenry County in criminal court?
A. Yes.
Q. Throughout the case you met with the lawyer?
A. A few times.
Q. While Popovich represented you in the underlying personal injury case, did you ever communicate with any other lawyers about your case?
A. At the end, yes.
Q. Popovich withdrew sometime in March 2015?
A. Correct.
Q. And Brad Balke entered his appearance on March 19, 2015. Does that sound correct?
A. That is correct.

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Q. Popovich also withdrew that day, right?
A. I don't know if it was on the same day. I'd have to look at the paperwork.
Q. Besides Mr. Balke, had you talked to any other lawyers towards the end of the relationship with Popovich?
A. Yes.
Q. How many?
A. Hundreds.
Q. Hundreds of lawyers?
A. I'm not kidding. Yes.
Q. Did you ask those lawyers to take your case?
A. I asked them to review it.
Q. Did any of them take the case?
A. No.
Q. They all reviewed it, though?
A. Yes. Most took the time to review it.
Q. Did any of them tell you why they didn't want to take the case?
A. There were different reasons I got from various. Some people just didn't get back to me and some people wrote me letters. I think I gave you some of those. But I got various reasons back from

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attorneys.
Q. I don't recall seeing any lawyers, but I would ask you to search for those.
MS. WILLIAMS: We'll search for those. I'll make a note.
BY MR. FLYNN:
Q. As you sit here, do you recall the basis for any attorney declining to take your personal injury case over from Popovich?
A. Say that again.
Q. As you sit here today, do you recall any of the reasons why any attorney declined to take your personal injury case over from the Popovich firm?
A. Yes.
Q. What were those reasons?
A. I remember a few. One I was looking at local lawyers in McHenry County and I was told like – I can name them. My sister was married to him.
Anyway, I was told if Tom Popovich says you don't have a case, you don't have a case and we're not even going to look at it. That I got a lot of it.

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Q. That's one reason. Any others?
A. That I got locally a lot of. As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that.
Q. Who said that?
A. Sal Ferris.
Q. When did you speak to Sal Ferris?
A. I don't know the exact date.
Q. When did he –
A. He wasn't the only one.
Q. When did he say that to you, that you just described?
A. He said it in a letter and he said it on the phone and he sent me an e-mail, I think. I don't remember the ways that he contacted me. I'd have to go back and look.
MS. WILLIAMS: We'll find it.
BY MR. FLYNN:
Q. Besides Sal Ferris, can you recall any other attorney, specifically, that told you they wouldn't take the case because of your settlement with the McGuires?

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A. Yes.
Q. Who was that?
A. There was at least three firms downtown here right near the Daley Center that I came down to see and I don't remember their names, but they – I got the same thing out of all three of them.
Q. Did any of the lawyers give you any other reason for declining your case?
A. Mostly it was because they knew Popovich or it was the McGuire settlement.
Q. Did any lawyer tell you that they didn't want to take your case because there was questionable liability against David Gagnon?
A. No.
Q. Did any lawyer tell you that there was questionable liability against the property owners, the McGuires?
A. No.
Q. We're jumping ahead, but did you have different lawyers that handled a binding arbitration or binding mediation for you in the underlying case?
A. Yes.
Q. Their name was Baudin?
A. Yes.

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Q. Why did Brad Balke not handle the binding arbitration?
A. I fired him.
Q. When did you fire Brad Balke?
A. I'd have to look at the dates. I'm not sure, exactly.
Q. Why did you fire him?
A. Because he forced me to undergo the exact mediation at the McHenry County court in front of Judge Meyer that Hans Mast set up that I specifically said no to.
Q. When was this mediation?
A. I'd have to look at the dates again.
Q. Was it a pretrial conference?
A. Yes.
Q. You actually attended this pretrial conference?
A. Yes, I did.
Q. What happened?
A. I said no.
Q. You said no about what?
A. They offered an amount of money and I said no.
Q. The defendants offered an amount of

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money?
A. Yes.
Q. Was this before or after the McGuires settled out of the case?
A. They were settled.
Q. So there was an offer of settlement from David Gagnon or his insurer?
A. Yes.
Q. Do you recall what that amount of money was?
A. $50,000.
Q. You refused the offer?
A. Yes.
Q. Why did that cause you to fire Brad Balke?
A. He wouldn't take it any further than that and he agreed to when I hired him. He agreed that that was not going to be the end of it and then he changed his tune, and I said, you know what – and the other thing was, I finally got through to the Baudins who I wanted to take the case because they had helped my family – his dad helped my family many eons earlier.
Q. Did you ever talk to Brad Balke about the

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liability or lack of liability by the McGuires, the property owners in the case?
A. I don't think so. We were on the Gagnon case.
Q. You didn't discuss the McGuires?
A. There may have been a word or something, but that's not what he was there for.
Q. He never gave you an opinion one way or the other whether the settlement was appropriate?
A. I don't believe Brad did, no. Like I said – I don't think he did.
Q. At some point after your accident did you hire the Daley Disability Law Firm?
A. Yes.
Q. Was that for –
A. I didn't hire.
Q. I know you're anticipating what I'm saying.
A. I was trying to correct myself. I did not hire.
Q. Either way, let me try to get out my question before you raise any kind of response, just so she can take down –
A. Count before I answer.

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Q. That's a good idea.
Did you ever retain the Daley Disability Law Firm?
A. NO.
Q. Did you have any relationship with Daley Disability –
A. Yes.
Q. – Law? Let me finish it before you answer. I know you're anticipating what you think I'm going to say, but it might not come out the way you think. Either way, she can't take down both of us talking over each other.
What relationship did you ever have with the Daley Disability Law Firm?
A. They stepped in as a substitute counsel for the law firm that I did hire.
Q. You originally hired some other law firm to represent you in connection with social security disability?
A. Yes.
Q. What was the name of that original law –
A. The lady's ladies name was Margaret Bradshaw.
Q. You terminated your relationship with her

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one way or another?
A. No.
Q. Why did Daley Disability Law substitute in for her?
A. I was told by – I have to go back and look at the communications exactly how it happened, but I was told that, basically, they are going to be taking over the hearing part of it. I don't know why. I don't know whether they sub out work. I don't know how it works.
Q. Would it be fair to say that you first retained Ms. Bradshaw in 2012 sometime?
A. I'd have to go back and look.
Q. Is that approximately when you applied for social security?
A. It sounds like it.
Q. The Daley Disability Law Firm came in sometime in 2012 as well?
A. I don't know exactly when. I don't know.
Q. Would it be 2012 or 2013?
A. I know that they were there and – I know that something had to be signed when we went in for the hearings. Margaret Bradshaw had to sign something for the judge allowing Daley Disability to

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represent me at the hearings. I don't know when exactly they got involved. That's behind the scenes. I didn't have anything to do with that.
Q. Did you file for bankruptcy while your personal injury case was pending?
A. Yes.
Q. When did you file for bankruptcy?
A. I'd have to look at the paperwork again, but I don't believe that was until, I want to say, about eight or nine months, but I'm guessing, after the McGuire settlement.
MS. WILLIAMS: The question was what month and year.
BY THE WITNESS:
A. I don't know exactly. I'd have to go back and look at the paperwork.
BY MR. FLYNN:
Q. Did you hire a lawyer to represent you in a bankruptcy?
A. Yes.
Q. Who was that lawyer?
A. David Stretch.
MS. WILLIAMS: If it helps, we can stipulate to the date the bankruptcy was filed.

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MR. FLYNN: That's fine. I think we've got some e-mails that may reflect when it was. I just wondered if he knew offhand.
MS. WILLIAMS: I can stipulate, at least, that it was 2014.
BY MR. FLYNN:
Q. You filed for bankruptcy while the Popovich firm was still representing you –
A. Yes.
Q. – in the underlying case, correct?
A. Yes.
Q. Sometimes I'll still pause in my question so if you could please pause before you answer.
In the underlying case you answered written discovery; is that true?
A. I believe so.
Q. Then you later testified at your deposition January 24, 2013, correct?
A. If that's the date, yes.
Q. Ultimately, David Gagnon was also deposed, true?
A. Yes.
Q. Were you present for his deposition?
A. No.

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Q. Did Caroline McGuire give a deposition in that case?
A. I believe so, yes.
Q. Were you present for that dep?
A. No.
Q. What about Bill McGuire's deposition?
A. I was not present.
Q. Did you e-mail back and forth with Hans Mast a fair amount during the Popovich firm's representation of you?
A. By "fair amount," what do you mean?
Q. Did you regularly e-mail with Hans Mast?
A. Yes.
Q. Those e-mail communications have all been produced in this case?
A. Yes.
Q. On to the exhibits. This will be 1.
(WHEREUPON, a certain document was marked Exhibit No. 1, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Let me show you what's been marked as Exhibit 1. These are one set of your Answers to Interrogatories in our case, the current legal

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malpractice case you filed against the Popovich firm and Hans Mast.
Do you recognize this document?
A. Yes.
Q. We've been providing you with various copies of the signature page in the case that's been back and forth between me and your counsel.
I don't, frankly, know if this verification that's attached is the one that went with this document, but I'll just ask you, for the record, if these are your answers, that's your signature, and that this verification is accurate?
A. That is my signature on there, yes.
Q. What was the e-mail address you used in the communication with Hans Mast?
A. Primarily it was pdulberg@comcast.net.
Q. His address was hansmast@comcast.net?
A. And he switched it to at&t.net.
Q. Did you use some other e-mail address as well?
A. I may have accidentally e-mailed him a couple of times from a Yahoo account.
Q. In answering discovery in our case, the legal malpractice case, did you search through both

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of those e-mail accounts of yours?
A. I no longer have the Yahoo account.
Q. Did you search through the Comcast account?
A. Yes.
Q. Did you search for PDFs or attachments to those e-mails that you produced?
A. Everything that I got, I turned over. I had converted the e-mails to PDFs because Comcast started purging the e-mails after so many years, so I turned them all into PDFs.
MS. WILLIAMS: The question was what did you search in your in box.
BY THE WITNESS:
A. What did I search?
BY MR. FLYNN:
Q. Let me ask you a different question. You produced e-mails in this case?
A. Yes.
Q. You turned e-mails into PDFs and sent them to your lawyer; is that right?
A. Yes.
Q. Some of the e-mails I reviewed have an icon that indicates there was a PDF or some other

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attachment to the e-mail. Do you understand that?
A. Yes.
Q. Did you produce the attachments to each of the e-mails in this case?
A. We went through that. I produced the attachments that I still had.
Q. There were some that were not available, correct?
A. Yeah. When I looked at them, 99 percent of them were already part of some other document that we turned over. I think 100 percent of them.
Q. At some point in time while Hans was handling your case, did he start to communicate with you relative to his analysis of the McGuires' liability in the case?
A. Yes.
Q. Did he start to generally advise you that he didn't believe that there was a strong case for liability against the McGuires?
A. Yes.
Q. Is it fair to say that Hans' opinion was that the McGuires did not have liability in the case because they did not control the work that David Gagnon was doing?

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A. Yes.
Q. That's generally a fair summary of Hans' opinion?
A. Not quite exactly those words, but yeah.
Q. The McGuires' liability as property owners was questionable because based on Hans' analysis of the evidence, they did not control the work or the manner of work of David Gagnon on the date of the accident; is that a fair summary?
A. Depends on which time he said that.
Q. Did he say things like that over and over again?
A. He did say things like that, yes.
Q. Again, I don't want to go over the facts you already testified to with regards to the date of the accident. At some point in time was William McGuire swimming in the swimming pool?
A. Yes.
Q. Was that an above ground pool or –
A. Above ground.
Q. Was there a fair amount of time during the day that Mr. McGuire was inside the house watching television?
A. Maybe – he went inside the house for

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probably about 45 minutes before the accident happened. I don't know that he was watching television.
MR. FLYNN: Let's mark the next exhibit as 2.
(WHEREUPON, a certain document was marked Exhibit No. 2, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 2, which is an e-mail chain including e-mails from November 18, 2013, are these e-mails between you and Hans Mast?
A. It looks like it, yes.
Q. I think the time stamps on these e-mails go from the bottom, which would be page 2, to the top of the first page, correct?
A. It's backwards, yes.
Q. In the original e-mail at 1:28 p.m., did Hans Mast relay to you a $5,000 settlement offer from the McGuires?
A. Which – where are you at?
Q. We're on Exhibit 2, which is also labeled as Bates label POP 181. At the bottom of the page, does Hans relay to you a settlement offer for

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$5,000?
A. Yes.
Q. He was telling you that the McGuires' attorney offered to settle the case for $5,000?
A. Yes.
Q. Did you have an understanding that that was a settlement just for the McGuires, not including David Gagnon?
A. Yes.
Q. In the e-mail Hans says, quote, "As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now."
Is that an accurate reading?
A. Of that sentence, yes.
Q. Is it fair to say that he suggested that you take the $5,000 but didn't force you to take it?
A. It says, "So my suggestion is..."
Q. Then did you respond to the e-mail?
A. Yes.
Q. Hans replied again at 8:07 p.m. that same day, right?
A. Yes.

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Q. He said, "Paul, whether you like it or not, they don't have a legal liability for your injury because they were not directing the work."
Is that right?
A. Part of it, yes.
Q. Was my prior summary of Hans' legal analysis a fair summary in view of these e-mails and his opinion that he relayed to you?
A. I think it went further than this, and other things, but yes.
Q. As far as these e-mails, I've accurately –
A. This e-mail, yes.
Q. What else did he tell you about the McGuires and why he didn't think they would be found liable in the case?
A. I'm pulling out of memory because I can't quote which document it's off of.
Q. That's what we're here for.
A. I can only give you the gist.
Q. I'll ask you for the exact language, but if you don't have it –
A. At one point he defined what an independent contractor is for me and he said that

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David was an independent contractor and that the McGuires weren't liable because they had hired somebody outside even though it's their own son, he's an adult, outside to do the work and that they weren't responsible.
Q. By the way, how old was David at the time that this accident occurred?
A. I'm adding. If I was 41 – I don't know what his birthday is, but I'm assuming he would be 44, 45.
Q. Is it fair to say that there were two 40-plus-year-olds, a 41- and a 44-year-old trimming trees with a chainsaw in David's parent's backyard that day, correct?
A. I was not using it. There was one 44-year-old using a chainsaw.
Q. You, the 41-year-old was holding some branches for him?
A. Yes. Just before the accident, yes.
Q. Up until this point in time when Hans is providing this legal analysis to you, you had a fair number of occasions to interact with lawyers, as we've discussed today, correct?
A. At this point, the only lawyer that I

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interacted with was the first one.
Q. I'm talking about in your lifetime. You had a corporate lawyer, you had a criminal lawyer, another personal injury lawyer –
A. I didn't hire –
Q. Let me finish. You had experience with lawyers representing you up to this point in time?
A. Yes.
Q. Did you have an understanding that lawyers evaluate cases differently?
A. Yes.
Q. And judges evaluate cases differently?
A. Sure. That's fair.
Q. Would it be fair to say that some laws in our country are clearer and some are open to interpretation?
A. I think all of them are.
MS. WILLIAMS: Objection. Calls for speculation.
If you understand the question, you can answer it.
BY MR. FLYNN:
Q. Would you say, for example, that the tax code is a little more clearcut than common law

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that's created by cases and case precedent?
A. I'm not real familiar with tax law. I have accountants for that.
Q. How about an easier question. The stop sign means that you stop, and if you go through it, it's pretty clear that you're liable for a traffic violation?
A. I'll agree with that.
Q. The legal liability for a property owner in Illinois might be a little more complicated; is that a fair statement?
A. I don't know.
Q. Would it be fair to say, in your opinion or your knowledge of the law, the property owner isn't necessarily liable because somebody is injured on their property?
A. Are you talking about what I know now or what I knew back when this was?
Q. At any time.
A. What I know now is in the circumstances that we were in, they were very liable.
Q. I'm just asking if – just because somebody is injured on a property owner's property, they are not necessarily liable, correct? Other

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factors are required too.
MS. WILLIAMS: I'm going to object for – he's not an expert and can't testify to legal analysis.
BY MR. FLYNN:
Q. As you sit here today, do you know whether a premises liability case involves multiple factors to prove liability against the property owner?
A. I don't know. I'd say that's fair. You're asking the wrong person for that.
Q. It was Hans' opinion that the McGuires did not control the work based on the evidence, correct?
A. In my opinion?
Q. That's not what I'm asking.
Was it Hans' opinion –
A. I can't –
Q. Let me just finish.
Did Hans tell you that it was his opinion that the McGuires were not liable because they did not control the work?
A. He said that right there, yes.
Q. Do you believe that he truly felt that way? That was his legal opinion?

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A. Do you want the Monday morning quarterbacking version or at the time?
Q. I'm asking if at that time you felt that he truly believed that the McGuires did not have liability?
A. At the time I trusted him, yes. I hired him to represent me, and yeah.
Q. You believed that he was relying his honest legal opinion to you at that time?
A. Yes.
Q. Including on November 18, 2013?
A. Yes.
Q. You did not accept the settlement offer of $5,000 that he relayed to you on that day, correct?
A. Correct.
Q. Did you ultimately meet with Hans to discuss the settlement offer?
A. I think it was the day before this, but I'm not sure. It was either the day before or the day after.
MS. WILLIAMS: I think the question was, did you meet with him, at all, not the date.

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BY THE WITNESS:
A. Yes.
MR. FLYNN: Can we mark this as Exhibit 3, please.
(WHEREUPON, a certain document was marked Exhibit No. 3, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 3. Do you recognize this memorandum?
A. Yes.
Q. You may have seen it from the document production that we made in this case. This is a memorandum drafted by Hans Mast, which purportedly memorializes a meeting that he had with you on November 20, 2013.
Does this refresh your memory as to when you met with him or if you met with him?
A. If he took the memorandum on the same day, then sure.
Q. In the memo Hans says, "I met with Paul and his friend."
Do you see that?
A. Yes.

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Q. Did you meet with Hans and some third person –
A. Yes.
Q. – at or about this time regarding the case?
A. Yes.
Q. Who was that friend?
A. Tom Kost.
Q. Who is Tom Kost?
A. My brother.
Q. Not that it matters necessarily for privilege purposes, but can you tell me how Tom Kost is your brother?
A. We have the same mom.
Q. He was with you and observed the meeting between you and Hans?
A. Yes.
Q. The $5,000 settlement offer was discussed, correct?
A. Yes.
Q. At that time did Hans, again, relay his opinion as to the questionable liability about the McGuires – strike that.
Did he relay to you his opinion about the

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questionable nature of the McGuires' liability?
A. At the meeting with Tom, yes.
Q. He advised you they maintain they were not directing Dave's work. That was the McGuires' position, correct?
A. I don't know that he stayed on that at that meeting. At different times he gave different reasons.
Q. The next line says, "Paul maintains the McGuires controlled everything that Dave was doing."
Is that an accurate reflection of your opinion?
A. Yes.
Q. As you sit here today, do you know if that statement is consistent with your own deposition testimony from the underlying case?
A. Yes.
Q. We'll come back to that. Did you tell Hans that you wanted to read the depositions of the McGuires and David Gagnon's depositions?
A. Say that again.
Q. Did you tell Paul that you wanted to read the depositions of the McGuires and Dave Gagnon's depositions?

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A. Did I tell Paul?
Q. I'm sorry. Did you tell Hans that?
A. That I wanted to read the McGuires and David Gagnon's depositions?
Q. Yes.
A. Yes, I did.
Q. What was the purpose of your wanting to review those depositions?
A. Hans had told me that what they said in their depositions meant that they had no liability.
Q. You wanted to review the testimony to determine whether you wanted to consider the $5,000 settlement offer; is that correct?
A. Right.
Q. Did you do that?
A. Eventually, yes.
Q. Before you accepted the offer?
A. I think so.
Q. So sometime after this meeting on November 20, 2013 and before you accepted the settlement offer on January 29, 2014, did you review those three deposition transcripts?
A. I'll correct you. I did not accept the offer on January 20th. I signed a release on

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January 29th.
Q. Fair point. Did you read the depositions between those two dates, November 20, 2013 and January 29, 2014?
A. Yes.
Q. Those are –
A. I believe I asked him – I don't know – it may be a little earlier because I don't know that I asked him before or after the meeting. I don't remember. I'd have to go back in the e-mails to give the date.
Q. Some point in time between those two dates you read the deps?
A. I may have asked for them before. I don't know without seeing the e-mail. It was, roughly, in the last quarter of that year, yes. Or the first month. I don't remember the first time that I asked to read them. I don't remember off the top of my head.
Q. At any point in time did you ever grant Hans authority to make a settlement demand in the case?
A. No.
MR. FLYNN: Mark this as Exhibit 4.

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(WHEREUPON, a certain document was marked Exhibit No. 4, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. Showing you what's been marked as Exhibit 4. This is a copy of the original complaint in this instant case. It reflects a filing date of November 28, 2017.

Is this your original legal malpractice complaint against the Popovich firm and Hans Mast?

A. I believe so.

Q. Did you review and approve the allegations in this complaint?

A. For the most part. I wanted to reword some things, but the lawyer, they do their thing.

Q. At the time you were represented by the Gooch firm is when you filed this lawsuit, correct?

A. Yes.

Q. Directing your attention back to Exhibit 1, if you still have it. If you could turn to page 10.

The answer to Interrogatory No. 24 indicates that on November 4, 2013, Mast was granted authority to investigate a settlement but a specific

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dollar amount was never provided. Do you see that?

A. He was verbally granted authority to investigate, yes.

Q. Who did you want him to investigate a settlement with?

A. The McGuires.

Q. Just the McGuires or the McGuires and –

A. He wanted to do it. I didn't. I said, "If you want to look at that, go ahead."

Q. Did you grant him authority to investigate a settlement with David Gagnon as well?

A. I don't know if I did or not, off the top of my head, but that would have been much later.

Q. Eventually did you tell Hans that you would agree to accept the $5,000 settlement offer from the McGuires?

A. Eventually did I tell him that?

Q. Yes.

A. Yes.

Q. When did you tell him that?

A. I want to say just before Christmas in December of 2013.

Q. There's no doubt in your mind that you relayed your acceptance of the $5,000 settlement

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offer to Hans Mast before Christmas Day, which would be December 25, 2013?

A. Right.

Q. Then did Hans mail to you a settlement release by letter dated January 24, 2014?

A. I'd like to see the letter, but yeah, I believe so.

Q. I believe it's –

A. I believe he had to mail it a couple times because I didn't get it.

MR. FLYNN: Let's mark Exhibit 5.

(WHEREUPON, a certain document was marked Exhibit No. 5, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. Showing you what's been marked as Exhibit 5. I'll represent to you that this is a copy of the second amended complaint that you filed in this case by your new lawyers, your current lawyers. If I could direct your attention to Exhibit D attached to this Exhibit 5.

Is Exhibit D a January 24, 2014 cover letter from Hans Mast to you enclosing the general release and settlement agreement from defense

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counsel for Caroline and Bill McGuire?

A. That's what it says.

Q. In the letter did he ask you to – it looks like it might be a typo. It says, "Please release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience."

A. Right, but I believe it was just a release – it was all tied into one.

Q. This letter is unsigned. Did you receive the letter unsigned?

A. Did I receive this unsigned?

Q. Yes.

A. Yes.

Q. Have you ever seen a signed copy of this letter?

A. No.

Q. If I could direct your attention to the next page of Exhibit D. Is that page 1 of the general release and settlement agreement?

A. Exhibit D?

Q. Correct.

MS. WILLIAMS: Turn the page.

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BY MR. FLYNN:
Q. Is this what you received attached to the cover letter?
A. I don't think so. Let me see. Yes, this looks like it because it's got these things I remember.
Q. When did you receive this letter and the attachment?
A. I would say I wrote back on January 29th and I probably got it that day, signed it and sent it back.
Q. The copy of the release is also unsigned. It's attached as exhibit -- part of Exhibit D to your second amended complaint.
Do you see the signature lines and the notary signature here that's missing?
A. Yes.
Q. Is this the document that you signed and sent back to Hans Mast?
A. The document that I signed had my signature.
Q. I'm asking if this is the same document that you signed and sent back to him?
A. Yes.

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Q. Right now we don't have a signed copy. I don't know that I've seen one in the case.
MS. WILLIAMS: Can we go off the record for a second?
MR. FLYNN: Sure.
(WHEREUPON, discussion was had off the record.)
BY MR. FLYNN:
Q. Is there any doubt, in your mind, that Exhibit D is the letter and attachment that you received from Hans Mast?
A. No. I believe that this is it.
Q. You signed some copy of this release and sent it back to Hans on January 29; is that correct?
A. Yes.
Q. You accepted the settlement offer prior to Christmas and presumably defense counsel or Hans drafted the settlement release and then Hans mailed it to you, correct?
A. Yes.
Q. At any point in time from December 25th until you received this settlement release, did you contact any lawyer to discuss whether it would be appropriate to let the McGuires out for 5,000?

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A. I believe I contacted Hans again.
Q. Besides Hans, did you talk to anyone else?
A. No.
Q. Was there anything preventing you from seeking a second opinion from some other lawyer at that time?
A. No.
Q. Directing your attention to Exhibit E attached to the second amended complaint, the second amended complaint, again, being Exhibit 5. Is this an e-mail from you to Hans on January 29, 2014?
A. This is the e-mail chain between me and Hans, yes.
Q. Down below at the bottom of the page, January 29 at 10:51 a.m., it appears that you were questioning Hans regarding some of the language in the release, including social security disability check boxes. Do you see that?
A. Yes.
Q. Hans responded to you and then at the top of the page here at 1:59 p.m. it says, "Okay, it's signed and in the mail."
A. Correct.

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Q. What did you mean by that?
A. I signed it and mailed it.
Q. Did you -- where did you mail it from?
A. My home.
Q. How did you do that?
A. Put a stamp on the envelope and put it in the mailbox, put the flag up and waited for the mailman.
Q. Is the mailbox attached to your home or is it --
A. It's out on the street.
Q. You walked down there and you put the mail -- the envelope in the mailbox, put the flag up and --
A. That is correct.
Q. Your understanding of signing that release and sending it back to your lawyer was that you would agree to take the $5,000 settlement, correct?
A. Yes.
Q. Hans didn't deliver the letter to you personally. He mailed it to you, correct?
A. He mailed it to me?
Q. He mailed it to you.

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A. Correct. U.S. mail.
Q. Do you recall an allegation in your complaint or amended complaint or second amended complaint in this case alleging that you were pressured or alleging undue influence by Hans in urging you to accept the $5,000 settlement from the McGuires?
A. Yes.
Q. How is it, as you sit here today, can you tell me how Hans unduly influenced you to accept the $5,000 settlement offer?
A. I don't know what Hans was thinking. How did I feel influenced?
Q. Unduly influenced.
Let me put it this way. He didn't put a gun to your head?
A. No.
Q. He suggested that you take the settlement?
A. Correct.
Q. He didn't force you to take the settlement?
A. Correct.
Q. It was your decision?

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A. Correct.
Q. You signed it and you sent it back to him in the mail?
A. Yes.
Q. Aside from your e-mails with Hans on January 29, did you call him that day?
A. I believe so.
Q. Did you also discuss whether it was appropriate to accept the McGuires' $5,000 settlement offer at that time?
A. Yes.
Q. You deliberated on it and decided to take it, correct?
A. There wasn't much – it was take it or get nothing.
Q. You had the opportunity to deliberate on it, correct?
A. For that day, yeah.
Q. You had reviewed the transcripts of the McGuire depositions and David Gagnon's depositions in order to provide you with some information in order to determine whether to accept the settlement offer, correct?
A. I believe I did try to read those, yes.

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Q. Did you call Hans or e-mail him and question him with respect to the evidence, the testimony contained in those deposition transcripts?
A. Yes.
Q. What did you say to him and what did he say to you?
A. There were many conversations over the phone and I'm sure some through e-mails.
Q. He continued to tell you that it was his opinion that the liability on the McGuires is questionable because they did not control David Gagnon's work that day, correct?
A. It depends on which time. Sometimes he said because they didn't tell them how to squeeze the trigger. It depends which time you are talking about.
Q. Again, there was nothing preventing you from seeking a second opinion from some other lawyer at the time you signed the settlement release and sent it back to Hans, correct?
A. From the time I received it, signed it and sent it back?
Q. Right.
A. No. It was a matter of hours. I got it

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that morning.
Q. You decided to mail it that day, right?
A. He needed it. He said now or you're not going to get anything.
Q. There was nothing preventing you from seeking the advice of another attorney at that time?
A. At that time it was time. It was now or nothing.
Q. You were in the comfort of your own house when you received the letter, correct?
A. Yes.
Q. You had the ability to go find another lawyer and ask them to discuss the case at that time. You had done it hundreds of times earlier – strike that.
After the settlement with the McGuires, you continued to prosecute the case against Gagnon, correct?
A. Yes.
Q. Did you have an understanding as to what, if any, insurance coverage he had?
A. Yes.
Q. How much was that?
A. What time frame are you talking about?

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Q. What was your initial understanding as to the limits on David Gagnon's insurance coverage?
A. Hans Mast told me he had $100,000.
Q. Was that in an e-mail?
A. There were — not initially, no, but later on he reiterated that in e-mails, yes.
Q. Did you, ultimately, learn that there was some additional amount of coverage with respect to Gagnon's policy?
A. Long after Hans Mast was gone, not part of the case.
Q. How much was the coverage?
A. The Allstate coverage, I believe, was 300,000.
Q. We'll talk about the settlement later, but did you ultimately settle the case again Gagnon for 300,000?
A. I believe it went to binding mediation.
Q. Was there an award of $300,000 based on a high/low agreement?
A. Yes.
Q. Is it fair to say that if Hans made a mistake about the $100,000 in coverage, that that was corrected and there was never any harm done as a

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result of his —
A. No.
Q. Explain to me how you were harmed by the representation that there was $100,000 in coverage.
A. You want me to explain?
Q. Yes.
A. Had I known the value of the case, I would have not filed for bankruptcy.
Q. Explain to me why one has something to do with the other.
A. Is my family and me going to dump money into a black hole that we can't recover or is there a light at the end of the tunnel where I can pay them back.
Q. At the time that you filed for bankruptcy, had any settlement offer been made from David Gagnon or his lawyers to you?
A. At the time of when?
Q. When you filed for bankruptcy.
A. I don't think so. I'd have to check the dates, but I don't think so.
Q. As the case was progressing against David Gagnon, were your doctors deposed?
A. As the case progressed with David Gagnon,

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I believe they were deposed. I don't remember. I'd have to look at the dates.
Q. Discovery continued on in the case?
A. I believe one doctor was deposed after the McGuire settlement. I'm not sure, though.
Q. Did Hans continue to represent you for some period of time?
A. Yes.
MR. FLYNN: I'll have you mark this as Exhibit 6.
(WHEREUPON, a certain document was marked Exhibit No. 6, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 6. Do you recognize this e-mail chain?
A. Yes.
Q. This is from September 23, 2014. If we go from the bottom up, it appears that Hans said to you that he wanted to give you the option of finding other counsel at this point if you really want to take the case to trial, which I think ultimately will be necessary. Correct?
A. Are we at "before I proceed" or "that's

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the very reason"?
Q. "That's the very reason."
Is it fair to say he was suggesting you find another counsel in the case at that point?
A. Yes.
Q. He also said, "I just do not believe strongly that defense counsel will offer much in the way of settlement."
Do you see that?
A. Yes.
Q. That's his opinion regardless of what he believed the coverage limits to be; is that a fair statement?
A. Yes.
Q. You responded to him, he responded to you and then you wrote an e-mail to him at 8:25 p.m. that night?
A. Okay.
Q. Do you see that? Did you say, "First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw"?
A. Yes.
Q. Did you start to look for other lawyers to help you in your case against Gagnon at that

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point in time?
A. I believe I did, that summer. This is fall, September.
Q. You had already started looking for new lawyers?
A. I believe that Hans had told me to start looking for a new lawyer in April of that year.
Q. Did he say why?
A. We'd have to read his thing. He says why.
Q. Do you recall why he said that to you?
A. He did not feel that the case was provable against David. He did not feel the value of the case was worth it. He did not feel -- actually, this is 2014. The dates are rough.
Q. He thought the case against David was difficult, correct?
A. Yes.
Q. Have you ever described the case as a he said, she said with respect to the facts of the accident?
A. He described that to me many times.
Q. Have you also --
A. And I used that back, yes.

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Q. Have you ever described this case as a he said, she said case?
A. I may have. I don't know.
Q. It is your word against David Gagnon's as to what happened and whose fault it was that day?
A. That's what Hans explained to me as what the problem was.
Q. Did you ever describe the accident as a he said, she said?
A. I don't think I called David a "she said" or me a "she said." I don't know. Right here I do.
Q. What do you say there?
A. I said, "I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw."
Q. He was denying that he even cut you, correct?
A. No, he never denied that.
Q. What was your reason for writing this sentence in that way?
A. Because Hans said that he believed David over me.
Q. With respect to what fact at issue?
A. His deposition versus mine. He said that I didn't make a good witness.

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Q. With respect to what points?
A. All of it. He was dumping me and he was coming up with his own excuses.
Q. You and David were the only ones that witnessed this accident?
A. Correct.
Q. Based on your understanding of how the evidence came out in the case, would you agree that there were differences with respect to the version of events?
A. Oh, yeah.
Q. There were differences between what he said happened and what you said happened?
A. Oh, definitely.
Q. Would it be fair to say, then, it would be up to the trier of fact, whether it be a judge or a jury, to determine who they believed?
MS. WILLIAMS: Objection. Calls for a legal conclusion.
You can answer, if you understand.
BY THE WITNESS:
A. I believe it would be up to a judge or jury, sure.

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BY MR. FLYNN:
Q. At the bottom of Exhibit 7 you say, "Bottom line Hans... do the best you can with what you got."
I'm sorry. I didn't mark this one yet. My apologies.
(WHEREUPON, a certain document was marked Exhibit No. 7, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 7. Is this an e-mail chain between you and Hans?
A. I don't think it's a chain. I think it's one.
Q. Point is well taken. It's you writing to Hans?
A. Yes.
Q. At the bottom it sounds like you had been in the hospital with a migraine and then you wrote, "Bottom line, Hans... do the best you can with what you got."
A. Yes.
Q. What did you mean by that?

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A. He wanted to settle, and I can tell you right now this letter was written after a very traumatic experience and -- let me read it and refresh myself. I'm melting down in this letter.
Q. You said after a traumatic experience. Are you referring to the bankruptcy filing from that day?
A. That, in combination with migraines, yes.
Q. David Stretch was your lawyer that filed bankruptcy for you?
A. Yes.
Q. Did you meet with Mr. Stretch and discuss the bankruptcy process before you hired him?
A. Yes.
Q. How long did you meet with him?
A. I think I asked about it. I don't know. It may have been a couple of months or a couple weeks before it got filed. I wanted to learn about it.
Q. Did you, ultimately, list the case against David Gagnon as an asset in your bankrupt filing?
A. Yes, I did.
Q. Is that why the bankruptcy trustee became

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involved with the binding mediation?
A. Yes.
Q. Did you ever meet the bankruptcy trustee?
A. Yes. The first one.
Q. What was the name of that person?
A. The first one was Heeg was her last name. H-e-e-g, I think.
Q. Again, we established that Brad Balke became your lawyer in the case on March 19, 2015, correct?
A. Yes.
Q. Is it fair to say that your relationship with Hans Mast was deteriorating over the fall and beginning of the winter of 2015?
A. I would say it had been deteriorating long before that. You can see from the last exhibit I'm melting down and it was already started deteriorating.
Q. By the time you drafted Exhibit 7, had you talked to other lawyers about taking your case?
A. I have to go back and look, but probably. If he told me to look at other lawyers in April before this, yes.
Q. How many lawyers would you say you talked

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to between April and the time you drafted this e-mail on September 26?
A. I couldn't count that high, probably.
Q. Quite a few?
A. Yeah.
Q. Did any of them take your case?
A. No.
MR. FLYNN: Mark this as Exhibit 8.
(WHEREUPON, a certain document was marked Exhibit No. 8, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 8. Is this an e-mail from you to Hans Mast?
A. Yes. It's an e-mail chain, yes.
Q. On February 22, 2015 at 7:42 p.m. you wrote to Hans, correct?
A. Yes.
Q. Halfway down in that e-mail message you said, quote, "Now I'm left wondering... how hard it is to sue an attorney?"
A. That is true.
Q. You wrote that?
A. Yes.

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Q. The next line you wrote, "And yes, I am and have been looking for someone who will take this case..."
A. That is not in reference to suing the attorney. That was in reference to the Gagnon case.
Q. What did the reference to suing an attorney mean?
A. That was me being angry.
Q. With Hans?
A. Yes. I was seeing red.
Q. You're suggesting that you may sue him?
A. Yeah. I didn't know that I could. I'm wondering about it.
Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?
A. Yes.
Q. You, ultimately, sued him for legal malpractice, right?
A. Yes.
Q. Is that what you had in mind when you wrote this?
A. No. This was about dropping Gagnon. The malpractice is about dropping the McGuires.

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Q. This –
A. We're talking – this is 2015.
Q. In this 2015 e-mail you are suggesting to Hans that you may sue him because of the McGuire settlement; is that right?
A. No.
Q. Then what is it that you're saying to him?
A. That if he damaged the Gagnon case, I didn't know if he did or didn't, and I'm threatening because I'm angry. You can see, again, I'm melting down here. These are emotional outbursts, I guess.
Q. Moving up the page a little bit also on February 22, 2015 at 8:14 p.m., you say, "To be honest, you took this case knowing it was my word versus his."
A. Yes.
Q. He said, he said, right?
A. Yes.
Q. Is that a fair characterization of the case, your word against David's?
A. That's how Hans kept describing it. That's the way I put it back to him, yes.
Q. You didn't correct him or dispute his

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characterization, did you?
A. No. I used his characterization.
Q. You agreed with it?
A. He said – how did it go? We had conversations between these e-mails on the phone. Then we would hang up and I would get angry and type it in an e-mail, type whatever it was that bothered me so he had it.
Q. Let me ask another question, if that's okay.
Did you ever correct Hans if he called this a he said, he said case? Did you ever say it's more than that?
A. Do I ever say it's more than that?
Q. Did you ever correct him? If he said it's a he said, he said case, did you say no, that's not right?
A. He said there's no witnesses. I said, "I'm a witness."
Q. You're one of the hes. It's your word against David Gagnon's, as you said in this e-mail?
A. Yes.
MR. FLYNN: If I could have you mark that as Exhibit 9.

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(WHEREUPON, a certain document was marked Exhibit No. 9, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Exhibit 9, is that Brad Balke's substitute appearance that was filed on March 19, 2015 in the case against Gagnon?
A. It looks like it, yes.
Q. Back to Exhibit 5, which is the second amended complaint. If I could direct your attention to Exhibit F. This appears to be a more complete copy of another e-mail we just talked about. Is Exhibit F more of the February 22, 2015 e-mail chain?
A. I'm not sure if that's separate or the same. Oh, it looks like it.
Q. At 7:20 p.m. Hans wrote to you and said, "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case."
Right?
A. Yes.
Q. He says, "I've been telling you over a year now the problems with the case and you just

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don't see them."
Correct?
A. That's what it says.
Q. Obviously, a difference of opinion, right?
A. Yes. Are you talking about difference of opinion as to the value or difference of opinion of the problems within the case?
Q. Let's go on. He says, "You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear, it is not. My guess is that seven out of ten times you will lose the case outright. That means zero. That's why I've been trying to convince you to agree to a settlement. You clearly do not want to."
Did I accurately read that?
A. Just that part of that paragraph, yes.
Q. So Hans is telling you that in his opinion your case against Gagnon you're going to lose it seven out of ten times, correct?
A. In this one, yes.
Q. He's acknowledging that you may have a

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chance.
A. I think later on he says nine out of ten.
Q. In this e-mail he says seven out of ten you will lose.
A. Yes.
Q. He's recognizing three times out of ten you may win, right?
A. I don't know what Hans is thinking.
Q. Is that what he said?
A. He says seven out of ten times you lose.
Q. You understood that there are risks in taking the case to trial that you could lose?
A. There are unforeseen risks, yes.
Q. There are always risks, period, in taking a case to trial?
A. Yes.
Q. Before you hired Brad Balke and after Hans told you he couldn't represent you, did you talk to any other lawyers about taking your case?
A. Yes.
Q. How many?
A. I can't tell you. A lot.
Q. Did any of them tell you that they wouldn't take the case because they didn't think you

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could prevail against Gagnon?
A. No.
Q. Not one?
A. No.
Q. What are the names of any of the lawyers you talked to about taking your case over from Popovich?
A. I can't tell you without looking at documents who it was and what date it was, what it was between these two.
Q. I don't think documents I produced would help you in that regard.
I'll just ask you based on your memory the names of any lawyers you met with from the time Hans wrote this February 22 e-mail –
A. I believe –
Q. Let me finish.
A. I believe –
MS. WILLIAMS: He has not finished his question.
THE WITNESS: Sorry.
BY MR. FLYNN:
Q. From the time that Hans wrote this February 22 e-mail and the time that Brad Balke

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enters an appearance on March 19. Just the name of any lawyer you –
A. I believe that Sal Ferris that I was talking about was one of the lawyers that I talked to.
Q. You're not sure? You believe that he was?
A. In between this time and this time?
Q. Yes.
A. I believe it's right around then.
Q. What type of law practice does Sal Ferris have?
A. I believe personal injury.
Q. Did you ever talk to him about taking your case before that date?
A. Before the date of this e-mail?
Q. Yes.
A. I'd have to look at it.
Q. He wasn't one of the original attorneys that you spoke with at the beginning of the case?
A. No.
Q. Fair to say once Balke entered his appearance on March 19, 2015 that Mast and Popovich were no longer your attorneys, correct?

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A. When Balke enters his appearance?
Q. Yes.
A. I would believe that, yes.
Q. They were terminated and Balke stepped in?
A. Yes.
Q. Can you tell me how the binding mediation which proceeded on December 8, 2015 evolved and came to be.
A. I was ordered into it from a bankruptcy court.
Q. Why is that?
A. I believe that the trustee put a motion up. I don't know who did it. I assume it was the trustee and the court ordered that it be put into binding mediation.
Q. Did you appear at the mediation?
A. Yes.
Q. Do you recall the name of the mediator?
A. Not off the top of my head, no.
Q. One of the exhibits to your second amended complaint indicates it was retired Judge James Etchingham.
A. That sounds familiar.

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Q. Do you recall how long the mediation lasted?
A. All day.
Q. Do you know if the parties submitted mediation briefs or statements to the judge?
A. I believe both sides submitted a whole bunch of things.
Q. The Boudins represented you in this mediation?
A. Yes.
Q. Because you had fired Balke by this point?
A. Oh, yes.
Q. Directing your attention, again, to Exhibit 5, the second amended complaint and Exhibit G. Exhibit G is, apparently, a memorialization of the mediation award. Do you see that?
A. It's how the judge decided to break it down, yes.
Q. Do you see that there's an award for future medical expenses of $200,000?
A. Yes.
Q. Since that date of December 8, 2015, have you received any medical treatment relative to your

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injuries –
A. Yes.
Q. Let me finish. Strike the question.
Since that date, December 8, 2015, have you received any medical treatment for your injuries incurred on January 28, 2011?
A. You're asking since the date of the binding mediation?
Q. That's right.
A. Yes.
Q. What medical treatment have you received?
A. I do an ongoing with the neurologist for the dystonia.
Q. That's in your right arm?
A. Yes.
Q. Have you calculated the medical bills that you've incurred since that day?
A. No, I have not.
Q. Are they anywhere near $200,000?
A. It depends if you calculate with or without insurance. I know what I pay, but then I have to pay for the insurance that pays for that.
Q. How much have you paid out of pocket since that date for medical treatment on your arm?

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A. I don't know, offhand.
Q. Was there any doctor that opined that you would require $200,000 in future medical expenses?
A. I believe so.
Q. Who was that?
A. I believe that was Dr. Patel. I don't know that she said $200,000. She was the doctor that was handling it at the time.
Q. Did you discuss your injury with the mediator at the mediation?
A. He did ask me a few questions.
Q. How much time did you spend with him?
A. On and off. He would come in and ask me questions and then go away and then come in and would ask me questions and then go away.
I don't remember which one was the mediator, which one was the Allstate adjuster, which one was the – I don't remember.
Q. You're not sure which one was the mediator?
A. They came in and they said they are going to ask you some questions and I answered them.
Q. As you sit here today, you don't know how much face time you had with the mediator that day?

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A. I don't remember the face of which one is which.
Q. Did the issue of lost wages ever come up?
A. At the mediation with me?
Q. Yes.
A. I don't remember.
Q. Did you ever make a claim of lost wages of $250,000?
A. I may have.
Q. Do you know what that was based on?
A. Yeah.
Q. What is that based on?
A. Past and future.
Q. What past wages had you ever earned that could lead to an award of $250,000?
A. To me, that's not a very high number. I think I asked for more than that. It would be an average over a certain number of years plus benefits and that's all lost.
Q. Would it be fair to say that your income would be accurately reflected in the tax returns you've produced in this case, so I don't want to ask you about each one of them?
A. I would say my personal income, yeah.

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Q. Have you filed personal tax returns since 2015?
A. Tried.
Q. I didn't ask you if you tried.
A. No. They won't let me. They said I don't make enough anymore.
MR. FLYNN: I believe the next exhibit is 10.
(WHEREUPON, a certain document was marked Exhibit No. 10, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what's been marked as Exhibit 10. This is a six-page binding mediation agreement. The copy I have is unsigned.
Do you recognize this as the mediation agreement that governed your December 8, 2016 mediation?
A. Yes.
Q. If I could direct your attention to -- first, let me ask you.
Do you know why the bankruptcy trustee or the bankruptcy court ordered binding mediation as opposed to nonbinding?
A. I have no idea.

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Q. On page 4, section F, subsection B – I'm sorry, 1B. It says, "The parties agree that for this mediation the minimum award to Paul Dulberg will be $50,000. Also, the maximum award to Paul Dulberg will be $300,000."
Do you see that?
A. Yes.
Q. Do you know why the parties agreed to this high/low agreement?
A. No.
Q. Do you recall alleging in your original complaint against Popovich that there was a high/low agreement?
A. There is. There was.
MS. WILLIAMS: Can you repeat the question, please.
(WHEREUPON, the record was read by the reporter as requested.)
BY THE WITNESS:
A. I don't know. I'd have to read it.
MS. WILLIAMS: I asked her to read it. And you had answered it previously.
BY MR. FLYNN:
Q. Directing your attention back to

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Exhibit 4, which is the original complaint in this case. Page 4, paragraph 16.
A. Okay.
Q. There's a sentence that begins with, "Unfortunately, a high/low agreement had been executed by Dulberg reducing the maximum account he could recover to $300,000 based upon the insurance policy available."
Do you see that?
A. Yes.
Q. It's not your position or testimony that Popovich had anything to do with the high/low agreement?
A. That was a mistake in there. No.
Q. You would agree that Popovich had nothing to do with the high/low agreement?
A. I believe that events that unfolded the way they did was due to Hans Mast's initial assessment of the value of the case.
Q. Let me ask it a different way.
Did Popovich have any idea that this high/low agreement existed when it was entered into?
A. I don't know.
Q. Do you have any reason to believe that he

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did?
A. I don't know. I don't know how much the Boudins were in contact with them because they worked together. I don't know.
Q. What do you mean, "they worked together"?
A. They worked together on all different cases. That's a small county out there.
Q. Did you ever write to Hans and accuse Popovich of having a conflict of interest because he may have gone to high school with David Gagnon?
A. I did learn that.
Q. Do you believe the fact that someone went to high school with another person may give rise to a conflict of interest in a lawsuit?
A. I was shooting in the dark and guessing why they didn't see this as a viable case.
Q. Do you think that was appropriate to send to your lawyer at the time?
A. When you're wondering why they are doing what they are doing and you learn that and they were pretty much in the same class and they all knew each other and it's a small town, let me ask you, are you friends with the guy I'm suing? That's an appropriate question.

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Q. You didn't say that. You asked if they went to school together.
A. Correct.
Q. Popovich did not enter into this high/low agreement on your behalf, correct?
A. Popovich, no.
Q. When I say "Popovich," I mean generally the Popovich firm and your lawyers.
A. This was years later. No.
Q. They had nothing to do with it, right?
A. I wouldn't say anything to do with it.
Q. Withdrawn.
Who drafted this high/low agreement that's contained in the mediation agreement?
A. I'm not sure who drafted it.
Q. Would it have been either the mediator, the bankruptcy trustee, your lawyers or the defense attorneys?
A. I assume that this would have been an agreement of all of them.
Q. You don't think Popovich had anything to do with drafting this high/low agreement, do you?
A. I don't know that he did or didn't.
Q. Do you have any reason to believe that he

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did?
A. At this point, no.
Q. Continuing on in Exhibit 4. Directing your attention to the bottom of page 4, paragraph 10.
A. Exhibit 4. Say it again.
Q. The bottom of page 4, paragraph 20. This is your complaint against Popovich and Mast.
A. This has been amended since then.
Q. I understand. Paragraph 20 reads, "Following the execution of the mediation agreement with the high/low agreement contained therein and the final mediation award, Dulberg realized for the first time that the information Mast and Popovich had given Dulberg was false and misleading and that, in fact, the dismissal of the McGuires was a serious and substantial mistake."
Do you see that?
A. Yes.
Q. Can you tell me, as you sit here today, what false and misleading information did Mast and Popovich give you?
A. That I realized on the day of the — following the execution of the mediation agreement?

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Q. Correct.
A. The liability of the McGuires.
Q. What was false about it?
A. What made them liable and what didn't.
Q. What is it you learned to dispute what you were told?
A. I learned from a reliability expert that had the report there that day that the McGuires provided the tools which made Gagnon an agent of the McGuires. He was working at their behest.
Q. Who was this liability expert?
A. What's his name?
Q. He's a doctor?
A. Yes.
Q. Continue on with that paragraph. "Following mediation, Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016."
Do you see that allegation?
A. Yeah.
Q. Who advised you to seek an independent opinion from an attorney handling legal malpractice matters?

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A. I believe that was Boudin.
Q. You believe that or you know that?
A. I know that.
Q. You alleged it in this complaint so it's important that we know who that was.
A. Yes, that was Boudin.
Q. Boudin told you to seek an independent opinion from an attorney that handles malpractice matters?
A. Yes.
Q. It says you received that opinion on or about December 16, 2016.
A. Yes.
Q. That's separate and apart from any opinion you may have received from a liability expert, a doctor, an expert on chainsaws?
A. Yes.
Q. Who was the lawyer that you received a legal opinion from on December 16, 2016?
A. I believe that would be Thomas Gooch.
Q. The drafter of this complaint?
A. I'd have to look at the dates because I think — December 8th was the mediation; is that right?

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Q. Correct.
A. So the 16th would sound about right to be meeting with Gooch, but I can get that date.
Q. You met with Gooch –
A. Soon, within weeks. It was quick.
Q. Now that the door has been opened, you fired Gooch in this case, correct?
A. Yes.
Q. He drafted this complaint and he's also the one that gave you an opinion about legal malpractice liability on the part of my clients?
A. Yes.
Q. What is it that he told you on December 16, 2016?
MS. WILLIAMS: Objection. I don't think we've waived that privilege, but – can we go off the record for a second?
MR. FLYNN: I don't want to go off the record. I've asked this interrogatory in about five different ways and it hasn't been answered appropriately.
The allegation was made in the complaint. That's why I drafted the interrogatory the way I did. I don't think that there's been a square

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answer to it. This is clear that you're talking about a legal opinion.
BY THE WITNESS:
Q. Is this the same wording as we have in the current complaint?
BY MR. FLYNN:
Q. It's not exactly.
A. What would this be valid for, then?
Q. You've raised a response to a statute of limitations defense in this case and placed your knowledge of the malpractice and the date of incurring of an injury at issue.
Because your discovery of malpractice has been placed at issue, it's our position that you've waived privilege anyhow with respect to this conversation on December 16, 2016.
A. I'm not sure –
MS. WILLIAMS: There's not a question pending. I'm going to make a standing objection as to privilege with Gooch.
If we can agree that that objection will stand, we can go through this line of questioning and then if we need to later, have a judge determine whether or not that line of questioning is

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admissible. Are you agreeable to that?
MR. FLYNN: I'm agreeable to continuing on for a few minutes. I want to explore. I'll try to lay foundation for – to confirm this wasn't anyone else, for starters. Why don't we continue on and if you need to raise it again, we can talk.
MS. WILLIAMS: Otherwise, I'm just going to raise it to every single question you ask. I just don't want to have to continue to make the objection as to – if questions are asked about advice given by a legal malpractice attorney, I'm going to raise an objection as to that.
MR. FLYNN: Okay. But this is why we had the 201K conferences, multiple 201K conferences. It was made clear, to me, that there was a waiver with respect to subsequent counsel.
MS. WILLIAMS: Tom Gooch isn't subsequent counsel.
MR. FLYNN: The allegation has been made in this complaint and apparently this is subsequent counsel subsequent to my client's representation.
MS. WILLIAMS: It is a different case. It's not subsequent counsel in the underlying case. It's a new case.

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MR. FLYNN: We'll get to the interrogatory in a few minutes. I'll pull that out.
BY MR. FLYNN:
Q. Let me ask you. Is there any other attorney besides Mr. Gooch that gave you an opinion that's referenced here on December 16?
A. No one that isn't privileged.
Q. Could it have been anyone else?
A. No.
Q. So Gooch is the only person that's being referenced here in this allegation that's in your complaint that's a public record?
I'm not asking you right now what the opinion is. I'm going to do that later. I'm asking you who gave it to you. It's not anyone besides Mr. Gooch, correct?
A. Yes. It was Thomas Gooch.
Q. He drafted the very complaint that that allegation is contained in?
A. Yes.
Q. Dr. Landford was the liability expert that you referenced earlier, correct?
A. Yes.
Q. Back to the allegation that Gooch and –

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that Popovich and Mast provided you false and misleading information. That information was simply their legal opinion on the McGuires' liability; isn't that correct?
A. No. There was nothing simple about that. That's a very complex series of things that go all the way back to before the McGuire settlement.
Q. They didn't lie to you, did they?
A. It depends on how you define lie.
Q. How do you define lie?
A. If you know better and you say something else, that's a lie. Omission is a lie.
Q. Did they provide you with anything other than a legal opinion as to the McGuires' liability?
A. Yes. They provided me with case laws. They provided me with all different stuff. Yes.
Q. Whatever the advice that was given to you on December 16, 2016, you felt that you were mislead by Popovich and Mast at that point in time, correct?
A. At that point in time it was confirmed to me that I had a valid case against Popovich.
Q. You had a valid malpractice case against Popovich?
A. Yes. I did not know before that.

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Q. As of December 16, 2016?
A. Yes.
Q. Why is it that you didn't file that lawsuit until nearly a year later on November 28, 2017?
A. I believe because Thomas Gooch had some health issues and then his wife had some health issues. It took a while.
(WHEREUPON, a certain document was marked Exhibit No. 11, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what has been marked as Exhibit 11. This is one set of your supplemental Answers to Interrogatories.
First, I'll ask you if that is your verification and signature at the end?
A. That is my signature.
Q. Again, I don't know if that verification was attached to this original document. It may have been. But there's been some confusion with respect to these verification pages. This is your signature and you answered these interrogatories, correct?
A. Yeah.

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Q. So this is a valid verification page with respect to this discovery document; is that a fair statement?
A. This is supplemental to original answers.
Q. That's your signature and you agree these are your answers?
A. I've reviewed them and we went over them and yes, I agree.
Q. And they are accurate?
A. As accurate as we can be.
Q. If I could direct your attention to Interrogatory No. 26. Do you see that?
A. Okay. Yes, I see it.
Q. This is similar to what we just talked about a few minutes ago. I'll read the interrogatory to you. "Identify and describe the false and misleading information Mast and Popovich provided to you and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake as alleged in paragraph 56 of your second amended complaint."
Do you see your supplemental answer here?

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A. I see it, yes.
Q. You reference the mediation award and then you state, quote, "At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning."
A. I do.
Q. Can you explain what that means because I don't quite understand it.
A. Hans Mast assured me – I want to go back to 2013, the Fall between October and the signature of the final release for the McGuires.
He assured me that, he said -- at that time he didn't tell me what anybody's policies were. He assured me that if we let the McGuires out of the case, Gagnon has enough insurance, you're going to get everything from him, so it doesn't matter that you're carrying the McGuires in the case.
Q. The next interrogatory is 27. "Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint including the identity of the expert, any opinions and any other information

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provided by the expert which caused you to learn in the summer of 2016 and became reasonably aware that Mast and Popovich did not properly represent you."

What does the summer of 2016 have to do with your discovery of malpractice?

A. Technically, I was sent Dr. Landford's report – I might be off a little by a couple months here, but I think in July of that year. And I read it, but I didn't – you don't catch everything the first time you read it.

It was not until later that I caught the part of the report that was brought to the attention – it caught my eye when I was sitting there and reading it.

Q. You didn't read any of this interrogatory or the original interrogatory as requesting legal opinions that you had alleged that gave you notice that there was a malpractice claim against Mast and Popovich?

A. Excuse me?

MR. FLYNN: Can you read that back.

(WHEREUPON, the record was read by the reporter as requested.)

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BY THE WITNESS:

A. The way she said it, I don't understand.

BY MR. FLYNN:

Q. I'll rephrase it.

We've known about this allegation in the original complaint since it was filed. You received some legal opinion in 2016. That's why you didn't know you had a malpractice case against Mast and Popovich.

We asked you in discovery answers a couple different ways what those legal opinions are. You didn't read 26 and 27 as requesting information about legal opinions?

A. I don't know that an expert witness would be considered a legal opinion. Wouldn't that be more like an attorney?

Q. I'll ask you again. Why is it that you first became aware of a legal malpractice matter against Mast and Popovich on or about December 16, 2016?

A. December 16th I was talking to a legal malpractice attorney.

Q. You were told that there was a case against –

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A. A valid case, yes.

Q. – Mast and Popovich?

A. Yes.

Q. Why is it you didn't know about this valid case prior to that date?

A. Because I hadn't talked to anybody that was a lawyer that specialized in that area.

Q. Whatever it is that he said to you gave you the basis for believing you had a valid case against Mast and Popovich?

A. Very much so, yes.

Q. You're withholding that information from me right now, as we sit here. You won't tell me what that expert said, correct?

MS. WILLIAMS: Repeat the question.

(WHEREUPON, the record was read by the reporter as requested.)

MS. WILLIAMS: I'm asserting attorney-client privilege on behalf of my client for Gooch's advice on December – in December of 2016.

However, because I want to move forward with this deposition, if he can answer the question, I believe we should go ahead and move forward and have him answer the question.

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I'll assert the privilege with the understanding that this may have to be briefed later.

MR. FLYNN: To be stricken later?

MS. WILLIAMS: Right.

MR. FLYNN: The substance of the answer he can put on the record. You're just saying you may move to strike it later?

MS. WILLIAMS: Right. I want to maintain the privilege with the objection, but I don't want to have to call the judge right now. I don't think it's something we should have to call the judge about right now.

MR. FLYNN: Just for the record, I believe it's been placed at issue by virtue of the first amended complaint. The responses to the statute of limitation defenses that were raised in very dispositive motions before Gooch withdrew from the case, the gist of that is the discovery rule has been raised and, therefore, it's our position that the date of discovery has been placed at issue and, accordingly, any legal opinions that were provided to this plaintiff have been exposed and that we're entitled to know what those are.

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MS. WILLIAMS: Can I also note one more thing?
MR. FLYNN: Sure.
MS. WILLIAMS: In the supplemental – in the request it specifically refers to paragraph 57 of the second amended complaint, which is different.
MR. FLYNN: It is different. I'll acknowledge that. I believe that the prior original interrogatories asked for any opinions relative to the discovery of the malpractice. I could be wrong. There was a reason I asked this and that's why I believe that's what it was about.
MS. WILLIAMS: So –
MR. FLYNN: That particular one I agree with you is not phrased as calling for –
MS. WILLIAMS: Right. That's the question that was asked. We answered the question that was asked, which that particular paragraph does not refer to a legal expert. It just merely – I'll read it out loud. "It was not until the mediation in December of 2016 based on the expert's opinion that Dulberg retain for mediation that Dulberg became reasonably aware."
I just want it clear that he did answer the question that was asked. I understand your line

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of questioning and we'll agree to move forward.
MR. FLYNN: I believe there were other discovery requests that did point to that and I think we can take a break here and I can find them fairly quickly because I think we're getting close to the end anyway.
MS. WILLIAMS: Okay.
BY MR. FLYNN:
Q. Did you ever receive any money from the mediation award?
A. No. I received money from the bankruptcy itself. It was a surplus bankruptcy.
Q. There was a $300,000 award given in the mediation.
A. That did not go to me. That went to bankruptcy.
Q. It was collected on your behalf and paid to the bankruptcy trustee, correct?
A. Correct.
Q. All $300,000?
A. I don't know that because I think – I don't know how exactly it works. I heard attorneys have a lien that's special. I don't know how they break it up. I assume it goes to the trustee.

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Q. The Boudins weren't working for free. They got something out of it, right?
A. Yes.
Q. The trustee took the remainder and paid off some of your creditors, correct?
A. Correct. All of them.
Q. But the award was paid to the trustee on your behalf?
A. I believe so. I don't know how it worked.
Q. How much was the surplus after your creditors were paid?
A. After just the creditors?
Q. How much did you get?
A. How much did I get?
Q. Yes.
A. A third.
Q. I'm asking how much money did you get?
A. A third of the award.
Q. Dollars. How much money did you get?
A. Roughly a hundred.
Q. $100,000?
A. I don't know the exact number. It's roughly a hundred.

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Q. Was there a check that was issued to you?
A. By the trustee, yes.
Q. Did you cash it?
A. Yes.
Q. At what bank?
A. McHenry Bank & Trust.
Q. Do you still have an account there?
A. Yes.
Q. Do you have a copy of the canceled check?
A. I'm sure the bank has a photo thing.
Q. You can request a copy of the check, correct?
A. I could. I could see if they got it.
Q. I would ask you to do that. If you have any other documentation relative to the payouts that were made by the bankruptcy trustee on your behalf, we are requesting that information.
MR. FLYNN: Why don't we take a break and I'm going to look for one document and then we're just about done here.
(WHEREUPON, a recess was had.)
MR. FLYNN: Mark these as the next two.

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(WHEREUPON, a certain document was marked Exhibit No. 12, for identification, as of 02/19/2020.)
(WHEREUPON, a certain document was marked Exhibit No. 13, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm going to show you what I've marked as Exhibits 12 and 13. Twelve are your answers to Hans Mast's interrogatories. Thirteen is your responses to Popovich's request for production.
Interrogatory No. 1 from Mast asks, "Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach."
Do you understand that?
A. Yes.
Q. So how is it they committed malpractice?
A. May I see it?
Q. I'm going to show it to you in a second. I only have one copy.
This is basically, how did you first become aware that they committed malpractice?

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That's the essence of that interrogatory.
Here is your response. I can show that to you. It doesn't reflect any discussion with any malpractice lawyer in December of 2016.
Tell me --
A. Let me read it again. We're talking about No. 1 on this?
Q. Correct.
A. Okay.
Q. You understand it?
A. Yes.
Q. Would you agree that the legal opinion you received on December 16, 2016 is responsive to that interrogatory, whatever it is that you were told?
A. Yes.
Q. You didn't identify this December 16, 2016 discussion in the answer to that interrogatory, correct?
A. Say that again.
Q. Your discussion with Mr. Gooch on December 16, 2016, that's referenced in your original complaint, you didn't respond and identify it in this answer to the interrogatory, correct?

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A. This asks for every way Popovich or Mast breached the duty of care. It didn't ask for Gooch's opinion.
Q. How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?
A. Yes.
Q. That's what you've alleged here in this complaint.
A. Yes.
Q. Here I'm asking you, each and every way that they ever breached a duty of care to you. I covered the waterfront. You didn't answer --
A. On the McGuire case it was between October 2013 and January 2014. Yes. There's a multitude of things and that's why I listed a range.
Q. I'm asking when you became aware of it, in that interrogatory. Do you see that?
A. I became aware of that when Thomas Gooch read them and said there's a problem here.
Q. That's not the way you answered the interrogatory, correct?
A. I answered the first part. I did not answer after the comma and the and.

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Q. There's no objection and indication that any information is being withheld, correct?
A. Excuse me?
Q. There's no objection and an indication that you're withholding --
A. I was not withholding.
Q. I'll show you Exhibit 13. It asks -- Exhibit 13 are the production requests to you. Number 8 asks for you to produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created and the date the recipient received the document.
The answer is, "The plaintiff is only withholding attorney-client communication between his successor counsel."
Is that your answer to the production request and did I accurately read No. 8?
A. May I consult with her for a minute?
Q. Sure.
THE WITNESS: Can we go off the record?
MS. WILLIAMS: If you can answer the question, answer the question first.

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BY THE WITNESS:
A. It's been a while since I've done this, so I'm not sure who the successor counsel is. Is it her or is it the Boudins or Balke?
BY MR. FLYNN:
Q. I think successor counsel, we can both agree, the successor counsel in the underlying case which would be Balke and then Boudin.
You didn't identify any documents withheld other than documents between you and successor counsel, correct?
THE WITNESS: I believe we waived those, didn't we, for Balke and Boudin?
MS. WILLIAMS: For Balke and Boudin we can represent that we waived those.
BY MR. FLYNN:
Q. Let me ask a different question.
Did Gooch communicate with you in writing relative to his opinion that you had a legal malpractice case against Mast and Popovich?
A. In writing?
Q. Yes.
A. I suppose the agreement between us that he would represent me because I had the case is a

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document in writing.
Q. Did he tell you – strike that.
The discussion that you reference in the complaint, paragraph 20 of December 16, 2016, was that a face-to-face communication with Gooch?
A. What number is that?
Q. Exhibit 4, paragraph 20. The legal opinion you received, was it verbal, was it written?
A. I believe it was verbal.
Q. Now, I'm going to ask you what he said. There was an objection and that will be addressed by the Court later. Please tell me what Gooch told you.
A. He read what I brought him, looked through some things, and I don't remember if it was the same day that we talked to him or he took a day or two. I don't remember. He got back to me and he said, "You have a case here. You have a valid case."
Q. Did he say why?
A. On the basis of what I brought to him. Yes.
Q. Specifics, though. I don't want to talk about generalities. Did he tell you what Mast and

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Popovich did wrong and how it injured you?
A. How it injured me? Yeah.
Q. The first part of my question was, did he tell you exactly what they did wrong in connection with your – their representation of you?
A. He probably did. I'm not recalling it right now. I'm pulling a blank.
The parts of the conversation I'm remembering, and for some reason I'm not pulling it. We've been at this a while and this is a long thing. Yes, he said based on what he saw, he saw reason for malpractice.
Q. You don't remember any details, as you sit here? Did you discuss the liability of property owners in Illinois?
A. Well, if they were just property owners in the case, that would be one thing, but they weren't just property owners.
Q. That wasn't my question. I'm asking if you discussed it?
A. Certainly.
Q. You and Gooch discussed the liability of the McGuires in the case?
A. Yes.

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Q. What did you say to him and what did he say to you?
A. I showed him the expert opinion.
Q. The chainsaw expert?
A. Yes.
Q. Did you show him any deposition transcripts?
A. Yes.
Q. Which ones?
A. All of them.
Q. And he read them before you talked?
A. I don't remember. Like I said, it may have been a few days between our initial meeting and bringing the whole file that I had and trying to get what the Boudins had and letting him go through it. I don't remember how long that took.
Q. How did you transmit the documents to him –
A. My brother carried them.
Q. Let me finish.
How did you transmit the documents to Mr. Gooch, including the deposition transcripts?
A. I believe we brought him a box.
Q. So you physically handed the documents to

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him?
A. I didn't physically hand them. My brother did.
Q. Did you communicate with Mr. Gooch by e-mail, at all, leading up to this meeting?
A. No.
Q. Did he ever write you any letters?
A. An e-mail or regular mail or what are you talking about?
Q. Any letters whatsoever.
A. Throughout the course of his representation, yes.
Q. What about in December of 2016?
A. I believe we started communicating in December, yes.
Q. But in writing?
A. In e-mails, sure.
Q. Did he discuss –
A. We may have. I'm not – whenever we started – whenever he started sending me things and going back and forth, I don't remember the exact date, but it was right after he started representing me, sure, we exchanged e-mails and started, yes.
Q. When did Gooch begin representing you?

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A. The day that he agreed to represent me. I believe it would have been the day that he decided that he had a case.
Q. On or about December 16?
A. Yes.
Q. At that point in time, or shortly thereafter, he communicated with you in writing the details of the breach of the standard of care committed by Popovich and Mast; is that correct?
A. I believe he started to detail those out in the complaint and we were working it back and forth trying to get it right.
Q. When did you first exchange drafts of the complaint?
A. I'd have to look back in the e-mails. I don't remember the dates.
Q. Did you look for any of these e-mails in connection with my discovery requests in this case?
A. At the time I think we thought they were privileged.
Q. That privilege objection wasn't exactly made. My question is, did you look for them?
A. Did I look for them? I have them.
Q. I would ask that you preserve each and

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every communication between you and Mr. Gooch, all written communications, even phone records that might reflect the dates and times of your phone communications, if any. Did you use a cell phone back then?
A. I used VOIP over a data line.
Q. Who was your carrier?
A. Comcast.
Q. Is that still your carrier?
A. Yes.
Q. Do you have the same phone that you utilized?
A. Same phone number for 50 years, yes.
Q. What else could you remember that Gooch told you on or about the 16th of December 2016 about Mast and Popovich breaching the standard of care and how it damaged you?
A. Say that again.
Q. What, if anything, else do you recall about your discussions with Gooch on December 16 regarding the breach of the standard of care by Popovich and Mast and how it injured you?
A. We discussed the whole scenario between October and January and what happened. It was

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pretty detailed. We discussed everything that you see that's been communicated in the e-mails. He didn't have much else to go on other than the documents and the e-mails.
Q. You're talking about the e-mails between you and Hans from the fall of 2013?
A. Yes.
Q. Ultimately leading to the $5,000 settlement?
A. Yes.
Q. Other than you have a case, what did Gooch say to you?
A. He said that they definitely committed malpractice.
Q. Did he ever put this in writing?
A. Did he ever put it in writing? I think he backed it up by filing a suit. That's documented.
Q. Again, the suit wasn't filed until November of 2017.
A. Yes, he had some health problems and then his wife had some health problems. Believe me, I was pushing for him to get that done.
Q. From December of 2016 until the complaint

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was filed, you exchanged some drafts of complaints with him?
A. I believe he let me see what he wanted to put in the complaint. I got to review some things. Of course I had, do this or that's not right. In fact, a couple of these things in here we had to definitely – you caught one. He totally worded it wrong. It was wrong. We had to amend.
MS. WILLIAMS: His question was, did he give you drafts for you to review?
THE WITNESS: Yes.
BY MR. FLYNN:
Q. These were exchanged by e-mail?
A. I believe so, yes.
Q. So you would have records of them?
A. Yes.
Q. Any comments with respect to the pleadings, as well, did you ever ask him questions? Did he explain to you the basis for the allegations in the draft complaints, similar to what you did with Hans?
A. Over many times, yes.
Q. This is all reflected in e-mails?
A. Yes.

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Q. Ultimately, you didn't file until November of 2017?
A. Correct.
Q. Popovich ceased being your lawyer March 19 of 2015, correct?
A. That sounds about right.
Q. Until December 16, 2016, you didn't have any reason to believe there was a malpractice case against –
A. Say the date again.
Q. Until December 16, 2016, you didn't have any other reason to believe there was a malpractice case against Popovich and Mast?
A. I did not know that I had a case, no.
Q. You threatened one with respect to the Gagnon case –
A. Yes.
Q. – at another point in time, correct?
A. I think I threatened him a few times in there. Yeah. I was actually nice to what I really wanted to say.
Q. Subject to the ruling on these objections, you don't recall any other specific details that you discussed with Popovich – I'm

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sorry – Gooch on December 16, other than what we already talked about?
A. I discussed the exact same things that you – the same documents that you already have. We went over the case that Mast and Popovich had against the McGuires. He followed through all the way to the end. We went over the whole case. You see as much as he did.
Q. Did Gooch ever explain to you why the McGuires would have been liable any more than Mast explained to you that they wouldn't be liable?
A. He said he agreed right away. He said that's obvious.
Q. Did Gooch ever provide you with any cases or statutes?
A. Provide to me, maybe. Maybe. I don't know.
Q. Would that be by e-mail?
A. It could be. I was in his office quite a few times. He may have.
Q. As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to

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the McGuires' liability?
A. That they were definitely liable. He tried to say that – like Popovich and Mast were first- or second-year lawyers and that they may have made a mistake here.
I said they've got 20 years in this. You think they'd know the difference. That's the kind of thing. He agreed with me. Twenty years, yeah, they should have known better.
Q. Did you ever discuss the specifics of the McGuires' potential liability with Gooch?
A. Liability with Gooch?
Q. With Gooch, did you ever discuss the specifics of the McGuires' liability other than he thinks you have a case?
A. Yes.
Q. Did he ever tell you why? What was it?
A. Because he agreed with the expert's opinion.
Q. The expert on the chainsaw?
A. Yes. The liability expert.
Q. The expert said you should use safety goggles and gloves and things like that?
A. He said more than that, but yes.

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Q. Do you know who commissioned that expert report?
A. Boudins.
Q. Do you know when the first draft of that doctor's expert report was circulated?
A. I heard that Boudin got it in February, maybe. I don't think I got it until July, but I'm not sure about that.
Q. July of what year?
A. The same year as the mediation.
Q. Of 2016?
A. Yeah.
Q. So you actually read it in advance of the mediation?
A. I talked about this earlier. I said yes. You don't catch everything the first time you read it. I was sitting there at the mediating table and I was reading it and I caught it and I turned to Randy and I said, after it was over, does this mean – that means.
Q. Means what?
A. Does this mean the McGuires are liable? Yeah, that means they are liable. He said, call my office after everything and I'll give you a name for

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an attorney you should go see.
MR. FLYNN: Any follow-up, Julia?
MS. WILLIAMS: I have two follow-up questions.

EXAMINATION

BY MS. WILLIAMS:
Q. Did you ever give Hans authority to make a settlement demand regarding Mr. Gagnon?
A. I think at one time in one of my meltdown letters I said get whatever you can, but no, I never actually signed anything saying you have the right to offer a settlement.
Q. Did you ever give Hans authority to make a settlement demand with regard to the McGuires?
A. A demand, no. He said he was going to probe and see what was out there, and I said, if you want to do that, that's fine.
MS. WILLIAMS: I have no further questions.
MR. FLYNN: Signature?
MS. WILLIAMS: We can waive signature.
THE REPORTER: Are you ordering this?
MR. FLYNN: Yes.
THE REPORTER: Regular delivery, e-tran?
MR. FLYNN: Yes.
THE REPORTER: Copy?

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MS. WILLIAMS: Yeah.
THE REPORTER: Regular delivery, e-tran?
MS. WILLIAMS: PDF.
(WHEREUPON, at 4:00 p.m., the deposition of PAUL DULBERG was concluded.)
* * * * *

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STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)

I, KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify:

That previous to the commencement of the examination of the witness, the witness was duly sworn to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction, and constitutes a true record of the testimony given and the proceedings had;

That the said deposition was taken before me at the time and place specified;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto

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set my hand and affix my seal of office at Chicago, Illinois this 3rd day of March, 2020.

Karen Piloggi

Notary Public, DuPage County, Illinois.
My commission expires 1/2/24.

CSR Certificate No. 84-3404

EXAMINATION

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANT HANS MAST'S
INTERROGATORIES TO PLAINTIFF PAUL DULBERG

NOW COMES Defendant, Hans Mast, by and through his attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 213, propounds the following interrogatories on Plaintiff, Paul Dulberg, to be answered under oath within 28 days:

DEFINITIONS & INSTRUCTIONS

The pronoun "you" refers to Plaintiff, Paul Dulberg, to whom this production request is addressed, as well as their agents, representatives, employees, anyone acting on his behalf, and unless privileged, his attorneys.

The term "document" as used herein means all records, papers, and books, transcriptions, pictures, drawings, or diagrams of every nature, whether transcribed by hand or by mechanical, electronic, photographic, or other means, as well as sound reproduction of oral statements or conversations by whatever means made, whether in your actual or constructive possession or under your control or not, relating or pertaining in any way to the subject matters in connection with which it is used, and includes originals, all file copies, and all other copies, no matter how prepared, and all drafts prepared in connection with such writing, whether used or not, including by way of

EXHIBIT D

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illustration and not by way of limitation, the following: books, records, contracts, agreements, expense accounts, canceled checks, catalogues, price lists, sound and tape recordings, memorandum (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts, and activities), minutes, diaries, calendar or desk pads, scrapbooks, notebooks, correspondence, emails, bulletins, circulars, forms, pamphlets, notices, statements, journals, postcards, letters, telegrams, reports, intra-office communications, photographs, microfilm, maps, and deposition transcripts, whether prepared by you for your own use or for transmittal or received by you.

INTERROGATORIES

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER:

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

ANSWER:

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

ANSWER:

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4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than $100,000?

ANSWER:

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

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McHenry County, Illinois
17LA000377
Date: 7/2/2020 9:30 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	)	
vs.	)	No. 17 LA 377
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: Edward X. Clinton, Jr.
Julia C. Williams
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juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

PLEASE TAKE NOTICE that on the 2nd day of July 2020 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:

- **Supplemental Requests for Production to Plaintiff;**

a copy of which is attached hereto and herewith served upon you.

Dated this 2nd day of July 2020.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: */s/ George K. Flynn*
One of their Attorneys

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EXHIBIT E

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing DEFENDANT'S NOTICE OF SERVICE OF DISCOVERY DOCUMENT was served upon:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
312-357-1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

by email on July 2, 2020.

/s/ George K. Flynn
One of their Attorneys

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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Page 409 of 464
C 1264 V2

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION TO PLAINTIFF

NOW COMES Defendant, The Law Offices of Thomas J. Popovich, P.C. by and through its attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 214, respectfully requests Plaintiff, Paul Dulberg, to produce within 28 days at the law offices of Karbal, Cohen, Economou, Silk & Dunne, LLC, 150 South Wacker Drive, Suite 1700, Chicago, Illinois 60606, the following photographs, documents, objects, and other tangible things:

SUPPLEMENTAL PRODUCTION REQUESTS

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

RESPONSE:

2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

RESPONSE:

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3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

RESPONSE:

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their representation of you or provision of legal services to you.

RESPONSE:

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

RESPONSE:

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition from February 19, 2020.

RESPONSE:

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

RESPONSE:

Respectfully submitted,

/s/ George K. Flynn

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GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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Page 412 of 464
C 1267 V2

George Flynn

From: George Flynn
Sent: Thursday, September 17, 2020 4:06 PM
To: Paul Dulberg
Subject: RE: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Thank you.

Pursuant to Illinois Supreme Court Rule 201(k), please advise when the supplemental discovery answers and documents will be served. As I indicated in court on September 10, I plan to file a motion to compel very soon if we do not receive the sworn answers and all responsive documents.

Best regards,

-----Original Message-----
From: Paul Dulberg <Paul_Dulberg@comcast.net>
Sent: Thursday, September 17, 2020 11:19 AM
To: George Flynn <gflynn@karballaw.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear Mr Flynn,

Please find the attached files named 2020-09-17_Appearance Pro se.pdf and 2020-09-17_ProofOfDelivery.pdf

I have filed these with the McHenry County Clerk via the i2file web site.

Thank you,
Paul

Paul Dulberg
847-497-4250

GROUP EXHIBIT F

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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George Flynn

From: George Flynn
Sent: Saturday, August 29, 2020 8:59 PM
To: Julia Williams
Cc: Ed Clinton; Mary Winch; Linda Walters
Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Julia:

I write pursuant to rule 201(k) and rule 219(c). Mr. Dulberg is late in responding to discovery pursuant the the extension you requested, and to which I agreed.

It is finally time for Mr. Dulberg to properly answer discovery in conformity to his allegations, and relative to the matters which he has placed at issue.

Once the Gooch discovery is produced, I would like to immediately depose Dulberg and Gooch. Please pass this along to your client.

You and your firm have been nothing but professional and it was a pleasure working with you.

Best regards,

> On Aug 18, 2020, at 2:13 PM, George Flynn <gflynn@karballaw.com> wrote:
>
> Julia:
>
> This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k).
>
> I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated.
>
> I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved).
>
> The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020.
>
> Please feel free to contact me if you would like to discuss this matter.
>
> Very truly yours,

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Purchased from re:SearchIL

C 1269 V2

From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Thursday, July 30, 2020 10:07 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
Subject: Fwd: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Begin forwarded message:

From: Linda Walters <lwalters@KARBALLAW.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)
Date: July 2, 2020 at 11:11:39 AM CDT
To: "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC

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C 1270 V2

150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<image001.jpg>

P: (312) 431-3641

<image002.png>

F: (312) 431-3670

<image003.png>

E: lwalters@KARBALLAW.com

CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

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C 1271 V2

George Flynn

From: George Flynn
Sent: Thursday, July 30, 2020 10:12 AM
To: Julia WIlliams
Cc: Ed Clinton; Mary Winch
Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Hi Julia. Yes, agreed.

On Jul 30, 2020, at 10:07 AM, Julia WIlliams <juliawilliams@clintonlaw.net> wrote:

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Begin forwarded message:

From: Linda Walters <lwalters@KARBALLAW.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)
Date: July 2, 2020 at 11:11:39 AM CDT
To: "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
Purchased from re:SearchIL

Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg>

P: (312) 431-3641

<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png>

F: (312) 431-3670

<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png>

E: lwalters@KARBALLAW.com

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<2691756v1 - Supplemental Request for Prod. to Plaintiff.PDF>
<2691837v1 - Notice of Service of Discovery Documents -- Supplemental RTP to Plaintiff (FS).PDF>

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
Purchased from re:SearchIL

C 1273 V2

George Flynn

From: George Flynn <gflynn@karballaw.com>
Sent: Tuesday, September 1, 2020 10:31 AM
To: Julia Williams
Cc: Ed Clinton; Mary Winch; Linda Walters
Subject: RE: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Julia:

Thank you. I understand the position you and your firm are in. I will plan to either file a motion to compel, or advise the court of our intentions to file a motion on September 10.

Stay safe.

Very Truly Yours,

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

From: Julia Williams <juliawilliams@clintonlaw.net>
Sent: Monday, August 31, 2020 8:45 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>; Linda Walters <lwalters@KARBALLAW.com>
Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

I will certainly pass this along to our client.

Unfortunately, because we are withdrawing, we are not comfortable answering discovery when another counsel may be appearing. Mr. Dulberg is seeking new counsel and would like to have his new counsel answer. I expect that we will be withdrawing on September 10, 2020. The court will grant Mr. Dulberg 21 days to find alternative counsel. Based upon this, it is unlikely that any answers to supplemental discovery will be prepared prior to the end of September.

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Purchased from re:SearchIL

Thank you again for your time and courtesy in this case. It has been nice to work with you as well.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

> On Aug 29, 2020, at 8:58 PM, George Flynn <gflynn@karballaw.com> wrote:
>
> Julia:
>
> I write pursuant to rule 201(k) and rule 219(c). Mr. Dulberg is late in responding to discovery pursuant the the extension you requested, and to which I agreed.
>
> It is finally time for Mr. Dulberg to properly answer discovery in conformity to his allegations, and relative to the matters which he has placed at issue.
>
> Once the Gooch discovery is produced, I would like to immediately depose Dulberg and Gooch. Please pass this along to your client.
>
> You and your firm have been nothing but professional and it was a pleasure working with you.
>
> Best regards,
>
> **George Flynn**
>
> **Karbal | Cohen | Economou | Silk | Dunne | LLC**
> 150 S. Wacker Drive
> Suite 1700
> Chicago, IL 60606
> <phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
> <fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
> <envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
>
> **CONFIDENTIALITY NOTE:**
> This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.
>
> > On Aug 18, 2020, at 2:13 PM, George Flynn <gflynn@karballaw.com> wrote:
> >
> > Julia:
> >
> > This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k).

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C 1275 V2

I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated.

I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved).

The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020.

Please feel free to contact me if you would like to discuss this matter.

Very truly yours,

From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Thursday, July 30, 2020 10:07 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
Subject: Fwd: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Begin forwarded message:

From: Linda Walters <lwalters@KARBALLAW.com>

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)
Date: July 2, 2020 at 11:11:39 AM CDT
To: "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<image001.jpg>

P: (312) 431-3641

<image002.png>

F: (312) 431-3670

<image003.png>

E: lwalters@KARBALLAW.com
CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

<image002.png><image003.png><image001.jpg>

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** FILED ** Env: 14019112
McHenry County, Illinois
17LA000377
Date: 7/13/2021 1:29 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO SUPPLEMENT DEFENDANTS' MOTION TO COMPEL AND TO REQUEST HEARING ON PLAINTIFF'S COMPLIANCE WITH APRIL 6, 2021 ORDER ON DEFENDANTS' MOTION TO COMPEL

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for their Motion to Supplement Defendants' Motion to Compel and To Request Hearing on Plaintiff's Compliance with April 6, 2021 Order on Defendants' Motion to Compel, state as follows:

1) Defendants are bringing this motion to supplement their prior Motion to Compel and request a hearing on Plaintiff's compliance with the Court's April 6, 2021 Order (attached as Ex. A).

2) The Defendants never received a file-stamped copy of the draft order which their counsel submitted to the Court for entry on April 2, 2021 (see Group Ex. B, April 2, 2021 email from Linda Walters, and attached Order). Defendants never received a response, nor received electronic notice of the entry of the Order on April 6, 2021, and accordingly did not diary the June 14, 2021 hearing, and thus did not appear.

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C 1278 V2

3) In the Court's April 6, 2021 Order granting Defendants' motion to compel, the Court ordered the Plaintiff to serve a supplemental answer to Mast's Interrogatory No. 1, and amend its responses to Popovich's Supplemental Request. The Court further ordered, "Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

4) On June 1, 2021, the Plaintiff served Exhibit C (Plaintiff's Amended Additional Answer to Defendant Hans Mast's Interrogatory to Plaintiff Paul Dulberg), and Exhibit D (Plaintiff's Amended Additional Response to Defendant The Law Offices of Thomas J. Popovich, P.C.'s Supplemental Request for Production). Dulberg also produced fourteen pages of bates labeled records (See Ex. E).

5) The Plaintiff has not complied with the Court's April 6, 2021 Order. Accordingly, Defendants respectfully request that the Court strike the non-responsive portions of Exhibits C, D, and E and close written discovery.

6) With respect to Exhibit C, Dulberg provide a "non-answer." Dulberg was ordered to specifically answer each discovery request. Mast's Interrogatory No. 1 states as follows: Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach. Dulberg's amended additional answer does not describe how there was a breach of the standard of care, he simply identifies a discovery date (December 12, 2016) based upon a binding mediation order. He does not describe the breach of the standard of care, or how, specifically, he became aware of it. He simply writes, "He knew the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016." He does not describe the

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C 1279 V2

discussion or explain how the standard of care was breached, or why his discussion with Tom Gooch enlightened him as to the breach.

7) Moreover, Popovich's supplemental requests for production are aimed specifically at identifying how Dulberg "discovered" his breach of the standard of care, and when he recognized damages as a result of same. In Exhibit D, Dulberg's amended additional response, Dulberg simply attaches various pages from pleadings in this case. He does not attach any discoverable materials, such as emails, letters, etc. Instead, he is simply regurgitating his position in this case. As previously argued in Defendants' Motion to Compel and at hearing, if Dulberg has no documents responsive to the discovery requests, and he has no basis for a tolling of the statute of limitations in this case, then his answer should simply state, "none." Enough is enough. Dulberg's non-responses to this discovery requests should be stricken, and he should be barred attempting to present any additional evidence in support of his tolling theory.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court grant their Motion to Supplement Defendants' Motion to Compel and set hearing on Plaintiff's compliance with April 6, 2021 Order on Defendants' Motion to Compel, and for any and all further relief this Court deems just and appropriate.

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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Purchased from re:SearchIL

C 1280 V2

ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	No. 17 LA 377

FILED
APR - 6 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

ORDER

This matter coming to be heard for status and continued hearing on Defendant's Motion to Compel, the court having heard argument, it is hereby ordered:

1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

2) Plaintiff's objections of "undue burden" raised in its initial responses to Popovich's Supplemental Requests for Production numbers 1-7 are overruled.

3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.

Prepared by:
Atty. No. George K. Flynn
ARDC #6239349
Name: Karbal, Cohen, Economou, Silk & Dunne, LLC
Attorney for: Defendants
Address: 150 S. Wacker Drive, Suite 1700
City: Chicago, IL 60606
Telephone: (312) 431-3700
E-Mail: gflynn@karballaw.com

....., 2021
ENTER:

.....
eSigned by THOMAS A. MEYER 04/06/2021 09:09:24 RNOhbggY

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

EXHIBIT A

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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Linda Walters

From: Linda Walters <lwalters@karballaw.com>
Sent: Friday, April 2, 2021 10:17 AM
To: proposedorders
Cc: contact@lawofficeofalphonsetalarico.com; George Flynn
Subject: RE: Paul Dulberg v. The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (Circuit Court of McHenry County, IL Case No.: 17 LA 000377)
Attachments: 2868280v1 - Proposed Order (4-2-21).PDF; 2867639v1 - Proposed Order (4-2-21).DOCX

On behalf of George Flynn, attached is a copy of a proposed order in both word and pdf format relative to the above. All counsel of record have been copied on this email.

Thank you.
Linda Walters
Asst. to George Flynn

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@karballaw.com

CONFIDENTIALITY NOTE:
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Linda Walters

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GROUP EXHIBIT B

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

ORDER

This matter coming to be heard for status and continued hearing on Defendant's Motion to Compel, the court having heard argument, it is hereby ordered:

1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

2) Plaintiff's objections of "undue burden" raised in its initial responses to Popovich's Supplemental Requests for Production numbers 1-7 are overruled.

3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.

Prepared by:
Atty. No. George K. Flynn
ARDC #6239349
Name: Karbal, Cohen, Economou, Silk & Dunne, LLC
Attorney for: Defendants
Address: 150 S. Wacker Drive, Suite 1700
City: Chicago, IL 60606
Telephone: (312) 431-3700
E-Mail: gflynn@karballaw.com

....., 2021
ENTER:

.....
Judge Judge's No.

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)
	)
Plaintiff,	)
	)
	)
v.	) Case No. 17LA 377
	)
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)
	)
	)
Defendants.	)

PLAINTIFF'S AMENDED ADDITIONAL ANSWER TO DEFENDANT HANS MAST'S INTERROGATORY TO PLAINTIFF PAUL DULBERG

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Amended Additional Answer to Defendant Hans Mast's Interrogatory #1 states as follows:

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER: Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

EXHIBIT C

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Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

AMENDED ADDITIONAL ANSWER: Dulberg discovered the pecuniary injury on December 12, 2016 based upon a binding mediation award and knew he had a legal malpractice case on December 16, 2016. He knew that the Defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

Dulberg discovered in the defendants' document disclosure, POP 000192, that Mast had in fact sent the McGuires' attorney a $7,500.00 offer on October 22, 2013 without Dulberg's knowledge and that was before the November 4, 2013 meeting in Mast's office when Mast first asked Dulberg if Mast could probe and see what was on the table for a possible settlement with the McGuires.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

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VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily belies the same to be true.

Paul Dulberg

June 1, 2021

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S AMENDED ADDITIONAL RESPONSE TO DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Amended Additional Response states as follows:

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016, 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

Objection-privileged Bates stamped e-mail string 8744-8746

EXHIBIT D

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2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016 and 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

RESPONSE: Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

Bates stamped document 8709-8710 previously enclosed.

Objection-privileged Bates stamped e-mail string 8744-8746

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 006502. (attached)

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their

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representation of you or provision of legal services to you.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931, 003133, and 004884. (attached)

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708

Misstates Plaintiff Paul Dulberg's contention was that he discovered the injury on December 16, 2016.

Dulberg actually discovered the pecuniary injury on December 12, 2016 and actually discovered he had a legal malpractice case on December 16, 2016.

2020 IL App (1st) 191953 Nos. 1-19-1953 & 1-19-1973 (consol.) Opinion filed November 30, 2020 Modified upon denial of rehearing December 31, 2020 which is equally available to all parties.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931.(Please see above)

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition

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from February 19, 2020.

RESPONSE:

Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022

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(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF COMPLETENESS

The undersigned, Paul Dulberg, being first duly sworn and under oath, deposes and states as follows:

1. I am the Plaintiff in the above-captioned action.

2. I have personal knowledge of the matters and facts set forth in this Affidavit and, if sworn as a witness, I can testify competently to those matters and facts.

3. The documents that I produced in response to the Court ordered Amended Additional Supplemental Requests for Production propounded by Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C are complete in accordance with the Court Order and Supplemental Requests for Production.

4. Plaintiff Paul Dulberg reserves the right to supplement his response to Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'s Supplemental Requests for Production as additional documents become known to me or come into my possession, custody, or control.

VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid

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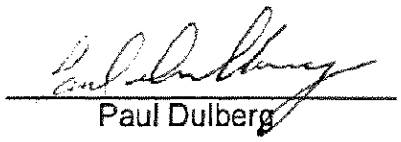
that he verily belies the same to be true.



Paul Dulberg

June 1, 2021

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LA 178. (Exhibit 2, ¶ 9, and Exhibit 2B)[1]. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of $5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 2, ¶ 18 and Exhibit 2D). Defendants continued to represent Dulberg until March 2015. (Exhibit 2, ¶ 21). Dulberg retained successor counsel and proceeded to a binding mediation and received a mediation award (Exhibit 2, ¶ 24 and Exhibit 2G). After the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 2, ¶ 28-29).

B. Alleged Acts of Negligence

Popovich's and Mast's alleged malpractice revolves around the settlement of the underlying case between Dulberg and McGuires. The allegations of a breach of the standard of care are all contained in ¶ 31, subsections a) through o) inclusive. Paragraph 31 states as follows:

> 31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:
>
> a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;
>
> b) Failed to thoroughly investigate liability issues against property owners of the subject property;

[1] The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 2A, 2B, 2C, 2D, 2E, 2F, and 2G.

EXHIBIT E

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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

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Page 6 of 24
Dulberg 001809

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fact." *(Emphasis added)* (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." *See* 735 ILCS 5/13-215.

45. DULBERG's Complaint states that DULBERG discovery the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

46. Therefore DULBERG would have until December 2021 to file his claims under fraudulent concealment. DULBERG filed his claims well within the five-year fraudulent concealment statute.

CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants' Combined Motion to Dismiss, and for all other relief this Honorable Court

Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
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fact." *(Emphasis added)* (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." *See* 735 ILCS 5/13-215.

45. DULBERG's Complaint states that DULBERG discovery the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

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CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants' Combined Motion to Dismiss, and for all other relief this Honorable Court

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000377 Dulberg 009016
Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
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Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

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C 1298 V2

LAW OFFICES
FERRIS, THOMPSON & ZWEIG, LTD.

SAUL M. FERRIS
GARY R. THOMPSON
MICHAEL L. ZWEIG*

RAFAEL J. GUZMÁN
ATTORNEYS AT LAW
*Licensed in IL & NY

103 S. GREENLEAF AVENUE, SUITE G
GURNEE, ILLINOIS 60031

TELEPHONE (847) 263-7770
FAX (847) 263-7771
www.ftzlaw.com

March 4, 2015

Mr. Paul Dulberg
3416 W. Elm Street
McHenry, IL 60050

RE: Your accident of January 24, 2013

Dear Mr. Dulberg:

Thank you for consulting with our firm on December 31, 2014 in regards to your personal injury case. Unfortunately, we have decided not to accept your case. Therefore, on behalf of Ferris, Thompson & Zweig, Ltd., we will not be taking any further action on your behalf as it relates to this matter. I believe you should not have settled with the property owners for $5,000.00. There are other reasons for my decision.

This is merely our professional opinion and does not mean you do not have a case. We recommend that you attempt to settle the case at the upcoming pretrial conference with your current attorney.

Sincerely,

Saul M. Ferris

SMF/cl

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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From: Randy Baudin II <randybaudin2@gmail.com>
Subject: award
Date: December 12, 2016 7:34:42 PM CST
To: pdulberg@comcast.net
1 Attachment, 45.2 KB

Congrats!!

Click to get my LinkedIn Profile



W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

Medical	$ 60,000.
Future medical	$ 200,000.
Lost Wage	$ 250,000.
P&S	75,000.
LNL	75,000.

Dulberg 002928

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The Honorable James P. Etchingham, (Ret.)

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: award**
Date: December 13, 2016 10:48:50 AM CST
To: paul_dulberg@comcast.net
1 Attachment, 45.2 KB

Paul Dulberg
847-497-4250
Sent from my iPad

Begin forwarded message:

From: Randy Baudin II <randybaudin2@gmail.com>
Date: December 12, 2016 at 7:34:42 PM CST
To: pdulberg@comcast.net
Subject: award

Congrats!!

Click to get my LinkedIn Profile

W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gegnon)

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

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Net Award: $561,000

Dulberg 002930

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C 1302 V2

Comments/Explanation medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P & S	75,000.
L N L	75,000.

The Honorable James P. Etchingham, (Ret.)

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ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

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The Honorable James P. Etchingham, (Ret.)

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: award**
Date: December 13, 2016 10:46:50 AM CST
To: paul_dulberg@comcast.net
1 Attachment, 45.2 KB

Paul Dulberg
847-497-4250
Sent from my iPad

Begin forwarded message:

From: Randy Baudin II <randybaudin2@gmail.com>
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Subject: award

Congrats!!

Click to get my LinkedIn Profile

W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

Paul Dulberg	)	
	)	
	)	
	)	
v.	)	ADR Systems File # 33391BMAG
	)	
	)	
David Gagnon	)	

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

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Comparative fault: 15 % (if applicable)

Net Award: $561,000

Dulberg 004884

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Comments/Explanation medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P.S	75,000.
L N L	75,000.

The Honorable James P. Etchingham, (Ret.)

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STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, Defendants.	No. 17 LA 377

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 19th day of July, 2021, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by
MR. ALPHONSE A. TALARICO (via Zoom)

On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN

On behalf of the Defendants.

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THE COURT: Counsel?
MR. FLYNN: No. 10, your Honor. I see Mr. Talarico. George Flynn on behalf of defendant/movant.
THE COURT: Dulberg versus Mast?
MR. FLYNN: Yes.
THE COURT: Okay. I saw Mr. Talarico. All right. Mr. Talarico?
MR. TALARICO: Yes, Judge. Good morning.
THE COURT: All right. Counselor here in court, what's going on?
MR. FLYNN: Good morning, your Honor. We brought a motion to supplement our motion to compel. The Court ruled on April 6th and granted defendant's motion to compel and set a June 14 compliance date.
THE COURT: Okay.
MR. FLYNN: I'm sorry. June 1st compliance date with a June 14 hearing. Somehow I don't believe we got a copy of the file stamped order and it didn't get diaried, so I believe the case was called on June 14 --
THE COURT: Okay.
MR. FLYNN: -- and a continue date August 19th.
THE COURT: You got inadequate compliance, is

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that ultimately --

MR. FLYNN: That's our position, yes.

THE COURT: All right. I'm going to pass this. We'll come back to it. And let me see if I can take a look at the compliance at issue.

Mr. Talarico, just hang in there. I'll be back at the end of the call.

MR. FLYNN: Thank you, your Honor.

(Whereupon the afore-captioned cause was recalled.)

THE COURT: Let's go to Dulberg. All right. Plaintiff's counsel for the record, if you could identify yourself.

MR. TALARICO: Good morning, your Honor. My name is Alphonse Talarico. I represent Paul Dulberg.

MR. FLYNN: And good morning again, your Honor. George Flynn on behalf of Popovich and Mast.

THE COURT: All right. So tell me what the issue is.

MR. FLYNN: Again, your Honor, the Court ruled on April 6th that the plaintiff was directed to provide the specific answers and responses to each interrogatory and production request. So we did

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receive supplemental production responses and a supplemental interrogatory answer. With respect to the supplemental production, there is one document that I consider to be responsive and that is new.

THE COURT: I'm sorry?

MR. FLYNN: There is one document that was produced and I consider it to be responsive and a new production. The rest of the documents that were produced, it's unusual. There are actual pleadings from this case that were attached as responsive documents to my discovery requests. I don't see how those -- which basically just set forth the plaintiff's position in this case in response to the various arguments we've made in motions.

THE COURT: Well, what is it you're looking for? What didn't you get?

MR. FLYNN: I'm looking to strike any of those documents --

THE COURT: Okay.

MR. FLYNN: -- that are not responsive.

THE COURT: Is it -- I mean, really is it necessary to go to the trouble of striking them if they're -- I mean, ultimately they're not going to be relevant as a discovery response.

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MR. FLYNN: Only -- I just want to make sure there aren't any additional documents that were --

THE COURT: Are there any additional documents, Mr. Talarico?

MR. TALARICO: Judge, I have no idea if -- it's our position we complied completely. We filed our answers on June 1st. If the Court had -- I don't know if the Court remembers, you had ordered us, plaintiff and defendant, to talk up through June 14th to see if there were any issues. The only response I got from the defendants was an e-mail with one word. As I told you on June 14th, the only word was, Thank you. Now I am totally surprised, 73 days later, Judge, and I don't know what else -- I want time to respond in writing, Judge. This is --

THE COURT: I don't -- I don't want to do that.

MR. TALARICO: This has been difficult.

THE COURT: This is --

MR. FLYNN: Yes, it has, Judge.

THE COURT: So what is it you -- what is it you are looking for? Because I have a representation on the record -- and I'm assuming there's an affidavit of compliance.

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MR. TALARICO: There is.

THE COURT: Okay. Then -- and he says, I've given you everything.

MR. FLYNN: That's fine with respect to the production response. Now there's the interrogatory answer.

THE COURT: All right. Tell me -- we're moving on to the interrogatory.

MR. FLYNN: And again, this goes to the statute of limitations on a legal malpractice case. The plaintiff is claiming that he didn't discover it until after the 2 years --

THE COURT: Could you keep your voice up a little?

MR. FLYNN: Sure. Plaintiff is arguing for a tolling of the statute of limitations on a legal malpractice case. He was asked in Interrogatory No. 1, Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

His response -- his amended additional response discusses his pecuniary injury, that only addresses damages. With respect to the breach of

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the standard of care and how he discovered it, he simply says he knew that the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

THE COURT: Okay.

MR. FLYNN: That describes the date. It doesn't describe how he became aware of it, what Gooch told him. Now, again, I know your Honor is aware of the deposition testimony in this case regarding that December 16 time period. If the answer is that Dulberg doesn't remember what Mr. Gooch told him, if Gooch said simply, You have a case, that's fine. That's what they should say. But I've already taken his deposition. There are no specifics that explain to me why Mr. Gooch crystallized this breach of the standard of care on December 16. But if this is all they have, then that's what he should say, is that I don't remember what Mr. Gooch told me.

THE COURT: I mean, he's -- I think he's complied. I'm not sure --

MR. FLYNN: What is the breach of the standard of care?

THE COURT: I'm sorry?

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MR. FLYNN: And what is the breach of the standard of care? That's what I've asked in the interrogatory. They don't say.

THE COURT: Well, I think that -- all right. I guess that is -- my reading on it, it's implied it's a statute of limitations. But --

MR. FLYNN: No, the statute of limitations is the issue in this case.

THE COURT: All right. What is the --

MR. FLYNN: The underlying personal injury case --

THE COURT: What is the breach? Did Mr. Gooch advise him what the breach was?

MR. TALARICO: Judge, all that Mr. Dulberg recalls was relayed in the responses. There were no recordings that were going on. Nothing was done in writing. I'm not sure how I can possibly respond anymore, to give anymore.

THE COURT: I have a representation that this is all there is.

MR. FLYNN: That's satisfactory to me. As long as when I file my summary judgment motion there's not some new discovery discussion as to --

MR. TALARICO: Judge --

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MR. FLYNN: -- what the breach was and what --
MR. TALARICO: I'm sorry. I hate to interrupt. Judge?
THE COURT: Yeah.
MR. TALARICO: We -- again, we were -- our response, I believe is in total compliance with the Court order of June 6th and your instructions on that day from the court record. And I'd like to respond in writing to establish that we did that.
THE COURT: No. No. I mean, you're -- you only need to respond in writing if we're going to have a hearing. If you want to file a brief that -- just in the file, that's fine, but I think we have a resolution today and I don't want to spend more time reading briefs resolving an issue that's moot. So I think this is resolved. What else is outstanding?
MR. FLYNN: I think that does resolve -- the representation resolves both issues, so --
THE COURT: I have -- you have advised -- well, you've advised that's all there is, so I'm finding you in compliance.
MR. TALARICO: Thank you, your Honor.
THE COURT: Okay. Is there anything else we need to do?

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MR. FLYNN: I suppose with respect to the summary judgment motion that I anticipate, Judge, there was one document that was produced in order to avoid a second deposition of Mr. Dulberg to authenticate this document, which is a letter from Attorney Thompson -- I'm sorry -- Attorney Ferris -- that goes to the issue of the statute of limitations. If Mr. Talarico would stipulate to the authenticity of this March 4, 2015 letter on the record, I don't need to send a request to admit for --

THE COURT: Can you hear all that?

MR. TALARICO: I heard it, Judge, but I'm not familiar with that document. A request to admit would be welcome.

MR. FLYNN: Fair enough.

MR. TALARICO: Just so I can see what it is.

THE COURT: That's fine. We're back again on August 19th. Do you want to delay that date in light of the fact you may be issuing a request to admit?

MR. FLYNN: I think that would make sense.

THE COURT: All right. So let's strike August 19th and tell me when it makes sense to come

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back.

MR. FLYNN: I'll need at least 30 days, so --

THE COURT: 60 days?

MR. FLYNN: A 60-day date would be great.

THE COURT: How's September 17th? That's a Friday.

MR. TALARICO: Fine with me, Judge.

MR. FLYNN: That works for me.

THE COURT: All right. So that will be at 8:45 and then we'll see what you guys want to do when you come back. And are you withdrawing your motion or ...

MR. FLYNN: I think that --

THE COURT: Or do you want me expressly to find compliance based on representations in open court?

MR. FLYNN: I'm not requesting a hearing any longer. I think we resolved the matter. So yeah, I'll withdraw it.

THE COURT: All right. Motion's withdrawn. The record still stands. I did find that you were in compliance and we'll deal with the next step whenever it comes up. But I will see you September 17th and if you could draft the order.

MR. FLYNN: I will. Thank you, your Honor.

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THE COURT: All right. Thank you.

Mr. Talarico, anything else?

MR. TALARICO: No, Judge, thank you for your time.

THE COURT: All right. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, CRISTIN M. KELLY, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Cristin M. Kelly
Certified Shorthand Reporter
License No. 084-004529
Date: August 24, 2021

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
09/16/2022 3:18 PM
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

ORDER

This matter coming to be heard for status, counsel for Plaintiff and Defendants appearing, and the Court being fully advised:

IT IS ORDERED:

1. This matter is continued for status on compliance with Plaintiff's subpoenas to his prior counsel, and status on Defendants' motion for summary judgment, on October 13, 2022 at 10:00 a.m.

   Zoom information for Room 201:
   Link: https://zoom.us/my/mchenrycourtroom201;
   Meeting ID: 272-959-8070
   Personal Link Name: mchenrycourtroom201;
   Password: no password required

Prepared by:

Atty. No. George K. Flynn/ARDC No. 6239349
Name: Karbal, Cohen, Economou, Silk & Dunne, LLC
Attorney for: Defendants
Address: 200 S. Wacker Drive, Suite 2550
City: Chicago, IL 60606
Telephone: (312) 431-3700
E-Mail: gfynn@karballaw.com

9/16/2022

…….., 2022

ENTER:

Thomas A. Meyer

……. Judge Judge's No.

Thomas Meyer

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

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McHenry County, Illinois
2017LA000377
Date: 9/19/2022 10:51 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: All Attorneys of Record (See Attached Service List)

PLEASE TAKE NOTICE that on the 19th day of September 2022, we filed with the Clerk of the 22ND Judicial Circuit Court of McHenry County, Illinois, PAUL DULBERG'S TRANSCRIPT WITH EXHIBITS, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 19th day of September 2022.

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
200 So. Wacker Drive, Suite 2550
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on September 19, 2022.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

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SERVICE LIST

Plaintiff's Attorney	
Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd 6th Floor Suite Northbrook, IL 60062-2841 contact@lawofficeofalphonsetalarico.com (312) 808-1410	

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McHenry County, Illinois
2017LA000377
Date: 9/19/2022 10:51 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

The deposition of PAUL DULBERG, called for examination, taken pursuant to the provisions of the Code of Civil Procedure and the rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Realtime Reporter of said state, at 150 South Wacker Drive, Chicago, Illinois, February 19, 2020, at the approximate hour of 1:00 p.m.

PRESENT:

THE CLINTON LAW FIRM,
111 West Washington Street, Suite 1437,
Chicago, Illinois 60602,
312-357-1515, by:
MS. JULIA C. WILLIAMS,
juliawilliams@clintonlaw.net,
appeared on behalf of the Plaintiff;

KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC,
150 South Wacker Drive, Suite 1700,
Chicago, Illinois 60606,
312-431-3700, by:
MR. GEORGE K. FLYNN,
gflynn@karballaw.com,
appeared on behalf of the Defendants.

REPORTED BY: Karen Pileggi, CSR, RPR, RMR, CRR,
CSR License No. 84-3404

(WHEREUPON, the witness was duly sworn.)

PAUL DULBERG,
called as the plaintiff herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FLYNN:

Q. Let the record reflect that this is the discovery deposition of Paul Dulberg taken by agreement of the parties and pursuant to notice.

This deposition is being taken pursuant to the Rules of the Illinois Supreme Court, the Illinois Code of Civil Procedure and any applicable local rules in McHenry County.

Sir, could you state your name and spell your last name for the record.

A. Palm Dulberg, D-u-l-b-e-r-g.

Q. What is your address?

A. 4606 Hayden Court, McHenry, Illinois 60051.

Q. How long have you lived there?

A. Forty-nine years.

Q. Who do you live there with now?

A. Mike McArtor.

Q. Did your mother live there at some point throughout the history of this case?

A. Yes.

Q. I'm just going to go over a few rules for the deposition. I know you've testified at least one time in a deposition before because you testified in the underlying personal injury case, correct?

A. Correct.

Q. Have you testified in any other depositions before?

A. No.

Q. I'll just remind you of a few rules that I'm sure you were aware of back then when you gave your deposition.

The court reporter is here to take down everything that you and I say. She can only take down one at a time so I'd ask that before you answer a question, let me finish the entire question. Okay?

A. Yes.

Q. I'll try to do the same. I'll try to let you respond before I ask a follow-up question.

You just nodded your head. That's

EXHIBIT E

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another good point to make. She can't take down nods of the head, shrugs of the shoulders or other hand gestures. Your answers need to be verbal.

From time to time we forget those rules and I may just point to the court reporter as a reminder, if that's okay.

A. Yes.

Q. If you need to take a break at any time, feel free to stop me. I just ask that it's not while a question is pending that has not been answered. Fair enough?

A. I'll try to do that.

Q. If you've answered a question, I will assume you understood it. Okay?

A. Yes.

Q. I was asking you about your mother. She lived at the house during the pendency of the underlying case?

A. Yes.

Q. Is she still alive?

A. Yes.

MS. WILLIAMS: Can we define "underlying case"?

BY MR. FLYNN:

Q. The underlying case is a personal injury

Page 6

case that you filed against Bill and Caroline McGuire and David Gagnon.

A. That sounds correct.

Q. We'll get into the dates of the filing a little bit later. We'll call that, generally, the underlying case.

Your mother lived at the house at that time?

A. Yes.

Q. Did she own the house?

A. No.

Q. Do you own the house currently?

A. Yes.

Q. Does anyone else own the house?

A. No.

Q. How long have you owned it?

A. I think I first purchased it off my parents in '97, '98, something like that.

Q. Did you hire a lawyer in connection with that transaction?

A. No.

Q. Were your parents represented by a lawyer?

A. No.

Page 7

Q. The building, as I understand it, is a duplex; is that right?

A. No.

Q. Were there two apartments in the building at one time?

A. No.

Q. Was there a point in time where you and your mother lived in one half of the house and Mike McArtor lived in the other half?

A. Yes.

Q. How was that arrangement with respect to the location of the living spaces, if you can describe it?

A. It has a walkout basement. He had the downstairs with an exit out the back. We had the upstairs with an exit out the front.

Q. Have you ever been convicted of a crime of fraud, dishonesty or deceit?

A. No.

Q. Besides the hiring of the Popovich firm in connection with the underlying personal injury case, up to that point in time had you ever had an occasion to hire a lawyer?

A. I did during a traffic accident, and I

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don't remember the year.

Q. Were you injured in about 2002? Does that sound right?

A. Roughly.

Q. Who did you hire?

A. I might get the name wrong because it's been a long time. I think it was Weiss and Michling and something else. It was a lawyer right outside the courthouse in Woodstock.

Q. A McHenry County lawyer?

A. Yeah.

Q. It was a personal injury case?

A. Yeah. It was a car accident.

Q. Did you file a lawsuit in that case?

A. I don't think we needed to.

Q. You just filed an insurance claim?

A. They did, yes.

Q. You settled it?

A. Yes.

Q. Any other occasions to hire a lawyer between that time and the time you hired the Popovich firm?

A. May I consult for a minute because I'm not sure how to answer that.

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Q. Why don't you just tell me why you can't answer it.
A. Because I've hired lawyers, but they were for the company that I had. That's different.
Q. I'm asking general questions about any interaction you've had with hiring lawyers. Any experience you've had with hiring lawyers.
A. I had a corporate lawyer. My mom and dad hired a lawyer for me when I was a kid. It was something. And myself, just the corporate lawyer, the car accident lawyer and the Popovich firm.
Q. Have you ever been married?
A. No.
Q. So you never hired a divorce lawyer. Good. How old are you now?
A. Forty-nine.
Q. The underlying case arose out of an injury that occurred on June 28, 2011, correct?
A. That sounds correct.
Q. How old were you at that time?
A. Forty-one.
Q. Besides the underlying lawsuit against the McGuires and Mr. Gagnon, had you ever filed any other lawsuit up until that point in time?

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A. No.
Q. Have you filed any lawsuits since that time besides the lawsuit against Popovich and Mast?
A. No.
Q. Do you have any military experience?
A. Yes.
Q. Please tell me about that.
A. Army National Guard. Illinois Army National Guard.
Q. How long have you been in the National Guard?
A. I'm not currently in it.
Q. When were you, from when to when?
A. I may not get the year correct. '88 or '89 to '92 or '93, somewhere in there.
Q. What was your highest rank when you were discharged from the National Guard?
A. When I was discharged?
Q. Correct.
A. I don't know. I've gotten moved up and moved down. I don't know where I ended up.
Q. How was it that you were discharged?
A. Less than honorable.
Q. What was the cause?

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A. I missed morning call, roll call. If you're not there, you're AWOL.
Q. Absent without leave?
A. Yes.
Q. What is the highest level of education that you've attained?
A. I do not have a degree. Two years of college.
Q. You graduated from high school?
A. Yes.
Q. Was that in Johnsburg in 1988?
A. Yes.
Q. Did you know Mr. Gagnon from Johnsburg High School?
A. Not from high school but just after high school.
Q. Just coincidentally you attended the same high school?
A. He was three years older than I was. I didn't know who he was until after high school.
Q. You had some education after high school but did not receive a degree, correct?
A. Correct.
Q. Where did you study?

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A. I had a couple classes at McHenry County College and McMurray College.
Q. What did you study?
A. The first two years. The basics.
Q. General studies?
A. Yeah. I did a criminal justice course. I did a macro/microeconomics. I did psychology, sociology. The normal stuff.
Q. How did you meet David Gagnon?
A. Through a mutual friend.
Q. When was that?
A. I want to say, roughly, 1990.
Q. Was your home located somewhere fairly close to his parents' home or his mom and stepdad's home?
A. Two streets away.
Q. That's where you were injured on June 28, 2011, was at David Gagnon's mom's house and his stepdad's house?
A. Yes.
Q. And their name is McGuire?
A. Yes.
Q. Generally speaking, you were injured assisting David with a chainsaw trying to cut down a

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tree?
A. He was cutting a branch.
Q. Cutting branches off a tree, correct?
A. Cutting up the branches after they were off the tree.
Q. Could you tell me a little bit about your work history. Do you have any licenses or certifications?
A. I'm certified to run printing presses. Or at least I was.
Q. You worked for Sharp Printing, Inc. from '91 to 2011; is that right?
A. Ninety-one? No. I would say 1999.
Q. Did you own that corporation?
A. Yes. Well, partner. I was a partner. I didn't own like...
Q. It was an Illinois corporation?
A. Yes.
Q. Were you –
A. A stockholder.
Q. Let me just finish my question so she can take us down.
You were a stockholder in Sharp Printing, Inc.?

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A. Yes.
Q. Who else were the stockholders?
A. Mike McArtor and Scott Dulberg and at that time it was Herbert Dulberg.
Q. What does that mean? Do you mean Scott's name was Herbert?
A. No. Scott Dulberg was an owner and Herbert Dulberg was an owner. Three different Dulbergs: me, my brother, my dad.
Q. And Mike McArtor?
A. Yes.
Q. There were four owners at what time?
A. Until my dad died and then it went to three.
Q. Was that business incorporated?
A. Yes.
Q. Did a lawyer assist the corporation with setting up the corporation?
A. Yes.
Q. When did that happen?
A. 1999.
Q. Did you hire the lawyer yourself?
A. All three of us did. All four of us. Sorry.

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Q. What was the name of that attorney?
A. McAndrews, and I don't remember the rest of it. It was McAndrews in McHenry. I can get you the rest of that information.
Q. They are based in Crystal Lake, Illinois?
A. It used to be in McHenry when we did that.
Q. Patrick McAndrews, he was also identified as the registered agent of that corporation?
A. Yes.
Q. It was voluntarily dissolved on April 8, 2011; is that right?
A. That's what the Secretary of State's Office has, yes.
Q. Is that your understanding as well?
A. I was corrected. My partners – I was corrected. It was actually after the accident. How it got to end up with that date, I'm not sure.
Q. What was corrected, exactly?
A. Well, do you want me to – Mike read my deposition and he said, "You got that wrong." I said, "What do you mean?" because I answered it twice in that deposition.
I was thinking that Juskie happened

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before the accident. Sharp Printing wasn't actually dissolved until after the accident when we decided to sell off the equipment and end it all. That's the honest truth.
Q. I will represent to you that the Illinois Secretary of State's Website as of today shows that the company was involuntarily dissolved on April 8, 2011. So it's your testimony that that is not true?
A. I don't know how they come up with that.
Q. Why don't we break it down and start with why the corporation was involuntarily dissolved. Do you know that?
A. Involuntarily? I don't know. It may be that I was late on paying the corporate licensing thing, which we just pay a fine and did it. We didn't renew it because we decided to end it.
We had a ten-year thing, I think, on it. I may be wrong. I've got to go back and look at the records.
Q. Is it possible that the corporation was actually involuntarily dissolved by the Illinois Secretary of State on April 8, 2011?
A. Sure.
Q. Did Sharp Printing, Inc. file corporate

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tax returns while it was a going concern?
A. We had a problem the couple of years before the accident because I was not up in Illinois and I usually did that with the lawyer and the accountant and things got screwed up while I was taking care of a loved one who was dying down in Florida.
Q. Did the corporation ever file tax returns?
A. Oh, yes.
Q. When did they file?
A. Quarterly and annually.
Q. Until what year?
A. Roughly somewhere in 2008. I was missing things because I was not here. I know we missed a few.
Q. I believe you testified in your underlying deposition that Sharp Printing, Inc. was not dissolved as a result of your June 28, 2011 chainsaw accident, correct?
A. Yes, I did. I stood corrected by my partners.
Q. So is it your testimony that the corporation was dissolved because of your personal

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injury?
A. I don't know how to answer that without going back and looking at records.
Q. Was the company winding down up until about the time you were hurt?
A. The company books got screwed up when I was down in Florida and I was back up in Illinois in 2010 getting back on my feet and I was going to pick things back up, get everything paid up, the fines and everything.
Q. Who were you taking care of in Florida?
A. My grandmother.
Q. You were gone from when until when?
A. I want to say from the mid to end of 2007 until somewhere in the beginning of 2010.
Q. Was anyone running Sharp Printing during that period of time?
A. Mike McArtor.
Q. Did Sharp Printing have any customers for that three-year period?
A. Yes, they did.
Q. How many?
A. I'm not sure, without looking at the books.

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Q. Can you estimate what the yearly revenues were for Sharp Printing in the year 2007?
A. In 2007? I'd have to look at the books, to be honest with you.
Q. Was it more than $5,000?
A. Yes.
Q. Was it more than $100,000?
A. No.
Q. Was it more than $20,000?
A. Yes.
Q. Same line of questioning with respect to 2008. Do you know what the revenues were for Sharp Printing in '08?
A. Are you asking me what we reported or what we made and put into accounts for equipment?
Q. I'm asking you about revenues.
A. Total sales?
Q. Total revenues.
A. In two thousand...?
Q. 2008.
A. I'd have to go back and look.
Q. Can you estimate what they were?
A. No, because I wasn't there.
Q. Do you know how many customers the

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company had in 2008?
A. We had a few, I know that. I don't know how many. Mike was handling it and it got messed up.
Q. What types of customers did Sharp Printing have in 2007 and 2008?
A. What kind of customers?
Q. Right. What did you do?
A. We printed on t-shirts. We printed on CDs. We printed on anything that wasn't wet. We printed on glass, all different stuff.
Q. Were there any full-time employees of Sharp Printing in '07 and '08?
A. In '07 and '08, no.
Q. Just the owners?
A. Just the owners.
Q. Did all the owners operate the business?
A. Yes.
Q. Including your brother?
A. Yes.
Q. What were the yearly revenues of Sharp Printing in 2009?
A. I don't know.
Q. What about 2010, do you know?

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A. No.
Q. When did Sharp Printing start selling its equipment?
A. I put up the ad in August. I think August. I might be off by a month or two. August of 2011.
Q. Did you sell any equipment prior to August 2011?
A. No.
Q. What type of equipment did Sharp Printing, Inc. have or own?
A. Mostly textile screen printing equipment, but we had other screen printing stuff too. Paper.
Q. Where was the equipment located?
A. My home.
Q. Did you require a license to conduct this business out of your home?
A. We had what was called a temporary -- we're in a rural area so we didn't have to have that.
Q. In any event, you didn't have a license, correct?
A. We had a license to do business there, yes.

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Q. In that location?
A. Yes.
Q. Did customers ever come to the shop?
A. Yes.
Q. Do you recall how many customers the business had in 2010?
A. Not in 2010.
Q. Was it more than five?
A. Yes.
Q. Was it more than 100?
A. It might be around that. I don't know, specifically.
Q. In 2010 you may have had 100 customers that you did t-shirt screen prints for?
A. Possibly. I'm not saying that is the number, but it's possible.
Q. Did Sharp Printing have any customers in 2011?
A. Mike was finishing up one customer's thing in the spring of 2011, yes. We don't -- I'll give you -- we don't typically get much work between January 1st and the first warm days of Spring. We sell t-shirts and not a lot of people buy during that period. They just don't.

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Q. You did not earn a salary from Sharp Printing, correct?
A. No.
Q. You did not earn an hourly wage, correct?
A. No.
Q. I think your interrogatory answers indicate you didn't take a profit or a draw, correct?
A. Correct.
Q. How much, if any, money did you earn from Sharp Printing in 2011?
A. Can I ask how to define that? In 2011 I didn't pull any.
Q. Did you earn any income whatsoever from Sharp Printing in 2010?
A. I don't think so.
Q. You were down in Florida for '07 to 2010?
A. Sometime in early 2010, yes.
Q. Did you earn any income from Sharp Printing from 2007 to 2010?
A. No.
Q. Were you working in Florida?
A. No.
Q. Is it fair to say you were unemployed

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from 2007 to 2010?
A. Yes. I was not officially collecting unemployment.
Q. You weren't an employee of any business or working for any individual, correct?
A. I did do some work for Mark. I did some traveling back and forth from Florida to Illinois back and forth during that time. When I was up here, I did do some work for Juskie Printing. Not much, though.
Q. What is Juskie Printing?
A. Juskie Printing is another one that I had listed as an employer in the underlying case.
Q. What are they?
A. Another print broker.
Q. Where are they located?
A. I don't know the exact address, but it's off of Chicago Avenue off of 355 going south.
MS. WILLIAMS: I think he's asking what city.
BY THE WITNESS:
A. I don't know how the cities break up down there.
BY MR. FLYNN:
Q. Somewhere in the western suburbs of

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Chicago?
A. Yes.
Q. How long did you have a relationship with Juskie Printing?
A. Since the early 2000s.
Q. What type of printing did Juskie do?
A. Offset, mostly.
Q. What does that mean?
A. Prints on paper.
Q. Did you have a set schedule at any time working for Juskie?
A. I don't know what you mean by "a set schedule."
Q. Did you have a particular number of hours per week?
A. No. The jobs I got were project based.
Q. How many projects did you have from 2007 to 2011 for Juskie?
A. Probably a few hundred quick little things, yeah. At least.
Q. Do you know what you earned from working at Juskie in 2007?
A. Not without looking at the returns, I don't know offhand.

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Q. How often were you in the Chicago area in 2007?
A. I didn't leave here until, I want to say, August or September of '07.
Q. And then thereafter?
A. I was not back that year.
Q. You didn't work for Juskie in 2008, correct?
A. I might have done some stuff.
Q. You're not sure?
A. I'd have to go back and look.
Q. Were you in Florida?
A. Part of the time, yeah.
Q. How often did you come back and forth between –
A. About every three months I tried to get back up here.
Q. For how long?
A. Sometimes a few weeks. Sometimes a month.
Q. Did you come back and work or did you take care of other things?
A. If I'd let Mark know I was back, "I've got something for you or I don't."

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Q. Who is Mark?
A. Mark owns Juskie Printing.
Q. I think your interrogatory answers indicated from 1999 through 2006 you were employed in a barter situation; is that right?
A. With Mark, yes.
Q. What does that mean, exactly?
A. Well, he would owe me money and he would give me printing equipment instead of cash.
Q. He owed you money for working for him?
A. Well, he owed both Sharp Printing and me, personally, money. They are two different things. But he would just pay by saying, hey, I've got this or I've got this paper cutter or this or that. It was a barter.
Q. So you worked for him from 1999 to 2006 but did not earn any income in the traditional sense?
A. No money changed hands.
Q. He gave you things to pay you for projects?
A. Correct.
Q. You gave a deposition in the underlying case on January 24, 2013. Does that sound right?

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A. If it says it on there, yes.
Q. You took an oath that day?
A. Yes.
Q. You told the truth?
A. I tried to, to the best of my knowledge, on that day, yes.
Q. You told the truth in response to all of the questions that day, correct?
A. I tried to, yes.
Q. You testified you were last employed prior to the accident in May of 2011?
A. That would be with Juskie, yes.
Q. It's accurate –
A. Actually, I wasn't employed. I was a 1099 so I was self-employment.
Q. When in May did you stop working for Juskie, whether it be as an employee or an independent contractor?
A. I believe it was the end of May.
Q. Then from the beginning of June until your accident on June 28, 2011, you were not employed; is that an accurate statement?
A. Correct.
Q. You were not even acting as an

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independent contractor for any business from that period of time, correct?
A. Not during that month, no.
Q. Your deposition testimony from 2013 is typed up on 175 pages. I don't intend to go back over each of those details.
A. Okay.
Q. It's fair to say you were injured, your arm was injured on June 28, 2011, correct?
A. Correct.
Q. Which arm was that?
A. My right arm.
Q. As a result of the injury, you hired the Popovich law firm to explore a recovery in the case?
A. I hired them to represent me, yes.
Q. You hired them to represent you and file a lawsuit against David Gagnon who was operating the chainsaw that injured you, correct?
A. He was one of them, yes.
Q. I'm asking you if you hired him to –
listen to the question, please.
David Gagnon was operating the chainsaw, correct?
A. Correct.

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Q. No one else was operating the chainsaw?
A. Correct.
Q. You also hired Popovich to sue Bill and Caroline McGuire, correct?
A. Correct.
Q. They were the land owners where your accident occurred?
A. They did own the land, yes.
Q. The accident occurred at their house, correct?
A. Correct.
Q. This was in the backyard, so to speak?
A. Yes.
Q. Hans Mast was the primary handling attorney at the Popovich firm for your case?
A. That's who I met with, yes.
Q. Did any other lawyer communicate with you while Popovich was handling your case?
A. The lady who sat in on my deposition. Ms. Freeman I think it is. I'm not sure about that.
Q. Generally speaking, Hans Mast, though, was the primary handling attorney?
A. Yes.
Q. Before you hired the Popovich firm in May

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of 2012, is that the correct time period?
A. I don't think so. I don't think they filed it until then, but I might be wrong. I'd have to go back and look.
Q. Was there a retainer agreement executed in May 2012?
A. I don't think I paid a retainer.
Q. Did you execute an attorney engagement agreement in May 2012?
A. I believe it was much earlier than that.
Q. You only executed one engagement letter or engagement agreement with Popovich, correct?
A. Yeah.
Q. Before you executed or came to an arrangement with Popovich, had you talked to any other lawyers about investigating –
A. One.
Q. Let me finish the question.
– investigating or filing the lawsuit?
A. Yes.
Q. Who was that?
A. I went back to the same firm that handled the car accident for me years earlier.
Q. What was the name of that firm?

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A. They changed names when I went back there. It was Weiss – I have to go back through paperwork and get you the actual name.
Q. They are known as a personal injury firm; is that right?
A. Yes.
Q. Why did you not hire them to take your case?
A. The man who handled my case previously with the car accident was no longer with the firm and they said go find somebody else.
Q. I'm not sure what one has to do with the other.
A. I don't either. I just said okay and I went and found somebody else.
Q. Did you meet with an attorney at that firm?
A. Yes.
Q. Did you tell them what happened with your incident?
A. Yes.
Q. They told you that they did not want to take the case; is that right?
A. Yes.

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Q. They declined the case?
A. They declined the case.
Q. Did they tell you why they declined the case?
A. No.
Q. You next went to the Popovich firm?
A. Yes.
Q. They took the case?
A. Yes.
Q. They, ultimately, filed a lawsuit against Gagnon and the McGuires on May 15, 2012; is that right?
A. Yes.
Q. You reviewed the lawsuit and approved it, correct?
A. I didn't – I never got anything to review.
Q. Did you ever read the lawsuit?
A. No. I was never given any paperwork.
Q. Back to the incorporation of Sharp. What interaction did you have with corporate lawyers when they were first retained?
A. McAndrews?
Q. Correct.

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A. What relationship?
Q. What experience did you have with McAndrews when you first retained them?
A. He was good.
Q. How often did you meet with him or speak to him?
A. Once a year.
Q. Did he file corporate returns or other documents for the company?
A. No. I had to file them. He just made sure they were all done right, I believe.
Q. Have you ever had occasion to hire a criminal lawyer?
A. I did in 1990. My mom and dad had to hire one. Not me.
Q. Did you hire a criminal lawyer for your mom and dad?
A. No. They hired one for me.
Q. Who was that?
A. Give me a second. You're digging back far in my memory. Driscoll was the last name.
Q. This was a McHenry County-based criminal lawyer?
A. No. Des Plaines.

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Q. What was the general nature of the reason for the need for a lawyer?
A. Drug possession.
Q. Were you convicted of it?
A. Yes. I pled guilty.
Q. That was a Cook County case, then?
A. No. It was a McHenry County case.
Q. The lawyer was in Des Plaines, though?
A. Yes.
Q. But he represented you in McHenry County in criminal court?
A. Yes.
Q. Throughout the case you met with the lawyer?
A. A few times.
Q. While Popovich represented you in the underlying personal injury case, did you ever communicate with any other lawyers about your case?
A. At the end, yes.
Q. Popovich withdrew sometime in March 2015?
A. Correct.
Q. And Brad Balke entered his appearance on March 19, 2015. Does that sound correct?
A. That is correct.

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Q. Popovich also withdrew that day, right?
A. I don't know if it was on the same day. I'd have to look at the paperwork.
Q. Besides Mr. Balke, had you talked to any other lawyers towards the end of the relationship with Popovich?
A. Yes.
Q. How many?
A. Hundreds.
Q. Hundreds of lawyers?
A. I'm not kidding. Yes.
Q. Did you ask those lawyers to take your case?
A. I asked them to review it.
Q. Did any of them take the case?
A. No.
Q. They all reviewed it, though?
A. Yes. Most took the time to review it.
Q. Did any of them tell you why they didn't want to take the case?
A. There were different reasons I got from various. Some people just didn't get back to me and some people wrote me letters. I think I gave you some of those. But I got various reasons back from

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attorneys.
Q. I don't recall seeing any lawyers, but I would ask you to search for those.
MS. WILLIAMS: We'll search for those. I'll make a note.
BY MR. FLYNN:
Q. As you sit here, do you recall the basis for any attorney declining to take your personal injury case over from Popovich?
A. Say that again.
Q. As you sit here today, do you recall any of the reasons why any attorney declined to take your personal injury case over from the Popovich firm?
A. Yes.
Q. What were those reasons?
A. I remember a few. One I was looking at local lawyers in McHenry County and I was told like -- I can name them. My sister was married to him.
Anyway, I was told if Tom Popovich says you don't have a case, you don't have a case and we're not even going to look at it. That I got a lot of it.

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Q. That's one reason. Any others?
A. That I got locally a lot of. As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that.
Q. Who said that?
A. Sal Ferris.
Q. When did you speak to Sal Ferris?
A. I don't know the exact date.
Q. When did he --
A. He wasn't the only one.
Q. When did he say that to you, that you just described?
A. He said it in a letter and he said it on the phone and he sent me an e-mail, I think. I don't remember the ways that he contacted me. I'd have to go back and look.
MS. WILLIAMS: We'll find it.
BY MR. FLYNN:
Q. Besides Sal Ferris, can you recall any other attorney, specifically, that told you they wouldn't take the case because of your settlement with the McGuires?

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A. Yes.
Q. Who was that?
A. There was at least three firms downtown here right near the Daley Center that I came down to see and I don't remember their names, but they -- I got the same thing out of all three of them.
Q. Did any of the lawyers give you any other reason for declining your case?
A. Mostly it was because they knew Popovich or it was the McGuire settlement.
Q. Did any lawyer tell you that they didn't want to take your case because there was questionable liability against David Gagnon?
A. No.
Q. Did any lawyer tell you that there was questionable liability against the property owners, the McGuires?
A. No.
Q. We're jumping ahead, but did you have different lawyers that handled a binding arbitration or binding mediation for you in the underlying case?
A. Yes.
Q. Their name was Baudin?
A. Yes.

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Q. Why did Brad Balke not handle the binding arbitration?
A. I fired him.
Q. When did you fire Brad Balke?
A. I'd have to look at the dates. I'm not sure, exactly.
Q. Why did you fire him?
A. Because he forced me to undergo the exact mediation at the McHenry County court in front of Judge Meyer that Hans Mast set up that I specifically said no to.
Q. When was this mediation?
A. I'd have to look at the dates again.
Q. Was it a pretrial conference?
A. Yes.
Q. You actually attended this pretrial conference?
A. Yes, I did.
Q. What happened?
A. I said no.
Q. You said no about what?
A. They offered an amount of money and I said no.
Q. The defendants offered an amount of

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money?
A. Yes.
Q. Was this before or after the McGuires settled out of the case?
A. They were settled.
Q. So there was an offer of settlement from David Gagnon or his insurer?
A. Yes.
Q. Do you recall what that amount of money was?
A. $50,000.
Q. You refused the offer?
A. Yes.
Q. Why did that cause you to fire Brad Balke?
A. He wouldn't take it any further than that and he agreed to when I hired him. He agreed that that was not going to be the end of it and then he changed his tune, and I said, you know what – and the other thing was, I finally got through to the Baudins who I wanted to take the case because they had helped my family – his dad helped my family many eons earlier.
Q. Did you ever talk to Brad Balke about the

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liability or lack of liability by the McGuires, the property owners in the case?
A. I don't think so. We were on the Gagnon case.
Q. You didn't discuss the McGuires?
A. There may have been a word or something, but that's not what he was there for.
Q. He never gave you an opinion one way or the other whether the settlement was appropriate?
A. I don't believe Brad did, no. Like I said – I don't think he did.
Q. At some point after your accident did you hire the Daley Disability Law Firm?
A. Yes.
Q. Was that for --
A. I didn't hire.
Q. I know you're anticipating what I'm saying.
A. I was trying to correct myself. I did not hire.
Q. Either way, let me try to get out my question before you raise any kind of response, just so she can take down –
A. Count before I answer.

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Q. That's a good idea.
Did you ever retain the Daley Disability Law Firm?
A. NO.
Q. Did you have any relationship with Daley Disability –
A. Yes.
Q. – Law? Let me finish it before you answer. I know you're anticipating what you think I'm going to say, but it might not come out the way you think. Either way, she can't take down both of us talking over each other.
What relationship did you ever have with the Daley Disability Law Firm?
A. They stepped in as a substitute counsel for the law firm that I did hire.
Q. You originally hired some other law firm to represent you in connection with social security disability?
A. Yes.
Q. What was the name of that original law --
A. The lady's ladies name was Margaret Bradshaw.
Q. You terminated your relationship with her

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one way or another?
A. No.
Q. Why did Daley Disability Law substitute in for her?
A. I was told by – I have to go back and look at the communications exactly how it happened, but I was told that, basically, they are going to be taking over the hearing part of it. I don't know why. I don't know whether they sub out work. I don't know how it works.
Q. Would it be fair to say that you first retained Ms. Bradshaw in 2012 sometime?
A. I'd have to go back and look.
Q. Is that approximately when you applied for social security?
A. It sounds like it.
Q. The Daley Disability Law Firm came in sometime in 2012 as well?
A. I don't know exactly when. I don't know.
Q. Would it be 2012 or 2013?
A. I know that they were there and – I know that something had to be signed when we went in for the hearings. Margaret Bradshaw had to sign something for the judge allowing Daley Disability to

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represent me at the hearings. I don't know when exactly they got involved. That's behind the scenes. I didn't have anything to do with that.
Q. Did you file for bankruptcy while your personal injury case was pending?
A. Yes.
Q. When did you file for bankruptcy?
A. I'd have to look at the paperwork again, but I don't believe that was until, I want to say, about eight or nine months, but I'm guessing, after the McGuire settlement.
MS. WILLIAMS: The question was what month and year.
BY THE WITNESS:
A. I don't know exactly. I'd have to go back and look at the paperwork.
BY MR. FLYNN:
Q. Did you hire a lawyer to represent you in a bankruptcy?
A. Yes.
Q. Who was that lawyer?
A. David Stretch.
MS. WILLIAMS: If it helps, we can stipulate to the date the bankruptcy was filed.

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MR. FLYNN: That's fine. I think we've got some e-mails that may reflect when it was. I just wondered if he knew offhand.
MS. WILLIAMS: I can stipulate, at least, that it was 2014.
BY MR. FLYNN:
Q. You filed for bankruptcy while the Popovich firm was still representing you —
A. Yes.
Q. — in the underlying case, correct?
A. Yes.
Q. Sometimes I'll still pause in my question so if you could please pause before you answer.
In the underlying case you answered written discovery; is that true?
A. I believe so.
Q. Then you later testified at your deposition January 24, 2013, correct?
A. If that's the date, yes.
Q. Ultimately, David Gagnon was also deposed, true?
A. Yes.
Q. Were you present for his deposition?
A. No.

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Q. Did Caroline McGuire give a deposition in that case?
A. I believe so, yes.
Q. Were you present for that dep?
A. No.
Q. What about Bill McGuire's deposition?
A. I was not present.
Q. Did you e-mail back and forth with Hans Mast a fair amount during the Popovich firm's representation of you?
A. By "fair amount," what do you mean?
Q. Did you regularly e-mail with Hans Mast?
A. Yes.
Q. Those e-mail communications have all been produced in this case?
A. Yes.
Q. On to the exhibits. This will be 1.
(WHEREUPON, a certain document was marked Exhibit No. 1, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Let me show you what's been marked as Exhibit 1. These are one set of your Answers to Interrogatories in our case, the current legal

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malpractice case you filed against the Popovich firm and Hans Mast.
Do you recognize this document?
A. Yes.
Q. We've been providing you with various copies of the signature page in the case that's been back and forth between me and your counsel.
I don't, frankly, know if this verification that's attached is the one that went with this document, but I'll just ask you, for the record, if these are your answers, that's your signature, and that this verification is accurate?
A. That is my signature on there, yes.
Q. What was the e-mail address you used in the communication with Hans Mast?
A. Primarily it was pdulberg@comcast.net.
Q. His address was hansmast@comcast.net?
A. And he switched it to at&t.net.
Q. Did you use some other e-mail address as well?
A. I may have accidentally e-mailed him a couple of times from a Yahoo account.
Q. In answering discovery in our case, the legal malpractice case, did you search through both

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of those e-mail accounts of yours?
A. I no longer have the Yahoo account.
Q. Did you search through the Comcast account?
A. Yes.
Q. Did you search for PDFs or attachments to those e-mails that you produced?
A. Everything that I got, I turned over. I had converted the e-mails to PDFs because Comcast started purging the e-mails after so many years, so I turned them all into PDFs.
MS. WILLIAMS: The question was what did you search in your in box.
BY THE WITNESS:
A. What did I search?
BY MR. FLYNN:
Q. Let me ask you a different question. You produced e-mails in this case?
A. Yes.
Q. You turned e-mails into PDFs and sent them to your lawyer; is that right?
A. Yes.
Q. Some of the e-mails I reviewed have an icon that indicates there was a PDF or some other

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attachment to the e-mail. Do you understand that?
A. Yes.
Q. Did you produce the attachments to each of the e-mails in this case?
A. We went through that. I produced the attachments that I still had.
Q. There were some that were not available, correct?
A. Yeah. When I looked at them, 99 percent of them were already part of some other document that we turned over. I think 100 percent of them.
Q. At some point in time while Hans was handling your case, did he start to communicate with you relative to his analysis of the McGuires' liability in the case?
A. Yes.
Q. Did he start to generally advise you that he didn't believe that there was a strong case for liability against the McGuires?
A. Yes.
Q. Is it fair to say that Hans' opinion was that the McGuires did not have liability in the case because they did not control the work that David Gagnon was doing?

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A. Yes.
Q. That's generally a fair summary of Hans' opinion?
A. Not quite exactly those words, but yeah.
Q. The McGuires' liability as property owners was questionable because based on Hans' analysis of the evidence, they did not control the work or the manner of work of David Gagnon on the date of the accident; is that a fair summary?
A. Depends on which time he said that.
Q. Did he say things like that over and over again?
A. He did say things like that, yes.
Q. Again, I don't want to go over the facts you already testified to with regards to the date of the accident. At some point in time was William McGuire swimming in the swimming pool?
A. Yes.
Q. Was that an above ground pool or –
A. Above ground.
Q. Was there a fair amount of time during the day that Mr. McGuire was inside the house watching television?
A. Maybe – he went inside the house for

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probably about 45 minutes before the accident happened. I don't know that he was watching television.
MR. FLYNN: Let's mark the next exhibit as 2.
(WHEREUPON, a certain document was marked Exhibit No. 2, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 2, which is an e-mail chain including e-mails from November 18, 2013, are these e-mails between you and Hans Mast?
A. It looks like it, yes.
Q. I think the time stamps on these e-mails go from the bottom, which would be page 2, to the top of the first page, correct?
A. It's backwards, yes.
Q. In the original e-mail at 1:28 p.m., did Hans Mast relay to you a $5,000 settlement offer from the McGuires?
A. Which – where are you at?
Q. We're on Exhibit 2, which is also labeled as Bates label POP 181. At the bottom of the page, does Hans relay to you a settlement offer for

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$5,000?
A. Yes.
Q. He was telling you that the McGuires' attorney offered to settle the case for $5,000?
A. Yes.
Q. Did you have an understanding that that was a settlement just for the McGuires, not including David Gagnon?
A. Yes.
Q. In the e-mail Hans says, quote, "As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now."
Is that an accurate reading?
A. Of that sentence, yes.
Q. Is it fair to say that he suggested that you take the $5,000 but didn't force you to take it?
A. It says, "So my suggestion is..."
Q. Then did you respond to the e-mail?
A. Yes.
Q. Hans replied again at 8:07 p.m. that same day, right?
A. Yes.

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Q. He said, "Paul, whether you like it or not, they don't have a legal liability for your injury because they were not directing the work."
Is that right?
A. Part of it, yes.
Q. Was my prior summary of Hans' legal analysis a fair summary in view of these e-mails and his opinion that he relayed to you?
A. I think it went further than this, and other things, but yes.
Q. As far as these e-mails, I've accurately –
A. This e-mail, yes.
Q. What else did he tell you about the McGuires and why he didn't think they would be found liable in the case?
A. I'm pulling out of memory because I can't quote which document it's off of.
Q. That's what we're here for.
A. I can only give you the gist.
Q. I'll ask you for the exact language, but if you don't have it –
A. At one point he defined what an independent contractor is for me and he said that

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David was an independent contractor and that the McGuires weren't liable because they had hired somebody outside even though it's their own son, he's an adult, outside to do the work and that they weren't responsible.
Q. By the way, how old was David at the time that this accident occurred?
A. I'm adding. If I was 41 – I don't know what his birthday is, but I'm assuming he would be 44, 45.
Q. Is it fair to say that there were two 40-plus-year-olds, a 41- and a 44-year-old trimming trees with a chainsaw in David's parent's backyard that day, correct?
A. I was not using it. There was one 44-year-old using a chainsaw.
Q. You, the 41-year-old was holding some branches for him?
A. Yes. Just before the accident, yes.
Q. Up until this point in time when Hans is providing this legal analysis to you, you had a fair number of occasions to interact with lawyers, as we've discussed today, correct?
A. At this point, the only lawyer that I

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interacted with was the first one.
Q. I'm talking about in your lifetime. You had a corporate lawyer, you had a criminal lawyer, another personal injury lawyer –
A. I didn't hire –
Q. Let me finish. You had experience with lawyers representing you up to this point in time?
A. Yes.
Q. Did you have an understanding that lawyers evaluate cases differently?
A. Yes.
Q. And judges evaluate cases differently?
A. Sure. That's fair.
Q. Would it be fair to say that some laws in our country are clearer and some are open to interpretation?
A. I think all of them are.
MS. WILLIAMS: Objection. Calls for speculation.
If you understand the question, you can answer it.
BY MR. FLYNN:
Q. Would you say, for example, that the tax code is a little more clearcut than common law

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that's created by cases and case precedent?
A. I'm not real familiar with tax law. I have accountants for that.
Q. How about an easier question. The stop sign means that you stop, and if you go through it, it's pretty clear that you're liable for a traffic violation?
A. I'll agree with that.
Q. The legal liability for a property owner in Illinois might be a little more complicated; is that a fair statement?
A. I don't know.
Q. Would it be fair to say, in your opinion or your knowledge of the law, the property owner isn't necessarily liable because somebody is injured on their property?
A. Are you talking about what I know now or what I knew back when this was?
Q. At any time.
A. What I know now is in the circumstances that we were in, they were very liable.
Q. I'm just asking if – just because somebody is injured on a property owner's property, they are not necessarily liable, correct? Other

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factors are required too.
MS. WILLIAMS: I'm going to object for – he's not an expert and can't testify to legal analysis.
BY MR. FLYNN:
Q. As you sit here today, do you know whether a premises liability case involves multiple factors to prove liability against the property owner?
A. I don't know. I'd say that's fair. You're asking the wrong person for that.
Q. It was Hans' opinion that the McGuires did not control the work based on the evidence, correct?
A. In my opinion?
Q. That's not what I'm asking.
Was it Hans' opinion –
A. I can't –
Q. Let me just finish.
Did Hans tell you that it was his opinion that the McGuires were not liable because they did not control the work?
A. He said that right there, yes.
Q. Do you believe that he truly felt that way? That was his legal opinion?

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A. Do you want the Monday morning quarterbacking version or at the time?
Q. I'm asking if at that time you felt that he truly believed that the McGuires did not have liability?
A. At the time I trusted him, yes. I hired him to represent me, and yeah.
Q. You believed that he was relying his honest legal opinion to you at that time?
A. Yes.
Q. Including on November 18, 2013?
A. Yes.
Q. You did not accept the settlement offer of $5,000 that he relayed to you on that day, correct?
A. Correct.
Q. Did you ultimately meet with Hans to discuss the settlement offer?
A. I think it was the day before this, but I'm not sure. It was either the day before or the day after.
MS. WILLIAMS: I think the question was, did you meet with him, at all, not the date.

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BY THE WITNESS:
A. Yes.
MR. FLYNN: Can we mark this as Exhibit 3, please.
(WHEREUPON, a certain document was marked Exhibit No. 3, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 3. Do you recognize this memorandum?
A. Yes.
Q. You may have seen it from the document production that we made in this case. This is a memorandum drafted by Hans Mast, which purportedly memorializes a meeting that he had with you on November 20, 2013.
Does this refresh your memory as to when you met with him or if you met with him?
A. If he took the memorandum on the same day, then sure.
Q. In the memo Hans says, "I met with Paul and his friend."
Do you see that?
A. Yes.

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Q. Did you meet with Hans and some third person —
A. Yes.
Q. — at or about this time regarding the case?
A. Yes.
Q. Who was that friend?
A. Tom Kost.
Q. Who is Tom Kost?
A. My brother.
Q. Not that it matters necessarily for privilege purposes, but can you tell me how Tom Kost is your brother?
A. We have the same mom.
Q. He was with you and observed the meeting between you and Hans?
A. Yes.
Q. The $5,000 settlement offer was discussed, correct?
A. Yes.
Q. At that time did Hans, again, relay his opinion as to the questionable liability about the McGuires — strike that.
Did he relay to you his opinion about the

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questionable nature of the McGuires' liability?
A. At the meeting with Tom, yes.
Q. He advised you they maintain they were not directing Dave's work. That was the McGuires' position, correct?
A. I don't know that he stayed on that at that meeting. At different times he gave different reasons.
Q. The next line says, "Paul maintains the McGuires controlled everything that Dave was doing."
Is that an accurate reflection of your opinion?
A. Yes.
Q. As you sit here today, do you know if that statement is consistent with your own deposition testimony from the underlying case?
A. Yes.
Q. We'll come back to that. Did you tell Hans that you wanted to read the depositions of the McGuires and David Gagnon's depositions?
A. Say that again.
Q. Did you tell Paul that you wanted to read the depositions of the McGuires and Dave Gagnon's depositions?

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A. Did I tell Paul?
Q. I'm sorry. Did you tell Hans that?
A. That I wanted to read the McGuires and David Gagnon's depositions?
Q. Yes.
A. Yes, I did.
Q. What was the purpose of your wanting to review those depositions?
A. Hans had told me that what they said in their depositions meant that they had no liability.
Q. You wanted to review the testimony to determine whether you wanted to consider the $5,000 settlement offer; is that correct?
A. Right.
Q. Did you do that?
A. Eventually, yes.
Q. Before you accepted the offer?
A. I think so.
Q. So sometime after this meeting on November 20, 2013 and before you accepted the settlement offer on January 29, 2014, did you review those three deposition transcripts?
A. I'll correct you. I did not accept the offer on January 20th. I signed a release on

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January 29th.
Q. Fair point. Did you read the depositions between those two dates, November 20, 2013 and January 29, 2014?
A. Yes.
Q. Those are —
A. I believe I asked him -- I don't know — it may be a little earlier because I don't know that I asked him before or after the meeting. I don't remember. I'd have to go back in the e-mails to give the date.
Q. Some point in time between those two dates you read the deps?
A. I may have asked for them before. I don't know without seeing the e-mail. It was, roughly, in the last quarter of that year, yes. Or the first month. I don't remember the first time that I asked to read them. I don't remember off the top of my head.
Q. At any point in time did you ever grant Hans authority to make a settlement demand in the case?
A. No.
MR. FLYNN: Mark this as Exhibit 4.

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(WHEREUPON, a certain document was marked Exhibit No. 4, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. Showing you what's been marked as Exhibit 4. This is a copy of the original complaint in this instant case. It reflects a filing date of November 28, 2017.

Is this your original legal malpractice complaint against the Popovich firm and Hans Mast?

A. I believe so.

Q. Did you review and approve the allegations in this complaint?

A. For the most part. I wanted to reword some things, but the lawyer, they do their thing.

Q. At the time you were represented by the Gooch firm is when you filed this lawsuit, correct?

A. Yes.

Q. Directing your attention back to Exhibit 1, if you still have it. If you could turn to page 10.

The answer to Interrogatory No. 24 indicates that on November 4, 2013, Mast was granted authority to investigate a settlement but a specific

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dollar amount was never provided. Do you see that?

A. He was verbally granted authority to investigate, yes.

Q. Who did you want him to investigate a settlement with?

A. The McGuires.

Q. Just the McGuires or the McGuires and —

A. He wanted to do it. I didn't. I said, "If you want to look at that, go ahead."

Q. Did you grant him authority to investigate a settlement with David Gagnon as well?

A. I don't know if I did or not, off the top of my head, but that would have been much later.

Q. Eventually did you tell Hans that you would agree to accept the $5,000 settlement offer from the McGuires?

A. Eventually did I tell him that?

Q. Yes.

A. Yes.

Q. When did you tell him that?

A. I want to say just before Christmas in December of 2013.

Q. There's no doubt in your mind that you relayed your acceptance of the $5,000 settlement

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offer to Hans Mast before Christmas Day, which would be December 25, 2013?

A. Right.

Q. Then did Hans mail to you a settlement release by letter dated January 24, 2014?

A. I'd like to see the letter, but yeah, I believe so.

Q. I believe it's —

A. I believe he had to mail it a couple times because I didn't get it.

MR. FLYNN: Let's mark Exhibit 5.

(WHEREUPON, a certain document was marked Exhibit No. 5, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. Showing you what's been marked as Exhibit 5. I'll represent to you that this is a copy of the second amended complaint that you filed in this case by your new lawyers, your current lawyers. If I could direct your attention to Exhibit D attached to this Exhibit 5.

Is Exhibit D a January 24, 2014 cover letter from Hans Mast to you enclosing the general release and settlement agreement from defense

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counsel for Caroline and Bill McGuire?

A. That's what it says.

Q. In the letter did he ask you to — it looks like it might be a typo. It says, "Please release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience."

A. Right, but I believe it was just a release — it was all tied into one.

Q. This letter is unsigned. Did you receive the letter unsigned?

A. Did I receive this unsigned?

Q. Yes.

A. Yes.

Q. Have you ever seen a signed copy of this letter?

A. No.

Q. If I could direct your attention to the next page of Exhibit D. Is that page 1 of the general release and settlement agreement?

A. Exhibit D?

Q. Correct.

MS. WILLIAMS: Turn the page.

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BY MR. FLYNN:
Q. Is this what you received attached to the cover letter?
A. I don't think so. Let me see. Yes, this looks like it because it's got these things I remember.
Q. When did you receive this letter and the attachment?
A. I would say I wrote back on January 29th and I probably got it that day, signed it and sent it back.
Q. The copy of the release is also unsigned. It's attached as exhibit -- part of Exhibit D to your second amended complaint.
Do you see the signature lines and the notary signature here that's missing?
A. Yes.
Q. Is this the document that you signed and sent back to Hans Mast?
A. The document that I signed had my signature.
Q. I'm asking if this is the same document that you signed and sent back to him?
A. Yes.

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Q. Right now we don't have a signed copy. I don't know that I've seen one in the case.
MS. WILLIAMS: Can we go off the record for a second?
MR. FLYNN: Sure.
(WHEREUPON, discussion was had off the record.)
BY MR. FLYNN:
Q. Is there any doubt, in your mind, that Exhibit D is the letter and attachment that you received from Hans Mast?
A. No. I believe that this is it.
Q. You signed some copy of this release and sent it back to Hans on January 29; is that correct?
A. Yes.
Q. You accepted the settlement offer prior to Christmas and presumably defense counsel or Hans drafted the settlement release and then Hans mailed it to you, correct?
A. Yes.
Q. At any point in time from December 25th until you received this settlement release, did you contact any lawyer to discuss whether it would be appropriate to let the McGuires out for 5,000?

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A. I believe I contacted Hans again.
Q. Besides Hans, did you talk to anyone else?
A. No.
Q. Was there anything preventing you from seeking a second opinion from some other lawyer at that time?
A. No.
Q. Directing your attention to Exhibit E attached to the second amended complaint, the second amended complaint, again, being Exhibit 5. Is this an e-mail from you to Hans on January 29, 2014?
A. This is the e-mail chain between me and Hans, yes.
Q. Down below at the bottom of the page, January 29 at 10:51 a.m., it appears that you were questioning Hans regarding some of the language in the release, including social security disability check boxes. Do you see that?
A. Yes.
Q. Hans responded to you and then at the top of the page here at 1:59 p.m. it says, "Okay, it's signed and in the mail."
A. Correct.

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Q. What did you mean by that?
A. I signed it and mailed it.
Q. Did you -- where did you mail it from?
A. My home.
Q. How did you do that?
A. Put a stamp on the envelope and put it in the mailbox, put the flag up and waited for the mailman.
Q. Is the mailbox attached to your home or is it --
A. It's out on the street.
Q. You walked down there and you put the mail -- the envelope in the mailbox, put the flag up and --
A. That is correct.
Q. Your understanding of signing that release and sending it back to your lawyer was that you would agree to take the $5,000 settlement, correct?
A. Yes.
Q. Hans didn't deliver the letter to you personally. He mailed it to you, correct?
A. He mailed it to me?
Q. He mailed it to you.

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A. Correct. U.S. mail.
Q. Do you recall an allegation in your complaint or amended complaint or second amended complaint in this case alleging that you were pressured or alleging undue influence by Hans in urging you to accept the $5,000 settlement from the McGuires?
A. Yes.
Q. How is it, as you sit here today, can you tell me how Hans unduly influenced you to accept the $5,000 settlement offer?
A. I don't know what Hans was thinking. How did I feel influenced?
Q. Unduly influenced.
Let me put it this way. He didn't put a gun to your head?
A. No.
Q. He suggested that you take the settlement?
A. Correct.
Q. He didn't force you to take the settlement?
A. Correct.
Q. It was your decision?

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A. Correct.
Q. You signed it and you sent it back to him in the mail?
A. Yes.
Q. Aside from your e-mails with Hans on January 29, did you call him that day?
A. I believe so.
Q. Did you also discuss whether it was appropriate to accept the McGuires' $5,000 settlement offer at that time?
A. Yes.
Q. You deliberated on it and decided to take it, correct?
A. There wasn't much – it was take it or get nothing.
Q. You had the opportunity to deliberate on it, correct?
A. For that day, yeah.
Q. You had reviewed the transcripts of the McGuire depositions and David Gagnon's depositions in order to provide you with some information in order to determine whether to accept the settlement offer, correct?
A. I believe I did try to read those, yes.

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Q. Did you call Hans or e-mail him and question him with respect to the evidence, the testimony contained in those deposition transcripts?
A. Yes.
Q. What did you say to him and what did he say to you?
A. There were many conversations over the phone and I'm sure some through e-mails.
Q. He continued to tell you that it was his opinion that the liability on the McGuires is questionable because they did not control David Gagnon's work that day, correct?
A. It depends on which time. Sometimes he said because they didn't tell them how to squeeze the trigger. It depends which time you are talking about.
Q. Again, there was nothing preventing you from seeking a second opinion from some other lawyer at the time you signed the settlement release and sent it back to Hans, correct?
A. From the time I received it, signed it and sent it back?
Q. Right.
A. No. It was a matter of hours. I got it

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that morning.
Q. You decided to mail it that day, right?
A. He needed it. He said now or you're not going to get anything.
Q. There was nothing preventing you from seeking the advice of another attorney at that time?
A. At that time it was time. It was now or nothing.
Q. You were in the comfort of your own house when you received the letter, correct?
A. Yes.
Q. You had the ability to go find another lawyer and ask them to discuss the case at that time. You had done it hundreds of times earlier – strike that.
After the settlement with the McGuires, you continued to prosecute the case against Gagnon, correct?
A. Yes.
Q. Did you have an understanding as to what, if any, insurance coverage he had?
A. Yes.
Q. How much was that?
A. What time frame are you talking about?

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Q. What was your initial understanding as to the limits on David Gagnon's insurance coverage?
A. Hans Mast told me he had $100,000.
Q. Was that in an e-mail?
A. There were – not initially, no, but later on he reiterated that in e-mails, yes.
Q. Did you, ultimately, learn that there was some additional amount of coverage with respect to Gagnon's policy?
A. Long after Hans Mast was gone, not part of the case.
Q. How much was the coverage?
A. The Allstate coverage, I believe, was 300,000.
Q. We'll talk about the settlement later, but did you ultimately settle the case again Gagnon for 300,000?
A. I believe it went to binding mediation.
Q. Was there an award of $300,000 based on a high/low agreement?
A. Yes.
Q. Is it fair to say that if Hans made a mistake about the $100,000 in coverage, that that was corrected and there was never any harm done as a

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result of his –
A. No.
Q. Explain to me how you were harmed by the representation that there was $100,000 in coverage.
A. You want me to explain?
Q. Yes.
A. Had I known the value of the case, I would have not filed for bankruptcy.
Q. Explain to me why one has something to do with the other.
A. Is my family and me going to dump money into a black hole that we can't recover or is there a light at the end of the tunnel where I can pay them back.
Q. At the time that you filed for bankruptcy, had any settlement offer been made from David Gagnon or his lawyers to you?
A. At the time of when?
Q. When you filed for bankruptcy.
A. I don't think so. I'd have to check the dates, but I don't think so.
Q. As the case was progressing against David Gagnon, were your doctors deposed?
A. As the case progressed with David Gagnon,

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I believe they were deposed. I don't remember. I'd have to look at the dates.
Q. Discovery continued on in the case?
A. I believe one doctor was deposed after the McGuire settlement. I'm not sure, though.
Q. Did Hans continue to represent you for some period of time?
A. Yes.
MR. FLYNN: I'll have you mark this as Exhibit 6.
(WHEREUPON, a certain document was marked Exhibit No. 6, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 6. Do you recognize this e-mail chain?
A. Yes.
Q. This is from September 23, 2014. If we go from the bottom up, it appears that Hans said to you that he wanted to give you the option of finding other counsel at this point if you really want to take the case to trial, which I think ultimately will be necessary. Correct?
A. Are we at "before I proceed" or "that's

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the very reason"?
Q. "That's the very reason."
Is it fair to say he was suggesting you find another counsel in the case at that point?
A. Yes.
Q. He also said, "I just do not believe strongly that defense counsel will offer much in the way of settlement."
Do you see that?
A. Yes.
Q. That's his opinion regardless of what he believed the coverage limits to be; is that a fair statement?
A. Yes.
Q. You responded to him, he responded to you and then you wrote an e-mail to him at 8:25 p.m. that night?
A. Okay.
Q. Do you see that? Did you say, "First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw"?
A. Yes.
Q. Did you start to look for other lawyers to help you in your case against Gagnon at that

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point in time?
A. I believe I did, that summer. This is fall, September.
Q. You had already started looking for new lawyers?
A. I believe that Hans had told me to start looking for a new lawyer in April of that year.
Q. Did he say why?
A. We'd have to read his thing. He says why.
Q. Do you recall why he said that to you?
A. He did not feel that the case was provable against David. He did not feel the value of the case was worth it. He did not feel -- actually, this is 2014. The dates are rough.
Q. He thought the case against David was difficult, correct?
A. Yes.
Q. Have you ever described the case as a he said, she said with respect to the facts of the accident?
A. He described that to me many times.
Q. Have you also --
A. And I used that back, yes.

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Q. Have you ever described this case as a he said, she said case?
A. I may have. I don't know.
Q. It is your word against David Gagnon's as to what happened and whose fault it was that day?
A. That's what Hans explained to me as what the problem was.
Q. Did you ever describe the accident as a he said, she said?
A. I don't think I called David a "she said" or me a "she said." I don't know. Right here I do.
Q. What do you say there?
A. I said, "I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw."
Q. He was denying that he even cut you, correct?
A. No, he never denied that.
Q. What was your reason for writing this sentence in that way?
A. Because Hans said that he believed David over me.
Q. With respect to what fact at issue?
A. His deposition versus mine. He said that I didn't make a good witness.

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Q. With respect to what points?
A. All of it. He was dumping me and he was coming up with his own excuses.
Q. You and David were the only ones that witnessed this accident?
A. Correct.
Q. Based on your understanding of how the evidence came out in the case, would you agree that there were differences with respect to the version of events?
A. Oh, yeah.
Q. There were differences between what he said happened and what you said happened?
A. Oh, definitely.
Q. Would it be fair to say, then, it would be up to the trier of fact, whether it be a judge or a jury, to determine who they believed?
MS. WILLIAMS: Objection. Calls for a legal conclusion.
You can answer, if you understand.
BY THE WITNESS:
A. I believe it would be up to a judge or jury, sure.

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BY MR. FLYNN:
Q. At the bottom of Exhibit 7 you say, "Bottom line Hans... do the best you can with what you got."
I'm sorry. I didn't mark this one yet. My apologies.
(WHEREUPON, a certain document was marked Exhibit No. 7, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 7. Is this an e-mail chain between you and Hans?
A. I don't think it's a chain. I think it's one.
Q. Point is well taken. It's you writing to Hans?
A. Yes.
Q. At the bottom it sounds like you had been in the hospital with a migraine and then you wrote, "Bottom line, Hans... do the best you can with what you got."
A. Yes.
Q. What did you mean by that?

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A. He wanted to settle, and I can tell you right now this letter was written after a very traumatic experience and – let me read it and refresh myself. I'm melting down in this letter.
Q. You said after a traumatic experience. Are you referring to the bankruptcy filing from that day?
A. That, in combination with migraines, yes.
Q. David Stretch was your lawyer that filed bankruptcy for you?
A. Yes.
Q. Did you meet with Mr. Stretch and discuss the bankruptcy process before you hired him?
A. Yes.
Q. How long did you meet with him?
A. I think I asked about it. I don't know. It may have been a couple of months or a couple weeks before it got filed. I wanted to learn about it.
Q. Did you, ultimately, list the case against David Gagnon as an asset in your bankrupt filing?
A. Yes, I did.
Q. Is that why the bankruptcy trustee became involved with the binding mediation?
A. Yes.
Q. Did you ever meet the bankruptcy trustee?
A. Yes. The first one.
Q. What was the name of that person?
A. The first one was Heeg was her last name. H-e-e-g, I think.
Q. Again, we established that Brad Balke became your lawyer in the case on March 19, 2015, correct?
A. Yes.
Q. Is it fair to say that your relationship with Hans Mast was deteriorating over the fall and beginning of the winter of 2015?
A. I would say it had been deteriorating long before that. You can see from the last exhibit I'm melting down and it was already started deteriorating.
Q. By the time you drafted Exhibit 7, had you talked to other lawyers about taking your case?
A. I have to go back and look, but probably. If he told me to look at other lawyers in April before this, yes.
Q. How many lawyers would you say you talked to between April and the time you drafted this e-mail on September 26?
A. I couldn't count that high, probably.
Q. Quite a few?
A. Yeah.
Q. Did any of them take your case?
A. No.
MR. FLYNN: Mark this as Exhibit 8.
(WHEREUPON, a certain document was marked Exhibit No. 8, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 8. Is this an e-mail from you to Hans Mast?
A. Yes. It's an e-mail chain, yes.
Q. On February 22, 2015 at 7:42 p.m. you wrote to Hans, correct?
A. Yes.
Q. Halfway down in that e-mail message you said, quote, "Now I'm left wondering... how hard it is to sue an attorney?"
A. That is true.
Q. You wrote that?
A. Yes.
Q. The next line you wrote, "And yes, I am and have been looking for someone who will take this case..."
A. That is not in reference to suing the attorney. That was in reference to the Gagnon case.
Q. What did the reference to suing an attorney mean?
A. That was me being angry.
Q. With Hans?
A. Yes. I was seeing red.
Q. You're suggesting that you may sue him?
A. Yeah. I didn't know that I could. I'm wondering about it.
Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?
A. Yes.
Q. You, ultimately, sued him for legal malpractice, right?
A. Yes.
Q. Is that what you had in mind when you wrote this?
A. No. This was about dropping Gagnon. The malpractice is about dropping the McGuires.

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Q. This —
A. We're talking — this is 2015.
Q. In this 2015 e-mail you are suggesting to Hans that you may sue him because of the McGuire settlement; is that right?
A. No.
Q. Then what is it that you're saying to him?
A. That if he damaged the Gagnon case, I didn't know if he did or didn't, and I'm threatening because I'm angry. You can see, again, I'm melting down here. These are emotional outbursts, I guess.
Q. Moving up the page a little bit also on February 22, 2015 at 8:14 p.m., you say, "To be honest, you took this case knowing it was my word versus his."
A. Yes.
Q. He said, he said, right?
A. Yes.
Q. Is that a fair characterization of the case, your word against David's?
A. That's how Hans kept describing it. That's the way I put it back to him, yes.
Q. You didn't correct him or dispute his

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characterization, did you?
A. No. I used his characterization.
Q. You agreed with it?
A. He said — how did it go? We had conversations between these e-mails on the phone. Then we would hang up and I would get angry and type it in an e-mail, type whatever it was that bothered me so he had it.
Q. Let me ask another question, if that's okay.
Did you ever correct Hans if he called this a he said, he said case? Did you ever say it's more than that?
A. Do I ever say it's more than that?
Q. Did you ever correct him? If he said it's a he said, he said case, did you say no, that's not right?
A. He said there's no witnesses. I said, "I'm a witness."
Q. You're one of the hes. It's your word against David Gagnon's, as you said in this e-mail?
A. Yes.
MR. FLYNN: If I could have you mark that as Exhibit 9.

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(WHEREUPON, a certain document was marked Exhibit No. 9, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Exhibit 9, is that Brad Balke's substitute appearance that was filed on March 19, 2015 in the case against Gagnon?
A. It looks like it, yes.
Q. Back to Exhibit 5, which is the second amended complaint. If I could direct your attention to Exhibit F. This appears to be a more complete copy of another e-mail we just talked about. Is Exhibit F more of the February 22, 2015 e-mail chain?
A. I'm not sure if that's separate or the same. Oh, it looks like it.
Q. At 7:20 p.m. Hans wrote to you and said, "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case."
Right?
A. Yes.
Q. He says, "I've been telling you over a year now the problems with the case and you just

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don't see them."
Correct?
A. That's what it says.
Q. Obviously, a difference of opinion, right?
A. Yes. Are you talking about difference of opinion as to the value or difference of opinion of the problems within the case?
Q. Let's go on. He says, "You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear, it is not. My guess is that seven out of ten times you will lose the case outright. That means zero. That's why I've been trying to convince you to agree to a settlement. You clearly do not want to."
Did I accurately read that?
A. Just that part of that paragraph, yes.
Q. So Hans is telling you that in his opinion your case against Gagnon you're going to lose it seven out of ten times, correct?
A. In this one, yes.
Q. He's acknowledging that you may have a

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chance.
A. I think later on he says nine out of ten.
Q. In this e-mail he says seven out of ten you will lose.
A. Yes.
Q. He's recognizing three times out of ten you may win, right?
A. I don't know what Hans is thinking.
Q. Is that what he said?
A. He says seven out of ten times you lose.
Q. You understood that there are risks in taking the case to trial that you could lose?
A. There are unforeseen risks, yes.
Q. There are always risks, period, in taking a case to trial?
A. Yes.
Q. Before you hired Brad Balke and after Hans told you he couldn't represent you, did you talk to any other lawyers about taking your case?
A. Yes.
Q. How many?
A. I can't tell you. A lot.
Q. Did any of them tell you that they wouldn't take the case because they didn't think you

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could prevail against Gagnon?
A. No.
Q. Not one?
A. No.
Q. What are the names of any of the lawyers you talked to about taking your case over from Popovich?
A. I can't tell you without looking at documents who it was and what date it was, what it was between these two.
Q. I don't think documents I produced would help you in that regard.
I'll just ask you based on your memory the names of any lawyers you met with from the time Hans wrote this February 22 e-mail —
A. I believe —
Q. Let me finish.
A. I believe —
MS. WILLIAMS: He has not finished his question.
THE WITNESS: Sorry.
BY MR. FLYNN:
Q. From the time that Hans wrote this February 22 e-mail and the time that Brad Balke

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enters an appearance on March 19. Just the name of any lawyer you —
A. I believe that Sal Ferris that I was talking about was one of the lawyers that I talked to.
Q. You're not sure? You believe that he was?
A. In between this time and this time?
Q. Yes.
A. I believe it's right around then.
Q. What type of law practice does Sal Ferris have?
A. I believe personal injury.
Q. Did you ever talk to him about taking your case before that date?
A. Before the date of this e-mail?
Q. Yes.
A. I'd have to look at it.
Q. He wasn't one of the original attorneys that you spoke with at the beginning of the case?
A. No.
Q. Fair to say once Balke entered his appearance on March 19, 2015 that Mast and Popovich were no longer your attorneys, correct?

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A. When Balke enters his appearance?
Q. Yes.
A. I would believe that, yes.
Q. They were terminated and Balke stepped in?
A. Yes.
Q. Can you tell me how the binding mediation which proceeded on December 8, 2015 evolved and came to be.
A. I was ordered into it from a bankruptcy court.
Q. Why is that?
A. I believe that the trustee put a motion up. I don't know who did it. I assume it was the trustee and the court ordered that it be put into binding mediation.
Q. Did you appear at the mediation?
A. Yes.
Q. Do you recall the name of the mediator?
A. Not off the top of my head, no.
Q. One of the exhibits to your second amended complaint indicates it was retired Judge James Etchingham.
A. That sounds familiar.

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Q. Do you recall how long the mediation lasted?
A. All day.
Q. Do you know if the parties submitted mediation briefs or statements to the judge?
A. I believe both sides submitted a whole bunch of things.
Q. The Boudins represented you in this mediation?
A. Yes.
Q. Because you had fired Balke by this point?
A. Oh, yes.
Q. Directing your attention, again, to Exhibit 5, the second amended complaint and Exhibit G. Exhibit G is, apparently, a memorialization of the mediation award. Do you see that?
A. It's how the judge decided to break it down, yes.
Q. Do you see that there's an award for future medical expenses of $200,000?
A. Yes.
Q. Since that date of December 8, 2015, have you received any medical treatment relative to your

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injuries —
A. Yes.
Q. Let me finish. Strike the question.
Since that date, December 8, 2015, have you received any medical treatment for your injuries incurred on January 28, 2011?
A. You're asking since the date of the binding mediation?
Q. That's right.
A. Yes.
Q. What medical treatment have you received?
A. I do an ongoing with the neurologist for the dystonia.
Q. That's in your right arm?
A. Yes.
Q. Have you calculated the medical bills that you've incurred since that day?
A. No, I have not.
Q. Are they anywhere near $200,000?
A. It depends if you calculate with or without insurance. I know what I pay, but then I have to pay for the insurance that pays for that.
Q. How much have you paid out of pocket since that date for medical treatment on your arm?

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A. I don't know, offhand.
Q. Was there any doctor that opined that you would require $200,000 in future medical expenses?
A. I believe so.
Q. Who was that?
A. I believe that was Dr. Patel. I don't know that she said $200,000. She was the doctor that was handling it at the time.
Q. Did you discuss your injury with the mediator at the mediation?
A. He did ask me a few questions.
Q. How much time did you spend with him?
A. On and off. He would come in and ask me questions and then go away and then come in and would ask me questions and then go away.
I don't remember which one was the mediator, which one was the Allstate adjuster, which one was the — I don't remember.
Q. You're not sure which one was the mediator?
A. They came in and they said they are going to ask you some questions and I answered them.
Q. As you sit here today, you don't know how much face time you had with the mediator that day?

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A. I don't remember the face of which one is which.
Q. Did the issue of lost wages ever come up?
A. At the mediation with me?
Q. Yes.
A. I don't remember.
Q. Did you ever make a claim of lost wages of $250,000?
A. I may have.
Q. Do you know what that was based on?
A. Yeah.
Q. What is that based on?
A. Past and future.
Q. What past wages had you ever earned that could lead to an award of $250,000?
A. To me, that's not a very high number. I think I asked for more than that. It would be an average over a certain number of years plus benefits and that's all lost.
Q. Would it be fair to say that your income would be accurately reflected in the tax returns you've produced in this case, so I don't want to ask you about each one of them?
A. I would say my personal income, yeah.

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Q. Have you filed personal tax returns since 2015?
A. Tried.
Q. I didn't ask you if you tried.
A. No. They won't let me. They said I don't make enough anymore.
MR. FLYNN: I believe the next exhibit is 10.
(WHEREUPON, a certain document was marked Exhibit No. 10, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what's been marked as Exhibit 10. This is a six-page binding mediation agreement. The copy I have is unsigned.
Do you recognize this as the mediation agreement that governed your December 8, 2016 mediation?
A. Yes.
Q. If I could direct your attention to — first, let me ask you.
Do you know why the bankruptcy trustee or the bankruptcy court ordered binding mediation as opposed to nonbinding?
A. I have no idea.

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Q. On page 4, section F, subsection B — I'm sorry, 1B. It says, "The parties agree that for this mediation the minimum award to Paul Dulberg will be $50,000. Also, the maximum award to Paul Dulberg will be $300,000."
Do you see that?
A. Yes.
Q. Do you know why the parties agreed to this high/low agreement?
A. No.
Q. Do you recall alleging in your original complaint against Popovich that there was a high/low agreement?
A. There is. There was.
MS. WILLIAMS: Can you repeat the question, please.
(WHEREUPON, the record was read by the reporter as requested.)
BY THE WITNESS:
A. I don't know. I'd have to read it.
MS. WILLIAMS: I asked her to read it. And you had answered it previously.
BY MR. FLYNN:
Q. Directing your attention back to Exhibit 4, which is the original complaint in this case. Page 4, paragraph 16.

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A. Okay.
Q. There's a sentence that begins with, "Unfortunately, a high/low agreement had been executed by Dulberg reducing the maximum account he could recover to $300,000 based upon the insurance policy available."
Do you see that?
A. Yes.
Q. It's not your position or testimony that Popovich had anything to do with the high/low agreement?
A. That was a mistake in there. No.
Q. You would agree that Popovich had nothing to do with the high/low agreement?
A. I believe that events that unfolded the way they did was due to Hans Mast's initial assessment of the value of the case.
Q. Let me ask it a different way.
Did Popovich have any idea that this high/low agreement existed when it was entered into?
A. I don't know.
Q. Do you have any reason to believe that he did?

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A. I don't know. I don't know how much the Boudins were in contact with them because they worked together. I don't know.
Q. What do you mean, "they worked together"?
A. They worked together on all different cases. That's a small county out there.
Q. Did you ever write to Hans and accuse Popovich of having a conflict of interest because he may have gone to high school with David Gagnon?
A. I did learn that.
Q. Do you believe the fact that someone went to high school with another person may give rise to a conflict of interest in a lawsuit?
A. I was shooting in the dark and guessing why they didn't see this as a viable case.
Q. Do you think that was appropriate to send to your lawyer at the time?
A. When you're wondering why they are doing what they are doing and you learn that and they were pretty much in the same class and they all knew each other and it's a small town, let me ask you, are you friends with the guy I'm suing? That's an appropriate question.

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Q. You didn't say that. You asked if they went to school together.
A. Correct.
Q. Popovich did not enter into this high/low agreement on your behalf, correct?
A. Popovich, no.
Q. When I say "Popovich," I mean generally the Popovich firm and your lawyers.
A. This was years later. No.
Q. They had nothing to do with it, right?
A. I wouldn't say anything to do with it.
Q. Withdrawn.
Who drafted this high/low agreement that's contained in the mediation agreement?
A. I'm not sure who drafted it.
Q. Would it have been either the mediator, the bankruptcy trustee, your lawyers or the defense attorneys?
A. I assume that this would have been an agreement of all of them.
Q. You don't think Popovich had anything to do with drafting this high/low agreement, do you?
A. I don't know that he did or didn't.
Q. Do you have any reason to believe that he

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did?
A. At this point, no.
Q. Continuing on in Exhibit 4. Directing your attention to the bottom of page 4, paragraph 10.
A. Exhibit 4. Say it again.
Q. The bottom of page 4, paragraph 20. This is your complaint against Popovich and Mast.
A. This has been amended since then.
Q. I understand. Paragraph 20 reads, "Following the execution of the mediation agreement with the high/low agreement contained therein and the final mediation award, Dulberg realized for the first time that the information Mast and Popovich had given Dulberg was false and misleading and that, in fact, the dismissal of the McGuires was a serious and substantial mistake."
Do you see that?
A. Yes.
Q. Can you tell me, as you sit here today, what false and misleading information did Mast and Popovich give you?
A. That I realized on the day of the — following the execution of the mediation agreement?

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Q. Correct.
A. The liability of the McGuires.
Q. What was false about it?
A. What made them liable and what didn't.
Q. What is it you learned to dispute what you were told?
A. I learned from a reliability expert that had the report there that day that the McGuires provided the tools which made Gagnon an agent of the McGuires. He was working at their behest.
Q. Who was this liability expert?
A. What's his name?
Q. He's a doctor?
A. Yes.
Q. Continue on with that paragraph. "Following mediation, Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016."
Do you see that allegation?
A. Yeah.
Q. Who advised you to seek an independent opinion from an attorney handling legal malpractice matters?

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A. I believe that was Boudin.
Q. You believe that or you know that?
A. I know that.
Q. You alleged it in this complaint so it's important that we know who that was.
A. Yes, that was Boudin.
Q. Boudin told you to seek an independent opinion from an attorney that handles malpractice matters?
A. Yes.
Q. It says you received that opinion on or about December 16, 2016.
A. Yes.
Q. That's separate and apart from any opinion you may have received from a liability expert, a doctor, an expert on chainsaws?
A. Yes.
Q. Who was the lawyer that you received a legal opinion from on December 16, 2016?
A. I believe that would be Thomas Gooch.
Q. The drafter of this complaint?
A. I'd have to look at the dates because I think — December 8th was the mediation; is that right?

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Q. Correct.
A. So the 16th would sound about right to be meeting with Gooch, but I can get that date.
Q. You met with Gooch –
A. Soon, within weeks. It was quick.
Q. Now that the door has been opened, you fired Gooch in this case, correct?
A. Yes.
Q. He drafted this complaint and he's also the one that gave you an opinion about legal malpractice liability on the part of my clients?
A. Yes.
Q. What is it that he told you on December 16, 2016?
MS. WILLIAMS: Objection. I don't think we've waived that privilege, but – can we go off the record for a second?
MR. FLYNN: I don't want to go off the record. I've asked this interrogatory in about five different ways and it hasn't been answered appropriately.
The allegation was made in the complaint. That's why I drafted the interrogatory the way I did. I don't think that there's been a square

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answer to it. This is clear that you're talking about a legal opinion.
BY THE WITNESS:
Q. Is this the same wording as we have in the current complaint?
BY MR. FLYNN:
Q. It's not exactly.
A. What would this be valid for, then?
Q. You've raised a response to a statute of limitations defense in this case and placed your knowledge of the malpractice and the date of incurring of an injury at issue.
Because your discovery of malpractice has been placed at issue, it's our position that you've waived privilege anyhow with respect to this conversation on December 16, 2016.
A. I'm not sure –
MS. WILLIAMS: There's not a question pending. I'm going to make a standing objection as to privilege with Gooch.
If we can agree that that objection will stand, we can go through this line of questioning and then if we need to later, have a judge determine whether or not that line of questioning is

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admissible. Are you agreeable to that?
MR. FLYNN: I'm agreeable to continuing on for a few minutes. I want to explore. I'll try to lay foundation for – to confirm this wasn't anyone else, for starters. Why don't we continue on and if you need to raise it again, we can talk.
MS. WILLIAMS: Otherwise, I'm just going to raise it to every single question you ask. I just don't want to have to continue to make the objection as to – if questions are asked about advice given by a legal malpractice attorney, I'm going to raise an objection as to that.
MR. FLYNN: Okay. But this is why we had the 201K conferences, multiple 201K conferences. It was made clear, to me, that there was a waiver with respect to subsequent counsel.
MS. WILLIAMS: Tom Gooch isn't subsequent counsel.
MR. FLYNN: The allegation has been made in this complaint and apparently this is subsequent counsel subsequent to my client's representation.
MS. WILLIAMS: It is a different case. It's not subsequent counsel in the underlying case. It's a new case.

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MR. FLYNN: We'll get to the interrogatory in a few minutes. I'll pull that out.
BY MR. FLYNN:
Q. Let me ask you. Is there any other attorney besides Mr. Gooch that gave you an opinion that's referenced here on December 16?
A. No one that isn't privileged.
Q. Could it have been anyone else?
A. No.
Q. So Gooch is the only person that's being referenced here in this allegation that's in your complaint that's a public record?
I'm not asking you right now what the opinion is. I'm going to do that later. I'm asking you who gave it to you. It's not anyone besides Mr. Gooch, correct?
A. Yes. It was Thomas Gooch.
Q. He drafted the very complaint that that allegation is contained in?
A. Yes.
Q. Dr. Landford was the liability expert that you referenced earlier, correct?
A. Yes.
Q. Back to the allegation that Gooch and –

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that Popovich and Mast provided you false and misleading information. That information was simply their legal opinion on the McGuires' liability; isn't that correct?

A. No. There was nothing simple about that. That's a very complex series of things that go all the way back to before the McGuire settlement.

Q. They didn't lie to you, did they?

A. It depends on how you define lie.

Q. How do you define lie?

A. If you know better and you say something else, that's a lie. Omission is a lie.

Q. Did they provide you with anything other than a legal opinion as to the McGuires' liability?

A. Yes. They provided me with case laws. They provided me with all different stuff. Yes.

Q. Whatever the advice that was given to you on December 16, 2016, you felt that you were mislead by Popovich and Mast at that point in time, correct?

A. At that point in time it was confirmed to me that I had a valid case against Popovich.

Q. You had a valid malpractice case against Popovich?

A. Yes. I did not know before that.

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Q. As of December 16, 2016?

A. Yes.

Q. Why is it that you didn't file that lawsuit until nearly a year later on November 28, 2017?

A. I believe because Thomas Gooch had some health issues and then his wife had some health issues. It took a while.

(WHEREUPON, a certain document was marked Exhibit No. 11, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. I'm handing you what has been marked as Exhibit 11. This is one set of your supplemental Answers to Interrogatories.

First, I'll ask you if that is your verification and signature at the end?

A. That is my signature.

Q. Again, I don't know if that verification was attached to this original document. It may have been. But there's been some confusion with respect to these verification pages. This is your signature and you answered these interrogatories, correct?

A. Yeah.

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Q. So this is a valid verification page with respect to this discovery document; is that a fair statement?

A. This is supplemental to original answers.

Q. That's your signature and you agree these are your answers?

A. I've reviewed them and we went over them and yes, I agree.

Q. And they are accurate?

A. As accurate as we can be.

Q. If I could direct your attention to Interrogatory No. 26. Do you see that?

A. Okay. Yes, I see it.

Q. This is similar to what we just talked about a few minutes ago. I'll read the interrogatory to you. "Identify and describe the false and misleading information Mast and Popovich provided to you and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake as alleged in paragraph 56 of your second amended complaint."

Do you see your supplemental answer here?

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A. I see it, yes.

Q. You reference the mediation award and then you state, quote, "At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning."

A. I do.

Q. Can you explain what that means because I don't quite understand it.

A. Hans Mast assured me — I want to go back to 2013, the Fall between October and the signature of the final release for the McGuires.

He assured me that, he said -- at that time he didn't tell me what anybody's policies were. He assured me that if we let the McGuires out of the case, Gagnon has enough insurance, you're going to get everything from him, so it doesn't matter that you're carrying the McGuires in the case.

Q. The next interrogatory is 27. "Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint including the identity of the expert, any opinions and any other information

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provided by the expert which caused you to learn in the summer of 2016 and became reasonably aware that Mast and Popovich did not properly represent you."

What does the summer of 2016 have to do with your discovery of malpractice?

A. Technically, I was sent Dr. Landford's report — I might be off a little by a couple months here, but I think in July of that year. And I read it, but I didn't — you don't catch everything the first time you read it.

It was not until later that I caught the part of the report that was brought to the attention — it caught my eye when I was sitting there and reading it.

Q. You didn't read any of this interrogatory or the original interrogatory as requesting legal opinions that you had alleged that gave you notice that there was a malpractice claim against Mast and Popovich?

A. Excuse me?

MR. FLYNN: Can you read that back.

(WHEREUPON, the record was read by the reporter as requested.)

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BY THE WITNESS:

A. The way she said it, I don't understand.

BY MR. FLYNN:

Q. I'll rephrase it.

We've known about this allegation in the original complaint since it was filed. You received some legal opinion in 2016. That's why you didn't know you had a malpractice case against Mast and Popovich.

We asked you in discovery answers a couple different ways what those legal opinions are. You didn't read 26 and 27 as requesting information about legal opinions?

A. I don't know that an expert witness would be considered a legal opinion. Wouldn't that be more like an attorney?

Q. I'll ask you again. Why is it that you first became aware of a legal malpractice matter against Mast and Popovich on or about December 16, 2016?

A. December 16th I was talking to a legal malpractice attorney.

Q. You were told that there was a case against —

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A. A valid case, yes.

Q. — Mast and Popovich?

A. Yes.

Q. Why is it you didn't know about this valid case prior to that date?

A. Because I hadn't talked to anybody that was a lawyer that specialized in that area.

Q. Whatever it is that he said to you gave you the basis for believing you had a valid case against Mast and Popovich?

A. Very much so, yes.

Q. You're withholding that information from me right now, as we sit here. You won't tell me what that expert said, correct?

MS. WILLIAMS: Repeat the question.

(WHEREUPON, the record was read by the reporter as requested.)

MS. WILLIAMS: I'm asserting attorney-client privilege on behalf of my client for Gooch's advice on December — in December of 2016.

However, because I want to move forward with this deposition, if he can answer the question, I believe we should go ahead and move forward and have him answer the question.

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I'll assert the privilege with the understanding that this may have to be briefed later.

MR. FLYNN: To be stricken later?

MS. WILLIAMS: Right.

MR. FLYNN: The substance of the answer he can put on the record. You're just saying you may move to strike it later?

MS. WILLIAMS: Right. I want to maintain the privilege with the objection, but I don't want to have to call the judge right now. I don't think it's something we should have to call the judge about right now.

MR. FLYNN: Just for the record, I believe it's been placed at issue by virtue of the first amended complaint. The responses to the statute of limitation defenses that were raised in very dispositive motions before Gooch withdrew from the case, the gist of that is the discovery rule has been raised and, therefore, it's our position that the date of discovery has been placed at issue and, accordingly, any legal opinions that were provided to this plaintiff have been exposed and that we're entitled to know what those are.

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MS. WILLIAMS: Can I also note one more thing?
MR. FLYNN: Sure.
MS. WILLIAMS: In the supplemental -- in the request it specifically refers to paragraph 57 of the second amended complaint, which is different.
MR. FLYNN: It is different. I'll acknowledge that. I believe that the prior original interrogatories asked for any opinions relative to the discovery of the malpractice. I could be wrong. There was a reason I asked this and that's why I believe that's what it was about.
MS. WILLIAMS: So --
MR. FLYNN: That particular one I agree with you is not phrased as calling for --
MS. WILLIAMS: Right. That's the question that was asked. We answered the question that was asked, which that particular paragraph does not refer to a legal expert. It just merely -- I'll read it out loud. "It was not until the mediation in December of 2016 based on the expert's opinion that Dulberg retain for mediation that Dulberg became reasonably aware."
I just want it clear that he did answer the question that was asked. I understand your line

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of questioning and we'll agree to move forward.
MR. FLYNN: I believe there were other discovery requests that did point to that and I think we can take a break here and I can find them fairly quickly because I think we're getting close to the end anyway.
MS. WILLIAMS: Okay.
BY MR. FLYNN:
Q. Did you ever receive any money from the mediation award?
A. No. I received money from the bankruptcy itself. It was a surplus bankruptcy.
Q. There was a $300,000 award given in the mediation.
A. That did not go to me. That went to bankruptcy.
Q. It was collected on your behalf and paid to the bankruptcy trustee, correct?
A. Correct.
Q. All $300,000?
A. I don't know that because I think -- I don't know how exactly it works. I heard attorneys have a lien that's special. I don't know how they break it up. I assume it goes to the trustee.

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Q. The Boudins weren't working for free. They got something out of it, right?
A. Yes.
Q. The trustee took the remainder and paid off some of your creditors, correct?
A. Correct. All of them.
Q. But the award was paid to the trustee on your behalf?
A. I believe so. I don't know how it worked.
Q. How much was the surplus after your creditors were paid?
A. After just the creditors?
Q. How much did you get?
A. How much did I get?
Q. Yes.
A. A third.
Q. I'm asking how much money did you get?
A. A third of the award.
Q. Dollars. How much money did you get?
A. Roughly a hundred.
Q. $100,000?
A. I don't know the exact number. It's roughly a hundred.

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Q. Was there a check that was issued to you?
A. By the trustee, yes.
Q. Did you cash it?
A. Yes.
Q. At what bank?
A. McHenry Bank & Trust.
Q. Do you still have an account there?
A. Yes.
Q. Do you have a copy of the canceled check?
A. I'm sure the bank has a photo thing.
Q. You can request a copy of the check, correct?
A. I could. I could see if they got it.
Q. I would ask you to do that. If you have any other documentation relative to the payouts that were made by the bankruptcy trustee on your behalf, we are requesting that information.
MR. FLYNN: Why don't we take a break and I'm going to look for one document and then we're just about done here.
(WHEREUPON, a recess was had.)
MR. FLYNN: Mark these as the next two.

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(WHEREUPON, a certain document was marked Exhibit No. 12, for identification, as of 02/19/2020.)
(WHEREUPON, a certain document was marked Exhibit No. 13, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm going to show you what I've marked as Exhibits 12 and 13. Twelve are your answers to Hans Mast's interrogatories. Thirteen is your responses to Popovich's request for production.
Interrogatory No. 1 from Mast asks, "Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach."
Do you understand that?
A. Yes.
Q. So how is it they committed malpractice?
A. May I see it?
Q. I'm going to show it to you in a second. I only have one copy.
This is basically, how did you first become aware that they committed malpractice?

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That's the essence of that interrogatory.
Here is your response. I can show that to you. It doesn't reflect any discussion with any malpractice lawyer in December of 2016.
Tell me –
A. Let me read it again. We're talking about No. 1 on this?
Q. Correct.
A. Okay.
Q. You understand it?
A. Yes.
Q. Would you agree that the legal opinion you received on December 16, 2016 is responsive to that interrogatory, whatever it is that you were told?
A. Yes.
Q. You didn't identify this December 16, 2016 discussion in the answer to that interrogatory, correct?
A. Say that again.
Q. Your discussion with Mr. Gooch on December 16, 2016, that's referenced in your original complaint, you didn't respond and identify it in this answer to the interrogatory, correct?

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A. This asks for every way Popovich or Mast breached the duty of care. It didn't ask for Gooch's opinion.
Q. How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?
A. Yes.
Q. That's what you've alleged here in this complaint.
A. Yes.
Q. Here I'm asking you, each and every way that they ever breached a duty of care to you. I covered the waterfront. You didn't answer --
A. On the McGuire case it was between October 2013 and January 2014. Yes. There's a multitude of things and that's why I listed a range.
Q. I'm asking when you became aware of it, in that interrogatory. Do you see that?
A. I became aware of that when Thomas Gooch read them and said there's a problem here.
Q. That's not the way you answered the interrogatory, correct?
A. I answered the first part. I did not answer after the comma and the and.

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Q. There's no objection and indication that any information is being withheld, correct?
A. Excuse me?
Q. There's no objection and an indication that you're withholding –
A. I was not withholding.
Q. I'll show you Exhibit 13. It asks – Exhibit 13 are the production requests to you. Number 8 asks for you to produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created and the date the recipient received the document.
The answer is, "The plaintiff is only withholding attorney-client communication between his successor counsel."
Is that your answer to the production request and did I accurately read No. 8?
A. May I consult with her for a minute?
Q. Sure.
THE WITNESS: Can we go off the record?
MS. WILLIAMS: If you can answer the question, answer the question first.

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BY THE WITNESS:
A. It's been a while since I've done this, so I'm not sure who the successor counsel is. Is it her or is it the Boudins or Balke?
BY MR. FLYNN:
Q. I think successor counsel, we can both agree, the successor counsel in the underlying case which would be Balke and then Boudin.
You didn't identify any documents withheld other than documents between you and successor counsel, correct?
THE WITNESS: I believe we waived those, didn't we, for Balke and Boudin?
MS. WILLIAMS: For Balke and Boudin we can represent that we waived those.
BY MR. FLYNN:
Q. Let me ask a different question.
Did Gooch communicate with you in writing relative to his opinion that you had a legal malpractice case against Mast and Popovich?
A. In writing?
Q. Yes.
A. I suppose the agreement between us that he would represent me because I had the case is a

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document in writing.
Q. Did he tell you -- strike that.
The discussion that you reference in the complaint, paragraph 20 of December 16, 2016, was that a face-to-face communication with Gooch?
A. What number is that?
Q. Exhibit 4, paragraph 20. The legal opinion you received, was it verbal, was it written?
A. I believe it was verbal.
Q. Now, I'm going to ask you what he said. There was an objection and that will be addressed by the Court later. Please tell me what Gooch told you.
A. He read what I brought him, looked through some things, and I don't remember if it was the same day that we talked to him or he took a day or two. I don't remember. He got back to me and he said, "You have a case here. You have a valid case."
Q. Did he say why?
A. On the basis of what I brought to him. Yes.
Q. Specifics, though. I don't want to talk about generalities. Did he tell you what Mast and

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Popovich did wrong and how it injured you?
A. How it injured me? Yeah.
Q. The first part of my question was, did he tell you exactly what they did wrong in connection with your -- their representation of you?
A. He probably did. I'm not recalling it right now. I'm pulling a blank.
The parts of the conversation I'm remembering, and for some reason I'm not pulling it. We've been at this a while and this is a long thing. Yes, he said based on what he saw, he saw reason for malpractice.
Q. You don't remember any details, as you sit here? Did you discuss the liability of property owners in Illinois?
A. Well, if they were just property owners in the case, that would be one thing, but they weren't just property owners.
Q. That wasn't my question. I'm asking if you discussed it?
A. Certainly.
Q. You and Gooch discussed the liability of the McGuires in the case?
A. Yes.

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Q. What did you say to him and what did he say to you?
A. I showed him the expert opinion.
Q. The chainsaw expert?
A. Yes.
Q. Did you show him any deposition transcripts?
A. Yes.
Q. Which ones?
A. All of them.
Q. And he read them before you talked?
A. I don't remember. Like I said, it may have been a few days between our initial meeting and bringing the whole file that I had and trying to get what the Boudins had and letting him go through it. I don't remember how long that took.
Q. How did you transmit the documents to him --
A. My brother carried them.
Q. Let me finish.
How did you transmit the documents to Mr. Gooch, including the deposition transcripts?
A. I believe we brought him a box.
Q. So you physically handed the documents to

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him?
A. I didn't physically hand them. My brother did.
Q. Did you communicate with Mr. Gooch by e-mail, at all, leading up to this meeting?
A. No.
Q. Did he ever write you any letters?
A. An e-mail or regular mail or what are you talking about?
Q. Any letters whatsoever.
A. Throughout the course of his representation, yes.
Q. What about in December of 2016?
A. I believe we started communicating in December, yes.
Q. But in writing?
A. In e-mails, sure.
Q. Did he discuss —
A. We may have. I'm not — whenever we started — whenever he started sending me things and going back and forth, I don't remember the exact date, but it was right after he started representing me, sure, we exchanged e-mails and started, yes.
Q. When did Gooch begin representing you?

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A. The day that he agreed to represent me. I believe it would have been the day that he decided that he had a case.
Q. On or about December 16?
A. Yes.
Q. At that point in time, or shortly thereafter, he communicated with you in writing the details of the breach of the standard of care committed by Popovich and Mast; is that correct?
A. I believe he started to detail those out in the complaint and we were working it back and forth trying to get it right.
Q. When did you first exchange drafts of the complaint?
A. I'd have to look back in the e-mails. I don't remember the dates.
Q. Did you look for any of these e-mails in connection with my discovery requests in this case?
A. At the time I think we thought they were privileged.
Q. That privilege objection wasn't exactly made. My question is, did you look for them?
A. Did I look for them? I have them.
Q. I would ask that you preserve each and

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every communication between you and Mr. Gooch, all written communications, even phone records that might reflect the dates and times of your phone communications, if any. Did you use a cell phone back then?
A. I used VOIP over a data line.
Q. Who was your carrier?
A. Comcast.
Q. Is that still your carrier?
A. Yes.
Q. Do you have the same phone that you utilized?
A. Same phone number for 50 years, yes.
Q. What else could you remember that Gooch told you on or about the 16th of December 2016 about Mast and Popovich breaching the standard of care and how it damaged you?
A. Say that again.
Q. What, if anything, else do you recall about your discussions with Gooch on December 16 regarding the breach of the standard of care by Popovich and Mast and how it injured you?
A. We discussed the whole scenario between October and January and what happened. It was

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pretty detailed. We discussed everything that you see that's been communicated in the e-mails. He didn't have much else to go on other than the documents and the e-mails.
Q. You're talking about the e-mails between you and Hans from the fall of 2013?
A. Yes.
Q. Ultimately leading to the $5,000 settlement?
A. Yes.
Q. Other than you have a case, what did Gooch say to you?
A. He said that they definitely committed malpractice.
Q. Did he ever put this in writing?
A. Did he ever put it in writing? I think he backed it up by filing a suit. That's documented.
Q. Again, the suit wasn't filed until November of 2017.
A. Yes, he had some health problems and then his wife had some health problems. Believe me, I was pushing for him to get that done.
Q. From December of 2016 until the complaint

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was filed, you exchanged some drafts of complaints with him?
A. I believe he let me see what he wanted to put in the complaint. I got to review some things. Of course I had, do this or that's not right. In fact, a couple of these things in here we had to definitely – you caught one. He totally worded it wrong. It was wrong. We had to amend.
MS. WILLIAMS: His question was, did he give you drafts for you to review?
THE WITNESS: Yes.
BY MR. FLYNN:
Q. These were exchanged by e-mail?
A. I believe so, yes.
Q. So you would have records of them?
A. Yes.
Q. Any comments with respect to the pleadings, as well, did you ever ask him questions? Did he explain to you the basis for the allegations in the draft complaints, similar to what you did with Hans?
A. Over many times, yes.
Q. This is all reflected in e-mails?
A. Yes.

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Q. Ultimately, you didn't file until November of 2017?
A. Correct.
Q. Popovich ceased being your lawyer March 19 of 2015, correct?
A. That sounds about right.
Q. Until December 16, 2016, you didn't have any reason to believe there was a malpractice case against –
A. Say the date again.
Q. Until December 16, 2016, you didn't have any other reason to believe there was a malpractice case against Popovich and Mast?
A. I did not know that I had a case, no.
Q. You threatened one with respect to the Gagnon case –
A. Yes.
Q. – at another point in time, correct?
A. I think I threatened him a few times in there. Yeah. I was actually nice to what I really wanted to say.
Q. Subject to the ruling on these objections, you don't recall any other specific details that you discussed with Popovich – I'm

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sorry – Gooch on December 16, other than what we already talked about?
A. I discussed the exact same things that you – the same documents that you already have. We went over the case that Mast and Popovich had against the McGuires. He followed through all the way to the end. We went over the whole case. You see as much as he did.
Q. Did Gooch ever explain to you why the McGuires would have been liable any more than Mast explained to you that they wouldn't be liable?
A. He said he agreed right away. He said that's obvious.
Q. Did Gooch ever provide you with any cases or statutes?
A. Provide to me, maybe. Maybe. I don't know.
Q. Would that be by e-mail?
A. It could be. I was in his office quite a few times. He may have.
Q. As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to

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the McGuires' liability?
A. That they were definitely liable. He tried to say that – like Popovich and Mast were first- or second-year lawyers and that they may have made a mistake here.
I said they've got 20 years in this. You think they'd know the difference. That's the kind of thing. He agreed with me. Twenty years, yeah, they should have known better.
Q. Did you ever discuss the specifics of the McGuires' potential liability with Gooch?
A. Liability with Gooch?
Q. With Gooch, did you ever discuss the specifics of the McGuires' liability other than he thinks you have a case?
A. Yes.
Q. Did he ever tell you why? What was it?
A. Because he agreed with the expert's opinion.
Q. The expert on the chainsaw?
A. Yes. The liability expert.
Q. The expert said you should use safety goggles and gloves and things like that?
A. He said more than that, but yes.

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Q. Do you know who commissioned that expert report?
A. Boudins.
Q. Do you know when the first draft of that doctor's expert report was circulated?
A. I heard that Boudin got it in February, maybe. I don't think I got it until July, but I'm not sure about that.
Q. July of what year?
A. The same year as the mediation.
Q. Of 2016?
A. Yeah.
Q. So you actually read it in advance of the mediation?
A. I talked about this earlier. I said yes. You don't catch everything the first time you read it. I was sitting there at the mediating table and I was reading it and I caught it and I turned to Randy and I said, after it was over, does this mean — that means.
Q. Means what?
A. Does this mean the McGuires are liable? Yeah, that means they are liable. He said, call my office after everything and I'll give you a name for

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an attorney you should go see.
MR. FLYNN: Any follow-up, Julia?
MS. WILLIAMS: I have two follow-up questions.

EXAMINATION

BY MS. WILLIAMS:
Q. Did you ever give Hans authority to make a settlement demand regarding Mr. Gagnon?
A. I think at one time in one of my meltdown letters I said get whatever you can, but no, I never actually signed anything saying you have the right to offer a settlement.
Q. Did you ever give Hans authority to make a settlement demand with regard to the McGuires?
A. A demand, no. He said he was going to probe and see what was out there, and I said, if you want to do that, that's fine.
MS. WILLIAMS: I have no further questions.
MR. FLYNN: Signature?
MS. WILLIAMS: We can waive signature.
THE REPORTER: Are you ordering this?
MR. FLYNN: Yes.
THE REPORTER: Regular delivery, e-tran?
MR. FLYNN: Yes.
THE REPORTER: Copy?

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MS. WILLIAMS: Yeah.
THE REPORTER: Regular delivery, e-tran?
MS. WILLIAMS: PDF.
(WHEREUPON, at 4:00 p.m., the deposition of PAUL DULBERG was concluded.)
* * * * *

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STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)

I, KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify:

That previous to the commencement of the examination of the witness, the witness was duly sworn to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction, and constitutes a true record of the testimony given and the proceedings had;

That the said deposition was taken before me at the time and place specified;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto

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set my hand and affix my seal of office at Chicago, Illinois this 3rd day of March, 2020.

Karen Pileggi

Notary Public, DuPage County, Illinois.

My commission expires 1/2/24.

CSR Certificate No. 84-3404

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EXAMINATION

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E X H I B I T S

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

DULBERG'S ANSWERS TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S INTERROGATORIES TO PLAINTIFF PAUL DULBERG

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds to Defendant, The Law Offices of Thomas J. Popovich, P.C.'s Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

1. Identify the person(s) answering and/or providing assistance in the answering of these interrogatories.

ANSWER: Paul Dulberg, available through counsel. The Clinton Law Firm, as counsel for Paul Dulberg.

2. Identify all persons who have knowledge of any matters relating to any of the facts, claims, damages, or defenses at issue in this case.

ANSWER: Paul Dulberg is the Plaintiff in this matter and is expected to testify in accordance with any deposition testimony he provided or provides. He has knowledge regarding the circumstances leading to the injury he sustained, the actual injury, the harm he suffered, including financial injury.

William McGuire ("William") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

EXHIBIT # 1

EXHIBIT E.1 - EXS. 1-13 TO DULBERG TRANSCRIPT 2-19-20

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Caroline McGuire ("Caroline") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

David Gagnon ("Gagnon") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

Barbara Dulberg. 4606 Hayden Ct., McHenry, IL 60051. Retired. Barbara is expected to testify to the facts and circumstances of the November 4, 2013 meeting with Hans Mast. Barbara is also expected to testify as to the facts and circumstances of Paul Dulberg's pain and suffering, and Dulberg's loss of use of his arm.

Thomas Kost. 423 Dempster Ave., Mt Prospect, IL 60056. Electrician. Thomas Kost is expected to testify as to the legal advice given to Dulberg from Mast and The Popovich Firm on the McGuires' liability, or lack of it, and how the judge would rule in the December 2013 meeting, as well as Dulberg's pain and suffering and loss of use of arm.

Mike McArtor, 4606 Hayden Ct., McHenry, IL 60051. McArtor was Dulberg's business partner at Sharp Printing, Inc. He is expected to testify regarding the facts and circumstances as to Dulberg's ability to work, loss of use of arm, and the facts and circumstances of the pain and suffering after the accident.

Scott Dulberg, 8245 Cunat Blvd, Apt. 2B, Richmond, IL 60071. Scott Dulberg is Paul Dulberg's family member and was Paul Dulberg's business partner at Sharp Printing, Inc. He is expected to testify regarding the facts and circumstances as to Dulberg's ability to work, loss of use of arm, and the facts and circumstances of the pain and suffering after the accident.

Investigation continues.

3. Identify the address of the McGuire's property described in paragraph 6 of your second amended complaint, and your address identified in paragraph 7 of the second amended complaint.

ANSWER: McGuires' real property is located at 1016 W. Elder Ave., McHenry, IL 60051.

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Dulberg's home is located at 4606 Hayden Ct., McHenry IL 60051

4. Identify and describe how you were invited to the McGuires' property to see if you wanted any of the wood from the tree, as alleged in paragraph 12 of your second amended complaint.

ANSWER: Dulberg received a call from Gagnon on June 27, 2011. Over the phone, Gagnon asked Dulberg if he wanted wood from the tree that the McGuires were removing and invited Dulberg to come see the wood.

5. Identify how William McGuire physically assisted in cutting down the tree, including the date, time, and location of his assistance, and describe how and when he supervised David Gagnon's actions in cutting down the tree, as alleged in paragraph 13 of your second amended complaint.

ANSWER: On June 28, 2011, Dulberg went to the McGuires' home and arrived between 8:30-9:00 am. He observed William McGuire working with Gagnon between that time and approximately noon that same day to remove tree branches from the tree. Gagnon continued to work throughout the day, after William stopped working. Caroline was present observing the work and supervising the work.

William and Caroline McGuire purchased and provided the chainsaw that was used to cut the branches. William and Caroline McGuire provided the ropes and straps that Gagnon used to climb the tree. Caroline had the chain saw owner's manual in her possession and instructed Gagnon what fuel/oil ratio to use for the chain saw.

William and Caroline McGuire instructed Gagnon as to which trees and branches that they wanted removed and where they wanted the trees and branches to fall during the removal process. Gagnon climbed into the tree and cut the branches utilizing the chain saw that the McGuire's provided. The branches would fall to the ground and William would pile the branches in the yard. He also started a fire and burnt some of the branches. At times, William started the chainsaw for Gagnon.

Throughout the entire day, Caroline observed the work and instructed Gagnon to "be careful"

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on several occasions. She also provided water to both William and Gagnon.

William, Caroline, and Gagnon had several conversations throughout the morning as to which trees and branches to cut, how to best remove the trees and branches, where the trees and branches would fall, and how to clean them up. William and Caroline instructed Gagnon regarding those matters.

At approximately noon on that same date, William stopped working on cutting down the tree and went into the house. He then came out of the house and entered the McGuires' pool that is located on the same property.

Gagnon continued to work through the afternoon and early in the afternoon complained to Caroline that he was "working alone" and couldn't complete the work that day without help. Caroline and Gagnon then asked Dulberg to assist. Dulberg agreed to assist.

Dulberg assisted William McGuire by moving branches to the garden and started the chainsaw for Gagnon once while Gagnon was in the tree.

Dulberg then assisted Gagnon by moving the large branches that had already been cut and holding the large limbs steady so that Gagnon could cut them. Dulberg would hold the large branch while Gagnon would cut the smaller branches off the larger branch with the chain saw.

Gagnon would tell Dulberg which branches to pick up and move to the location where Gagnon was cutting them into smaller pieces by cutting off smaller limbs with the chain saw. Gagnon would also instruct Dulberg as to how and where to hold the limbs so that he could cut the branch with the chain saw. Gagnon placed the larger limb, which was now stripped of the smaller branches in a pile and instructed Dulberg to grab the next limb, which still had the smaller branches, to start the process again.

The chain saw was very loud and little conversation occurred during the time the chain saw was on. Instead, Gagnon would gesture to communicate with Dulberg as to how he wanted the branch

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held or moved.

No one cut down the entire tree that day, instead branches were removed from the tree and cut down into smaller pieces.

6. Identify and describe how Caroline McGuire supervised David Gagnon and William McGuire's actions, as alleged in paragraph 14 of the second amended complaint.

ANSWER: See answer to 5.

7. Identify the date, time, the location, and the exact words exchanged between Gagnon and the McGuires on the one hand and you on the other as alleged in paragraph 15 of your second amended complaint, in which it is alleged that were asked to assist the trimming and removal of the tree.

ANSWER: See answer to 5. Dulberg does not recall the "exact words exchanged" but does recall the incident as outlined in his answer to 5.

8. Identify what safety information was readily available to Caroline and William McGuire as alleged in paragraph 18 of your second amended complaint, and how you know this information.

ANSWER: Caroline and William McGuire had the owner's manual to the chain saw. Caroline was reading parts of it aloud to Gagnon in the morning of June 28, 2011. Dulberg observed Caroline in possession of the owner's manual and saw her reading it in the morning of June 28, 2011.

The owner's manual had safety instructions and warnings that would have prevented the accident.

9. Did you request any protective equipment or other safety devices from the McGuires or Gagnon while you provided assistance to Gagnon in operating the chainsaw?

ANSWER: No, Gagnon instructed Dulberg as to what to do and Dulberg never operated the chain saw or read the owner's manual.

10. Did you assist Gagnon with trimming and removal of the tree? If so, describe

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each and every action you took in assisting Gagnon with the cutting down or removal of the tree.

ANSWER: See answer to 5.

11. Identify and describe each and every conversation between and David Gagnon while you were assisting him with trimming or cutting down the tree.

ANSWER: See answer to 5.

12. Identify and describe each of your employers in the ten year period prior to the accident of June 28, 2011, including any self-employment. For each employer, identify your wage rate or salary, your title, your job description, your required duties, and your income for the ten year period prior to the accident in question.

ANSWER:

1. 1999-2011 Sharp Printing, Inc., 4606 Hayden Ct., McHenry, IL 60051

Paul Dulberg was an owner and operator of Sharp Printing, Inc. along with his two partners Scott Dulberg and Michael McArtor.

Paul Dulberg was the President, salesperson, graphic designer, 8 color screen print pressman, handled fulfillment, shipping & receiving, as well as other day to day operations of the company.

For income, see tax returns.

Sharp Printing, Inc. operated out of the lower floor of Paul Dulberg's personal residence and paid all utilities bills, including garbage, water, natural gas, electric, internet, phone, and cable. The approximate value is $650 per month.

2. 1999-2011 Juskie Printing

Paul Dulberg served as an independent contractor for Juskie Printing performing graphic design and prepress functions.

From 1999-2006, this was a barter arrangement.

From 2007-2011, Paul Dulberg earned approximately $18,000 per year.

See tax documents.

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3. Intermatic Incorporated

1998-2002 Intermatic Incorporated, Offset Press Operator I

2002-2007 Intermatic Incorporated, Graphic Designer

2010 Intermatic Incorporated, Independent Contractor for Graphic Design

See tax documents for income information.

See job description provided with documents.

4. 2011 Art Material Services. Material Handler

Operated and maintain thread roller.

See tax documents for income information.

13. Did you suffer any serious personal injury and/or illness within ten years prior to the date of the occurrence? If so, describe where and how you were injured and/or became ill and describe the injuries and/or illness suffered.

ANSWER:

1. Migraine Headaches, treated at home.

2. 2002. Rear end collision at Hayden Dr and Johnsburg/Wilmot Rd., in McHenry, IL.

See medical records produced.

3. Approx. 2004, Chest Infection. Treater: Dr. Sek. Treated with inhaler and antibiotics

4. 2005. Broken Foot. Treated at Centegra Hospital in McHenry. Scott Dulberg stepped on Paul Dulberg's bare right foot.

14. Have you suffered any serious injury and/or illness since the date of the occurrence? If so, state when, where, and how you were injured and/or became ill and describe the injury and/or illness suffered.

ANSWER:

1. 2011 to present. Migraines.
   Treaters: Dr. Levin
   Dr. Terrance Lee
   Investigation Continues.
2. 2013 Hemorrhoid related to stress. Treater: Dr. Conway

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3. 2016 Dog Bite to Left Leg. Treater: Centegra, McHenry.

a. Dulberg broke up a fight between his dog and the neighbors' dog when he was bitten by a neighbor's dog.

4. Enlarged Prostate Treaters: Dr. Berger, The Uro Center, Lake Zurich, Illinois.

Dr. Elterman and Dr. Tarnauskas, Elterman Center, Skokie, Illinois.

Investigation continues. No other major illness or injuries relevant to this case.

15. Have you filed any claim for workers compensation benefits in the ten years prior to the underlying accident of June 28, 2011? If so, state the name and address of your employer, the date(s) of the accidents, the identity of the insurance company that paid you such benefits and the case nos. and jurisdictions where filed.

ANSWER: No.

16. State the personal injuries sustained by you as the result of the underlying occurrence.

ANSWER: Chainsaw injury to the right arm. See medical records.

17. With regard to your injuries, state:

(a) The name and address of each attending physician and/or health care professional;
(b) The name and address of each consulting physician and/or health care professional;
(c) The name and address of each person and/or laboratory taking an x-ray, MRI and/or other radiological tests of you;
(d) The date or inclusive dates on which each of them rendered you service;
(e) The amounts to date of respective bills for services; and
(f) From which of them you have written reports

ANSWER: See medical records provided.

18. As a result of your personal injuries from the underlying case, were you a patient or outpatient at any hospital and/or clinic? If so, state the names and addresses of all hospitals and/or clinics, the amounts of their respective bills and the date or inclusive dates of their services.

ANSWER: See medical records provided.

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19. As a result of your personal injuries from the underlying case, were you unable to work? If so, state:

(a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;
(b) The date or inclusive dates on which you were unable to work;
(c) The amount of wage and/or income lost by you; and
(d) The name and address of your present employer and/or wage and/or salary.

ANSWER: Paul Dulberg was self-employed and unable to work after the accident. He has not been employed since the date of the accident. See tax returns for lost wages. See SSDI documents for current income.

20. State any and all other expenses and/or losses you claim as a result of the occurrence in the underlying case or resulting from any alleged legal malpractice committed by Popovich or Mast. As to each expense and/or loss, state the date or dates it was incurred, the name of the person, firm, and/or company to whom such amounts are owed, whether the expense and/or loss in question has been paid, and if so, by whom it was so paid and describe the reason and/or purpose for each expense and/or loss.

ANSWER: Investigation continues. Medical costs, lost wages, loss of use, permanent disability resulting from injury, and pain and suffering.

21. Were any photographs, movies, and/or videotapes taken of the scene of the occurrence or the persons and/or equipment involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, and the name, address, occupation and employer of the person taking them.

ANSWER: Photograph of Mr. Gagnon. See all photographs produced with request to produce.

22. Had you consumed any alcoholic beverage within the 12 hours immediately prior to the occurrence or had you used any drugs or medications within 24 hours immediately prior to the occurrence. If so, state the name(s) and address(es) of those from whom it was obtained, where it was used, the particular kind and amount of drug, medication, or alcohol so used by you, and the names and current residence addresses of all persons known by you to have knowledge concerning the use of said drug or medication or alcohol.

ANSWER: Dulberg may have taken Naproxen sodium prior to the accident. Naproxen

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sodium is a pain reliever available over the counter. Dulberg does not recall whether he took the drug the night before or the day of the accident, but he did take it on a regular basis at that time. He did not consumer any other drugs or alcohol during that time.

23. Describe why you agreed to a binding mediation in the summer of 2016 as alleged in paragraph 52 of your second amended complaint.

ANSWER: At that time, a bankruptcy trustee was appointed by the bankruptcy court and the bankruptcy trustee filed a motion for binding mediation that was granted.

24. Identify the date on which you provided any settlement authority to Hans Mast or the Popovich firm, and the amount of any specific settlement authority to make any settlement demand upon the defendants in the underlying case.

ANSWER: Specific settlement authority was never given. On November 4, 2013, Mast was granted authority to investigate a settlement, but a specific dollar amount was never provided. On or around January 29, 2014, Dulberg signed the settlement agreement.

25. Identify and describe the date on which you received a copy of the settlement agreement from Mast in the underlying case, the date on which you executed the settlement agreement and the date on which you mailed the executed settlement agreement to Mast.

ANSWER: January 29, 2014, received, signed and mailed back to Mast.

26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.

ANSWER: Mast told Dulberg that Illinois law does not permit a recovery against the McGuires in the circumstances of Dulberg's case and that Dulberg would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to

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seek and receive a full recovery from Gagnon.

27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.

ANSWER:

Dr. Landford is a chain saw expert who was retained by Dulberg. See documents produced.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

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XFINITY Connect hansmast@comcast.ne

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Re: Dave's Best and oldest friend John

From : Paul Dulberg <pdulberg@comcast.net> Tue, Nov 19, 2013 02:29 AM

Subject : Re: Dave's Best and oldest friend John

To : Hans Mast <hansmast@comcast.net>

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>
> Sent from my iPhone
>
>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>
>> Only 5, That's not much at all.
>> Is this a take it or leave it or do we have any other options?
>>
>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>
>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.
>>
>> They all left me out in the yard screaming for help while they were busy making sure they were covered.
>>
>> She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.
>>
>> How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.
>>
>> I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.
>>
>> I'm not happy with the offer.
>>
>> As far as John Choyinski, he knows he has to call you and said he will tomorrow.
>>
>> Paul
>>
>> Paul Dulberg
>> 847-497-4250
>> Sent from my iPad
>>
>>> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>>>
>>> Im waiting to hear from John. I tried calling him last week, but no one answered.
>>>
>>> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at

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some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>>>
>>> Let me know what you think..
>>>
>>> Hans
>>> ----- Original Message -----
>>> From: Paul Dulberg <pdulberg@comcast.net>
>>> To: Hans Mast <hansmast@comcast.net>
>>> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
>>> Subject: Dave's Best and oldest friend John
>>> Hans,
>>> Just spoke with John Choyinski again about talking with you.
>>> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
>>> I believe he will try and call sometime tomorrow.
>>> Paul
>>> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
>>> Sorry for the rant but Dave was a complete ass all the way and deserves this.
>>> Paul Dulberg
>>> 847-497-4250
>>> Sent from my iPad

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MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the $5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans

EXHIBIT # 3
2-19-20

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VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true, correct, and complete, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Paul Dalberg

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE
THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM.
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT # 4
2-19-20

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

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11. That as Exhibit B reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as Exhibit C.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. *MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by* violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III

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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Client

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT

ALL STATE LEGAL

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COPY

MAY 16 2012

KATHERINE M. KEEFE, McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT B

ALLSTATE LEGAL

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ____ ON
_____ 20__, AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 202 ON
9/28 20 22, AT 8:30 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1-15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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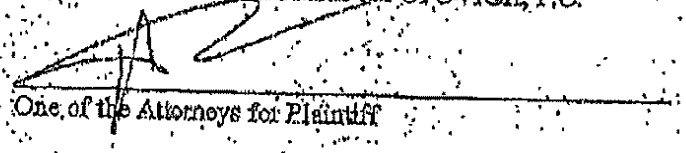
WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



One of the Attorneys for Plaintiff

Hans A. Most
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203084

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kohrak

Mark J. Vogo
James P. Tutai
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT C
ALLSTATE LEGAL

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No: 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740.ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____ _____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation	
Medical	$ 60,000.
Future medical	$ 200,000.
Lost wage	$ 250,000.
P.S	75,000.
L N L	75,000.

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

ALL-STATE LEGAL

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McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF, v. THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	)	Case No. 17 LA 377

NOTICE OF FILING

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on December 6, 2018, the undersigned caused the enclosed Second Amended Complaint to be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, a non-attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Mary Winch
Mary Winch

EXHIBIT # 5
2-19-20

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McHenry County, Illinois
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Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendant.	)	No. 17 LA 377

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

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4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

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15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

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27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A.**

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

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44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

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53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing

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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

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Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40 % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Client

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT A

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MAY 15 2012
KATHRYNE M. KEEPS
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,
Plaintiff,
vs.
DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,
Defendants.

No.: 12LA178

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count 1

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 7/28 2012, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____ 20__, AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
B

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and know that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 544-3797
ARDC No. 06208684

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5. That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

EXHIBIT GROUP C

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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ---- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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The Law Offices of Thomas J. Popovich P.C.

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Thomas J. Popovich
Hans A. Mast
John A. Konrad

Mark J. Vogo
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____ _____
PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: McGuire settlement**
Date: December 28, 2018 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap..
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.



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ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
V.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

On December 6, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation	
Medical	$ 60,000.
Future medical	$ 300,000.
Lost wage	$ 250,000.
P.I.S	75,000.
L.N.L	75,000.

The Honorable James P. Etchingham, (Ret.)

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Pamela Walker

From: McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
Sent: Monday, December 10, 2018 1:37 PM
To: George K. Flynn; Pamela Walker
Subject: 17LA000377 - 2 Documents Filed

17LA000377

DULBERG, PAUL VS MAST, HANS, ET AL

Doc Type	COAA
Description	COMPLAINT - AMENDED
Date Filed	12/6/2018
Image Link	View Document Image

Doc Type	NOTF
Description	NOTICE - FILING
Date Filed	12/6/2018
Image Link	View Document Image

NOTE: E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Just received your mailed letter**
Date: December 27, 2016 7:10:43 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: September 23, 2014 at 9:06:46 PM CDT
To: Hans Mast <hansmast@comcast.net>
Subject: **Fwd: Just received your mailed letter**

Hans,
if I use a chainsaw and cut you badly who is going to believe me when I say it's not my fault, Hans just fell into it?

Who in their right mind is going to believe me when your pointing your finger at me saying I did it?

Who?

Begin forwarded message:

From: Paul Dulberg <pdulberg@comcast.net>
Date: September 23, 2014 at 8:25:03 PM CDT
To: Hans Mast <hansmast@comcast.net>
Subject: **Re: Just received your mailed letter**

First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw. I was but a lowly printer/graphic designer my whole life and never asked for anyone's sympathy till now.

Secondly, I'm sorry I must live among a bunch of potential jurors that you don't trust to just do the right thing.

Thirdly, I'm most sorry for agreeing to lend David Gagnon a hand when he needed some help, I had no idea he was going to try and lop it off.

Fourth, I'm sorry you don't feel good about pushing for a trial. I wish whatever mysterious evidence you seek would be shared with me because without a video camera I can only say what I've seen from direct experience. And I guess in this case "me" the victim isn't credible enough but the one wielding a chainsaw that hurt me is.

A few questions from a layman,

How much could a trial actually cost?
What,
$50,000
$150,000
Does it even cost as much as a car?
What number?

How much would you hope to get for us in a settlement?

How much could be expected if the trial does proceed and we have a favorable outcome?

Hans, if your heart is not in this I'm sorry

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

EXHIBIT # 6
2-19-20

On Sep 23, 2014, at 7:39 PM, Hans Mast <hansmast@comcast.net> wrote:

Hi Paul. My view hasn't changed. I think each time we've talked I've always tried to be open about my reservation to take this

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case to trial. I just don't think we have enough evidence to prove our case and to invest the time and cost and preparing for trial and moving to trial just in my mind does not make sense to me. I have to be very realistic about things and honest with my opinion. It doesn't do you any good if I do not feel strongly about the case.

That's the very reason why I wanted to have this discussion. I want to give you the option of finding other counsel at this point if you really want to take the case to trial which I think ultimately will be necessary. I just do not believe strongly that defense counsel will offer much in the way of a settlement. Although I will ask him if he is going to make an offer and maybe that will allow you to make a better judgment on this.

Sent from my iPhone

> On Sep 23, 2014, at 7:17 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>
> Before I proceed,
> Why the change of heart?
> I mean, last month your response was we are setting a date for trial or something like that but Now it's settle or find new council again.
> Paul
>
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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C 1422 V2

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Bad night**
Date: December 27, 2016 7:07:16 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: September 26, 2014 at 6:32:40 PM CDT
To: Hans Mast <hansmast@comcast.net>
Subject: Bad night

Hans,

Last evening I was in the hospital with the most severe migraine I've ever had.

This morning I filed for bankruptcy with David Stretch.

This afternoon I spent with my regular physician Dr Zaide doing a follow up from yesterday.

And right now, I have to email you. All when I still have a slight residual headache and should be in bed.

At first I thought the migraine was brought on by the medications I'm taking but it wasn't, it was brought on after our discussions. Now I can't prove that but it seems pretty obvious to me. Joke no pun intended there!

That migraine made me realize I need the stress of this situation over with. All the stress on top of losing everything is too much and I'd rather live than die from it all before my body does something worse.

My body is not reacting well and the migraines are getting more frequent and worse. Have you ever vomited at the same time as deficating while being in some of the most excruciating pain in your life?

If not, neither did I till the chainsaw went through my arm. That's when the migraines became more frequent, stronger and faster coming on. And now for the first time during the day.

Ever since I awoke this morning, all I can I think is the stress of it all is killing me more and more as the reality sets in and I just can't afford to care about it anymore.

My health means more than some lawsuits and the lure of money.

All because some idiot named David Gagnon forgot to tell me to move out of the way and he can't seem to admit it.

Yes, after reading his deposition and hearing it was my fault I was pissed.

In my anger I suspected all sorts of things. Including it being intentional especially after my discussions at his home only trying to get his homeowners policy number and him wanting money and threatening me for it.

Yes, my arm and elbow were hurt from his stupidity irregardless if some dr can link the two together or not.

Yes, there will be ongoing medical as a result of all this because it still hurts and doesn't work right.

Yes, I am now disabled irregardless of what SSDI appeal goes because of this.

Yes. I understand I'm screwed because of a system that allows one person to hurt another and even after a trial and judgement entered all they have to do is go file for bankruptcy in the same courthouse on the same day.

Yes, it just took me almost an hour just to type this.

Yes, yes, yes...

but none of it matters anymore!

Bottom line Hans... Do the best you can with what you got, I've got nothing more to lose or give. I need it all to just go away.

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C 1423 V2

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Memo**
Date: December 27, 2016 6:01:21 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 9:38:57 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

No answer, that's what I thought...
Your not very quick when cornered and your not excused from this case until I say you are whether or not your firm agrees.
Got it?

> On Feb 22, 2015, at 9:05 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>
> Is your wanting out a personal issue with me or is it strictly financial?
>
> > On Feb 22, 2015, at 9:01 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Oh, and unless I'm wrong, David did admit to having control over the chainsaw. David, in his lie, admitted to seeing me move my arm and continued along his path with the chainsaw at cutting rpm's.
> > In effect he did admit it was his fault.
> >
> > > On Feb 22, 2015, at 8:52 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > You do not have my consent to quit.
> > >
> > > > On Feb 22, 2015, at 8:23 PM, Hans Mast <hansmast@att.net> wrote:
> > > >
> > > > Paul, honesty hurts. I am honest to a fault sometimes. You told me at the start that David would admit his fault. That proved not to be true. Still your threats and putdowns don't change anything. Just find another attorney and we can part ways.
> > > >
> > > > Sent from my iPhone
> > > >
> > > > > On Feb 22, 2015, at 8:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > >
> > > > > To be honest, you took this case knowing it was my word vs. his.
> > > > > Now you back out because the value of the case isn't worth your time?
> > > > > You got some nerve and your earning the reputation of a shady lawyer
> > > > >
> > > > > > On Feb 22, 2015, at 7:42 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > > >
> > > > > > To believe David's version of events you must believe I was committing suicide.
> > > > > > Who in their right mind puts his arm into a chainsaw?
> > > > > >
> > > > > > I figured you would cop out again...
> > > > > >
> > > > > > Now I'm left wondering...
> > > > > > How hard is it to sue an atty?
> > > > > >
> > > > > > And yes I am and have been looking for someone who will take this case...
> > > > > >
> > > > > > The issue of my word vs David Gagnons... Did he cut me or did I cut myself?
> > > > > >
> > > > > > Of coarse he cut me.
> > > > > >
> > > > > > Next issue please?

EXHIBIT # 8
2-19-20

Dulberg 001384

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY

FILED APE
MAR 19 2019
KATHERINE M. KECK
McHENRY CTY. CIR. CLK.

PAUL DULBERG

vs. Case Number 12 LA 178

DAVID GAGNON, ET AL.

APPEARANCE

I HEREBY ENTER THE APPEARANCE OF

PAUL DULBERG
(Insert the name of the party for whom you are entering your appearance)

AND MY OWN AS

☐	REGULAR COUNSEL	☐	TRIAL COUNSEL
☐	SPECIAL & LIMITED APPEARANCE	☒	SUBSTITUTE COUNSEL
☐	PRO-SE	☐	COUNSEL IN FORCIBLE ENTRY
☐	ADDITIONAL COUNSEL	☐	APPELLATE COUNSEL
☐	GUARDIAN AD LITEM	☐	COURT APPOINTED COUNSEL

AND AS (HIS) (HER) (THEIR) COUNSEL IN THE ABOVE ENTITLED CASE.

SIGNED BB
(Signature of Attorney filing appearance)

Name BRAD J. BALKE, P.C. BRAD J. BALKE
Printed Name

ARDC Number 6273509

Attorney for PLAINTIFF

Address 542 S. DEARBORN ST., STE. 310

City, State Zip CHICAGO, IL 60605

Phone 312-986-8063

CC-APPI (Revised 12/01/06)

EXHIBIT # 9
2-19-20

Dulberg 002646

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Binding Mediation Agreement
ADR Systems File # 33391BMAG

Revised for Special Billing

I. Parties

A. Paul Dulberg, by attorneys, Kelly N. Baudin and Randall Baudin, II

B. David Gagnon, by attorney, Shoshan Reddington

SPECIAL BILLING – Section V.B.5 – Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.

II. Date, Time and Location of the Binding Mediation

Date: Thursday, December 8, 2016
Time: 1:30 P.M.
Location: ADR Systems of America, LLC
20 North Clark Street
Floor 29
Chicago, IL 60602
Contact: Alex Goodrich
312-960-2267

III. Rules Governing the Mediation

Each party ("Party") to this agreement ("Agreement") hereby agrees to submit the above dispute for binding mediation ("Mediation") to ADR Systems of America, L.L.C., ("ADR Systems") in accordance with the following terms:

A. **Powers of the Mediator**

1. The Parties agree that The Honorable James P. Etchingham (Ret.) shall serve as the sole Mediator in this matter (the "Mediator").
2. The Mediator shall have the power to determine the admissibility of evidence and to rule upon the law and the facts of the dispute pursuant to Section III(D)(1). The Mediator shall also have the power to rule on objections to evidence which arise during the hearing.
3. The Mediator is authorized to hold joint and separate caucuses with the Parties and to make oral and written recommendations for settlement purposes.
4. **The Parties agree that the Mediator shall decide all issues concerning liability and damages arising from the dispute if this matter cannot be settled, unless any of the above is waived. Any other issues to be decided must be agreed upon by the Parties, and included in this contract.**
5. Any failure to object to compliance with these Rules shall be deemed a waiver of such objection.

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B. **Amendments to the Agreement**

1. No Party shall amend the Agreement at any time without the consent and approval of such changes by the opposing Party, and ADR Systems of America.
2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR Systems case manager by telephone. The agreed proposal must also be submitted to the ADR Systems case manager in writing, by fax or email, if necessary, and the contract changes MUST be made by ADR Systems. No changes made outside these guidelines will be accepted. Furthermore, if the amended contract made by ADR Systems is not signed by both Parties, the Agreement shall be enforced in its original form, without changes.

C. **Pre-Hearing Submission**

1. Mediation statements are permitted provided that the statement is shared among the other parties. The Mediation Statement may include: statement of facts, including a description of the injury and a list of special damages and expenses incurred and expected to be incurred; and a theory of liability and damages and authorities in support thereof.

D. **Evidentiary Rules**

1. The Parties agree that the following documents are allowed into evidence, without foundation or other proof, provided that said items are served upon the Mediator and the opposing Party at least **17 (seventeen)** days prior to the hearing date:
   a. Medical records and medical bills for medical services;
   b. Bills for drugs and medical appliances (for example, prostheses);
   c. Property repair bills or estimates;
   d. Reports of lost time from employment, and / or lost compensation or wages;
   e. The written statement of any expert witness, the deposition of a witness, the statement of a witness, to which the witness would be allowed to express if testifying in person, if the statement is made by affidavit sworn to under oath or by certification as provided in section 1-109 of the Illinois Code of Civil Procedure;
   f. Photographs;
   g. Police reports;
   h. Any other document not specifically covered by any of the foregoing provisions that a Party believes in good faith should be considered by the Mediator; and
   i. Each Party may introduce any other evidence, including but not limited to documents or exhibits, in accordance with the rules of evidence of the State of Illinois.
2. The Parties agree that they will not disclose any and all dollar figures relating to the high/low agreement; last offer and last demand; policy limits; and /or set-offs orally or in written form, to the Mediator at any time before or during the conference, or while under advisement, prior to the Mediator's final decision.

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a. Violation of this rule set forth in (D)(2) shall constitute a material breach of this Agreement. The non-disclosing Party must formally object to the Mediator upon learning of the breach, or the breach will be considered waived. The non-disclosing Party shall then have the option to continue the Mediation from the point of objection to its completion; or to terminate the Mediation at the point of objection as null and void. The ADR Systems case manager must be made aware of this breach at the time of the objection, so the objection is addressed in accordance with the Agreement; and

b. If the Mediation is terminated as null and void, all costs of the Mediation will be charged entirely to the disclosing Party. A new Mediation shall then take place with a new Mediator on a new date. If the Mediation is not terminated, the costs of the Mediation shall remain the responsibility of each Party or in accordance with the Agreement.

3. The Parties agree if a Party has an objection to the evidence or material submitted by any other Party pursuant to Paragraph (D)(1), notice of the objection shall be given to the ADR Systems case manager and opposing counsel by telephone and in writing at least seven days prior to the Mediation. If resolution cannot be obtained, the case manager will forward the objection to the Mediator to be ruled upon before or at the Mediation. The case manager will notify each of the Parties of the objection. The objection may result in a postponement of the proceedings. **If the objection is because of new material being disclosed with the submission for the first time (for example, new or additional reports, additional medical/wage loss claims, etc.) then the disclosing party shall be charged for the total cost associated with the continuance.**

4. The Parties agree that any Party desiring to introduce any of the items described in Paragraph (D)(1) without foundation or other proof, must deliver said items to the Mediator and to the other Parties no later than **Monday, November 21, 2016**.

5. The items are considered delivered as of the date that one of the following events occur:

   a. If mailed, by the date of the postmark;

   b. If delivered by a courier or a messenger, the date the item is received by the courier or messenger; and

   c. The date transmitted by facsimile or email.

6. The Parties agree to deliver any of the items described in Paragraph (C)(1) and (D)(1) to the following addresses:

   If emailing Submissions, please send to submissions@adrsystems.com, however, please do not send anything over 50 pages, including exhibits.

   The Honorable James P. Etchingham, (Ret.) (Mediator)
   C/O ADR SYSTEMS
   20 North Clark Street
   Floor 29
   Chicago, IL 60602

   Kelly N. Baudin, Esq. / Randall Baudin, II, Esq. (Plaintiff Attorneys)
   BAUDIN LAW GROUP
   304 McHenry Avenue
   Crystal Lake, IL 60039

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Shoshan Reddington, Esq. (Defense Attorney)
LAW OFFICES OF STEVEN LIHOSIT
200 N. La Salle Street
Suite 2550
Chicago, IL 60601

E. **Conference Procedure**

1. The Parties may present opening statements but there will be no live testimony.
2. The Parties will attempt to reach a voluntary settlement through negotiation with the assistance of the Mediator.
3. If the Parties cannot voluntarily reach a settlement, the Mediator will advise the Parties that settlement cannot be reached. The Mediator will then take the matter under advisement and render an award that will be binding to all Parties, (the "Award"), subject to the terms of any high/low agreement that the Parties may have as described below in Paragraph (F)(1).

F. **Award Limits**

1. The Parties may agree prior to the Mediation that a minimum and maximum amount will serve as parameters for the Award (sometimes referred to as a "high/low agreement"), such that the actual amount that must be paid to the plaintiff or claimant shall not exceed a certain amount (the "high" or "maximum award") and shall not be less than a certain amount (the "low" or "minimum award").

   a. If liability is disputed and comparative fault or negligence is asserted as an affirmative defense, the Mediator shall make a finding regarding comparative fault or negligence, if any. In the event that there is a finding of comparative fault or negligence of the plaintiff that is greater than 50% (fifty percent), the plaintiff shall receive the negotiated minimum award. In the event that there is a finding of comparative fault or negligence of 50% (fifty percent) or less against the plaintiff, then any damages awarded in favor of the plaintiff shall be reduced by the amount of the plaintiff's comparative fault or negligence, but shall be no less than the minimum parameter or more than the maximum parameter.

   b. All award minimum and maximum parameters are subject to applicable set-offs if any, as governed by policy provisions if not specified in the Agreement.

      The Parties agree that for this Mediation the minimum award to Paul Dulberg will be **$50,000.00**. Also, the maximum award to Paul Dulberg will be **$300,000.00**. These amounts reflect the minimum and maximum amounts of money that David Gagnon shall be liable to pay to Paul Dulberg.

IV. Effect of this Agreement

A. After the commencement of the Mediation, no Party shall be permitted to cancel this Agreement or the Mediation and the Mediator shall render a decision that shall be in accordance with the terms set forth in this Agreement. When the Award is rendered, the Mediation is resolved, and any Award arising from this Mediation shall operate as a bar and complete defense to any action or proceeding in any court or tribunal that may arise from the same incident upon which the Mediation is based.

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B. The Parties further agree that any pending litigation will be dismissed, with prejudice, as to those Parties participating in this Mediation upon the conclusion thereof. Any and all liens, including contractual rights of subrogation owed are subject to existing Illinois law. By agreement of the Parties, the Mediator's Award will be final and binding and not subject to appeal or motion for reconsideration by any Party.

V. Mediation Costs

A. ADR Systems Fee Schedule

1. A deposit is required for the Administrative Fee, Mediator's estimated review, session, and follow-up time ("Mediation Costs"). Binding-Mediations are billed at a four hour per day minimum. **The required deposit amount is $2,590.00 from Party B and is due by November 21, 2016.** Any unused portion of the deposit will be refunded based on the four hour minimum. If the Mediator's review, session and follow-up time go over the estimated amount, each Party will be invoiced for the additional time.
2. Mediation Costs are usually divided equally among all Parties, unless otherwise agreed upon by the Parties. **ADR Systems must be notified of special fee arrangements.**
3. All deposits are due two weeks prior to the session. ADR Systems reserves the right to cancel a session if deposits are not received from all Parties two weeks prior to the session.
4. ADR Systems requires **14-day notice in writing or via electronic transmission** of cancellation or continuance. For Binding-Mediations **cancelled or continued** within 14 days of the session, the Party causing the cancellation will be billed for the Mediation Costs of all the Parties involved, which includes the four hour per day minimum, additional review time, and any other expenses incurred("cancellation fees"). If the cancellation is by agreement of all Parties, or if the case has settled, the cancellation fees will be split equally among all Parties, unless ADR Systems is instructed otherwise. The cancellation fees may be waived if the Mediator's lost time can be filled by another matter.

Administrative Fee	$390.00 (Non-refundable)
Mediator's Review Time	$450.00 per hour
Session Time	$450.00 per hour
Mediator's Decision Writing Time	$450.00 per hour
Mediator's Travel Time (if any)	$75.00 per hour

B. Responsibility for Payment ****Special Billing**

1. Each Party and its counsel (including that counsel's firm) shall be jointly and severally responsible for the payment of that Party's allocated share of the Mediation Costs as set forth above.
2. All expenses and disbursements made by ADR Systems in connection with the Mediation, including, but not limited to, outside room rental fee, meals, express mail and messenger charges, and any other charges associated with the Mediation, will be billed equally to the Parties at the time of the invoice.

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3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney's fees, incurred by ADR Systems in connection with the collection of any amount due and owing. Payment of additional costs incurred by ADR Systems in connection with the collection of any amount due and owing shall be made within 15 days of invoice.

4. In the event ADR Systems' session rooms are completely booked on your selected session date, ADR Systems will attempt to find another complimentary venue for your session. If ADR Systems cannot find a complimentary venue or the parties cannot agree on the complimentary venue, ADR Systems reserves the right to schedule your case in a location that may involve a facilities charge. The facilities charge will be split equally among the parties unless ADR Systems is instructed otherwise.

5. ****Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.**

VI. Acknowledgment of Agreement

A. By signing this Agreement, I acknowledge that I have read and agree to all the provisions as set forth above.

B. Each Party is responsible for only his/her own signature where indicated and will submit this signed Agreement to ADR Systems within 10 days of receipt of the Agreement. Counsel may sign on behalf of the Party.

By: _____
Paul Dulberg / Plaintiff Date

By: _____
Kelly N. Baudin / Attorney for the Plaintiff Date

By: _____
Randall Baudin, II / Attorney for the Plaintiff Date

By: _____
Shoshan Reddington / Attorney for the Defendant Date

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DULBERG'S SUPPLEMENTAL ANSWERS TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S INTERROGATORIESTO PLAINTIFF PAUL DULBERG

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds, in supplement, to Defendant, The Law Offices of Thomas J. Popovich, P.C.'s Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

12. Identify and describe each of your employers in the ten year period prior to the accident of June 28, 2011, including any self-employment. For each employer, identify your wage rate or salary, your title, your job description, your required duties, and your income for the ten year period prior to the accident in question.

SUPPLEMENT TO ORIGINAL ANSWER:

1. 1999-2011 Sharp Printing, Inc., 4606 Hayden Ct., McHenry, IL 60051

Paul Dulberg was an owner and operator of Sharp Printing, Inc. along with his two partners Scott Dulberg and Michael McArtor. Dulberg provided full time employment services to Sharp Printing, Inc. and thus was "employed" by Sharp Printing, Inc. However, Dulberg did not draw a salary from Sharp Printing, Inc. and did not receive any profits from the company.

Paul Dulberg was the President, salesperson, graphic designer, 8 color screen print pressman, handled fulfillment, shipping & receiving, as well as other day to day operations of the company.

For income, see tax returns.

EXHIBIT # 11
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Sharp Printing, Inc. operated out of the lower floor of Paul Dulberg's personal residence and paid all utilities bills, including garbage, water, natural gas, electric, internet, phone, and cable. The approximate value is $650 per month.

19. As a result of your personal injuries from the underlying case, were you unable to work? If so, state:

(a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;
(b) The date or inclusive dates on which you were unable to work;
(c) The amount of wage and/or income lost by you; and
(d) The name and address of your present employer and/or wage and/or salary.

SUPPLEMENT TO ORIGINAL ANSWER:

Paul Dulberg was self-employed by Sharp Printing and unable to work after the accident. He was also an independent contractor with Juskie Printing. He has not been employed since the date of the accident. See tax returns for lost wages. See SSDI documents for current income.

26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.

SUPPLEMENT TO ORIGINAL ANSWER:

On December 8, 2016, the mediator issued a net award to Dulberg of $561,000. Dulberg discovered he could not recover the entire mediation award from Gagnon. At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect, because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning.

27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.

SUPLEMENT TO ORIGINAL ANSWER:

Dr. Landford is a chainsaw expert who was retained by Dulberg during the mediation which occurred in 2016. Landford's expert opinion demonstrates that contrary to Mast's advice, the McGuires were liable for Gagnon's actions with the chainsaw. The expert report came out in February of 2016 and the mediation award was issued in December of 2016.

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Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street
Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
cd@clintonlaw.net
juliawilliams@clintonlaw.net

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VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true, correct, and complete, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Paul Dulberg

Received 09-19-2022 11:08 AM / Circuit Clerk Accepted on 09-19-2022 11:15 AM / Transaction #19541281 / Case #2017LA000377
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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

DULBERG'S ANSWERS TO DEFENDANT HANS MAST'S INTERROGATORIESTO PLAINTIFF PAUL DULBERG

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds to Defendant Hans Mast's Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER: Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

ANSWER: Various dates between October 2013 to January 2014. The advice was

EXHIBIT # 12
2-19-20

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provided via email, text messages, telephone calls, and in person meetings.

Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg would that he would retain his claim against Gaganon and be able to seek and receive a full recovery from Gagnon.

All documents in Plaintiff's possession and control produced.

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

ANSWER: The McGuire's owned their home and vehicles. McGuire's also held bank accounts in their name. Investigation continues.

4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than $100,000?

ANSWER: The McGuire's produced insurance information to Dulberg on the day of the accident and also were represented by insurance counsel.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street, Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

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5ttIN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

DULBERG'S RESPONSES TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPVICH, P.C., s REQUESTS FOR PRODUCTION TO PLAINTIFF

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 214, responds to Defendants, The Law Offices of Thomas J. Popovich, P.C.'s Requests for Production To Plaintiff as follows:

PRODUCTION REQUESTS

1. Produce any and all records regarding the legal representation provided to you by the Law Offices of Thomas J. Popovich, P.C. ("Popovich") and/or Hans Mast ("Mast") in connection with the underlying case, against William McGuire, Caroline McGuire, and David Gagnon.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

2. Produce any and all correspondence, agreements, draft agreements, emails, letters, and any other documents between you and Popovich or Mast in connection with the legal representation in the underlying case.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

3. Produce any and all correspondence between you and any defendant from the underlying case, including Caroline McGuire, William McGuire, and David Gagnon, from June 28, 2011 to the present time.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

4. Produce any and all documentation relating to legal representation of you by any successor counsel in the underlying case.

EXHIBIT # 13
2-19-20

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RESPONSE: Objection. Attorney Client Privilege.

5. Any and all engagement or disengagement letters or agreements between you and any attorney relative to legal services in the underlying case.

RESPONSE: Objection. Attorney Client Privilege.

6. Any and all pleadings and discovery (including deposition transcripts) created, filed, served, and received in the underlying case prior and subsequent to Popovich and Mast's withdrawal as your attorneys, including but not limited to any "high/low" agreement and any arbitration award, arbitration agreement, and any other documentation relating to any arbitration in the underlying case.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

7. Produce any and all documents relating in any way to your claimed damages in the instant case, including but not limited to any special damages, such as medical bills, medical records, costs, invoices, and lost wages.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

8. Produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created, and the date any recipient received the document.

RESPONSE: Plaintiff is only withholding attorney client communication between his successor counsel.

9. Produce any and all state and federal tax returns you filed in the ten year period prior to the accident of June 28, 2011.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

10. Produce any and all documentation of lost wages as alleged in paragraph 30 of your second amended complaint, including but not limited to any employment agreement, wage records, paystubs, cancelled checks, and any other documentation reflecting income in the ten year period prior to the date of the accident.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

11. Produce copies of any and all settlement documents, settlement agreements, cancelled checks or other payments made in connection with any settlement reached in the underlying case, including payment of approximately $300,000 as alleged in paragraph 54 of your supplemental complaint.

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RESPONSE: All relevant documents in Plaintiff's possession will be produced.

12. An affidavit signed you (and not your attorney) pursuant to Illinois Supreme Court Rule 214, certifying that your response is complete in accordance with each request contained herein.

RESPONSE: Produced.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street
Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

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** FILED ** Env: 19720144
McHenry County, Illinois
2017LA000377
Date: 9/30/2022 3:00 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: All Attorneys **of Record (Please see the attached Service List)**

PLEASE TAKE NOTICE that on the 29 day of September 2022, I filed with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, Non-Party Subpoena For Documents Deponent Julia Christine Williams, Individually and as Manager of Williams Law, LLC and Non-Party Subpoena For Documents Edward X. Clinton, Individually and as Manager of Clinton Law Firm, LLC a copy of which is attached and hereby served upon you.

September 29, 2022

ALPHONSE A. TALARICO
Law Office of Alphonse A. Talarico
ARDC No. 6184530
707 Skokie Boulevard, Suite 600
Northbrook, Illinois 60062

Received 09-30-2022 03:39 PM / Circuit Clerk Accepted on 10-03-2022 08:39 AM / Transaction #19720144 / Case #2017LA000377
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Page 1 of 2
C 1441 V2

(312) 808-1410
Attorney for Plaintiff Paul Dulberg
contact@lawofficeofalphonsetalarico.com

AFFIDAVIT OF SERVICE

I, the undersigned attorney, certify that this Notice was served to all parties listed on the attached **Service List** by E-filing with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, *Non-Party Subpoena For Documents Deponent Julia Christine Williams, Individually and as Manager of Williams Law, LLC and Non-Party Subpoena For Documents Edward X. Clinton, Individually and as Manager of Clinton Law Firm, LLC* and by email on September 29, 2022.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

Received 09-30-2022 03:39 PM / Circuit Clerk Accepted on 10-03-2022 08:39 AM / Transaction #19720144 / Case #2017LA000377
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C 1442 V2

** FILED ** Env: 19735409
McHenry County, Illinois
2017LA000377
Date: 10/3/2022 1:12 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: All Attorneys **of Record (Please see the attached Service List)**

PLEASE TAKE NOTICE that on the 29 day of September 2022, I filed with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, Non-Party Subpoena For Documents Deponent Julia Christine Williams, Individually and as Manager of Williams Law, LLC and Non-Party Subpoena For Documents Edward X. Clinton, Individually and as Manager of Clinton Law Firm, LLC a copy of which is attached and hereby served upon you.

September 29, 2022

ALPHONSE A. TALARICO
Law Office of Alphonse A. Talarico
ARDC No. 6184530
707 Skokie Boulevard, Suite 600
Northbrook, Illinois 60062

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Page 1 of 3
C 1443 V2

(312) 808-1410
Attorney for Plaintiff Paul Dulberg
contact@lawofficeofalphonsetalarico.com

AFFIDAVIT OF SERVICE

I, the undersigned attorney, certify that this Notice was served to all parties listed on the attached **Service List** by E-filing with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, *Non-Party Subpoena For Documents Deponent Julia Christine Williams, Individually and as Manager of Williams Law, LLC and Non-Party Subpoena For Documents Edward X. Clinton, Individually and as Manager of Clinton Law Firm, LLC* and by email on September 29, 2022.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

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SERVICE LIST

GEORGE K. FLYNN
Karbal Cohen Economou Silk Dunne, LLC
200 South Wacker Drive, Suite 2550
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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2017LA000377
Date: 10/3/2022 1:12 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE TWENTY-SECOND JUDICIAL CIRCUIT

MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	CASE NO. 17 LA 377 JUDGE THOMAS A. MEYER

SUBPOENA FOR DOCUMENTS

(THIS SUBPOENA IS FOR RECORDS ONLY.)

TO: JULIA CHRISTINE WILLIAMS,
Individually and as Manager of
Williams Law, LLC
111 West Washington Street Suite 1437
Chicago, IL 60602-2708

YOU ARE COMMANDED to produce responsive documents, Electronically Stored Information (ESI) including but not limited to writings, drawings, graphs, charts, photographs, images, sound recordings, and other data or data compilations from which ESI can be obtained, voicemails, text messages, internet history logs, information stored on backup tapes, social media profiles and activity, recordings of conference calls or videoconferences, videos, data from Workplace Collaboration Tools (WCT) or devices connected to the Internet of Things (IoT), communications conducted using ephemeral messaging applications, geolocation data that can

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C 1446 V2

reveal the precise location of a device and the individual using the device or objects in response to the requests below on August 31, 2022, at 10:00 a.m. at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062.

You are subpoenaed by the undersigned attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed. If you fail to respond to this subpoena, you may be in contempt of court.

DEFINITIONS:

I) Electronically Stored Information (ESI) means information that is stored in or on any electronic medium.

INSTRUCTIONS:

A) Please respond in numerical order stating the number and in chronological order therein.

B) Electronically Stored Information (ESI) shall be produced as exact duplicates of the original source files, in original format as source files, also including 'Native," "Image," and "Load" files.

C) The required time period begins March 2, 2020 and ends on April 29, 2022.

D) Please see **COMPLIANCE WITH SUBPOENA** below.

PLEASE TAKE FURTHER NOTICE that, pursuant to this subpoena, Julia Christine Williams is requested to produce the following documents, Electronically Stored Information (ESI), or objects in response to the requests on August 31, 2022, at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062:

1. The original transcript stamped "Original" of the discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes.

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C 1447 V2

2. An exact duplicate of the original transcript stamped “Copy” of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the copy demanded is a contemporaneous copy issued by U.S. Legal Support.

3. An exact duplicate of the original transcript stamped “Copy” in condensed format (mini) of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the condensed transcript demanded is a contemporaneous version issued by U.S. Legal Support.

4. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the discovery deposition of Hans Mast taken on June 25, 2020.

5. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibit 12 of the discovery deposition of Hans Mast taken on June 25, 2020.

6. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the exhibit titled “ Legal Research” of discovery deposition of Hans Mast taken on June 25, 2020.

7. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibits 1-11 and 13-15 of the discovery deposition of Hans Mast taken on June 25, 2020.

Please note that the appearance of the respondent is excused, and no deposition will be taken, if the documents specified above are produced on or before August 26, 2022

NOTE TO WITNESS: Please contact attorney Alphonse A, Talarico at (312) 808-1410 for information as to the reimbursement of additional charges for production incurred by the respondent.

NOTE TO WITNESS: Enclosed with this subpoena is a check for statutory witness fees and mileage reimbursement in the amount of $29.00 plus $25.00 for production costs. The total money forwarded is $54.00.

Received 10-03-2022 01:37 PM / Circuit Clerk Accepted on 10-03-2022 04:21 PM / Transaction #19735409 / Case #2017LA000377
Purchased from re:SearchIL

C 1448 V2

Dated: August 2, 2022

By:

/s/ Alphonse A. Talarico

Alphonse A. Talarico 6184530
Law Office of Alphonse A. Talarico
707 Skokie Boulevard #600
Northbrook, Illinois, 60062
Tel: (312) 808-1410
contact@lawofficeofalphonsetalarico.com
Attorney for Plaintiff Paul Dulberg

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C 1449 V2

PROOF OF SERVICE

Gazelle Process & Investigations PLLC #117-001853 on oath states:

I am over the age of 18 and not a party to this case.

I served the foregoing Subpoena for Documents on Julia Christine Williams as follows:

By leaving a copy of the Subpoena for Documents with _____

personally at _____ on _____, 2022

at the hour of _____.m.

I also enclosed a check for $54.00 for the witness and mileage fees plus production costs.

Pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that the signer verily believes the same to be true.

_____

Gazelle Process & Investigations PLLC #117-001853

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C 1450 V2

COMPLIANCE WITH SUBPOENA

The attached subpoena, by Illinois law, requires you and/or your organization to appear and to produce commanded documents on August 31, 2022, at the Law Office of Alphonse A. Talarico, attorney for Plaintiff Paul Dulberg.

DEPONENT:

JULIA CHRISTINE WILLIAMS,
Individually and as Manager of
Williams Law, LLC
111 West Washington Street Suite 1437
Chicago, IL 60602-2708

Your actual appearance will be waived if the commanded documents are mailed, by certified or registered mail, or delivered to our office on or before August 26, 2022 prior to that date and you inform us so by that date.

Please sign and date this form and return it to us with your records and a copy of this subpoena .

Affidavit of Compliance

The undersigned certifies under penalties of perjury as provided by law pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, that the statements checked below are true and correct.

Check one (1) from the following:

_____ After making a diligent search of any and all the records in our possession or control, I certify that all records we have on the above are submitted herewith in response to this subpoena.

_____ After making a diligent search of any and all records, I certify there are no records to provide in response to this subpoena.

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Check one (1) from the following:

_____ I am the Custodian of Records for Julia Christine Williams and Williams Law LLC, and I have personal knowledge of the record-keeping procedures of Julia Christine Williams and Williams Law LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I am an employee of or manager of Julia Christine Williams and Williams Law LLC, and I have personal knowledge of the record-keeping procedures of Julia Christine Williams and Williams Law LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I have no personal knowledge of the record-keeping procedures of Julia Christine Williams and Williams Law LLC and the manner of creation for all records produced responsive to this subpoena.

Check **all** that apply from the following:

_____ The records produced in response to this subpoena were kept in the course of the regularly conducted activity of Julia Christine Williams and Williams Law LLC.

_____ The records produced in response to this subpoena were made by the regularly conducted activity as a regular practice of Julia Christine Williams and Williams Law LLC.

_____ The records produced in response to this subpoena were made at or near the time of the occurrences set forth by, or from information transmitted by, a person with knowledge of the matters set forth within the records.

Date: _____, 2022

Position: _____

Name: _____

(Print)

_____

(Signature)

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** FILED ** Env: 19735409
McHenry County, Illinois
2017LA000377
Date: 10/3/2022 1:12 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE TWENTY-SECOND JUDICIAL CIRCUIT

MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	CASE NO. 17 LA 377 JUDGE THOMAS A. MEYER

SUBPOENA FOR DOCUMENTS

(THIS SUBPOENA IS FOR RECORDS ONLY.)

TO: EDWARD X. CLINTON,
Individually and as Manager of
Clinton Law Firm, LLC
111 West Washington Street Suite 1437
Chicago, Illinois 60602-2708

YOU ARE COMMANDED to produce responsive documents, Electronically Stored Information (ESI) including but not limited to writings, drawings, graphs, charts, photographs, images, sound recordings, and other data or data compilations from which ESI can be obtained, voicemails, text messages, internet history logs, information stored on backup tapes, social media profiles and activity, recordings of conference calls or videoconferences, videos, data from Workplace Collaboration Tools (WCT) or devices connected to the Internet of Things (IoT), communications conducted using ephemeral messaging applications, geolocation data that can

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C 1454 V2

reveal the precise location of a device and the individual using the device or objects in response to the requests below on August 31, 2022, at 1:00 p.m. at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062.

You are subpoenaed by the undersigned attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed. If you fail to respond to this subpoena, you may be in contempt of court.

DEFINITIONS:

I) Electronically Stored Information (ESI) means information that is stored in or on any electronic medium.

INSTRUCTIONS:

A) Please respond in numerical order stating the number and in chronological order therein.

B) Electronically Stored Information (ESI) shall be produced as exact duplicates of the original source files, in original format as source files, also including 'Native," "Image," and "Load" files.

C) The required time period begins March 2, 2020 and ends on April 29, 2022.

D) Please see **COMPLIANCE WITH SUBPOENA** below.

PLEASE TAKE FURTHER NOTICE that, pursuant to this subpoena, Edward X. Clinton is requested to produce the following documents, Electronically Stored Information (ESI), or objects in response to the requests on August 31, 2022, at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062:

1. The original transcript stamped "Original" of the discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes.

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2. An exact duplicate of the original transcript stamped “Copy” of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the copy demanded is a contemporaneous copy issued by U.S. Legal Support.

3. An exact duplicate of the original transcript stamped “Copy” in condensed format (mini) of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the condensed transcript demanded is a contemporaneous version issued by U.S. Legal Support.

4. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the discovery deposition of Hans Mast taken on June 25, 2020.

5. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibit 12 of the discovery deposition of Hans Mast taken on June 25, 2020.

6. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the exhibit titled “ Legal Research” of discovery deposition of Hans Mast taken on June 25, 2020.

7. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibits 1-11 and 13-15 of the discovery deposition of Hans Mast taken on June 25, 2020.

Please note that the appearance of the respondent is excused, and no deposition will be taken, if the documents specified above are produced on or before August 26, 2022

NOTE TO WITNESS: Please contact attorney Alphonse A, Talarico at (312) 808-1410 for information as to the reimbursement of additional charges for production incurred by the respondent.

NOTE TO WITNESS: Enclosed with this subpoena is a check for statutory witness fees and mileage reimbursement in the amount of $29.00 plus $25.00 for production costs. The total money forwarded is $54.00.

Received 10-03-2022 01:37 PM / Circuit Clerk Accepted on 10-03-2022 04:21 PM / Transaction #19735409 / Case #2017LA000377
Purchased from re:SearchIL

C 1456 V2

Dated: August 2, 2022

By:

/s/ Alphonse A. Talarico

Alphonse A. Talarico 6184530
Law Office of Alphonse A. Talarico
707 Skokie Boulevard #600
Northbrook, Illinois, 60062
Tel: (312) 808-1410
contact@lawofficeofalphonsetalarico.com
Attorney for Plaintiff Paul Dulberg

Received 10-03-2022 01:37 PM / Circuit Clerk Accepted on 10-03-2022 04:21 PM / Transaction #19735409 / Case #2017LA000377
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C 1457 V2

PROOF OF SERVICE

Gazelle Process & Investigations PLLC #117-001853 on oath states:

I am over the age of 18 and not a party to this case.

I served the foregoing Subpoena for Documents on Edward X. Clinton as follows:

By leaving a copy of the Subpoena for Documents with _____

personally at _____ on _____, 2022

at the hour of _____.m.

I also enclosed a check for $54.00 for the witness and mileage fees plus production costs.

Pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that the signer verily believes the same to be true.

_____

Gazelle Process & Investigations PLLC #117-001853

Received 10-03-2022 01:37 PM / Circuit Clerk Accepted on 10-03-2022 04:21 PM / Transaction #19735409 / Case #2017LA000377
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C 1458 V2

COMPLIANCE WITH SUBPOENA

The attached subpoena, by Illinois law, requires you and/or your organization to appear and to produce commanded documents on August 31, 2022, at the Law Office of Alphonse A. Talarico, attorney for Plaintiff Paul Dulberg.

DEPONENT:

EDWARD X. CLINTON,
Individually and as Manager of
Clinton Law Firm, LLC
111 West Washington Street Suite 1437
Chicago, Illinois 60602-2708

Your actual appearance will be waived if the commanded documents are mailed, by certified or registered mail, or delivered to our office on or before August 26, 2022 prior to that date and you inform us so by that date.

Please sign and date this form and return it to us with your records and a copy of this subpoena .

Affidavit of Compliance

The undersigned certifies under penalties of perjury as provided by law pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, that the statements checked below are true and correct.

Check one (1) from the following:

_____ After making a diligent search of any and all the records in our possession or control, I certify that all records we have on the above are submitted herewith in response to this subpoena.

_____ After making a diligent search of any and all records, I certify there are no records to provide in response to this subpoena.

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C 1459 V2

Check one (1) from the following:

_____ I am the Custodian of Records for Edward X. Clinton and Clinton Law Firm LLC, and I have personal knowledge of the record-keeping procedures of Julia Christine Williams and Williams Law LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I am an employee of or manager of Edward X. Clinton and Clinton Law Firm LLC, and I have personal knowledge of the record-keeping procedures of Edward X. Clinton and Clinton Law Firm LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I have no personal knowledge of the record-keeping procedures of Edward X. Clinton and Clinton Law Firm LLC and the manner of creation for all records produced responsive to this subpoena.

Check **all** that apply from the following:

_____ The records produced in response to this subpoena were kept in the course of the regularly conducted activity of Edward X. Clinton and Clinton Law Firm LLC.

_____ The records produced in response to this subpoena were made by the regularly conducted activity as a regular practice of Edward X. Clinton and Clinton Law Firm LLC.

_____ The records produced in response to this subpoena were made at or near the time of the occurrences set forth by, or from information transmitted by, a person with knowledge of the matters set forth within the records.

Date: _____, 2022

Position: _____

Name: _____

(Print)

_____

(Signature)

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C 1460 V2

Received 10-03-2022 01:37 PM / Circuit Clerk Accepted on 10-03-2022 04:21 PM / Transaction #19735409 / Case #2017LA000377
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C 1461 V2

** FILED ** Env: 19765955
McHenry County, Illinois
2017LA000377
Date: 10/5/2022 9:46 AM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts

STATE OF ILLINOIS, CIRCUIT COURT

McHenry **COUNTY**

PROOF OF DELIVERY

For Court Use Only

Instructions	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person or company that filed this case as Plaintiff/Petitioner.	Paul Dulberg **Plaintiff / Petitioner** *(First, middle, last name or Company)*
Enter the name of the Defendants/ Respondents.	v.
Enter the Case Number given by the Circuit Clerk.	Hans Mast & Law Offices of Thomas J. Popovich, P.C. **Defendants / Respondents** *(First, middle, last name, or business name)* 17 LA 377 **Case Number**

In **1**, enter the name of each court document you are sending.

1. I am sending the following court document: Julia C. Williams response to Plaintiff's Records Subpoena

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **ust** enter the lawyer's information.

a. To:

Name: George K. Flynn
First Middle Last

Address: 200 S. Wacker Drive, Suite 2550 Chicago Illinois 60606
Street, Apt # City State ZIP

Email address: gflynn@karballaw.com

In **1b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **ust** use one of the first two options. Otherwise, you may use one of the other options.

b. By:

- ☑ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

Only use one of the methods belo if you do not have an email address, or the person you are sending the document to does not have an email address

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

In **c**, fill in the date and time that you are sending the document.

c. On: 10/05/2022 *Date* at: 4:00 *Time* ☐ a.m. ☑ p.m.

Received 10-05-2022 11:56 AM / Circuit Clerk Accepted on 10-05-2022 12:06 PM / Transaction #19765955 / Case #2017LA000377
Page 1 of 2
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C 1462 V2

Enter the Case Number given by the Circuit Clerk: 17 LA 377

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **ust** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **ust** use one of the first two options. Otherwise, you may use one of the

In **c**, fill in the date and time that you are sending the document.

If you are sending your document to more than 2 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

2. I am sending this document:

a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:

- ☐ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

Only use one of the methods belo if you do not have an email address, or the person you are sending the document to does not have an email address

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

c. On: _____ at: _____ ☐ a.m. ☐ p.m.
Date *Time*

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

I certify that everything in the *roo o De i er* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Alphonse A. Talarico *Your Signature*	707 Skokie Blvd. #600 *Street Address*
Alphonse A. Talarico *Print Your Name*	Northbrook, Illinois 60062 *City, State, ZIP*
(312) 808-1410 *Telephone*	contact@lawofficeofalphonsetalarico.com *Email*
61684530 *Attorney # (if any)*	

TTIN COU T OCUM NT MAI : ou should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

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Page 2 of 2
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** FILED ** Env: 19790478
McHenry County, Illinois
2017LA000377
Date: 10/6/2022 12:39 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S MOTION TO COMPEL NON-PARTIES JULIA C. WILLIAMS AND EDWARD X. CLINTON TO COMPLY WITH RECORDS SUBPOENAS AND TO AMEND PLAINTIFF'S MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TAKEN IN VIOLATION OF SUPREME COURT RULE 206 h(2) REMOTE ELECTRONIC MEANS DEPOSITIONS and ORDERS OF THE ILLINOIS SUPREME COURT In re: ILLINOIS COURTS RESPONSE to COVID-19 EMERGENCY/IMPACT ON DISCOVERY M.R.30370 CORRECTED ORDER APRIL 29, 2020 and M.R.30370 AMENDED ORDER JUNE 4, 2020 FILED SEQUENTIALLY WITH THIS MOTION

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Motion To Compel and amend Plaintiff's motion to exclude the deposition of Defendant Hans Mast states as follows:

1) On July 11, 2022 this Honorable Court entered an Order granting Plaintiff leave to serve subpoenas on The Clinton Law Firm.

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C 1464 V2

2) The Non-Party Subpoenas were issued by Alphonse A. Talarico on August 2, 2022 naming respondents: Julia Christine Williams individually and as manager of Williams Law, LLC; Edward X. Clinton, individually and as manager of Clinton Law Firm, LLC. (Please see Notice of Filing and both subpoenas which are part of the Clerk's file as reflected on October 3, 2022.)

3) The Non-Party Subpoenas were served upon respondent Julia Christine Williams personally and on respondent Edward X. Clinton (as insisted upon and accepted by respondent Julia Christine Williams) at The Clinton Law Firm, 111 W. Washington St., Suite 1437, Chicago, Illinois 60602 on August 5, 2022. (Please see Plaintiff's Exhibit 1 AFFIDAVIT OF SERVICE attached)

4) Plaintiff's Attorney has made/received multiple telephone and email communications with the subpoena respondents and extended the compliance date in an attempt to obtain full compliance but said informal communications have not resolved the issues.

5) As of the filing date of this Motion To Compel both written subpoena responses are non-compliant.

6) Non-Party Subpoena Respondent Edward X. Clinton has not responded in writing, nor has he served an executed Affidavit of Compliance as required.

7) Non-Party Subpoena Respondent Julia Christine Williams has responded in writing twice, but her responses are non-compliant for the following reasons:

A) The Affidavit of Compliance itself is non-compliant as respondent changed the required wording as served on August 5, 2022 without first filing a written motion pursuing an Order from this Honorable Court seeking to quash, condition, or modify the

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C 1465 V2

subpoenas or to issue protective orders. (Please see Plaintiff's Exhibit #2 RESPONSE TO SUBPOENA FOR DOCUMENTS attached)**;**

B) Including within her RESPONSE TO SUBPOENA FOR DOCUMENTS the following,

"GENERAL OBJECTIONS"

"Respondents object to all requests that seek the disclosure of attorney-client communications between Respondents and their former client Paul Dulberg.

Respondents object to all requests that seek the disclosure of attorney work product."

Again, without first filing a written motion pursuing an Order from this Honorable Court seeking to quash, condition, or modify the subpoenas or to issue protective orders subpoena respondent Julia C. Williams indicates certain documents are protected from disclosure but does not include an Attorney-Client Privilege Log nor a Work Product Log leaving Plaintiff to guess what she determines what should not be disclosed even though Illinois law assumes an implied waiver when a former client serves a record subpoena upon former counsel. (Please see Plaintiff's Exhibit #2 RESPONSE TO SUBPOENA FOR DOCUMENTS above)

8) Plaintiff, by serving Records subpoenas on his former attorneys has made a limited waiver of the Attorney-Client and Work Product Privilege. (Please see Illinois Rules of Evidence Rule 502(a)(1), (a)(2), (a)(3) ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT; LIMITATIONS ON WAIVER)

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C 1466 V2

WHEREFORE PLAINTIFF PRAYS THAT THIS HONORABLE COURT ENTER AN ORDER compelling NON-PARTIES JULIA C. WILLIAMS AND EDWARD X. CLINTON TO comply with the records subpoenas as written, including an Attorney-Client Privilege Log and a Work Product Log or file and present a motion to quash, condition, or modify the subpoenas, or to issue protective orders as deemed appropriate.

PLAINTIFF FURTHER PRAYS THAT THIS HONORABLE COURT limit Plaintiff Paul Dulberg's implied waiver of his Attorney-Client Privilege to the subject matter of the discovery deposition of Defendant Hans Mast taken on June 25, 2020 as indicated in the Records Subpoenas. Additionally, Plaintiff prays that he be allowed to amend his Motion to Exclude the discovery Deposition of Defendant Hans Mast taken on June 25, 2020 until a reasonable time after the Subpoena Responses herein are fully complied with.

Respectfully submitted,

/s/ Alphonse A. Talarico

Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

707 Skokie Boulevard Suite 600

Northbrook, Illinois 60022

(312) 808-1410

ARDC No. 6184530

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Page 4 of 11
C 1467 V2

contact@lawofficeofalphonsetalarico.com

alphonsetalarico@gmail.com

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C 1468 V2

AFFIDAVIT OF SERVICE

Case:	Court:	County:	Job:
17 LA 377	Circuit Court of the Twenty Second Judical Circuit	Mchenry, IL	7463844
Plaintiff / Petitioner: PAUL DULBERG		**Defendant / Respondent:** THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	
Received by: Gazelle Process & Investigations PLLC.		**For:** Alphonse A. Talarico	
To be served upon: JULIA CHRISTINE WILLIAMS Individually and as Manager of Williams Law, LLC			

I, Michael Moriarty, state on oath that I am at least 18 years old, not a party to this case/action, that I am authorized to perform service in Illinois, and am a registered sub-contractor of Gazelle Process & Investigations PLLC under Illinois Detective Agency License 117.001853

Recipient Name / Address: JULIA CHRISTINE WILLIAMS , Company: 111 W Washington St Suite 1437, Chicago, Illinois 60602-2708

Manner of Service: Personal/Individual, Aug 5, 2022, 10:00 am CDT

Documents: Subpoena (Received Aug 3, 2022 at 9:00am CDT), Witness Fee Check (#VV056-$54.00) (Received Aug 3, 2022 at 9:00am CDT)

Additional Comments:
1) Successful Attempt: Aug 5, 2022, 10:00 am CDT at Company: 111 W Washington St Suite 1437, Chicago, Illinois 60602-2708 received by JULIA CHRISTINE WILLIAMS . Age: 40's; Ethnicity: Caucasian; Gender: Female; Weight: 140; Height: 5'5"; Hair: Blond; Relationship: Attorney; Other: Julia Williams insisted on accepting service for Edward Clinton. She was very nice and assured me that she would direct them to him immediately. It is standard practice for her to accept for Edward.;

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the above statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

08/09/2022

Michael Moriarty — **Date**

Gazelle Process & Investigations PLLC.
518 S. IL HIGHWAY 31 Suite 325
MCHENRY, IL 60050-7464
847-752-4450

EXHIBIT 1

Received 10-11-2022 02:00 PM / Circuit Clerk Accepted on 10-11-2022 04:13 PM / Transaction #19790478 / Case #2017LA000377
Purchased from re:SearchIL

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	CASE NO. 17 LA 377 JUDGE THOMAS A. MEYER

RESPONSE TO SUBPOENA FOR DOCUMENTS
(THIS SUBPOENA IS FOR RECORDS ONLY.)

Edward X. Clinton, Jr., individually as manager of Clinton Law Firm, LLC, and Julia C. Williams, individually, as attorney at Clinton Law Firm, LLC and as manager of Williams Law, LLC, (hereinafter "Respondents") respond to the Subpoena for Documents as follows:

GENERAL OBJECTIONS

Respondents object to all requests that seek the disclosure of attorney-client communications between Respondents and their former client Paul Dulberg.

Respondents object to all requests that seek the disclosure of attorney work product.

RESPONSES

Respondent incorporate the general objections in to each response to requests 1-7, and further respond as follows:

1. The original transcript stamped "Original" of the discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes.



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The transcript of the deposition of Hans Mast is produced with this response in pdf format and titled "Hans Mast 062520 FULL.pdf" and "Hans Mast 062520 MINI.pdf." The exhibits to the deposition are produced with Bates Stamp Dulberg Clinton Subpoena 518-562, 616-642. No such "original" stamp or "copy" stamp is attached to the transcript as the transcript was produced in an electronic format.

2. An exact duplicate of the original transcript stamped "Copy" of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the copy demanded is a contemporaneous copy issued by U.S. Legal Support.

The transcript of the deposition of Hans Mast is produced with this response in pdf format and titled "Hans Mast 062520 FULL.pdf" and "Hans Mast 062520 MINI.pdf." The exhibits to the deposition are produced with Bates Stamp Dulberg Clinton Subpoena 518-562, 616-642. No such "original" stamp or "copy" stamp is attached to the transcript as the transcript was produced in an electronic format.

3. An exact duplicate of the original transcript stamped "Copy" in condensed format (mini) of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the condensed transcript demanded is a contemporaneous version issued by U.S. Legal Support.

The transcript of the deposition of Hans Mast is produced with this response in pdf format and titled "Hans Mast 062520 FULL.pdf" and "Hans Mast 062520 MINI.pdf." The exhibits to the deposition are produced with Bates Stamp Dulberg Clinton Subpoena 518-562, 616-642. No such "original" stamp or "copy" stamp is attached to the transcript as the transcript was produced in an electronic format.

4. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the discovery deposition of Hans Mast taken on June 25, 2020.

See documents Bates Stamped Dulberg Clinton Subpoena 1-671.

5. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibit 12 of the discovery deposition of Hans Mast taken on June 25, 2020.

See documents Bates Stamped Dulberg Clinton Subpoena 1-671.

6. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the exhibit titled " Legal Research" of discovery deposition of Hans Mast taken on June 25, 2020.

See documents Bates Stamped Dulberg Clinton Subpoena 1-671.

7. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibits 1-11 and 13-15 of the discovery deposition of Hans Mast taken on June 25, 2020.

See documents Bates Stamped Dulberg Clinton Subpoena 1-671.

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C 1471 V2

Affidavit of Compliance

The undersigned certifies under penalties of perjury as provided by law pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, that the statements checked below are true and correct.

Check one (1) from the following:

__x___ After making a diligent search of any and all the records in our possession or control, I certify that all records we have on the above are submitted herewith in response to this subpoena.

_____ After making a diligent search of any and all records, I certify there are no records to provide in response to this subpoena.

Check one (1) from the following:

__x___ I have personal knowledge of the record-keeping procedures of the Clinton Law Firm, LLC and Julia Christine Williams and Williams Law LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I am an employee of or manager of Edward X. Clinton and Clinton Law Firm LLC, and I have personal knowledge of the record-keeping procedures of Edward X. Clinton and Clinton Law Firm LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I have no personal knowledge of the record-keeping procedures of Edward X. Clinton and Clinton Law Firm LLC and the manner of creation for all records produced responsive to this subpoena.

Check **all** that apply from the following:

__x___ The records produced in response to this subpoena were kept in the course of the regularly conducted activity of Edward X. Clinton, Clinton Law Firm LLC, Julia C. Williams, and Williams Law LLC.

__x___ The records produced in response to this subpoena were made by the regularly conducted activity as a regular practice of Edward X. Clinton, Clinton Law Firm LLC, Julia C. Williams, and Williams Law LLC.

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C 1472 V2

_____ The records produced in response to this subpoena were made at or near the time of the occurrences set forth by, or from information transmitted by, a person with knowledge of the matters set forth within the records.

Date: September 29, 2022

Position: __Attorney_____

Name: ___Julia C. Williams_____

(Print)

Julia C. Williams

(Signature)

Received 10-11-2022 02:00 PM / Circuit Clerk Accepted on 10-11-2022 04:13 PM / Transaction #19790478 / Case #2017LA000377
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C 1473 V2

SERVICE LIST

GEORGE K. FLYNN
Karbal Cohen Economou Silk Dunne, LLC
200 South Wacker Drive, Suite 2550
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

** FILED ** Env: 19790478
McHenry County, Illinois
2017LA000377
Date: 10/6/2022 12:39 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS, CIRCUIT COURT

McHenry **COUNTY**

NOTICE OF COURT DATE FOR MOTION

For Court Use Only

Instructions

Directly above, enter the name of the county where the case was filed.

Enter the name of the person who started the lawsuit as Plaintiff/Petitioner.

Enter the name of the person being sued as Defendant/Respondent.

Enter the Case Number given by the Circuit Clerk.

Paul Dulberg
Plaintiff / Petitioner *(First, middle, last name)*

v.

Hans Mast & Law Offices of Thomas J. Popovich, P.C.
Defendant / Respondent *(First, middle, last name)*

17 LA 377
Case Number

In **1**, enter
- he court date and time of your hearing. Call your Circuit Clerk to get this information. If e-filing in Cook County, you may get the date when you e-file.
- he courtroom and address of the court building.
- he call-in or video information for remote appearances (if applicable).
- he clerk s phone number and website.

ll this information is available from the Circuit Clerk, you can find their contact information at illinoiscourts.gov/courts/circuit-court/circuit-court-clerks/.

1. Hearing Information

The hearing for the *Motion* I filed is scheduled:

a. On 10/13/2022 *Date* at 10:00 *Time* ☑ a.m. ☐ p.m. in 201 *Courtroom*

In-person at:

2200 N. Seminary Avenue, Woodstock, Illinois 60098
Courthouse Address *City* *State* *ZIP*

OR

Remotely (You may be able to attend this court date by phone or video conference. This is called a Remote Appearance.)

By telephone: 888-882-6878
Call in number for telephone remote appearance

By video conference: https://zoom.us/my/mchenrycourttoom201
Video conference ebsite

272-959-8070
Video conference log in information (meeting ID, pass ord, etc)

Call the Circuit Clerk at: 815.334.4190 *Local Circuit Cler s phone #* or visit their website at https://www.mchenrycountyil.gov/county-g *ebsite* to find out more about how to do this.

I certify that everything in the *Notice of Court Date for Motion* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

707 Skokie Boulevard #600
Street Address

Northbrook, Illinois 60062
City, State, ZIP

contact@lawofficeofalphonsetalarico.com
Email

(312) 808-1410
Telephone

6184530
Attorney # (if any)

TTIN COU T OCUM NT MAI : ou should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

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Page 1 of 3
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C 1475 V2

PROOF OF DELIVERY

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **ust** enter the lawyer s information.

In **1b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **ust** use one of the first two options. Otherwise, you may use one of the other options.

In **c**, fill in the date and time that you are sending the document.

1. I am sending the *Notice of Court Date for Motion*

a. To:

Name: George K. Flynn
First *Middle* *Last*

Address: 200 S. Wacker Drive, Suite 2550 Chicago, Illinois 60606
Street, Apt # *City* *State* *ZIP*

Email address: gflynn@karballaw.com

b. By:

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Only use one of the methods belo if you do not have an email address, or the person you are sending the document to does not have an email address

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  - ☐ The party
  - ☐ The party s family member who is 13 or older, at the party s residence
  - ☐ The party s lawyer
  - ☐ The party s lawyer s office
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c. On: 10/06/2022 *Date* at: 4:30 *Time* ☐ a.m. ☑ p.m.

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **ust** enter the lawyer s information.

In **2b**, check the box to show how you are sending the document.

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Only use one of the methods belo if you do not have an email address, or the person you are sending the document to does not have an email address

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party s family member who is 13 or older, at the party s residence
  - ☐ The party s lawyer
  - ☐ The party s lawyer s office
- ☐ Mail or third-party carrier

c. On: _____ *Date* at: _____ ☐ a.m. ☐ p.m.

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☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

Enter your complete address, telephone number, and email address, if you have one.

(312) 808-1410
Telephone

707 Skokie Boulevard Suite 600
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City, State, ZIP

contact@lawofficeofalphonsetalarico.com
Email

6184530
Attorney # (if any)

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Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST Defendants.	)))))) Case No. 17 LA 377)))))

PLAINTIFF'S MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TA EN IN VIOLATION OF SUPREME COURT RULE REMOTE ELECTRONIC MEANS DEPOSITIONS d ORDERS OF THE ILLINOIS SUPREME COURT I r ILLINOIS COURTS RESPONSE COVID- EMERGENCY IMPACT ON DISCOVERY M R CORRECTED ORDER APRIL , d M R AMENDED ORDER JUNE , d GRANT LEAVE TO TA E THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Motion To Exclude the Discovery Deposition of Defendant Hans Mast taken in violation of Supreme Court Rule 206 h(2) and Supreme Court Orders states as follows:

RELEVANT FACTS

1) On June 25, 2020 the Discovery Deposition of Defendant Hans Mast was taken pursuant to a non-filed notice (violation waived) but all 15 exhibits and the questioning

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of deponent Hans Mast based upon all 15 exhibits violated the Rules and Orders of the Illinois Supreme Court.

2) Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition without any exhibits from Defendants' Attorney's office and the exhibits 1-11 and 13-15 from the Plaintiff's current Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)

3) Plaintiff's current Attorney objected to the use of the discovery deposition of Defendant Hans Mast during the hearing because there's exhibit(s) missing. (Please see Report of Proceedings April 27, 2022 page 31 line 21-24 which is part of the Clerk's online file)

4) Plaintiff's current Attorney more completely explained to the Court that the discovery deposition of Hans Mast in all its variations was missing exhibit 12. (Please see Report of Proceedings April 27, 2022 page 36 line 19-24 to page 37 line 1-3 which is part of the Clerk's online file)

5) Thereafter this Honorable Court asked Defendants' Attorney whether he had exhibit 12. (Please see Report of Proceedings April 27, 2022 page 37 line 19-20 which is part of the Clerk's online file)

6) The Attorney for the Defendants responded "I may. I don't know. I haven't look for it." (Please see Report of Proceedings April 27, 2022 page 37 line 20-21 which is part of the Clerk's online file)

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7) This Honorable Court ordered Defendants' Attorney to produce exhibit 12 if he has it. (Please see Report of Proceedings April 27, 2022 page 39 line 16-21 which is part of the Clerk's online file)

8) On April 28, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney's office with a link at https: www.dropbox.com to access Mast Dep Ex.12. (Please see Plaintiff's Exhibit #1 attached)

9) Plaintiff's current Attorney noticed that the label purporting to be authentic on Hans Mast's discovery deposition exhibit 12 seemed not to match the other 14 exhibit label as to fonts, shape, color, and DEPONENT's NAME (Hans Mist not Hans Mast).

10) On May 18, 2022 Plaintiff's current Attorney caused to be served upon Certified Shorthand Reporter Barbara G. Smith a Subpoena For Records in which she was requested to produce "The original discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic shorthand notes."

11) Certified Shorthand Reporter Barbara G. Smith's complete response submitted on a flash drive was received on June 16, 2022.

12) Contained on the flash drive is a file titled HPSCANS and therein were a series of communications and handwritten notes between the Certified Shorthand Reporter Barbara G. Smith and Noelle Kappes of US Legal Support and Plaintiff's former attorney Julia C. Williams clearly indicating that Hans Mast discovery deposition taken June 25, 2020 did not have exhibit 12 sent before the deposition nor uploaded during the deposition and said exhibit was never in the Certified Shorthand Reporter Barbara G. Smith's possession before, during or after the deposition was taken, transcribed or

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submitted for transmission. (Please see Plaintiff's Group Exhibit #2 Barbara G. Smith job papers0001.pdf and job papers0002.pdf attached)

13) Thereafter, on June 21, 2022 Plaintiff's current Attorney sent Hans Mast's discovery deposition taken on June 25, 2020 with exhibits 1-11 and 13-15, that were located in Plaintiff's former Attorney Julia C. Williams' electronic file with exhibit 12 received from Defendants' Attorney's office on April 28, 2022 with Barbara G. Smith's flash drive to Plaintiff's S. Ct. Rule 213(f)(3) expert Robin D. Williams, MFS, MS, D-BFDE Board Certified, Omni Document Examinations for analysis.

14) On July 11, 2022 Plaintiff's current Attorney received Robin D. Williams's Report of Findings concluding that the label on exhibit 12 did not come from the same group or batch of labels identified as exhibits 1-11 and 13-15. (Please see Plaintiff's Exhibit #3 Robin D. Williams Report of Findings July 11, 2022 attached)

15) On July 11, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney stating that the Hans Mist exhibit 12 alleged to be part of Defendant Hans Mast's discovery deposition was received apart from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 14, 2020 while the Deposition and Exhibits 1-11 and 13-15 were received from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 10, 2020. (Please see Plaintiff's Exhibit #4 attached)

LAW AND ORDER(S)

Illinois Supreme Court Rule 206. Method of Taking Depositions on Oral Examination

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(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. (1) Reserved. (2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition. (3) Reserved. (4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties. (5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order. (6) No

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recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

M.R.30370 CORRECTED ORDER APRIL 29, 2020

(Please see Plaintiff's Exhibit #5 attached)

M.R.30370 AMENDED ORDER JUNE 4, 2020

(Please see Plaintiff's Exhibit #6 attached)

VIOLATIONS

A) The exhibits that were decided upon to be used by former counsel Julia C. Williams, and specifically exhibit 12, were not provided to the officer administering the oath and all other parties within a reasonable period of tine prior to the deposition.

A1) On or about April 30, 2020 Defendants' Counsel sent an email to Plaintiff's former Counsel Julia C. Williams indicating an awareness of the current Supreme Court rules regarding depositions when he wrote "The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.." (Please see Plaintiff's Exhibit #7 attached.)

A2) On or about May 29th 2020 former attorney Julia C. Williams sent an email to Defendants' Counsel indicating an awareness of the current Supreme Court rules regarding depositions when she wrote " …and given the Supreme Court rules, it makes

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sense to take advantage of the remote deposition option." (Please see Plaintiff's Exhibit #8 attached.)

A3) On or about June 23, 2020 Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 23 exhibits that she [emphasis added] use in the discovery Deposition of Defendant Hans Mast on June 25, 2020. Additionally she indicated that there could be additions and there [emphasis added] be subtractions. Additionally she wrote "…and I will do my best to send them ahead of time." (Please see Plaintiff's Exhibit #9 attached.)

A4) On or about July 13, 2020 Noelle Kappes, Scheduling and Client Solution Manager U.S. Legal Support sends an email to Plaintiff's former attorney Julia C. Williams stating that "the court reporter indicated you would be sending us exhibit 12 from this deposition (discovery deposition of Defendant Hans Mast taken remotely on June 25, 2020) so that we can include it with the transcript. I don't believe we have received it can you send it tomorrow " (Please see Plaintiff's Exhibit #10 attached)

A5) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams emails to Noelle Kappes "Dear Noelle, I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here." (Please see Plaintiff's Exhibit #10 attached.)

A6) On or about July 14, 2020 wtolliver2uslegalsupport.com emailed to Plaintiff's former attorney and Defendants' attorney that "Exhibit 12 is now available to download" (Please see Plaintiff's Exhibit #11 attached)

A7) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams wrote to Plaintiff "Attached is exhibit 12 that was missing in the original transcript copy because

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the copy that the court reporter received was [emphasis added] (Please see Plaintiff's Exhibit #12 attached)

A8) On or about August 5, 2022 Plaintiff's former attorney inexplicitly emails to Mary Winch marywinch@clintonlaw.net,ed@clintonlaw.net the same email she sent to the same recipients on July 14, 2020. (Please see A5 above and Plaintiff's Exhibit #13 attached)

B) The deposition participants were not able to view the exhibits in real time during the deposition.

B1) The following clearly indicated a problem with viewing the exhibits submitted and the Defendants' internet equipment and internet connection and audio during the attempted remote discovery deposition of Defendant Hans Mast:

B1.1) Q. So I'm uploading Exhibit 2, it's titled Dulberg Mast Dep Exhibit 2, and this should be the original complaint filed in the case Dulberg versus Gagnon, et al., 12 LA 178, filed in McHenry County. Do you see that document

A. Yeah. What I'm going off are an email I got with all the exhibits attached, so I'm not that's what I'm looking at.; (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 17 lines 3 to 10 also found on 209 of 464 previously filed.)

B1.2) Q. Okay.

A. Oh, uh, I think It just kicked me off.

Mr. Flynn: I got disconnected, too. It's the Wi-Fi.

By Ms. Williams:

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Q. Okay, we'll just wait a minute here.

A. I can hear you. I just can't see you. Q. We'll wait a minute until you can get your video back on.

Mr. Flynn: Julia, we think the Wi-Fi may have dropped **r** **c** [emphasis added]

Ms. Williams: Okay. Well, let's just give a minute and see.; (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 22 lines 1 to 10 also found on 211 of 464 previously filed.)

B1.3) Q. Okay. I just uploaded Dulberg Mast Exhibit 4 and it says letter it's "Letter Re Settlement," and that should be still be Exhibit 4 that was emailed around to Counsel so that you would have it. And it is labeled POP192 and POP193. Do you recogni e those documents

A. Wait. I think the Internet, maybe because we were having problems, is the Internet went down, so now my exhibits aren't pulling up. Can you try again Do you have that, George

Mr. Flynn: Yeah, here's the **rd c** [emphasis added]

The Witness: I'll look at the **rd c** [emphasis added], so what are you asking (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 26 lines 5 to 17 also found on 212 of 464 previously filed.)

B1.4) Q. Okay. Just uploaded Exhibit 5, and this is email dated October 30, 2013, and it's marked at the bottom 000195.

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A. Okay.

Q. Okay, and here in this email it looks like you started this email chain to Paul on October 25, 2013. Do you see that

A. It looks like there s a couple emails here. There's several pages. You just mean the first page

Q. I think It should only be, I believe it's only one page and it looks like

A. Oh, these aren't part of it Just one page

Q. The document that I have is just one page. Are we looking at the same thing

A. Okay.

Q. It's POP00195 on the bottom.

A. Yeah, he had a couple other pages on it, but okay.

Q. Okay. I just want to make sure that I didn't okay. And on the bottom there of the first sheet, if you have several, **l d r r d** [emphasis added], it states, "Friday, October 25, 2013," do you see that

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 28 lines 16 to 24 and page 29 lines 1-14 also found on 212 of 464 previously filed.)

B1.5) Q. Okay. So I'm going to upload another file here.

A. Yeah, our internet is down. That's why I can't bring these up.

Q. Okay.

Mr. Flynn: Julia, just so you know, I've got hard copies of the majority of the exhibits you sent with the exception of the larger files, like the insurance policy and the dep

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transcripts.

MS. Williams: Okay. Okay, great.

Mr. Flynn: I've got some of the deposition transcripts, but I didn't want to waste a lot of paper and ink at home.

MS. Williams: Okay. I think we'll be For the most part, I think we'll be fine and we'll deal with it if and when we get to that point.

Q. Okay. So the document that I'm looking at now is another email on the it's now titled Exhibit 6. I don't think it was entitled Exhibit 6 in what I sent to George, but it's an email that the first date on the email is November 4, 2013, and the last date is November 5, 2013 email chain and it's at the bottom it's stamped Dulberg001531.

A. What exhibit is it

Q. I think it might have been **-A** emphasis added) to George. It's now exhibit 6 for the purpose of this deposition.

A. Yeah, that wasn't part of the download then. Do you have

Mr. Flynn: Yeah, I don't think that was included. (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 31 lines 10 to 24 and page 32 lines 1 to 17 also found on 213 of 464 previously filed.)

B1.6) Q. Okay. Okay, I'm going to stop screen sharing. Okay. I'm going to upload another file. This is Deposition Exhibit 7. George, you probably had it as Exhibit 6, but for the purpose of this deposition right now it's going to be 7 and it's an email chain dated

A. I have these on the computer. You don't need to, unless

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you want to, but I'm just saying I have these on the computer.

Q. Okay, but Barb needs them, so that's why I keep uploading them, otherwise she doesn't have them. Okay. So Exhibit 7, and it's POP00181 and POP00182,and it's two pages of an email chain, it starts November 15th and ends November 19, is that accurate

A. Yes.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 35 lines 5 to 20 and also found on 214 of 464 previously filed.)

B2) From this point on the transcript indicated that the deponent could not view any exhibits uploaded so that Plaintiff's former attorney Julia C. Williams was asking questions based upon her attempted uploads but the deponent Defendant Hans Mast was looking at physical documents to respond based upon the following:

B2.1) Q. Okay. So I'm going to upload another document and then we can keep going here. And then this is Exhibit 8 and for it is a letter from Ronald Barch to you, Hans, and it's POP000667. Do you [emphasis added] that

A. What date is it

Q. I'm sorry, dated November 18, 2013,

A. Yeah, I (emphasis added) that.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment

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Exhibit G page 36 lines 6 to 13 and also found on 214 of 464 previously filed.)

B2.2) Q. Yep, it's POP000181.

A. What exhibit

Q. It's Exhibit 7.

A. 7, that's the letter.

Q. If may be 6 for you. It may be 6 for you.

A. Let's take a look. What page is the email

Q. The date at the top of the email chain is Tuesday, November 19, 2013.

A. Yeah, I [emphasis added] that.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 38 lines 1 to 9 and also found on 215 of 464 previously filed.)

B2.3) Q. I'm going to add another exhibit here. Okay, for the purpose of this deposition it's Deposition Exhibit 9. This is a memorandum. At the top it will say, " memorandum," and the date is November 20, 2013, and at the bottom it is identified as POP and then 3 there's 000003, I believe. Do you [emphasis added] that

A. What exhibit is it

Q. I think you're probably going to have it as Exhibit 8, but for the purpose of this deposition it's actually going to be Exhibit 9.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages page 40 lines 12 to 22 and also found on 214 of 464 previously filed.)

B2.4) Q. Okay, I'm uploading Dulberg Mast Dep Exhibit 12. **T d L**

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D

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A T r , ' LAJATO [emphasis added]

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 49 lines 20 to 24, page 50 lines 1 to 11 and also found on 217-218 of 464 previously filed.)

C) The case of *Tilschner v. Spangler* No.2-10-0111, 949 N.E.2d 688, 350 Ill.Dec.896, 409 Ill.App.3d 98 (2011) which Plaintiff Paul Dulberg specifically instructed his former attorney Julia C. Williams to include as an exhibit to be the basis of questions to the deponent Defendant Hans Mast because: Mast had personally given a copy of the certified opinion to Dulberg on November 20, 2013; had personally appeared and argued the case along with Thomas J. Popovich, and Mark J. Vogg of Defendant the Law Offices of Thomas J. Popovich, P.C.; and had insisted that the decision in the case was the reason Plaintiff Paul Dulberg would not prevail in the underlying case against the Defendants Carolyn and William (Bill) McGuire. (This is based upon information and

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belief pending this Honorable Court's ruling upon Plaintiff's previously filed Motion To Compel concerning his former attorney Julia C. Williams claims' of Attorney-Client Privilege and Work Product.) (Please see Plaintiff's Exhibit 14 *Tilschner v. Spangler* No.2-10-0111 attached)

C1) *Tilschner v. Spangler* No.2-10-0111 was not included in exhibit 12 as constituted, when sent 19 days after the deposition had concluded, in response to the inquires of Noelle Kappes Scheduling and Client Solutions Manager U.S. Legal Support (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G found on pages 264 - 290 of 464 previously filed.)

C2) *Tilschner v. Spangler* No.2-10-0111 was inexplicitly replaced with an exact duplicate of the *Lejato v. AT&T, INC.,* No. 1-95-0447 669 N.E.2d 645 283 Ill. App. 3d 126 (1996) (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages 264-285 of 464 previously filed.)

W r r , Plaintiff Paul Dulberg prays that this Honorable Court allows Plaintiff to amend this Motion after Plaintiff's previously set Motion to Compel responses to his Records Subpoenas served upon respondents Julia C. Williams and Edward X. Clinton is ruled upon and, if so ordered, complied with, that Plaintiff's Motion to Exclude the discovery deposition of Defendant Hans Mast taken remotely on June 25, 2020 is granted, that Plaintiff request to take the deposition of Defendant Hans Mast is granted

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and for any other additional relief this Honorable Court deems fair and equitable.

Respectfully submitted,

/s/ Alphonse A. Talarico

Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

707 Skokie Boulevard Suite 600

Northbrook, Illinois 60022

(312) 808-1410

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RE: Dulberg v. Mast and Popovich

Linda Walters <lwalters@karballaw.com>
Thu 4/28/2022 4:00 PM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please use the below link to access Mast Dep Ex. 12.

https://www.dropbox.com/s/b2lmm0a6s3oex3d/Mast%20Dep%20Ex.%2012.PDF?dl=0

Thank you.

Linda Walters
Asst. to George Flynn

Linda Walters

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EXHIBIT 1

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Attachment available until Aug 13, 2020

Dear Noelle,

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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put this X in folder on desktop & renamed bad file 12-A - this is the new 12

Click to Download
Dulberg Mast Dep Exh 12 Legal Research .pdf
35.1 MB

still couldn't send 1-22-21 There was a problem reading this document.

On Jul 13, 2020, at 8:37 PM, Noelle Kappes <nkappes@uslegalsupport.com> wrote:

called Noelle - 10:30 - 7-14 - she will have William look at it or email us/Emma

Hi there,

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you,
Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.
Witness: Hans Mast
Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.
Date: 06/25/2020
Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)
Location:

GROUP EXHIBIT 2

Received 10-13-2022 02:45 PM / Circuit Clerk Accepted on 10-14-2022 01:12 PM / Transaction #19869175 / Case #2017LA000377
Purchased from re:SearchIL

Reporter and all Parties will appear via Video Conference.

Thank you for choosing U.S. Legal Support.
Court Reporting | Record Retrieval | Trial Services

Please note: To ensure your safety and the safety of others, when visiting a U.S. Legal Support office, please practice responsible social distancing measures. We ask that you provide and wear your own mask in common areas (halls, restrooms, break areas, cube areas, conference rooms, etc.). Thank you for your understanding and cooperation.

<CFM923267.PDF>

Received 10-13-2022 02:45 PM / Circuit Clerk Accepted on 10-14-2022 01:12 PM / Transaction #19869175 / Case #2017LA000377
Purchased from re:SearchIL

Hi Ms. Williams – This is Barb Smith, the court reporter from US Legal that was present at the dep of Hans Mast on 6-25-20. I am currently working on the transcript and while preparing the exhibits I noticed that Exhibit No. 12, which is the 27 pages of legal research, did not download completely. The Exhibit 12 that I have has blank pages 1-22 and only pages 23-27 have print on them. I just wanted to let you know and check if you wanted to resend or if that's how No. 12 is supposed to be.

Thank you.

Barb

7-2-20

Williams responded 7-2-20
but the ~~dept~~ space was
blank.
called 7-6-20 Left Message
7-7 submitted job and emailed
Noelle about it

Received 10-13-2022 02:45 PM / Circuit Clerk Accepted on 10-14-2022 01:12 PM / Transaction #19869175 / Case #2017LA000377
Purchased from re:SearchIL

Job 923267

From: Smith Family (barbnwally@att.net)

To: nkappes@uslegalsupport.com

Date: Tuesday, July 7, 2020, 09:32 PM CDT

Hi Noelle -- Hope you're doing well. I just want to let you know I submitted this job, 923267, last night. Two things I wanted to let you know about. First, this job and 925187 were both submitted last night. These are the first two I used Box for the exhibits. I hope I did them correctly. If there's any problems, please let me know.

For 923267 I have another issue. One of the exhibits, #12, was downloaded during the Zoom session. It's 27 pages and when I first looked at it I noticed that pages 1-22 were blank. I emailed Julia Williams, our client, on 7-2 about this. She responded and the message section of her email was blank. I waited for another email but received none. On 7-6 I called and left her a message and have not received a response. I did note all of this information in the email that I sent the job with.

The main reason I'm telling you all of this is that I am going to be out of town Thursday and Friday. My daughter is getting married in Arkansas so I will not be bringing my computer with me and will be quite busy. Hopefully I hear from her on Wednesday.

Thanks,

Barb

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C 1498 V2

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF,	)	
v.	)	No. 17 LA 377
THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	)	

AMENDED NOTICE OF DEPOSITION

TO: **All Attorneys of Record (See Attached Service List)**

YOU ARE HEREBY NOTIFIED, that pursuant to the provisions of Section 2-1003 of the Illinois Code of Civil Procedure and Supreme Court Rule 206, the following deposition will be taken for the purpose of discovery before a Notary Public via remote electronic deposition at the time and place specified, upon oral interrogatories to be propounded to said witness.

Deponent	***Location***	***Date***	***Time***
Hans Mast	Compton Law Group 85 Market St. Elgin, IL 60123 (remote electronic deposition)	June 25, 2020	10:00a.m.

YOU ARE HEREBY FURTHER NOTIFIED that you are by this Notice required to have present at the date, time, and place stated, the said Deponent for oral examination for the purpose of discovery. YOU ARE FURTHER NOTIFIED that PAUL DULBERG, a party to this case, intends to be present at the above noticed deposition.

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed by 5:00 p.m. on June 4, 2020.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Julia C. Williams
Julia C. Williams

Received 10-13-2022 02:45 PM / Circuit Clerk Accepted on 10-14-2022 01:12 PM / Transaction #19869175 / Case #2017LA000377
Purchased from re:SearchIL

SERVICE LIST:

George Flynn
~~Karbal | Cohen~~ | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Julia C. Williams
Julia C. Williams

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C 1500 V2

U.S. Legal Support - Chicago
200 West Jackson
Suite 600
Chicago, IL 60606
Telephone: 312-236-8352
Fax 312-236-3344

U.S. Legal Support

JOB WORKSHEET

Resource	**Barbara G. Smith**		
Job No.	**923267**	**Job Type**	**Deposition**
Job Date	**06/25/2020**	**Job Time**	**10:00 AM** (GMT-06:00) Central Time (US & Canada)
Due Date	07/10/2020	**Notation**	R/VC
Witness	Hans Mast		
Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	**17LA377**		
Location	***U.S. Legal Support, Inc. - Remote Video Conference** **Reporter and all Parties will appear via Video Conference.** **Phone:** **Room No.:** **Detail: To join the Video Conference, a website link will be provided by U.S. Legal Support the business day prior to the setting.**		
Remarks	Court Reporter & RemoteDepo *everyone appearing remotely except attorney George Flynn who will be with the deponent REPORTER MUST READ THE ATTACHED READ ON		

Client	Clinton Law Firm 111 West Washington Street Suite 1437 Chicago, IL 60602 Phone: 312-357-1515 Fax:	
Contact	Julia Williams	
Ordered By	Julia Williams via email	
Requested Service	Service Item RemoteDepo w/InstantExhibit - Videoconferencing	Units 1.00

Thank you for accepting this assignment. Please note that by accepting this assignment, you acknowledge U.S. Legal Support's requirement to have an up-to-date W-9, BAA, and CIA form submitted prior to our releasing payment.

Please provide the transcript to our production team by due date reflected above.
Exhibits to be delivered to production within 3 days after deposition.

Received 10-13-2022 02:45 PM / Circuit Clerk Accepted on 10-14-2022 01:12 PM / Transaction #19869175 / Case #2017LA000377
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13 interrog
14 interrogs
15 mtg

16
17
18
19
20

#1 retainer
2 complaint
3 memo
4 ~~settled~~ demand
5 email
6 email
7 email 11-15
8 email
9 memo
10 memo 12-18
11 settlement letter
12 case law

Nov 13

witness & atty flyn in McHenry Co.

start 10:08
end 12:20
#18

AP: Paul
~~Dulberg~~
Dulberg

Mr. Flynn - dept
copy reg + mini

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C 1502 V2

OMNI
Document Examinations

Robin D. Williams, MFS, MS, D-BFDE
Board Certified

Bonnie L. Schwid, B.S., D-BFDE
Board Certified

July 11, 2022

Attorney Alphonse A. Talarico
Law Office of Alphonse Talarico
707 Skokie Blvd.
Suite 600
Northbrook, Illinois 60062

REPORT OF FINDINGS

RE: Dulberg v Popovich et al LA 377

Dear Attorney Talarico,
Pursuant to your request, I examined the following documents:

Document containing a disputed Exhibit Label
(machine copy)

Q-1 The first page of a 27-page document containing machine copies of pages from a book or books. The first line on the yellow label reads "Exhibit 12".
The label is in the bottom center of a machine copy of 2 pages. The page number in the upper left corner is 502. The center heading reads: "218 Illinois Decisions".
Dated 6-25-2020.
Some of the pages in the 27-page document are duplications of previous pages.
The page sequencing in the 27-page document is as follows: 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 854, 855, 856, 857, 858.

Document(s) submitted as containing genuine Exhibit Labels
(machine copies):

K-1 The yellow label at the bottom right of the document reads "Exhibit 1".
K-2 The yellow label at the top center of the document reads "Exhibit 2".
K-3 The yellow label at the bottom right of the document reads "Exhibit 3".
K-4 The yellow label at the bottom right of the document reads "Exhibit 4".
K-5 The yellow label at the bottom right of the document reads "Exhibit 5".
K-6 The yellow label at the bottom right of the document reads "Exhibit 6".
K-7 The yellow label at the bottom right of the document reads "Exhibit 7".
K-8 The yellow label at the bottom right of the document reads "Exhibit 8".
K-9 The yellow label at the bottom right of the document reads "Exhibit 9".

EXHIBIT 3

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K-10 The yellow label at the bottom right of the document reads "Exhibit 10".
K-11 The yellow label at the bottom right of the document reads "Exhibit 11".
K-13 The yellow label at the bottom right of the document reads "Exhibit 13".
K-14 The yellow label at the top center of the document reads "Exhibit 14".
K-15 The yellow label at the bottom right of the document reads "Exhibit 15".

Assignment

The purpose of the examination was to determine whether the yellow label that is in question on Item Q-1, also identified as Exhibit Label #12 and the labels submitted as genuine on Items K-1 through K-11 and K-13 through K-15 all originated from the same group or batch of labels.

Procedure

The examination consisted of visual and microscopic study of the font styles, the discriminating variations of letter formations, letter designs, beginnings and endings of letters, t-crossings, spelling of words and exterior and interior shapes of the labels.

Opinion

It is the opinion of this examiner that the label in question identified as Q-1, Questioned Label #12, did not come from the same group or batch of labels identified as Items K-1 through K-11 and K-13 through K-15.

Discussion

Item Q-1, Exhibit Label #12 contained a different font in all of the words on the label (except in the word "Date") and in numerals 1 and 2 as illustrated in the attached charts.

It is important to note that the name of Hans *Mast* was misspelled on Item Q-1, Exhibit Label #12, as "Hans *Mist*".

It is noteworthy that in an enlargement of the label identified as Q-1, Exhibit Label #12, is the appearance of a squared outer edge in the upper left corner of the label that can be seen. This differs from the rounded outer edges of the known labels that were used for comparison.

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C 1504 V2

This examination was conducted from machine copies of the document in question and the exemplars used for comparison. I assume that they are accurate reproductions of the originals. If the original documents become available, I am requesting the opportunity to examine the original documents containing the original labels and revisit my opinion. However, I do not believe my opinion will change.

Please allow four weeks in the event that testimony will be required.

Respectfully submitted,
Omni Document Examinations

Robin D. Williams

Robin D. Williams, MFS, MS, D-BFDE
Diplomate-Board of Forensic Document Examiners

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C 1505 V2

Dulberg v. Popovich

George Flynn <gflynn@karballaw.com>
Mon 7/11/2022 10:25 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: Linda Walters <lwalters@karballaw.com>

1 attachments (26 MB)
EX 0012 Hans Mast 062520.pdf;

Mr. Talarico:

Below is a copy the transmittal email with exhibit 12 received by my office on July 14, 2020. A previous email from July 10, 2020 from US legal contained the other deposition exhibits. The link contained in the July 14 email produced the attached PDF of exhibit 12.

Regards,

From: "wtolliver@uslegalsupport.com" <wtolliver@uslegalsupport.com>
Date: July 14, 2020 at 11:13:35 AM CDT
To: George Flynn <gflynn@karballaw.com>
Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

U.S. Legal Support has switched to paperless production. Your litigation support package contains digital files of your transcript and exhibits. These files are also readily available 24/7 via our secure Client Online Portal. The certified original will be printed to facilitate lodging with the Court. Should you require a hard certified copy of the transcript or a CD of your files, please contact your local U.S. Legal Support office.

Thank you for choosing U.S. Legal Support.

We have uploaded the following file(s). To open or download, please click on the link(s) below.

File Information

Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Job No.	923267	Job Date	6/25/2020
Witness	H. Mast Exhibits		



If you are unable to see the links or are not redirected to the file(s), please copy and paste the URL below in your browser:
https://share.uslegalsupport.com/docs/download?tk=86791893-4ae0-47ae-884c-52dfe3f186c0

Received 10-13-2022 02:45 PM / Circuit Clerk Accepted on 10-14-2022 01:12 PM / Transaction #19869175 / Case #2017LA000377

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Available File(s)

File Type	File Name	Description	Size(KB)
Exhibit	EX 0012 Hans Mast 062520.pdf		26741

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George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
Please note our new address below effective May 27, 2022
200 S. Wacker Drive
Suite 2550
Chicago, IL 60606

P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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IN THE
SUPREME COURT OF ILLINOIS

In re: Illinois Courts Response to COVID-19 Emergency/Impact On Discovery	)	M.R.30370

Corrected
Order

In the exercise of the general administrative and supervisory authority over the courts of Illinois conferred on this Court pursuant to Article VI, Section 16 of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VI, sec. 16); and in view of the actions that have been taken by the Governor of the State of Illinois in response to the outbreak of the novel coronavirus (COVID-19); and consistent with the order issued by this Court on March 17, 2020,

IT IS HEREBY ORDERED:

Effective immediately and until further order of the Court, paragraph (h) of Illinois Supreme Court Rule 206 is temporarily amended as follows:

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) Reserved. ~~The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.~~

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

(3) Reserved. ~~Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.~~

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

(5) Time spent at a remote electronic means deposition in addressing necessary

EXHIBIT 5

Received 10-13-2022 02:45 PM / Circuit Clerk Accepted on 10-14-2022 01:12 PM / Transaction #19869175 / Case #2017LA000377
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technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments
(April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Order entered by the Court.

SEAL OF THE SUPREME COURT
STATE OF ILLINOIS
AUG. 26. 1818

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, this 29th day of April, 2020.

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois

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Purchased from re:SearchIL

C 1509 V2

IN THE
SUPREME COURT OF ILLINOIS

In re: Illinois Courts Response to COVID-19 Emergency/Impact On Discovery	)	M.R. 30370

Effective immediately, the Court's corrected order of April 29, 2020 regarding Illinois Courts Response to COVID-19 Emergency/Impact On Discovery is amended to add a committee comment concerning the temporary amendment of paragraph (h)(3) of Illinois Supreme Court Rule 206 as follows:

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) Reserved. ~~The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.~~

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

(3) Reserved. ~~Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.~~

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

(5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

EXHIBIT 6

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Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments
(April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Committee Comments
(June 4, 2020)

Paragraph (h)(3)

Subparagraph (h)(3) has been deleted to avoid discovery disputes over physical presence by a party or a party's attorney at a remote deposition. Deletion of the subparagraph does not mean that personal presence by a party or a party's attorney is absolutely prohibited. During the pandemic not all depositions are required to proceed remotely, nor is a continuance automatically required if counsel cannot agree on a remote method. Absent agreement, the circumstances of a remote deposition are within the discretion of the trial court.

Order entered by the Court.

SEAL OF THE SUPREME COURT
STATE OF ILLINOIS
AUG. 26, 1818

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, this 4th day of June, 2020.

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois

Received 10-13-2022 02:45 PM / Circuit Clerk Accepted on 10-14-2022 01:12 PM / Transaction #19869175 / Case #2017LA000377
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C 1511 V2

Good Morning, George,

I hope you are doing well. I would prefer to do an in-person deposition given that the client will likely want to be present and that may present some issues with a video deposition. That being said, I don't want to hold this up indefinitely.

Let's plan for the end of June. If the "stay at home" orders get extended again, we will reconsider the "in person" v "remote" deposition.

I hope you and your family are well.

I am working remotely. If you need to call—the best remote number is 312.508.3376.

Thanks,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Apr 30, 2020, at 11:12 AM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

I hope you and your family are staying safe, healthy, and busy during these uncharted times.

The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.

Otherwise, perhaps we can get a live deposition on the books for some time in June. If so, I would

EXHIBIT 7

Received 10-13-2022 02:45 PM / Circuit Clerk Accepted on 10-14-2022 01:12 PM / Transaction #19869175 / Case #2017LA000377

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suggest the 2nd half of June.

Let me know what you think

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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Hi Julia. I think June 17 will work. Just let me know the details. For the time being, I will plan on being at Hans' office for the deposition.

I am still not sure about June 5. I may attend live, but I should be able to make a decision by Tuesday.

How about touching base on Monday regarding the deposition logistics?

If you need to call, my cell is 773-341-8114.

So far so good here. I hope you and your family are doing well. Thanks

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Friday, May 29, 2020 4:37 PM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: Dulberg v. Popovich

Hi George,

How is the June 16,17, or 18? If not, we should also be open the week after on Wednesday or Thursday—June 24, 25.

I anticipate this will be a video deposition, despite things opening back up, I think it is the safest route for everyone and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option. Details to come on that. We can work that out and a time once we get the date nailed down.

I believe we have a June 5 status date. I believe we are encouraged to either use CourtCall or get an agreed order. I am happy to draft an agreed order setting out a date for close of oral fact discovery (f(1), f(2)) and setting the matter for further status, so we can submit it to the Judge prior to June 5 to avoid the date. Alternatively, I am also happy to appear via CourtCall if you intend to appear.

I hope you and your family are well.

EXHIBIT
8

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Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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On May 4, 2020, at 11:43 AM, George Flynn <gflynn@karballaw.com> wrote:

Thanks Julia. So far so good here.

Sounds like a plan. If you have a date in mind for late June, I have a feeling it will work for me. I can pass it along to Hans, so he can hold the date. Please also advise where you want to conduct the deposition.

Take care

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Monday, May 4, 2020 11:37 AM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: Dulberg v. Popovich

Received 10-13-2022 02:45 PM / Circuit Clerk Accepted on 10-14-2022 01:12 PM / Transaction #19869175 / Case #2017LA000377
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From: **Julia Williams** juliawilliams@clintonlaw.net
Subject: Re: Dulberg v Popovich Firm et al; Mast Deposition Exhibits
Date: June 24, 2020 at 10:49 AM
To: George Flynn gflynn@karballaw.com

Dear George,

Here is one more exhibit that I may use. We are still waiting on the instructions from US Legal which I expect by COB today.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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On Jun 24, 2020, at 9:31 AM, George Flynn <gflynn@karballaw.com> wrote:

Thanks Julia. I will see you virtually, tomorrow.

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

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EXHIBIT 9

From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Tuesday, June 23, 2020 4:26 PM
To: George Flynn <gflynn@karballaw.com>
Cc: Mary Winch <marywinch@clintonlaw.net>; Ed Clinton <ed@clintonlaw.net>
Subject: Dulberg v Popovich Firm et al; Mast Deposition Exhibits

Dear George,

Attachments available until Jul 23, 2020

I am attaching the deposition exhibits that I *may* use on Thursday. I don't believe there will be any additions between now and then, but if there are they will minor and I will do my best to send them ahead of time. Obviously, I may not use all of these.

I have not used US Legal or done any remote depositions so you will have to forgive any errors. My understanding is that in the video conferencing system I will be able to upload the document in Pdf or other format (I am only using PDFs), then you and the court reporter will be able to download it. The court reporter will label the exhibits and

include them in the transcript after the deposition is complete. You are not required to print any of the documents—unless of course you would like to do that.

I did my best to label the exhibits in the number order that I believe I will use them. That being said, things change in depositions and they may have to be renumbered. In an effort to not make it super confusing, I used descriptive names as well.

If you have questions/concerns, please let me know. Otherwise, I will see you remotely on Thursday and we'll hope that everything goes smoothly.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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From: **Noelle Kappes** nkappes@uslegalsupport.com
Subject: RE: U.S. Legal Support - Confirmation of Scheduling - Job No. 923267
Date: July 14, 2020 at 11:27 AM
To: Julia WIlliams juliawilliams@clintonlaw.net
Cc: Smith Family barbnwally@att.net, Mary Winch marywinch@clintonlaw.net, Ed Clinton ed@clintonlaw.net

NK

Received, thank you.

Noelle Kappes
Scheduling and Client Solutions Manager I U.S. Legal Support
200 West Jackson Boulevard, Suite 600
Chicago, IL 60606

Direct 312.854.1422 I Main 312.957.4546
nkappes@uslegalsupport.com
www.uslegalsupport.com



From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Tuesday, July 14, 2020 9:41 AM
To: Noelle Kappes <nkappes@uslegalsupport.com>
Cc: Smith Family <barbnwally@att.net>; Mary Winch <marywinch@clintonlaw.net>; Ed Clinton <ed@clintonlaw.net>
Subject: Re: U.S. Legal Support - Confirmation of Scheduling - Job No. 923267
Importance: High

This message has originated from an **External Source.** Please use caution when opening attachments, clicking links, or responding to this email.

Dear Noelle,

Attachment available until Aug 13, 2020

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm

EXHIBIT
10

The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Dulberg Mast Dep Exh 12 Legal Research .pdf
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On Jul 13, 2020, at 8:37 PM, Noelle Kappes <nkappes@uslegalsupport.com> wrote:

Hi there,

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you,
Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.
Witness: Hans Mast
Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.
Date: 06/25/2020
Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)
Location:
Reporter and all Parties will appear via Video Conference.

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From: wtolliver@uslegalsupport.com
Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:13 AM
To: juliawilliams@clintonlaw.net

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

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Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Job No.	923267	**Job Date**	6/25/2020
Witness	H. Mast Exhibits		

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Exhibit	EX 0012 Hans Mast 062520.pdf		26741

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From: **Julia Williams** juliawilliams@clintonlaw.net
Subject: Fwd: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:17 AM
To: Paul Dulberg pdulberg@comcast.net
Cc: marywinch@clintonlaw.net, ed@clintonlaw.net

Dear Paul,

Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was blank.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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From: "wtolliver@uslegalsupport.com" <wtolliver@uslegalsupport.com>
Subject: **Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020**
Date: July 14, 2020 at 11:13:26 AM CDT
To: <juliawilliams@clintonlaw.net>

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Case No.	17LA377		
Job No.	923267	**Job Date**	6/25/2020
Witness	H. Mast Exhibits		

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From: **Julia Williams** juliawilliams@clintonlaw.net
Subject: Fwd: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: August 5, 2022 at 10:21 AM
To: Mary Winch marywinch@clintonlaw.net, ed@clintonlaw.net

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Begin forwarded message:

From: "wtolliver@uslegalsupport.com" <wtolliver@uslegalsupport.com>
Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:13:26 AM CDT
To: <juliawilliams@clintonlaw.net>

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

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File Information

Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Job No.	923267	**Job Date**	6/25/2020
Witness	H. Mast Exhibits		

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NOTICE
The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 2—10—0111
Opinion filed May 6, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PATRICIA TILSCHNER,	)	Appeal from the Circuit Court
	)	of McHenry County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 08—LA—383
	)	
LOWELL SPANGLER and RALPH M. RUPPEL,	)	
	)	Honorable
	)	Maureen P. McIntyre,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court, with opinion.
Justice Hutchinson concurred in the judgment and opinion.
Justice Hudson specially concurred in the judgment, with opinion.

OPINION

Plaintiff, Patricia Tilschner, appeals from the trial court's orders dismissing count II of her third-amended complaint and denying her motion to reconsider. Patricia claims on appeal that the trial court erred in concluding that this State has not adopted section 318 of the Restatement (Second) of Torts (1965).[1] We affirm.

Patricia was injured during a party at the home of defendant Lowell Spangler when defendant Ralph Ruppel ignited fireworks. Patricia's third amended complaint contained three counts. Count

[1]Patricia raised a similar claim regarding an undifferentiated duty independent of section 318 but abandoned that argument during oral argument.

EXHIBIT 14

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I alleged common-law negligence against Spangler. Count II alleged negligence against Spangler pursuant to section 318 of the Restatement (Second) of Torts. Count III alleged common-law negligence against Ruppel. Spangler moved to dismiss count II, pursuant to section 2—615 of the Code of Civil Procedure (735 ILCS 5/2—615 (West 2008)). The trial court granted the motion to dismiss with prejudice and denied Patricia's subsequent motion to reconsider. Patricia filed an application for leave to appeal to this court pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010), which was denied. Patricia was also denied leave to file a fourth amended complaint. She then voluntarily dismissed count I of the third amended complaint, and the trial court found no just reason to delay enforcement or appeal, pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). This appeal followed.

Patricia now contends that the trial court erred in dismissing count II of her third amended complaint. When a defendant challenges the legal sufficiency of a complaint with a section 2—615 motion to dismiss, all well-pleaded facts alleged in the complaint are taken as true. *King v. Senior Services Associates, Inc.*, 341 Ill. App. 3d 264, 266 (2003). On review of a dismissal pursuant to section 2—615, this court must determine whether the allegations of the complaint, when interpreted in the light most favorable to the plaintiff, sufficiently set forth a cause of action on which relief may be granted. *King*, 341 Ill. App. 3d at 266. The motion should be granted only if the plaintiff can prove no set of facts to support her cause of action. *King*, 341 Ill. App. 3d at 266. As this process does not require the trial court to weigh findings of fact or determine credibility, this court is not required to defer to the trial court's judgment, and we will review the matter *de novo*. *King*, 341 Ill. App. 3d at 266.

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C 1528 V2

To state a cause of action in negligence, a plaintiff must allege facts that establish a duty, a breach of that duty, and proximate causation. *Ryan v. Yarbrough*, 355 Ill. App. 3d 342, 345 (2005). Patricia alleged that Spangler:

> "[o]wed a duty to the Plaintiff and his other invited guests to keep control and care over his property and to protect them against any unreasonable risks of harm known due to acts of a third person under his control, including the Defendant, RALPH RUPPEL, pursuant to the Restatement (Second) of Torts, §318."

Section 318 of the Restatement (Second) of Torts provides:

> "If the actor permits a third person to use land or chattels in his possession otherwise than as a servant, he is, if present, under a duty to exercise reasonable care so to control the conduct of the third person as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if the actor
>
> (a) knows or has reason to know that he has the ability to control the third person, and,
>
> (b) knows or should know of the necessity and opportunity for exercising such control." Restatement (Second) of Torts §318 (1965).

A restatement is not binding on Illinois courts unless it is adopted by our supreme court. *Eckburg v. Presbytery of Blackhawk of the Presbyterian Church (USA)*, 396 Ill. App. 3d 164, 169 (2009); *In re Estate of Lieberman*, 391 Ill. App. 3d 882, 890 (2009). Thus, we must determine whether our supreme court has adopted section 318 of the Restatement (Second) of Torts; if it has not, Spangler owed no duty to Patricia.

Citing a line of both supreme court and appellate court cases, Patricia argues that section 318 has "unquestionably" been adopted in Illinois. However, this is not the first time that this court has

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C 1529 V2

examined this question and concluded to the contrary. In *Zimring v. Wendrow*, 137 Ill. App. 3d 847, 850 (1985), this court specifically found that "[n]o Illinois case has adopted section 318 of the Restatement (Second) of Torts, upon which plaintiff relies." Ultimately, we concluded that we "need not consider" the sufficiency of the complaint in relation to section 318. *Zimring*, 137 Ill. App. 3d at 853. In *Elizondo v. Ramirez*, 324 Ill. App. 3d 67, 73 (2001), the plaintiff asserted that section 318 "has been adopted in Illinois and cite[d] two cases in support." After analyzing those cases—*Cravens v. Inman*, 223 Ill. App. 3d 1059 (1991), and *Teter v. Clemens*, 112 Ill. 2d 252 (1986)—we concluded that "it is unclear whether these cases represent the law in Illinois" (*Elizondo*, 324 Ill. App. 3d at 73-74), and we declined to "express an opinion on whether section 318 represents the law in Illinois" (*Elizondo*, 324 Ill. App. 3d at 74). We note with interest that Patricia cites to *Elizondo* but fails to mention, let alone address, this court's refusal to find that section 318 had, indeed, been adopted in this state. Patricia now argues, despite our analysis in *Elizondo*, that our supreme court adopted section 318 in *Teter*. We disagree, and we will not revisit our prior analysis and determination in *Elizondo* that there was no clear adoption of section 318 by our supreme court in *Teter*.

While Patricia does not cite to *Cravens*, its ultimate disposition is instructive. In *Cravens*, the First District of the Illinois Appellate Court found a duty and, thus, a claim for negligence, pursuant to section 318 and to *Teter*, in the factual scenario of adults providing alcohol to minor guests who subsequently left in an automobile and were involved in a fatal accident. However, our supreme court in *Charles v. Seigfried*, 165 Ill. 2d 482, 501-02 (1995), concluded that it did "not agree that the views set forth in *Cravens* should be adopted through judicial decision." This court noted the supreme court's refusal, in an admittedly different context, to impose liability pursuant to section 318. See *Elizondo*, 324 Ill. App. 3d at 74.

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C 1530 V2

Patricia argues that the supreme court "implicitly" adopted section 318 in *Estate of Johnson v. Condell Memorial Hospital*, 119 Ill. 2d 496, 503-04 (1988), in which the court stated:

> "In general, one has no duty to control the conduct of another to prevent him from causing harm to a third party (Restatement (Second) of Torts §315 (1965)), but there are exceptions to this, based on 'special relationships.' Sections 315 through 319 of the Restatement (Second) of Torts (1965) describe these relationships. The 'special relationship' that the plaintiff alleges existed here that would give rise to a duty to protect another from harm is found in section 319 ***."

The court ultimately concluded, "It cannot be reasonably said, based on the complaint's allegations against Condell, that the hospital assumed a duty of care to Holt under section 319 of the Restatement (Second) of Torts (1965)." *Estate of Johnson*, 119 Ill. 2d at 506-07. Patricia argues that the "clear import" of the decision "is that sections 315-319 have been adopted in Illinois." She then cites to a similar statement in *Kirk v. Michael Reese Hospital & Medical Center*, 117 Ill. 2d 507, 530 (1987) ("There are types of relationships that give rise to a duty to control a third party's conduct set out in sections 316 to 319 of the Restatement (Second) of Torts (1965) ***"), to support her conclusion that the supreme court "cited with approval all of the exceptions/duties established in sections 316 through 319." Patricia is not alone in this argument. The First District of the Illinois Appellate Court has boldly stated that the supreme court has adopted sections 315 through 319. See *Brewster v. Rush-Presbyterian-St. Luke's Medical Center*, 361 Ill. App. 3d 32, 36-37 (2005) (citing *Estate of Johnson*, 119 Ill. 2d at 503-04); *Iseberg v. Gross*, 366 Ill. App. 3d 857, 862 (2006) (citing only *Brewster*, which expressly mentions sections 315 through 319, but then mysteriously increasing the number of sections adopted, to include sections 314 through 320).

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However, we first note that neither *Estate of Johnson* nor *Kirk* (nor, for that matter, *Brewster* nor *Iseberg*) involved a claimed application of section 318. Both *Estate of Johnson* and *Kirk* involved claims arising from alleged improper medical treatment of third parties who subsequently injured the plaintiffs; these claims were analyzed under section 319, which speaks to a duty of those in charge of someone having dangerous propensities. See *Estate of Johnson*, 119 Ill. 2d at 503-04; *Kirk*, 117 Ill. 2d at 530-31. The "most relevant" section in *Brewster* was section 317, which addresses the duty of a master to control the conduct of his servants. *Brewster*, 361 Ill. App. 3d at 37; Restatement (Second) of Torts §317 (1965). In *Iseberg*, the plaintiff did not even allege that any of the Restatement sections applied and imposed a duty on the defendants. *Iseberg*, 366 Ill. App. 3d at 862.

Patricia has failed to cite, and our research has not revealed, a single case since *Teter* in which our supreme court has specifically addressed, or even quoted, section 318 of the Restatement (Second) of Torts. We cannot conclude that our supreme court has adopted—explicitly, implicitly, impliedly, or otherwise—a Restatement section that it has not been called upon to analyze, apply, or adopt. Even the cases upon which Patricia relies do little more than acknowledge the existence of section 318. *Estate of Johnson* says that sections 315 through 319 describe " 'special relationships' " that form the bases for exceptions to the general rule of section 315. *Estate of Johnson*, 119 Ill. 2d at 503. *Kirk* merely notes that certain types of relationships set out in sections 316 through 319 give rise to a duty to control a third party's conduct, although none of the types applied there. *Kirk*, 117 Ill. 2d at 530. The mere citation to a cluster of sections, or even the analysis some of the nearby sections, is insufficient to establish the adoption of a restatement section.

The supreme court has addressed more thoroughly and deeply other restatement sections and specifically did *not* adopt them. For example, in a case examining the difference between void and

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voidable judgments, the supreme court compared its conclusions with those that it would have reached if the criteria of section 12 of the Restatement (Second) of Judgments were applied to the facts of the case. *In re Marriage of Mitchell*, 181 Ill. 2d 169, 176 (1998). The court noted that the result in the case was "consistent with the trend of modern authority" as exemplified by the Restatement (Second) of Judgments. *Mitchell*, 181 Ill. 2d at 175. The court then quoted section 12 of the Restatement (Second) of Judgments and applied the criteria of that section to the facts of the case. *Mitchell*, 181 Ill. 2d at 176. After determining that adopting the view expressed in the Restatement would require a re-examination of existing case-law analysis, the court casually noted that "[t]he parties [did] not ask us to adopt the rule expressed in the Restatement, however, and therefore we need not decide in this case whether to take that step." *Mitchell*, 181 Ill. 2d at 177. In *Mitchell*, the court explicitly declined to adopt a restatement section that it specifically quoted, applied to the facts of the case, analyzed, and compared to existing case law, because the parties did not ask for it. Here, Patricia cannot cite to a case wherein the court even cited to section 318, let alone provided the type of analysis that it did in *dictum* in *Mitchell*. With such meager authority, we cannot find the adoption of a restatement section.

Patricia similarly attempts to find adoption of section 318 in this court's decision in *Duncan v. Rzonca*, 133 Ill. App. 3d 184 (1985). Patricia's specific claim is that the *Duncan* court adopted section 316 of the Restatement and that, since sections 316 through 319 are "uniformly discussed together," there is "simply no logical explanation for why section 316 but not section 318 would be adopted in Illinois." We first note that this court does not have the authority to adopt a restatement section; as we have already stated, a restatement is binding on Illinois courts *only if it is adopted by our supreme court*. See *Eckburg*, 396 Ill. App. 3d at 169; *Lieberman*, 391 Ill. App. 3d at 890. In the absence of Illinois law, we often deem secondary sources, such as the Restatement (Second) of

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Torts, to be persuasive. [2] *Eckburg*, 396 Ill. App. 3d at 169. A restatement is a policy statement; this court does not adopt policy, it applies present law to the facts of the case before it. Further, this argument relies on the same fallacy as her prior argument: the "adoption" of a section includes the adoption of other sections "uniformly discussed together." This argument is not only a *non sequitur*, it is irrational as well. *Duncan* does not support Patricia's cause.

The restatement that we adopt today is that our supreme court has not adopted section 318 of the Restatement (Second) of Torts. Therefore, count II of Patricia's third-amended complaint, interpreted in the light most favorable to her, fails to allege a duty recognized by our supreme court and fails to set forth a cause of action on which relief may be granted. The trial court did not err in granting Spangler's section 2—615 motion to dismiss with prejudice.

---

[2]"A secondary source is not the law. It's a commentary on the law. A secondary source can be used for three different purposes: it might educate you about the law, it might direct you to the primary law, or it might serve as persuasive authority. Few sources do all three jobs well. The important classes of legal secondary sources include: treatises, periodical articles, legal encyclopedias, ALR Annotations, *Restatements*, and Looseleaf services. ***

* * *

Restatements

The restatements were developed by legal scholars initially to restate the law, and currently to describe what the law should be. In either case, Restatements are very persuasive although they are not very good at describing the law. They can serve as adequate law finders." (Emphasis added.) *Secondary Sources*, Yale Law School, Lillian Goldman Law Library, http://m-library.law.yale.edu/content/secondary-sources.

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For these reasons, the judgment of the circuit court of McHenry County is affirmed.

Affirmed.

JUSTICE HUDSON, specially concurring:

I agree with much of the majority's analysis in this case as well as the result at which it arrives. However, I would prefer to refrain from making sweeping and unnecessary statements about the authority of this court. It is well established that a court should avoid constitutional questions when a case can be decided on other grounds. *In re Detention of Swope*, 213 Ill. 2d 210, 218 (2004); *Beahringer v. Page*, 204 Ill. 2d 363, 370 (2003). The scope of the authority of this court is a constitutional matter. See *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002).

In this case, the majority rejects plaintiff's contention that this court has adopted section 318 of the Restatement (Second) of Torts, finding plaintiff's argument "irrational." Slip op. at 8. This finding should resolve this question. The majority, nevertheless, goes on to hold that this court does not have the authority to adopt a section of a restatement. It is unnecessary to consider whether this court has such authority in light of the majority's holding that nothing this court previously did would constitute an adoption of section 318. As I believe it improper to address the issue of the authority of this court, I do not join this portion of the majority's opinion.

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United States of America

2-10-0111

PATRICIA TILSCHNER,

Plaintiff-Appellant,

State of Illinois, Appellate Court, Second District, } ss.

v.

LOWELL SPANGLER and RALPH M. RUPPEL,

Defendants-Appellees.

I, ROBERT J. MANGAN, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the decision of the said Appellate Court in the above entitled cause of record in my said office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this

6th *day of* May, *A.D. 20* 2011

Robert J. Mangan

Clerk Appellate Court, Second District

(RO-2131 — 5M — 3/02)

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Date: 10/12/2022 4:54 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST Defendants.	)))))) Case No. 17 LA 377)))))

NOTICE OF FILING

TO A Attorneys **R c rd P c d S r c L**

PLEASE TA E NOTICE that on the 12 day of October 2022, I filed with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, **PLAINTIFF'S MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TA EN IN VIOLATION OF SUPREME COURT RULE REMOTE ELECTRONIC MEANS DEPOSITIONS d ORDERS OF THE ILLINOIS SUPREME COURT I r ILLINOIS COURTS RESPONSE COVID- EMERGENCY IMPACT ON DISCOVERY M R CORRECTED ORDER APRIL , d M R AMENDED ORDER JUNE , d GRANT LEAVE TO TA E THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST** a copy of which is attached and hereby served upon you.

October 12, 2022

ALPHONSE A. TALARICO
Law Office of Alphonse A. Talarico
ARDC No. 6184530
707 Skokie Boulevard, Suite 600
Northbrook, Illinois 60062
(312) 808-1410

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Attorney for Plaintiff Paul Dulberg
contact@lawofficeofalphonsetalarico.com

AFFIDAVIT OF SERVICE

I, the undersigned attorney, certify that this Notice was served to all parties listed on the attached **S r c L** by E-filing with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, **PLAINTIFF'S MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TA EN IN VIOLATION OF SUPREME COURT RULE REMOTE ELECTRONIC MEANS DEPOSITIONS d ORDERS OF THE ILLINOIS SUPREME COURT I r ILLINOIS COURTS RESPONSE COVID-EMERGENCY IMPACT ON DISCOVERY M R CORRECTED ORDER APRIL , d M R AMENDED ORDER JUNE , d GRANT LEAVE TO TA E THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST** and by email on October 12, 2022.

Under penalties as provided by law pursuant to 735 ILCS 5 1-109, I certify that the statements set forth herein are true and correct.

s Alphonse A. Talarico
Alphonse A. Talarico

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SERVICE LIST

GEORGE K. FLYNN
Karbal Cohen Economou Silk Dunne, LLC
200 South Wacker Drive, Suite 2550
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

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ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.		

KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
10/17/2022 8:16 AM
McHenry County, Illinois
22nd Judicial Circuit
****

ORDER

This matter coming to be heard for continued status on Defendants' Motion for Summary Judgment, and Plaintiff's Motion to Compel/Petition for Rule to Show Cause directed at Julia C. Williams and Edward X. Clinton, it is hereby ordered:

IT IS ORDERED:

1) Plaintiff's motion to compel is granted as follows: Williams and Clinton are ordered to produce all documents responsive to Dulberg's subpoena to the court for an In Camera inspection within 14 days. Williams and Clinton must appear on November 4, 2022 at 9:15. a.m. if they do not produce all responsive documents to the court within 14 days.
2) Plaintiff Paul Dulberg hereby waives attorney-client privilege for the limited purpose Williams' and Clinton's compliance with Plaintiff's subpoenas to them.
3) Plaintiff's response to Popovich's and Mast's Motion for Summary Judgment must be filed and served by December 28, 2022.
4) Popovich's and Mast's reply in support of Motion for Summary Judgment must be filed and served by January 19, 2023.
5) Hearing on Popovich's and Mast's Motion for Summary Judgment is set for February 1, 2023 at 10:00 a.m.

Zoom information for Room 201:
Link: https://zoom.us/my/mchenrycourtroom201;
Meeting ID: 272-959-8070
Personal Link Name: mchenrycourtroom201;
Password: no password required

Prepared by:

Atty. No.	George K. Flynn/ARDC No. 6239349
Name:	Karbal, Cohen, Economou, Silk & Dunne, LLC
Attorney for:	Defendants
Address:	200 S. Wacker Drive, Suite 2550
City:	Chicago, IL 60606
Telephone:	(312) 431-3700
E-Mail:	gfynn@karballaw.com

10/17/2022
……., 2022
ENTER:

Thomas A. Meyer
……
Judge Judge's No.

Thomas Meyer

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

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McHenry County, Illinois
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Date: 10/28/2022 12:24 PM
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Clerk of the Circuit Court

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	CASE NO. 17 LA 377 JUDGE THOMAS A. MEYER

Motion to Vacate Order

Julia Williams and Edward X. Clinton, on their own behalf, respectfully request that this Honorable Court vacate its October 17, 2022 order, in part, as follows:

I. Introduction

1. Julia Williams and Edward X. Clinton ("Clinton Law") previously represented Plaintiff Paul Dulberg in this pending matter. Mr. Talarico is Plaintiff's current counsel of record. On or around August 2, 2022, Mr. Talarico issued a subpoena to each Julia Williams and Edward X. Clinton requesting records in this case. Since that time, Ms. Williams and Mr. Clinton have been attempting to work with Mr. Talarico regarding the subpoena. On October 6, 2022, Mr. Talarico, without notice to Ms. Williams or Mr. Clinton, filed a Motion to Compel/Petition for Rule to Show Cause, which was granted. Ms. Williams and Mr. Clinton are now asking this Honorable Court to vacate portions of that order because the order may do great harm to Mr. Dulberg. Clinton Law has a legitimate professional concern that the service of the subpoena has waived the attorney-client privilege between Clinton Law and Dulberg for no good reason and at great risk of harm to Dulberg. Serving a subpoena on prior counsel and waiving the attorney-client privilege was a reckless act.

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II. Relevant Facts

2. Edward X. Clinton, Jr. and Julia Williams, of the Clinton Law Firm, represented Plaintiff Paul Dulberg in this pending matter from November 8, 2018 to September 10, 2020.

3. On or around September 2, 2020, the Clinton Law Firm sent to Plaintiff Dulberg, via FedEx, all physical documents that Dulberg provided to the Clinton Law Firm and a flash drive containing the Clinton Law Firm's entire legal file, including but not limited to, pleadings, discovery, and communications with Plaintiff, opposing counsel, and third parties.

4. On or around March 26, 2021, the Clinton Law Firm sent a flash drive containing that same material as was sent in a flash drive to Mr. Dulberg to Mr. Talarico, including but not limited to, pleadings, discovery, and communications with Plaintiff, opposing counsel, and third parties.

5. In August 2022, Julia Williams of Williams Law LLC and "Of Counsel" with The Clinton Law Firm accepted service of two subpoenas, the first issued to her and the second issued to Edward X. Clinton, Jr. of The Clinton Law Firm. The subpoenas requested identical information. (Exhibit 1, Subpoenas)[1]

6. On August 30, 2022, Julia Williams contacted Attorney Alphonse Talarico regarding the subpoena and produced by email that day the following documents:

A. Hans Mast Deposition Transcript Full
B. Hans Mast Deposition Transcript Mini
C. Hans Mast Deposition Exhibit 12
D. Hans Mast Deposition Exhibits 1-11, 13-15
E. A folder containing all of the exhibits that were prepared, whether utilized or not, for Hans Mast deposition.

[1] Ms. Williams accepted service of both subpoenas, but was not served with any witness fee, as is stated in the Affidavit of Service.

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7. Ms. Williams spoke with Mr. Talarico and identified her concern that the subpoena was too expansive as it requested attorney-client privileged documents and documents that were subject to the work product privilege. Ms. Williams further noted that Mr. Talarico was requesting documents and information that his client was entitled to without a subpoena. Ms. Williams expressed that The Clinton Law Firm would produce all the requested information but wished to avoid formally responding to the subpoena given the concern that the Dulberg was waiving the attorney-client privilege and the requirement to produce all documents to all parties of record.

8. On August 30th, Mr. Talarico stated that he would review the documents and advise Ms. Williams and Mr. Clinton if he required more information.

9. On September 8, 2022, Mr. Talarico emailed Ms. Williams and Mr. Clinton advising that the documents were not sufficient and he was seeking compliance with the subpoena.

10. On September 9, 2022, Ms. Williams again reiterated Clinton Law's concern about providing privileged documents to the Court and placing them in the public record and provided the following folders:

a. All emails that were not subject to privilege
b. Exhibit 12 to Hans Mast Deposition
c. Exhibits Marked to Mast Deposition
d. Proposed Exhibits for Mast Deposition

11. Again, on September 9, 2022, Mr. Talarico indicated that he would review the documents and advise if they were insufficient.

12. Ms. Williams and Mr. Clinton did not hear from Mr. Talarico again until September 29, 2022, when he advised Ms. Williams and Mr. Clinton that the documents were insufficient and seeking a formal response to the subpoena.

13. On September 29, 2022, counsel sent Mr. Talarico three separate emails including a response to the subpoena.

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14. The first email outlined the attempts to provide the required documents and reiterating again the concern about privileged documents and stated the documents would be produced that day, thus neither Mr. Clinton nor Ms. Williams would appear on October 6, 2022.

15. The second email contained the privileged attorney client communication and was not produced in response to the subpoena, but informally to Mr. Talarico.

16. The third email was the formal response to the subpoena contained the following exhibits:

a. Response to Subpoena
b. Documents Bates Stamped "Dulberg Clinton Subpoena" 1-671
c. Hans Mast Full Deposition Transcript
d. Hans Mast Mini Deposition Transcript

17. All emails between Ms. Williams, Mr. Clinton, and Mr. Talarico are attached to this Motion. (Exhibit 2 Emails Dated August 30, 2022; Exhibit 3 Emails dated September 8, 2022; Exhibit 4 emails dated September 29, 2022)

18. At no time did Mr. Talarico indicate that Mr. Dulberg was waiving attorney-client privilege and did not address Clinton Law's serious concerns about other work product privileged documents.

19. Mr. Talarico did not respond to any of the September 29, 2022 emails indicating that he required further response to the subpoena or that the information was not sufficient for his needs.

20. Mr. Talarico did not respond to the email notifying Mr. Clinton or Ms. Williams that their appearance would still be required on October 6, 2022.

21. Mr. Talarico failed to participate in 201k communications to reach an agreement with Mr. Clinton and Ms. Williams regarding the subpoena and failed to advise Mr. Clinton or Ms. Williams that the Mr. Dulberg was waiving the attorney-client communication privilege.

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22. On October 6, 2022, Mr. Talarico filed a Motion to Compel to compel Mr. Clinton and Ms. Williams to comply with the subpoena.

23. The Motion to Compel was not served upon Mr. Clinton or Ms. Williams.

24. Mr. Clinton and Ms. Williams have attempted to produce documents to Mr. Talarico that meet his needs, while protecting the client communication.

25. On October 17, 2022, this Court issued an order compelling Mr. Clinton and Ms. Williams to produce documents to this Honorable Court and waiving the attorney-client privilege. Exhibit 5, Order).

26. Ms. Williams and Mr. Clinton were first notified of the petition when Mr. Talarico sent them a copy of the order entered on October 17, 2022. (Exhibit 6, Email)

27. Plaintiff failed to serve the Petition for Rule and Motion on Mr. Clinton or Ms. Williams, pursuant to the Supreme Court Rules 204(d), 219(a), 754(f).

28. In conjunction with this Motion, Mr. Clinton and Ms. Williams are providing this Honorable Court with a flash drive with all documents responsive to the subpoena for in-camera inspection, which will be labeled as follows:

A. Dulberg Clinton Subpoena Response 2022 Sep 29
B. Dulberg Clinton Subpoena 1-677[2]
C. Hans Mast 062520 FULL
D. Hans Mast 062520 MINI
E. Dulberg Clinton Subpoena Privileged Communication 1-33
F. Dulberg Subpoena Work Product Privilege 1-13

29. Mr. Clinton and Ms. Williams are requesting that this Honorable Court vacate the order granting the Motion to Compel/Petition for Rule to Show Cause as they were never served with the petition and never granted any opportunity to respond to the petition. Their due process

[2] An additional email chain regarding the Hans Mast deposition was located and is being produced with Bates stamp 672-677.

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rights have been violated. That is not the main problem here. Clinton Law is concerned that Dulberg has agreed to waive the attorney-client privilege in this matter without due and proper consideration of the consequences of that action. This is a serious matter. Clinton Law requests that the Court personally inquire of Dulberg as to whether he understands the consequences of his waiver of the attorney client privilege with Clinton Law.

30. Clinton Law also request that the Court review the documents in camera without placing them in the public record. There is no just reason to waive the attorney client privilege in this case to obtain documents that were previously furnished to both Dulberg and Talarico and can be produced to Dulberg and Talarico without waiving the privilege.[3]

WHEREFORE, Mr. Clinton and Ms. Williams respectfully request that this Honorable Court (a) vacate its order granting Plaintiff's motion to compel/petition for rule; (b) review the documents that were produced in camera and (c) vacate its order waiving the attorney-client privilege and such further relief as this Honorable Court deems just and equitable.

Respectfully Submitted,

By: /s/ Edward X. Clinton, Jr.

By: /s/ Julia C. Williams

Edward X. Clinton, Jr.
ed@clintonlaw.net
Atty No 6206773
Julia C. Williams
juliawilliams@clintonlaw.net
ARDC No. 6296386
The Clinton Law Firm, LLC
111 West Washington Street, Suite 1437
Chicago, IL 60602
312-357-1515

[3]If there is a document we inadvertently failed to turn over, Clinton Law apologies for that error. The Clinton Law Firm is willing to correct any error and produce all documents to Dulberg and Talarico. There is no reason to waive the attorney-client privilege to correct any error.

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Exhibit 1

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IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	CASE NO. 17 LA 377 JUDGE THOMAS A. MEYER

SUBPOENA FOR DOCUMENTS

(THIS SUBPOENA IS FOR RECORDS ONLY.)

TO: JULIA CHRISTINE WILLIAMS,
Individually and as Manager of
Williams Law, LLC
111 West Washington Street Suite 1437
Chicago, IL 60602-2708

YOU ARE COMMANDED to produce responsive documents, Electronically Stored Information (ESI) including but not limited to writings, drawings, graphs, charts, photographs, images, sound recordings, and other data or data compilations from which ESI can be obtained, voicemails, text messages, internet history logs, information stored on backup tapes, social media profiles and activity, recordings of conference calls or videoconferences, videos, data from Workplace Collaboration Tools (WCT) or devices connected to the Internet of Things (IoT), communications conducted using ephemeral messaging applications, geolocation data that can

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reveal the precise location of a device and the individual using the device or objects in response to the requests below on August 31, 2022, at 10:00 a.m. at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062.

You are subpoenaed by the undersigned attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed. If you fail to respond to this subpoena, you may be in contempt of court.

DEFINITIONS:

I) Electronically Stored Information (ESI) means information that is stored in or on any electronic medium.

INSTRUCTIONS:

A) Please respond in numerical order stating the number and in chronological order therein.

B) Electronically Stored Information (ESI) shall be produced as exact duplicates of the original source files, in original format as source files, also including 'Native," "Image," and "Load" files.

C) The required time period begins March 2, 2020 and ends on April 29, 2022.

D) Please see **COMPLIANCE WITH SUBPOENA** below.

PLEASE TAKE FURTHER NOTICE that, pursuant to this subpoena, Julia Christine Williams is requested to produce the following documents, Electronically Stored Information (ESI), or objects in response to the requests on August 31, 2022, at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062:

1. The original transcript stamped "Original" of the discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes.

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C 1549 V2

2. An exact duplicate of the original transcript stamped "Copy" of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the copy demanded is a contemporaneous copy issued by U.S. Legal Support.

3. An exact duplicate of the original transcript stamped "Copy" in condensed format (mini) of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the condensed transcript demanded is a contemporaneous version issued by U.S. Legal Support.

4. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the discovery deposition of Hans Mast taken on June 25, 2020.

5. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibit 12 of the discovery deposition of Hans Mast taken on June 25, 2020.

6. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the exhibit titled " Legal Research" of discovery deposition of Hans Mast taken on June 25, 2020.

7. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibits 1-11 and 13-15 of the discovery deposition of Hans Mast taken on June 25, 2020.

Please note that the appearance of the respondent is excused, and no deposition will be taken, if the documents specified above are produced on or before August 26, 2022

NOTE TO WITNESS: Please contact attorney Alphonse A, Talarico at (312) 808-1410 for information as to the reimbursement of additional charges for production incurred by the respondent.

NOTE TO WITNESS: Enclosed with this subpoena is a check for statutory witness fees and mileage reimbursement in the amount of $29.00 plus $25.00 for production costs. The total money forwarded is $54.00.

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C 1550 V2

Dated: August 2, 2022

By:

/s/ Alphonse A. Talarico

Alphonse A. Talarico 6184530
Law Office of Alphonse A. Talarico
707 Skokie Boulevard #600
Northbrook, Illinois, 60062
Tel: (312) 808-1410
contact@lawofficeofalphonsetalarico.com
Attorney for Plaintiff Paul Dulberg

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C 1551 V2

PROOF OF SERVICE

Gazelle Process & Investigations PLLC #117-001853 on oath states:

I am over the age of 18 and not a party to this case.

I served the foregoing Subpoena for Documents on Julia Christine Williams as follows:

By leaving a copy of the Subpoena for Documents with _____

personally at _____ on _____, 2022

at the hour of _____.m.

I also enclosed a check for $54.00 for the witness and mileage fees plus production costs.

Pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that the signer verily believes the same to be true.

_____

Gazelle Process & Investigations PLLC #117-001853

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C 1552 V2

COMPLIANCE WITH SUBPOENA

The attached subpoena, by Illinois law, requires you and/or your organization to appear and to produce commanded documents on August 31, 2022, at the Law Office of Alphonse A. Talarico, attorney for Plaintiff Paul Dulberg.

DEPONENT:

JULIA CHRISTINE WILLIAMS,
Individually and as Manager of
Williams Law, LLC
111 West Washington Street Suite 1437
Chicago, IL 60602-2708

Your actual appearance will be waived if the commanded documents are mailed, by certified or registered mail, or delivered to our office on or before April 26, 2022 prior to that date and you inform us so by that date.

Please sign and date this form and return it to us with your records and a copy of this subpoena .

Affidavit of Compliance

The undersigned certifies under penalties of perjury as provided by law pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, that the statements checked below are true and correct.

Check one (1) from the following:

_____ After making a diligent search of any and all the records in our possession or control, I certify that all records we have on the above are submitted herewith in response to this subpoena.

_____ After making a diligent search of any and all records, I certify there are no records to provide in response to this subpoena.

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Page 13 of 57
C 1553 V2

Check one (1) from the following:

_____ I am the Custodian of Records for Julia Christine Williams and Williams Law LLC, and I have personal knowledge of the record-keeping procedures of Julia Christine Williams and Williams Law LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I am an employee of or manager of Julia Christine Williams and Williams Law LLC, and I have personal knowledge of the record-keeping procedures of Julia Christine Williams and Williams Law LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I have no personal knowledge of the record-keeping procedures of Julia Christine Williams and Williams Law LLC and the manner of creation for all records produced responsive to this subpoena.

Check **all** that apply from the following:

_____ The records produced in response to this subpoena were kept in the course of the regularly conducted activity of Julia Christine Williams and Williams Law LLC.

_____ The records produced in response to this subpoena were made by the regularly conducted activity as a regular practice of Julia Christine Williams and Williams Law LLC.

_____ The records produced in response to this subpoena were made at or near the time of the occurrences set forth by, or from information transmitted by, a person with knowledge of the matters set forth within the records.

Date: _____, 2022

Position: _____

Name: _____

(Print)

_____

(Signature)

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C 1554 V2

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	CASE NO. 17 LA 377 JUDGE THOMAS A. MEYER

SUBPOENA FOR DOCUMENTS

(THIS SUBPOENA IS FOR RECORDS ONLY.)

TO: EDWARD X. CLINTON,
Individually and as Manager of
Clinton Law Firm, LLC
111 West Washington Street Suite 1437
Chicago, Illinois 60602-2708

YOU ARE COMMANDED to produce responsive documents, Electronically Stored Information (ESI) including but not limited to writings, drawings, graphs, charts, photographs, images, sound recordings, and other data or data compilations from which ESI can be obtained, voicemails, text messages, internet history logs, information stored on backup tapes, social media profiles and activity, recordings of conference calls or videoconferences, videos, data from Workplace Collaboration Tools (WCT) or devices connected to the Internet of Things (IoT), communications conducted using ephemeral messaging applications, geolocation data that can

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C 1555 V2

reveal the precise location of a device and the individual using the device or objects in response to the requests below on August 31, 2022, at 1:00 p.m. at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062.

You are subpoenaed by the undersigned attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed. If you fail to respond to this subpoena, you may be in contempt of court.

DEFINITIONS:

I) Electronically Stored Information (ESI) means information that is stored in or on any electronic medium.

INSTRUCTIONS:

A) Please respond in numerical order stating the number and in chronological order therein.

B) Electronically Stored Information (ESI) shall be produced as exact duplicates of the original source files, in original format as source files, also including 'Native," "Image," and "Load" files.

C) The required time period begins March 2, 2020 and ends on April 29, 2022.

D) Please see **COMPLIANCE WITH SUBPOENA** below.

PLEASE TAKE FURTHER NOTICE that, pursuant to this subpoena, Edward X. Clinton is requested to produce the following documents, Electronically Stored Information (ESI), or objects in response to the requests on August 31, 2022, at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062:

1. The original transcript stamped "Original" of the discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes.

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C 1556 V2

2. An exact duplicate of the original transcript stamped "Copy" of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the copy demanded is a contemporaneous copy issued by U.S. Legal Support.

3. An exact duplicate of the original transcript stamped "Copy" in condensed format (mini) of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the condensed transcript demanded is a contemporaneous version issued by U.S. Legal Support.

4. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the discovery deposition of Hans Mast taken on June 25, 2020.

5. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibit 12 of the discovery deposition of Hans Mast taken on June 25, 2020.

6. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the exhibit titled " Legal Research" of discovery deposition of Hans Mast taken on June 25, 2020.

7. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibits 1-11 and 13-15 of the discovery deposition of Hans Mast taken on June 25, 2020.

Please note that the appearance of the respondent is excused, and no deposition will be taken, if the documents specified above are produced on or before August 26, 2022

NOTE TO WITNESS: Please contact attorney Alphonse A, Talarico at (312) 808-1410 for information as to the reimbursement of additional charges for production incurred by the respondent.

NOTE TO WITNESS: Enclosed with this subpoena is a check for statutory witness fees and mileage reimbursement in the amount of $29.00 plus $25.00 for production costs. The total money forwarded is $54.00.

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C 1557 V2

Dated: August 2, 2022

By:

/s/ Alphonse A. Talarico

Alphonse A. Talarico 6184530
Law Office of Alphonse A. Talarico
707 Skokie Boulevard #600
Northbrook, Illinois, 60062
Tel: (312) 808-1410
contact@lawofficeofalphonsetalarico.com
Attorney for Plaintiff Paul Dulberg

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C 1558 V2

PROOF OF SERVICE

Gazelle Process & Investigations PLLC #117-001853 on oath states:

I am over the age of 18 and not a party to this case.

I served the foregoing Subpoena for Documents on Edward X. Clinton as follows:

By leaving a copy of the Subpoena for Documents with _____

personally at _____ on _____, 2022

at the hour of _____.m.

I also enclosed a check for $54.00 for the witness and mileage fees plus production costs.

Pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that the signer verily believes the same to be true.

_____

Gazelle Process & Investigations PLLC #117-001853

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C 1559 V2

COMPLIANCE WITH SUBPOENA

The attached subpoena, by Illinois law, requires you and/or your organization to appear and to produce commanded documents on August 31, 2022, at the Law Office of Alphonse A. Talarico, attorney for Plaintiff Paul Dulberg.

DEPONENT:

EDWARD X. CLINTON,
Individually and as Manager of
Clinton Law Firm, LLC
111 West Washington Street Suite 1437
Chicago, Illinois 60602-2708

Your actual appearance will be waived if the commanded documents are mailed, by certified or registered mail, or delivered to our office on or before April 26, 2022 prior to that date and you inform us so by that date.

Please sign and date this form and return it to us with your records and a copy of this subpoena .

Affidavit of Compliance

The undersigned certifies under penalties of perjury as provided by law pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, that the statements checked below are true and correct.

Check one (1) from the following:

_____ After making a diligent search of any and all the records in our possession or control, I certify that all records we have on the above are submitted herewith in response to this subpoena.

_____ After making a diligent search of any and all records, I certify there are no records to provide in response to this subpoena.

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C 1560 V2

Check one (1) from the following:

_____ I am the Custodian of Records for Edward X. Clinton and Clinton Law Firm LLC, and I have personal knowledge of the record-keeping procedures of Julia Christine Williams and Williams Law LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I am an employee of or manager of Edward X. Clinton and Clinton Law Firm LLC, and I have personal knowledge of the record-keeping procedures of Edward X. Clinton and Clinton Law Firm LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I have no personal knowledge of the record-keeping procedures of Edward X. Clinton and Clinton Law Firm LLC and the manner of creation for all records produced responsive to this subpoena.

Check **all** that apply from the following:

_____ The records produced in response to this subpoena were kept in the course of the regularly conducted activity of Edward X. Clinton and Clinton Law Firm LLC.

_____ The records produced in response to this subpoena were made by the regularly conducted activity as a regular practice of Edward X. Clinton and Clinton Law Firm LLC.

_____ The records produced in response to this subpoena were made at or near the time of the occurrences set forth by, or from information transmitted by, a person with knowledge of the matters set forth within the records.

Date: _____, 2022

Position: _____

Name: _____

(Print)

_____

(Signature)

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Exhibit 2

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From: **Julia WIlliams** juliawilliams@clintonlaw.net
Subject: Re: Dulberg v Mast et al; Mast Dep and Exh H
Date: August 30, 2022 at 9:28 AM
To: alphonsetalarico@gmail.com
Cc: Ed Clinton ed@clintonlaw.net, Mary Winch marywinch@clintonlaw.net

Dear Mr. Talarico,

Attached are the remaining exhibits for the Mast dep.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

> On Aug 30, 2022, at 9:23 AM, Julia WIlliams <juliawilliams@clintonlaw.net> wrote:
>
> Dear Mr. Talarico,
>
> Attached is exhibit H and the Mast dep. I will give you a call to discuss.
>
> Best regards,
>
> Julia Williams
> Of Counsel
> The Clinton Law Firm
> 111 W. Washington, Ste. 1437
> Chicago, IL 60602
> P:312.357.1515
> F: 312.201.0737
> juliawilliams@clintonlaw.net
>
> This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Click to Download
Hans Mast 062520 FULL.pdf
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Hans Mast 062520 MINI.pdf
2.7 MB

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EX 0012 Hans Mast 062520.pdf
27.4 MB



EX 0001 Hans Mast 0...20.pdf



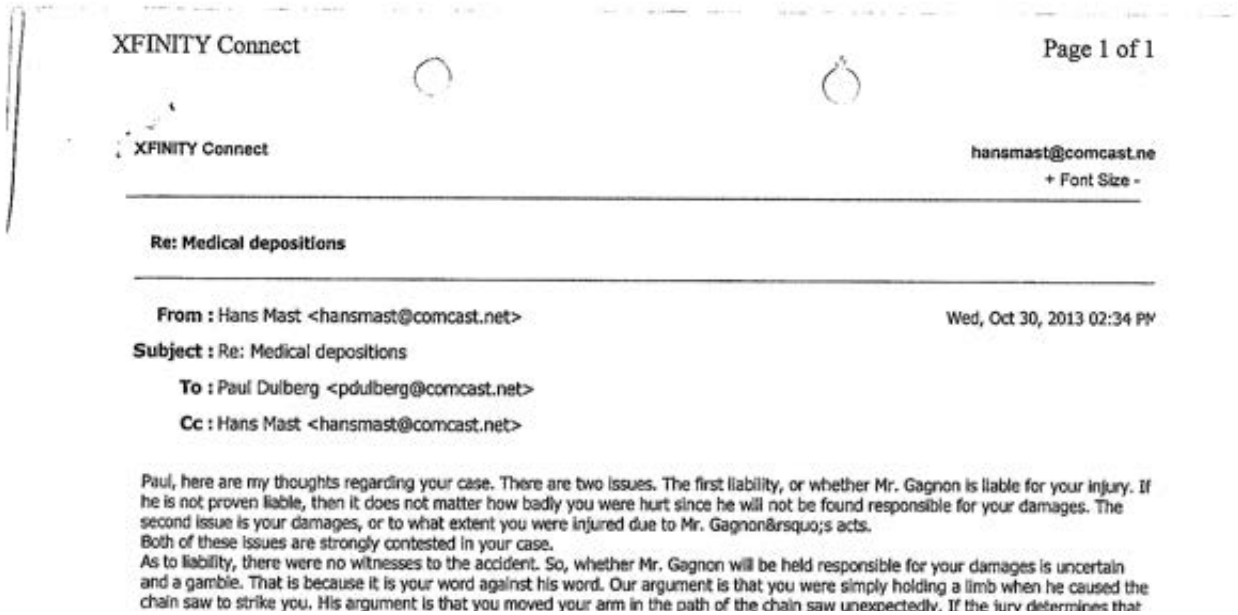
EX 0002 Hans Mast 0...20.pdf



EX 0003 Hans Mast 0...20.pdf



EX 0004 Hans Mast 0...20.pdf



XFINITY Connect

Page 1 of 1

XFINITY Connect

hansmast@comcast.ne

+ Font Size -

Re: Medical depositions

From : Hans Mast <hansmast@comcast.net>

Wed, Oct 30, 2013 02:34 PM

Subject : Re: Medical depositions

To : Paul Dulberg <pdulberg@comcast.net>

Cc : Hans Mast <hansmast@comcast.net>

Paul, here are my thoughts regarding your case. There are two issues. The first liability, or whether Mr. Gagnon is liable for your injury. If he is not proven liable, then it does not matter how badly you were hurt since he will not be found responsible for your damages. The second issue is your damages, or to what extent you were injured due to Mr. Gagnon’s acts.
Both of these issues are strongly contested in your case.
As to liability, there were no witnesses to the accident. So, whether Mr. Gagnon will be held responsible for your damages is uncertain and a gamble. That is because it is your word against his word. Our argument is that you were simply holding a limb when he caused the chain saw to strike you. His argument is that you moved your arm in the path of the chain saw unexpectedly. If the jury determines that

From: **Julia WIlliams** juliawilliams@clintonlaw.net
Subject: Attorney Work Product Mast Dep Exhibits
Date: August 30, 2022 at 9:38 AM
To: alphonsetalarico@gmail.com
Cc: ed@clintonlaw.net, marywinch@clintonlaw.net

Attorney Work Product

Dear Alphonse,

Attached is the file with the exhibits that were used and then the ones not used.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Dulberg Mast Dep Ex...une 25
62.9 MB

From: **Julia WIlliams** juliawilliams@clintonlaw.net
Subject: Fwd: Dulberg v Popovich Firm et al; Mast Deposition Exhibits
Date: August 30, 2022 at 9:40 AM
To: alphonsetalarico@gmail.com
Cc: ed@clintonlaw.net, marywinch@clintonlaw.net

Dear Alphonse,

Here is the email producing the exhibits to opposing counsel.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

> Begin forwarded message:
>
> **From:** Julia Williams <juliawilliams@clintonlaw.net>
> **Subject:** **Dulberg v Popovich Firm et al; Mast Deposition Exhibits**
> **Date:** June 23, 2020 at 4:25:46 PM CDT
> **To:** George Flynn <gflynn@KARBALLAW.COM>
> **Cc:** marywinch@clintonlaw.net, ed@clintonlaw.net
>
> Dear George,
>
> I am attaching the deposition exhibits that I *may* use on Thursday. I don't believe there will be any additions between now and then, but if there are they will minor and I will do my best to send them ahead of time. Obviously, I may not use all of these.
>
> I have not used US Legal or done any remote depositions so you will have to forgive any errors. My understanding is that in the video conferencing system I will be able to upload the document in Pdf or other format (I am only using PDFs), then you and the court reporter will be able to download it. The court reporter will label the exhibits and include them in the transcript after the deposition is complete. You are not required to print any of the documents—unless of course you would like to do that.
>
> I did my best to label the exhibits in the number order that I believe I will use them. That being said, things change in depositions and they may have to be renumbered. In an effort to not make it super confusing, I used descriptive names as well.
>
> If you have questions/concerns, please let me know. Otherwise, I will see you remotely on Thursday and we'll hope that everything goes smoothly.
>
> Best Regards,
>
> Julia Williams
> Of Counsel
> The Clinton Law Firm
> 111 W. Washington, Ste. 1437
> Chicago, IL 60602
> P:312.357.1515
> F: 312.201.0737
> juliawilliams@clintonlaw.net
>
> This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

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Dulberg Mast Dep Exh 1 Retainer Contract.pdf

64 KB

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Dulberg Mast Dep Exh 2 Complaint.pdf

349 KB

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Dulberg Mast Dep Exh 3 Intake Memo .pdf

149 KB

Click to Download

Dulberg Mast Dep Exh 4 Letter Re settlement offer $7,500.pdf

89 KB

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Dulberg Mast Dep Exh 5 Mast Email 2013 Oct 30.pdf

92 KB

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Dulberg Mast Dep Exh 6 Email 2013 Nov 18.pdf

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Dulberg Mast Dep Exh 7 Letter w settlement offer 2013 Nov 18.pdf

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Dulberg Mast Dep Exh 8 Memo 2013 Nov 20 re mtg.pdf

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Dulberg Mast Dep Exh 9 Emails Dulberg Mast 2013 Nov 20.pdf

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Dulberg Mast Dep Exh 10 memo re settlement acceptance 2013 Dec .pdf
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Dulberg Mast Dep Exh 15 Gagnon Policy.pdf
9.8 MB

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Dulberg Mast Dep Exh 16 Motion to Withdraw.pdf
153 KB

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Dulberg Mast Dep Exh 17 WIlliam McGuire Dep.pdf
585 KB

Click to Download
Dulberg Mast Dep Exh 18 Memo re William Dep.pdf
133 KB

Click to Download
Dulberg Mast Dep Exh 19 Carolyn McGuire Dep .pdf
4.7 MB

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Dulberg Mast Dep Exh 20 Carolyn McGuire Dep Memo.pdf

181 KB

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9.5 MB

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Dulberg Mast Dep Exh 22 Gagnon Dep Memo.pdf

273 KB

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Dulberg Mast Dep Exh 23 Emails re Gagnon Value 2015 Mar 12.pdf

206 KB

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Exhibit 3

Received 10-31-2022 08:47 AM / Circuit Clerk Accepted on 10-31-2022 02:50 PM / Transaction #20089152 / Case #2017LA000377
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From: **Julia WIlliams** juliawilliams@clintonlaw.net
Subject: Re: Records Subpoenas Dulberg v. Mast et al 17 LA 377
Date: September 9, 2022 at 9:55 AM
To: Alphonse Talarico contact@lawofficeofalphonsetalarico.com
Cc: Ed Clinton ed@clintonlaw.net

Good Morning,

Here they are. Let me know if there are any problems.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Emails Not confidential 2.7 MB | Exhibit 12 to Mast Dep 32.9 MB | Exhibits Marked to Mast Dep 2.5 MB | Proposed Exhibit...st Dep 62.9 MB

> On Sep 9, 2022, at 9:52 AM, Alphonse Talarico <contact@lawofficeofalphonsetalarico.com> wrote:
>
> Dear Julia C. Williams,
>
> The promised attachments were not included in your email.
>
> Please send so I can evaluate what you are stating.
>
> Your anticipated cooperation is greatly appreciated,
> Alphonse A. Talarico
> 3128081410
>
> ---
>
> **From:** Julia WIlliams <juliawilliams@clintonlaw.net>
> **Sent:** Thursday, September 8, 2022 4:30 PM
> **To:** Ed Clinton <ed@clintonlaw.net>
> **Cc:** Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
> **Subject:** Re: Records Subpoenas Dulberg v. Mast et al 17 LA 377
>
> Dear Mr. Talarico,
>
> As I stated previously, we would prefer not to issue a formal response to the subpoena as it requests privileged attorney-client communication between our office and Mr. Dulberg, as well as work product in the form of notes.
>
> Instead, I am attaching here all of my communications (emails) about the Mast Deposition with third parties as well as the deposition and exhibits. These documents would be what we would produce in our response.
>
> Attached you will find all of the emails regarding Hans Mast deposition between our firm and third parties as well as the transcript and documents.

I did not produce emails between our firm and Mr. Dulberg, but as I recall those emails were included with the file that we produced previously via flash drive.

As I stated when we spoke previously, we are happy to produce what you need, but we do not want to breach any attorney-client privilege by responding to the subpoena formally.

If you would prefer for us to respond formally to the subpoena we will do so, but we will be objecting to any request for attorney-client communication and attorney work product. We could also agree to narrow the request to (a) exclude attorney-client privileged communication and work product between and among, Julia WIlliams, Edward Clinton, Jr., The Clinton Law Firm, Paul Dulberg and any successor counsel for Dulberg, and (b) exclude any work product.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

> On Sep 8, 2022, at 2:33 PM, Ed Clinton <ed@clintonlaw.net> wrote:
>
> Alphonse,
>
> Can you send me the subpoena?
>
> Ed
>
> > On Sep 8, 2022, at 2:31 PM, Alphonse Talarico <contact@lawofficeofalphonsetalarico.com> wrote:
> >
> > Dear Attorneys Julia C. Williams and Edward X. Clinton,
> >
> > After careful consideration of all concepts raises and a careful review of work product, I find that neither Records Subpoena has been complied with and therefore demand such compliance.
> >
> > As a courtesy to two fellow members of the bar I have reset the original document compliance date to be on or before September 22, 2022 and the records deposition to be :
> >
> > - for Julia C. Williams on October 6, 2022 starting at 10:00 AM
> > - for Edward X. Clinton October 6, 2022 starting at 1:00 PM
> >
> > all other instructions and the location where to send/appear shall remain the same as stated in the subpoenas.
> >
> > Your anticipated cooperation is greatly appreciated,
> >
> > Alphonse A. Talarico

Alphonse A. Talarico
(312) 808-1410

Received 10-31-2022 08:47 AM / Circuit Clerk Accepted on 10-31-2022 02:50 PM / Transaction #20089152 / Case #2017LA000377

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Exhibit 4

Received 10-31-2022 08:47 AM / Circuit Clerk Accepted on 10-31-2022 02:50 PM / Transaction #20089152 / Case #2017LA000377
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From: **Julia WIlliams** juliawilliams@clintonlaw.net
Subject: Re: Dulberg v. Popovich et al 17 LA 377
Date: September 29, 2022 at 10:39 AM
To: Alphonse Talarico contact@lawofficeofalphonsetalarico.com
Cc: Ed Clinton ed@clintonlaw.net

Dear Mr. Talarico,

We will be responding formally to the subpoena request by separate email today, but will be objecting to the disclosure of attorney-client communication and work product.

As a courtesy to you, by separate email, we will be producing to you, but not as a formal response to the subpoena, the privileged communication between our office and Mr. Dulberg regarding the Hans Mast deposition.

I note that on 8.30.2022, we did provide the Exh. 12 and mini and full versions of the transcript. At that time, we spoke. I stated that I was concerned that the request included request for privileged work product as well as attorney-client communication. You stated you would review and let us know if you required a formal response.

On 9.8.2022, you again reached out indicating that the response was insufficient and you did need more document. I reiterated my concern about a formal response because of the issue of disclosing attorney-client communication and work product and noted that noted that your client is entitled to the majority of the documents without a subpoena,. I did then produce to you informally via email, that day, (a) all communications with third parties regarding the deposition of Hans Mast, (b) all exhibits used in the deposition, (c) all proposed exhibits, including exhibits that were not utilized, and (d) the full and mini version of the transcript. I also requested that you narrow the scope of the subpoena to exclude attorney client communication.

At that time, you indicated that you would review the materials and let us know if you needed more.

I am now receiving this message that states you represented to the court that we have produced “nothing.” This is simply untrue. We have been trying to work with you to avoid the issue of producing attorney-client privileged information that would ultimately be produced to opposing counsel in the pending case.

Furthermore, prior to the issuance of the subpoena and when you first filed your appearance in this case, we produced to you on a flash drive, as Mr. Dulberg’s successor counsel, the entirety of our file, including communications between our firm and Mr. Dulberg as well as third party communications.

I am hopeful that our response to the subpoena and the informal production of communication between our office and Mr. Dulberg closes this matter. We will not be appearing at your office on Oct. 6.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

> On Sep 28, 2022, at 10:57 AM, Alphonse Talarico <contact@lawofficeofalphonsetalarico.com> wrote:
>
> Dear Attorneys Williams and Clinton,
>
> I have previously informed you that the response to the records subpoena emailed to me by Julia C. Williams was not in full compliane. Nor was the non- response by Attorney Clinton compliant.
> As a courtesy to members of the Bar I emailed a revised date to comply, that being September 22, 2022 for document compliance.
> As of today, I have not received full compliance with either subpoena and the revised date for your appearance at my office was set for October 6, 2022.
> If you don't intend on appearing for the deposition on October 6, 2022 please let me know by return email within the next 24 hours.
> If you both will appear on October 6, 2022 I will make the appropriate arrangements.
> If I do not receive a response or if either or both of you respond in the negative, I

will not proceed with finalizing the arrangements.
Please note that the subpoenas served upon both of you were discussed at the most recent status on September 16, 2022 and Judge Meyer instructed me to inform you of the following "The ball is in their court. They've done nothing. And you may want to pass that information on to them that unless or until I see something filed on their behalf objecting to the scope of your subpoena, I assume it's appropriate and should be complied with...All right. Yeah. I expect if they're not going to give full compliance - - and based on what you're telling me they're acknowledging it's not full compliance - - if they are not going to give full compliance, they need to come to court."

P.S. Please respond in writing only by email.

Your anticipated cooperation is greatly appreciated,
Alphonse A. Talarico

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Purchased from re:SearchIL

From: **Julia WIlliams** juliawilliams@clintonlaw.net
Subject: Dulberg Communications with Clinton Firm re Hans Mast Dep
Date: September 29, 2022 at 11:00 AM
To: Alphonse Talarico contact@lawofficeofalphonsetalarico.com
Cc: Ed Clinton ed@clintonlaw.net, Mary Winch marywinch@clintonlaw.net

Julia WIlliams has shared OneDrive for Business files with you. To view them, click the links below.

Court today-1.eml Lost wages issue-1.eml

Thumb Drive of Gooch Files-1.eml Retainer.eml

Release and copy of court order.eml Discovery Documents.eml

Dulberg v Popovich; Gooch File.eml Interrogatories-documents discovery.eml

Court today.eml Dulberg v Mast et al; Discovery and Court Order.eml

Lost wages issue.eml Thumb Drive of Gooch Files.eml

Attorney-Client Privileged and Work Product Privileged Communication

Dear Mr. Talarico,

Attached please find the attorney-client communication between our firm and Mr. Dulberg about the Hams Mast deposition. I am not producing this in a formal response to your subpoena, but rather informally as there is no concern of privilege with successor counsel, but we are maintaining privilege as it relates to opposing counsel.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P: 312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged or confidential. If you are not the intended recipient, please notify the sender and delete this message immediately.

From: **Julia WIlliams** juliawilliams@clintonlaw.net
Subject: Dulberg v Mast et al; Subpoena to Clinton Law
Date: September 29, 2022 at 10:52 AM
To: contact@lawofficeofalphonsetalarico.com, ed@clintonlaw.net
Cc: marywinch@clintonlaw.net

Dear Mr. Talarico,

Enclosed please find the response and documents related to the document subpoena issued on or around August 2, 2022.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.


Dulberg Clinton Subpo...29.pdf


Dulberg Clinton Subpo...62.pdf


Dulberg Clinton Subpo...71.pdf


Dulberg Clinton Subpo...42.pdf


Dulberg Clinton Subpo...15.pdf


Hans Mast 06252...LL.pdf


Hans Mast 06252...INI.pdf

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Exhibit 5

Received 10-31-2022 08:47 AM / Circuit Clerk Accepted on 10-31-2022 02:50 PM / Transaction #20089152 / Case #2017LA000377
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C 1579 V2

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit courts.

** FILED ** Env: 19790478
McHenry County, Illinois
2017LA000377
Date: 10/6/2022 12:39 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS, CIRCUIT COURT McHenry COUNTY	NOTICE OF COURT DATE FOR MOTION	For Court Use Only

Instructions

Directly above, enter the name of the county where the case was filed.

Enter the name of the person who started the lawsuit as Plaintiff/Petitioner.

Enter the name of the person being sued as Defendant/Respondent.

Enter the Case Number given by the Circuit Clerk.

Paul Dulberg
Plaintiff / Petitioner *(First, middle, last name)*

v.

Hans Mast & Law Offices of Thomas J. Popovich, P.C.
Defendant / Respondent *(First, middle, last name)*

17 LA 377
Case Number

In **1**, enter:
-The court date and time of your hearing. Call your Circuit Clerk to get this information. If e-filing in Cook County, you may get the date when you e-file.
-The courtroom and address of the court building.
-The call-in or video information for remote appearances (if applicable).
-The clerk's phone number and website. All this information is available from the Circuit Clerk, you can find their contact information at: illinoiscourts.gov/courts/circuit-court/circuit-court-clerks/.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

1. Hearing Information

The hearing for the *Motion* I filed is scheduled:

a. On 10/13/2022 *Date* at 10:00 *Time* ☑ a.m. ☐ p.m. in 201 *Courtroom*

In-person at:

2200 N. Seminary Avenue, Woodstock, Illinois 60098
Courthouse Address *City* *State* *ZIP*

OR

Remotely (You may be able to attend this court date by phone or video conference. This is called a "Remote Appearance.")

By telephone: 888-882-6878
Call-in number for telephone remote appearance

By video conference: https://zoom.us/my/mchenrycourttoom201
Video conference website

272-959-8070
Video conference log-in information (meeting ID, password, etc.)

Call the Circuit Clerk at: 815.334.4190 *Local Circuit Clerk's phone #* or visit their website at https://www.mchenrycountyil.gov/county-g *Website* to find out more about how to do this.

I certify that everything in the *Notice of Court Date for Motion* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Alphonse A. Talarico *Your Signature*	707 Skokie Boulevard #600 *Street Address*
Alphonse A. Talarico *Print Your Name*	Northbrook, Illinois 60062 *City, State, ZIP*
contact@lawofficeofalphonsetalarico.com *Email*	(312) 808-1410 *Telephone*
6184530 *Attorney # (if any)*	

GETTING COURT DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

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C 1580 V2

PROOF OF DELIVERY

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **1b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

In **c**, fill in the date and time that you are sending the document.

1. I am sending the *Notice of Court Date for Motion*

a. To:

Name: George K. Flynn
First *Middle* *Last*

Address: 200 S. Wacker Drive, Suite 2550 Chicago, Illinois 60606
Street, Apt # *City* *State* *ZIP*

Email address: gflynn@karballaw.com

b. By:

- ☑ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

c. On: 10/06/2022 *Date* at: 4:30 *Time* ☐ a.m. ☑ p.m.

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

In **c**, fill in the date and time that you are sending the document.

2. I am sending this document:

a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:

- ☐ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

c. On: _____ *Date* at: _____ ☐ a.m. ☐ p.m.

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Enter the Case Number given by the Circuit Clerk: 17 LA 377

If you are sending your document to more than 2 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

/s/ Alphonse A. Talarico *Your Signature*	707 Skokie Boulevard Suite 600 *Street Address*
Alphonse A. Talarico *Print Your Name*	Northbrook, Illinois, 60062 *City, State, ZIP*
(312) 808-1410 *Telephone*	contact@lawofficeofalphonsetalarico.com *Email*
	6184530 *Attorney # (if any)*

GETTING COURT DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

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** FILED ** Env: 19790478
McHenry County, Illinois
2017LA000377
Date: 10/6/2022 12:39 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)
	)
Plaintiff,	)
	)
	)
v.	) Case No. 17LA 377
	)
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)
	)
Defendants.	)

PLAINTIFF'S MOTION TO COMPEL NON-PARTIES JULIA C. WILLIAMS AND EDWARD X. CLINTON TO COMPLY WITH RECORDS SUBPOENAS AND TO AMEND PLAINTIFF'S MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TAKEN IN VIOLATION OF SUPREME COURT RULE 206 h(2) REMOTE ELECTRONIC MEANS DEPOSITIONS and ORDERS OF THE ILLINOIS SUPREME COURT In re: ILLINOIS COURTS RESPONSE to COVID-19 EMERGENCY/IMPACT ON DISCOVERY M.R.30370 CORRECTED ORDER APRIL 29, 2020 and M.R.30370 AMENDED ORDER JUNE 4, 2020 FILED SEQUENTIALLY WITH THIS MOTION

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Motion To Compel and amend Plaintiff's motion to exclude the deposition of Defendant Hans Mast states as follows:

1) On July 11, 2022 this Honorable Court entered an Order granting Plaintiff leave to serve subpoenas on The Clinton Law Firm.

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2) The Non-Party Subpoenas were issued by Alphonse A. Talarico on August 2, 2022 naming respondents: Julia Christine Williams individually and as manager of Williams Law, LLC; Edward X. Clinton, individually and as manager of Clinton Law Firm, LLC. (Please see Notice of Filing and both subpoenas which are part of the Clerk's file as reflected on October 3, 2022.)

3) The Non-Party Subpoenas were served upon respondent Julia Christine Williams personally and on respondent Edward X. Clinton (as insisted upon and accepted by respondent Julia Christine Williams) at The Clinton Law Firm, 111 W. Washington St., Suite 1437, Chicago, Illinois 60602 on August 5, 2022. (Please see Plaintiff's Exhibit 1 AFFIDAVIT OF SERVICE attached)

4) Plaintiff's Attorney has made/received multiple telephone and email communications with the subpoena respondents and extended the compliance date in an attempt to obtain full compliance but said informal communications have not resolved the issues.

5) As of the filing date of this Motion To Compel both written subpoena responses are non-compliant.

6) Non-Party Subpoena Respondent Edward X. Clinton has not responded in writing, nor has he served an executed Affidavit of Compliance as required.

7) Non-Party Subpoena Respondent Julia Christine Williams has responded in writing twice, but her responses are non-compliant for the following reasons:

A) The Affidavit of Compliance itself is non-compliant as respondent changed the required wording as served on August 5, 2022 without first filing a written motion pursuing an Order from this Honorable Court seeking to quash, condition, or modify the

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subpoenas or to issue protective orders. (Please see Plaintiff's Exhibit #2 RESPONSE TO SUBPOENA FOR DOCUMENTS attached);

B) Including within her RESPONSE TO SUBPOENA FOR DOCUMENTS the following,

"GENERAL OBJECTIONS"

"Respondents object to all requests that seek the disclosure of attorney-client communications between Respondents and their former client Paul Dulberg.

Respondents object to all requests that seek the disclosure of attorney work product."

Again, without first filing a written motion pursuing an Order from this Honorable Court seeking to quash, condition, or modify the subpoenas or to issue protective orders subpoena respondent Julia C. Williams indicates certain documents are protected from disclosure but does not include an Attorney-Client Privilege Log nor a Work Product Log leaving Plaintiff to guess what she determines what should not be disclosed even though Illinois law assumes an implied waiver when a former client serves a record subpoena upon former counsel. (Please see Plaintiff's Exhibit #2 RESPONSE TO SUBPOENA FOR DOCUMENTS above)

8) Plaintiff, by serving Records subpoenas on his former attorneys has made a limited waiver of the Attorney-Client and Work Product Privilege. (Please see Illinois Rules of Evidence Rule 502(a)(1), (a)(2), (a)(3) ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT; LIMITATIONS ON WAIVER)

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WHEREFORE PLAINTIFF PRAYS THAT THIS HONORABLE COURT ENTER AN ORDER compelling NON-PARTIES JULIA C. WILLIAMS AND EDWARD X. CLINTON TO comply with the records subpoenas as written, including an Attorney-Client Privilege Log and a Work Product Log or file and present a motion to quash, condition, or modify the subpoenas, or to issue protective orders as deemed appropriate.

PLAINTIFF FURTHER PRAYS THAT THIS HONORABLE COURT limit Plaintiff Paul Dulberg's implied waiver of his Attorney-Client Privilege to the subject matter of the discovery deposition of Defendant Hans Mast taken on June 25, 2020 as indicated in the Records Subpoenas. Additionally, Plaintiff prays that he be allowed to amend his Motion to Exclude the discovery Deposition of Defendant Hans Mast taken on June 25, 2020 until a reasonable time after the Subpoena Responses herein are fully complied with.

Respectfully submitted,

/s/ Alphonse A. Talarico

Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

707 Skokie Boulevard Suite 600

Northbrook, Illinois 60022

(312) 808-1410

ARDC No. 6184530

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C 1586 V2

contact@lawofficeofalphonsetalarico.com

alphonsetalarico@gmail.com

Received 10-31-2022 02:07 PM / Circuit Clerk Accepted on 10-31-2022 02:10 PM / Transaction #20090152 / Case #2017LA000377
Page 5 of 5
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C 1587 V2

AFFIDAVIT OF SERVICE

Case:	Court:	County:	Job:
17 LA 377	Circuit Court of the Twenty Second Judical Circuit	Mchenry, IL	7463844
Plaintiff / Petitioner: PAUL DULBERG		**Defendant / Respondent:** THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	
Received by: Gazelle Process & Investigations PLLC.		**For:** Alphonse A. Talarico	
To be served upon: JULIA CHRISTINE WILLIAMS Individually and as Manager of Williams Law, LLC			

I, Michael Moriarty, state on oath that I am at least 18 years old, not a party to this case/action, that I am authorized to perform service in Illinois, and am a registered sub-contractor of Gazelle Process & Investigations PLLC under Illinois Detective Agency License 117.001853

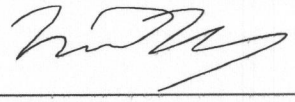
Recipient Name / Address: JULIA CHRISTINE WILLIAMS , Company: 111 W Washington St Suite 1437, Chicago, Illinois 60602-2708

Manner of Service: Personal/Individual, Aug 5, 2022, 10:00 am CDT

Documents: Subpoena (Received Aug 3, 2022 at 9:00am CDT), Witness Fee Check (#VV056-$54.00) (Received Aug 3, 2022 at 9:00am CDT)

Additional Comments:
1) Successful Attempt: Aug 5, 2022, 10:00 am CDT at Company: 111 W Washington St Suite 1437, Chicago, Illinois 60602-2708 received by JULIA CHRISTINE WILLIAMS . Age: 40's; Ethnicity: Caucasian; Gender: Female; Weight: 140; Height: 5'5"; Hair: Blond; Relationship: Attorney; Other: Julia Williams insisted on accepting service for Edward Clinton. She was very nice and assured me that she would direct them to him immediately. It is standard practice for her to accept for Edward.;

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the above statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.



08/09/2022

Michael Moriarty — **Date**

Gazelle Process & Investigations PLLC.
518 S. IL HIGHWAY 31 Suite 325
MCHENRY, IL 60050-7464
847-752-4450



Received 10-31-2022 08:07 PM / Circuit Clerk Accepted on 10-31-2022 02:50 PM / Transaction #20099458 / Case #2017LA000377
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IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO. 17 LA 377
	)	
	)	JUDGE THOMAS A. MEYER
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

RESPONSE TO SUBPOENA FOR DOCUMENTS
(THIS SUBPOENA IS FOR RECORDS ONLY.)

Edward X. Clinton, Jr., individually as manager of Clinton Law Firm, LLC, and Julia C. Williams, individually, as attorney at Clinton Law Firm, LLC and as manager of Williams Law, LLC, (hereinafter "Respondents") respond to the Subpoena for Documents as follows:

GENERAL OBJECTIONS

Respondents object to all requests that seek the disclosure of attorney-client communications between Respondents and their former client Paul Dulberg.

Respondents object to all requests that seek the disclosure of attorney work product.

RESPONSES

Respondent incorporate the general objections in to each response to requests 1-7, and further respond as follows:

1. The original transcript stamped "Original" of the discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes.

EXHIBIT 2

Received 10-31-2022 08:07 PM / Circuit Clerk Accepted on 10-31-2022 02:50 PM / Transaction #20099458 / Case #2017LA000377
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C 1589 V2

The transcript of the deposition of Hans Mast is produced with this response in pdf format and titled "Hans Mast 062520 FULL.pdf" and "Hans Mast 062520 MINI.pdf." The exhibits to the deposition are produced with Bates Stamp Dulberg Clinton Subpoena 518-562, 616-642. No such "original" stamp or "copy" stamp is attached to the transcript as the transcript was produced in an electronic format.

2. An exact duplicate of the original transcript stamped "Copy" of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the copy demanded is a contemporaneous copy issued by U.S. Legal Support.

The transcript of the deposition of Hans Mast is produced with this response in pdf format and titled "Hans Mast 062520 FULL.pdf" and "Hans Mast 062520 MINI.pdf." The exhibits to the deposition are produced with Bates Stamp Dulberg Clinton Subpoena 518-562, 616-642. No such "original" stamp or "copy" stamp is attached to the transcript as the transcript was produced in an electronic format.

3. An exact duplicate of the original transcript stamped "Copy" in condensed format (mini) of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the condensed transcript demanded is a contemporaneous version issued by U.S. Legal Support.

The transcript of the deposition of Hans Mast is produced with this response in pdf format and titled "Hans Mast 062520 FULL.pdf" and "Hans Mast 062520 MINI.pdf." The exhibits to the deposition are produced with Bates Stamp Dulberg Clinton Subpoena 518-562, 616-642. No such "original" stamp or "copy" stamp is attached to the transcript as the transcript was produced in an electronic format.

4. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the discovery deposition of Hans Mast taken on June 25, 2020.

See documents Bates Stamped Dulberg Clinton Subpoena 1-671.

5. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibit 12 of the discovery deposition of Hans Mast taken on June 25, 2020.

See documents Bates Stamped Dulberg Clinton Subpoena 1-671.

6. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the exhibit titled " Legal Research" of discovery deposition of Hans Mast taken on June 25, 2020.

See documents Bates Stamped Dulberg Clinton Subpoena 1-671.

7. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibits 1-11 and 13-15 of the discovery deposition of Hans Mast taken on June 25, 2020.

See documents Bates Stamped Dulberg Clinton Subpoena 1-671.

Received 10-31-2022 08:07 PM / Circuit Clerk Accepted on 10-31-2022 02:50 PM / Transaction #20099458 / Case #2017LA000377
Page 80 of 157
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Affidavit of Compliance

The undersigned certifies under penalties of perjury as provided by law pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, that the statements checked below are true and correct.

Check one (1) from the following:

__x___ After making a diligent search of any and all the records in our possession or control, I certify that all records we have on the above are submitted herewith in response to this subpoena.

_____ After making a diligent search of any and all records, I certify there are no records to provide in response to this subpoena.

Check one (1) from the following:

__x___ I have personal knowledge of the record-keeping procedures of the Clinton Law Firm, LLC and Julia Christine Williams and Williams Law LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I am an employee of or manager of Edward X. Clinton and Clinton Law Firm LLC, and I have personal knowledge of the record-keeping procedures of Edward X. Clinton and Clinton Law Firm LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I have no personal knowledge of the record-keeping procedures of Edward X. Clinton and Clinton Law Firm LLC and the manner of creation for all records produced responsive to this subpoena.

Check **all** that apply from the following:

__x___ The records produced in response to this subpoena were kept in the course of the regularly conducted activity of Edward X. Clinton, Clinton Law Firm LLC, Julia C. Williams, and Williams Law LLC.

__x___ The records produced in response to this subpoena were made by the regularly conducted activity as a regular practice of Edward X. Clinton, Clinton Law Firm LLC, Julia C. Williams, and Williams Law LLC.

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Page 91 of 157
C 1591 V2

_____ The records produced in response to this subpoena were made at or near the time of the occurrences set forth by, or from information transmitted by, a person with knowledge of the matters set forth within the records.

Date: September 29, 2022

Position: __Attorney_____

Name: ___Julia C. Williams_____
(Print)

Julia C. Williams
(Signature)

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Page 50 of 57
C 1592 V2

SERVICE LIST

GEORGE K. FLYNN
Karbal Cohen Economou Silk Dunne, LLC
200 South Wacker Drive, Suite 2550
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

Received 10-31-2022 02:07 PM / Circuit Clerk Accepted on 10-31-2022 02:10 PM / Transaction #20090152 / Case #2017LA000377
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Exhibit 6

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.		

KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
10/17/2022 8:16 AM
McHenry County, Illinois
22nd Judicial Circuit
****

ORDER

This matter coming to be heard for continued status on Defendants' Motion for Summary Judgment, and Plaintiff's Motion to Compel/Petition for Rule to Show Cause directed at Julia C. Williams and Edward X. Clinton, it is hereby ordered:

IT IS ORDERED:

1) Plaintiff's motion to compel is granted as follows: Williams and Clinton are ordered to produce all documents responsive to Dulberg's subpoena to the court for an In Camera inspection within 14 days. Williams and Clinton must appear on November 4, 2022 at 9:15. a.m. if they do not produce all responsive documents to the court within 14 days.
2) Plaintiff Paul Dulberg hereby waives attorney-client privilege for the limited purpose Williams' and Clinton's compliance with Plaintiff's subpoenas to them.
3) Plaintiff's response to Popovich's and Mast's Motion for Summary Judgment must be filed and served by December 28, 2022.
4) Popovich's and Mast's reply in support of Motion for Summary Judgment must be filed and served by January 19, 2023.
5) Hearing on Popovich's and Mast's Motion for Summary Judgment is set for February 1, 2023 at 10:00 a.m.

Zoom information for Room 201:
Link: https://zoom.us/my/mchenrycourtroom201;
Meeting ID: 272-959-8070
Personal Link Name: mchenrycourtroom201;
Password: no password required

Prepared by:

Atty. No.	George K. Flynn/ARDC No. 6239349
Name:	Karbal, Cohen, Economou, Silk & Dunne, LLC
Attorney for:	Defendants
Address:	200 S. Wacker Drive, Suite 2550
City:	Chicago, IL 60606
Telephone:	(312) 431-3700
E-Mail:	gfynn@karballaw.com

10/17/2022
……., 2022
ENTER:

Thomas A. Meyer
……
Judge Judge's No.

Thomas Meyer

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

Received 10-31-2022 08:47 AM / Circuit Clerk Accepted on 10-31-2022 02:50 PM / Transaction #200891527 Case #2017LA000377
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Exhibit 7

Received 10-31-2022 08:47 AM / Circuit Clerk Accepted on 10-31-2022 02:50 PM / Transaction #20089152 / Case #2017LA000377
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From: **Alphonse Talarico** contact@lawofficeofalphonsetalarico.com
Subject: Order Entered October 17 2022 Dulberg v. Hans Mast et al
Date: October 17, 2022 at 10:17 AM
To: Julia WIlliams juliawilliams@clintonlaw.net, Ed Clinton ed@clintonlaw.net, jwilliams@williamslawchicago.com, Julia@McLauchlanLawGroup, Julia.c.floyd@gmail.com

AT

Dear Ms. Williams and Mr. Clinton,

Please see the attached Order signed by the Hororable Thomas A. Meyer.

Thank you,
Alphonse A. Talarico
(312) 808-1410

PDF

Order October 13 202...- -.pdf

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McHenry County, Illinois
2017LA000377
Date: 10/28/2022 1:35 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF, v. THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	))))))))	Case No. 17 LA 377

NOTICE OF FILING AND CERTIFICATE OF DISCOVERY SERVICE

TO: Attached Service List

PLEASE TAKE NOTICE that on October 28, 2022, the undersigned caused the this Notice of Filing and Certificate of Discovery Service be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, The undersigned, an attorney, certifies that she caused a copy of the foregoing notice and Certificate to be filed upon the Service list via the Court's electronic system and also served via email to the Service the following discovery responses

1. Julia Williams Amended Response to Subpoena for Documents and Affidavit
2. Edward X. Clinton, Jr. Amended Response to Subpoena for Documents and Affidavit
3. Julia Williams Response to Subpoena for Documents dated Sept. 29, 2022
4. Documents bates stamped Dulberg Clinton Subpoena 1-677
5. Document titled "Hans Mas 062520 FULL"
6. Document titled "Hans Mas 062520 MINI"

/s/ Julia C. Williams
Julia C. Williams

Received 10-31-2022 08:58 AM / Circuit Clerk Accepted on 10-31-2022 02:51 PM / Transaction #20091238 / Case #2017LA000377

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Service List:

Alphonse A. Talarico
707 Skokie Blvd., Ste. 600
Northbrook, IL 60062
contact@lawofficeofalphnsetalarico.com

George Flynn
Attorney for Defendants
Karbal Cohen Economou Silk Dunne LLC 150 S. Wacker Dr., Ste. 1700
Chicago, IL 60606 gflynn@karballaw.com

Received 10-31-2022 08:58 AM / Circuit Clerk Accepted on 10-31-2022 02:51 PM / Transaction #20091238 / Case #2017LA000377

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McHenry County, Illinois
2017LA000377
Date: 10/28/2022 12:24 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

NOTICE OF MOTION

TO: Attached service list

PLEASE TAKE NOTICE that on November 4, 2022 at 9:15 am, or as soon thereafter as I may be heard, I will appear via the Court's zoom procedurues, before the Honorable Judge Thomas A. Meyer, or any judge sitting in that Judge's stead, in Courtroom 201 of the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, 2200 N. Seminary Ave., Woodstock, IL 60098, and present the enclosed Motion to Vacate, a copy of which is attached.

Please further note that the undersigned intends to appear via Zoom per the instructions available on the McHenry County Circuit Court Clerk Website:
Meeting ID: 272-959-8070
Password: No password required
Telephone: 888-882-6878

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

Received 10-31-2022 08:47 AM / Circuit Clerk Accepted on 10-31-2022 02:50 PM / Transaction #20089152 / Case #2017LA000377

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C 1600 V2

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109I, the undersigned, on oath, certifies that on October 28, 2022, she caused a copy of the above and foregoing Notice of Motion and Motion to Withdraw to be served upon all persons to whom directed as outlined above.

/s/ Julia C. Williams
Julia C. Williams

Service List:

Alphonse A. Talarico
707 Skokie Blvd., Ste. 600
Northbrook, IL 60062
contact@lawofficeofalphnsetalarico.com
Via Odyssey eFile IL filing system

George Flynn
Attorney for Defendants
Karbal Cohen Economou Silk Dunne LLC
150 S. Wacker Dr., Ste. 1700
Chicago, IL 60606
gflynn@karballaw.com
Via Odysssey eFile IL filing system

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** FILED ** Env: 20117491
McHenry County, Illinois
2017LA000377
Date: 10/31/2022 5:42 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S MOTION FOR RULE TO SHOW CAUSE

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Motion for Rule To Show Cause states as follows:

1) On July 11, 2022 this Honorable Court entered an Order granting Plaintiff leave to serve subpoenas on The Clinton Law Firm.

2) The Non-Party Subpoenas were issued by Alphonse A. Talarico on August 2, 2022 naming respondents: Julia Christine Williams individually and as manager of Williams Law, LLC; Edward X. Clinton, individually and as manager of Clinton Law Firm, LLC. (Please see Notice of Filing and both subpoenas which are part of the Clerk's file as reflected on October 3, 2022.)

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C 1602 V2

3) The Non-Party Subpoenas were served upon respondent Julia Christine Williams personally and on respondent Edward X. Clinton (as insisted upon and accepted by respondent Julia Christine Williams) at The Clinton Law Firm, 111 W. Washington St., Suite 1437, Chicago, Illinois 60602 on August 5, 2022. (Please see Plaintiff's Exhibit 1 AFFIDAVIT OF SERVICE attached)

4) Contrary to the "to-be" filed self-serving assertions in their **M T V c** , the witness fee and milage checks were served in the amount of 54.00 for each respondent. (Please see Exhibit #2a and 2b attached)

5) As of the filing date of this **M F r R T S C** both written subpoena responses are non-compliant.

6) Non-Party Subpoena Respondent Edward X. Clinton has responded in writing on October 28, 2022 but the Affidavit of Compliance has been changed from the one served.

7) Non-Party Subpoena Respondent has not filed any documents, whether alleging privilege or any non-privilege but has asserted that separate Records Subpoena Respondent Julia C. Williams, although never an employee nor an associate with the Clinton Law Firm has the authority to answer not only for Julia C. Williams and Williams Law, LLC but also for Edward X. Clinton and the Clinton Law Firm.

8) Numerous times in communications regarding the Discovery Deposition of Defendant Hans Mast Julia C. Williams used the emails:

Julia.c.floyd@gmail.com;

Julia@McLauchianLawGroup. (Please see Exhibit 3 attached which is an email from Julia C. Williams @ Williams Law to Mary Winch at Clinton Law and Paul Dulberg)

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7) Non-Party Subpoena Respondent Julia Christine Williams and Non-Party Respondent Edward X. Clinton have an amended responses and an original response, but their responses are non-compliant for the following reasons:

a) The Affidavit(s) of Compliance are non-compliant as respondents changed the required wording as served on August 5, 2022 without first filing a written motion pursuing an Order from this Honorable Court seeking to quash, condition, or modify the subpoenas or to issue protective orders;

b) By filing mirror-image responses 4,5,6 and 7 in which the following statement is repeated:

RESPONSE:

See documents Bates Stamped Dulberg Clinton Subpoena 1-677.

S d c r d c d C r r c r c

A D r C S Pr d C c -

B D r S W r Pr d c Pr - EMPHASIS ADDED

c) The above responses are contumacious to the order entered on October 17, 2022, which was served by email upon both Respondents on October 17, 2022 stating:

PLAINTIFF PAUL DULBERG HEREBY WAIVES ATTORNEY-CLIENT PRIVILEGE FOR THE LIMITED PURPOSE WILLIAMS' AND CLINTON'S COMPLIANCE WITH PLAINTIFF'S SUBPOENAS TO THEM EMPHASIS ADDED

(Please see Exhibit 4 attached)

WHEREFORE PLAINTIFF PRAYS THAT THIS HONORABLE COURT ENTER AN ORDER compelling NON-PARTIES JULIA C. WILLIAMS AND EDWARD X. CLINTON TO

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C 1604 V2

appear before this Court and there and then show cause why they should not be held in contempt of this Court for failure to obey said subpoenas.

Additionally, Plaintiff prays that he be allowed to amend his Motion to Exclude the discovery Deposition of Defendant Hans Mast taken on June 25, 2020 until a reasonable time after the Subpoena Responses herein are fully complied with.

Finally, Plaintiff prays that he be granted reasonable attorney's fee and cost incurred in obtaining compliance with these non-Party Record Subpoenas.

Respectfully submitted,

/s/ Alphonse A. Talarico

Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

707 Skokie Boulevard Suite 600

Northbrook, Illinois 60022

(312) 808-1410

ARDC No. 6184530

contact@lawofficeofalphonsetalarico.com

alphonsetalarico@gmail.com

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Gazelle Process & Investigations PLLC.
8600 US Highway 14 Suite 205C
Crystal Lake, IL 60012-2700
Phone 847-752-4450

Job: 7463829 **Due:** 08/10/2022
Recipient: EDWARD X. CLINTON Individually and as Manager of Clinton Law Firm, LLC
Server: Windy City Process Serving Inc. **Fee:**

Client: Alphonse A. Talarico

Case	17 LA 377	**Plaintiff**	PAUL DULBERG
Court	Circuit Court of the Twenty Second Judical Circuit	**Defendant**	THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,
Documents	Subpoena,Witness Fee (Check VV057-$54.00)		
Instructions			
SERVE ANYBODY AT HOME 13 YEARS OR OLDER, PERSONAL SERVICE AT BUSINESS ONLY			

RUSH

Company Address
111 W Washington St Suite 1437, Chicago, Illinois 60602-2708

EDWARD X. CLINTON Individually and as Manager of Clinton Law Firm, LLC

Date & Time:	Description of Service / Recipient:

Age: _____ **Gender:** _____ **Ethnicity:** _____ **Weight:** _____

Height: _____ **Hair:** _____ **Eyes:** _____ **Relationship:** _____

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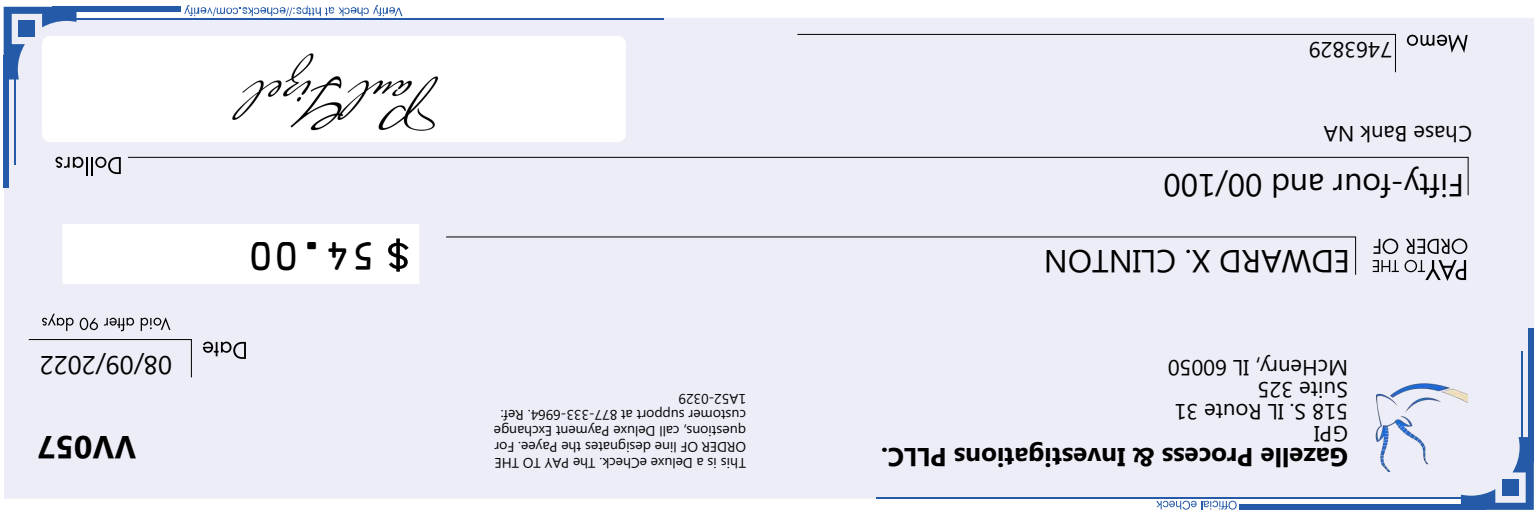

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For your records

Issued date: 2022-08-09
Check number: VV057
From: Gazelle Process & Investigations PLLC.
Amount: $54.00
Payable to: EDWARD X. CLINTON
Delivery email: None
Memo: 7463829

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AFFIDAVIT OF SERVICE

Case:	Court:	County:	Job:
17 LA 377	Circuit Court of the Twenty Second Judical Circuit	Mchenry, IL	7463829
Plaintiff / Petitioner: PAUL DULBERG		**Defendant / Respondent:** THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	
Received by: Gazelle Process & Investigations PLLC.		**For:** Alphonse A. Talarico	
To be served upon: EDWARD X. CLINTON Individually and as Manager of Clinton Law Firm, LLC			

I, Michael Moriarty, state on oath that I am at least 18 years old, not a party to this case/action, that I am authorized to perform service in Illinois, and am a registered sub-contractor of Gazelle Process & Investigations PLLC under Illinois Detective Agency License 117.001853

Recipient Name / Address: JULIA CHRISTINE WILLIAMS , Company: 111 W Washington St Suite 1437, Chicago, Illinois 60602-2708

Manner of Service: Substitute Service - Business, Aug 5, 2022, 10:00 am CDT

Documents: Subpoena (Received Aug 3, 2022 at 9:00am CDT), Witness Fee (Check VV057-$54.00) (Received Aug 3, 2022 at 9:00am CDT)

Additional Comments:
1) Successful Attempt: Aug 5, 2022, 10:00 am CDT at Company: 111 W Washington St Suite 1437, Chicago, Illinois 60602-2708 received by JULIA CHRISTINE WILLIAMS . Age: 40's; Ethnicity: Caucasian; Gender: Female; Weight: 140; Height: 5'5"; Hair: Blond; Relationship: Attorney; Other: Julia Williams insisted on accepting service for Edward Clinton. She was very nice and assured me that she would direct them to him immediately. It is standard practice for her to accept for Edward.;

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the above statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.



08/09/2022

Michael Moriarty
Process Server

Date

Gazelle Process & Investigations PLLC.
518 S. IL HIGHWAY 31 Suite 325
MCHENRY, IL 60050-7464
847-752-4450

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Gazelle Process & Investigations PLLC.
8600 US Highway 14 Suite 205C
Crystal Lake, IL 60012-2700
Phone 847-752-4450

Job: 7463844 **Due:** 08/10/2022
Recipient: JULIA CHRISTINE WILLIAMS Individually and as Manager of Williams Law, LLC
Server: Windy City Process Serving Inc. **Fee:**

Client: Alphonse A. Talarico

Case	17 LA 377	**Plaintiff**	PAUL DULBERG
Court	Circuit Court of the Twenty Second Judical Circuit	**Defendant**	THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,
Documents	Subpoena,Witness Fee Check (#VV056-$54.00)		
Instructions			
SERVE ANYBODY AT HOME 13 YEARS OR OLDER, PERSONAL SERVICE AT BUSINESS ONLY			

RUSH

Company Address
111 W Washington St Suite 1437, Chicago, Illinois 60602-2708

JULIA CHRISTINE WILLIAMS Individually and as Manager of Williams Law, LLC

Date & Time:	Description of Service / Recipient:

Age: _____ **Gender:** _____ **Ethnicity:** _____ **Weight:** _____

Height: _____ **Hair:** _____ **Eyes:** _____ **Relationship:** _____

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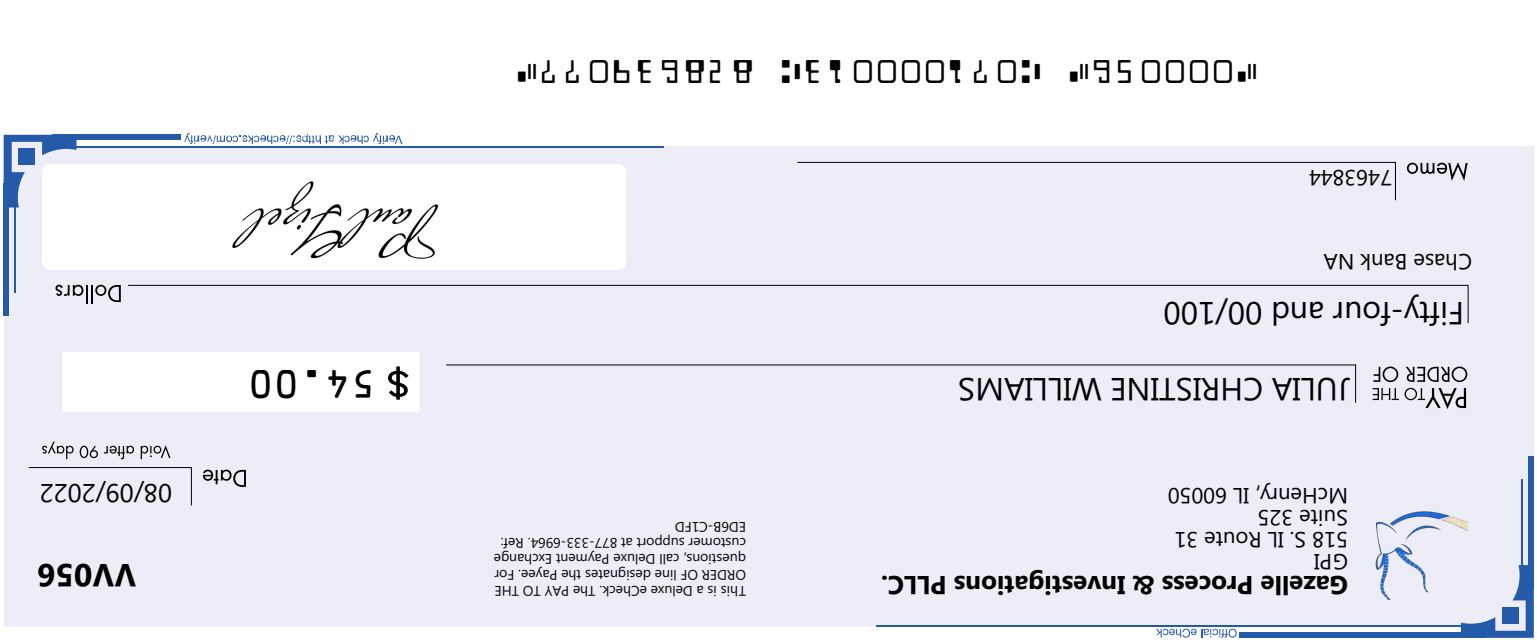

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✔ **Any printer works** ✔ **Black or color ink** ✔ **Basic white paper**	✔ **Correct if bank numbers are:** Centered in white space Parallel to edge of the page Clearly printed in dark black ink ✘ **Reprint if bank numbers are:** Cut off, skewed, or off-center Smudged or wrinkled Too light to read	1. **Cut on the dotted line above** 2. **Endorse the back** 3. **Deposit like normal:** In-person at a bank or credit union Using an ATM Via smartphone mobile deposit With an office check scanner

Does your financial institution have questions about this check?

- This check was printed from an authorized check record. It is not a Check 21 Image Replacement Document.
- To confirm this check was issued by the account holder and details (pay to, amount, routing/account number) remain unmodified, the item's authenticity can be verified using the Deluxe Inc. Check Verification service at https://echecks.com/verify.

Questions? Visit **eChecks.com** or call 877-333-6964

For your records

Issued date: 2022-08-09
Check number: VV056
From: Gazelle Process & Investigations PLLC.
Amount: $54.00
Payable to: JULIA CHRISTINE WILLIAMS
Delivery email: None
Memo: 7463844

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deluxe. PAYMENT EXCHANGE

Received 11-01-2022 11:55 AM / Circuit Clerk Accepted on 11-01-2022 12:14 PM / Transaction #20117491 / Case #2017LA000377
Purchased from re:SearchIL

AFFIDAVIT OF SERVICE

Case:	Court:	County:	Job:
17 LA 377	Circuit Court of the Twenty Second Judical Circuit	Mchenry, IL	7463844
Plaintiff / Petitioner: PAUL DULBERG		**Defendant / Respondent:** THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	
Received by: Gazelle Process & Investigations PLLC.		**For:** Alphonse A. Talarico	
To be served upon: JULIA CHRISTINE WILLIAMS Individually and as Manager of Williams Law, LLC			

I, Michael Moriarty, state on oath that I am at least 18 years old, not a party to this case/action, that I am authorized to perform service in Illinois, and am a registered sub-contractor of Gazelle Process & Investigations PLLC under Illinois Detective Agency License 117.001853

Recipient Name / Address: JULIA CHRISTINE WILLIAMS , Company: 111 W Washington St Suite 1437, Chicago, Illinois 60602-2708

Manner of Service: Personal/Individual, Aug 5, 2022, 10:00 am CDT

Documents: Subpoena (Received Aug 3, 2022 at 9:00am CDT), Witness Fee Check (#VV056-$54.00) (Received Aug 3, 2022 at 9:00am CDT)

Additional Comments:
1) Successful Attempt: Aug 5, 2022, 10:00 am CDT at Company: 111 W Washington St Suite 1437, Chicago, Illinois 60602-2708 received by JULIA CHRISTINE WILLIAMS . Age: 40's; Ethnicity: Caucasian; Gender: Female; Weight: 140; Height: 5'5"; Hair: Blond; Relationship: Attorney; Other: Julia Williams insisted on accepting service for Edward Clinton. She was very nice and assured me that she would direct them to him immediately. It is standard practice for her to accept for Edward.;

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the above statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.



08/09/2022

Michael Moriarty **Date**

Gazelle Process & Investigations PLLC.
518 S. IL HIGHWAY 31 Suite 325
MCHENRY, IL 60050-7464
847-752-4450

Received 11-01-2022 11:55 AM / Circuit Clerk Accepted on 11-01-2022 12:14 PM / Transaction #20117491 / Case #2017LA000377

Purchased from re:SearchIL

From: **Julia C. Williams** jwilliams@williamslawchicago.com
Subject: Discovery Documents
Date: January 29, 2020 at 3:50 PM
To: Paul Dulberg paul_dulberg@comcast.net
Cc: marywinch@clintonlaw.net, ed@clintonlaw.net

Dear Paul,

Attached are the three sets of documents that we produced to opposing counsel.

First Set “Dulberg Documents Disclosure FINAL 2019 May 29” contains Bates Stamp 1-2598
Second Set “Dulberg BK Files Bates 2599” contains Bates Stamp 2599-2619.
Third Set “Dulberg Bates 2620” contains Bates Stamp 2620-2638.

We have already provided the discovery documents that the other side provided to us. I am not producing them again here.

You will need these documents to respond to my next email.

Best Regards,

Julia C. Williams
Williams Law LLC
111 W. Washington, Ste. 1437
Chicago, IL 60602
P: 312.508.3376
F: 312.896.3946
www.williamslawchicago.com
jwilliams@williamslawchicago.com

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.



Dulberg BK Files Bates 2599 .pdf
Downloading…



Dulberg Bates 2620.pdf
Downloading…



Dulberg Docum…29.pdf
Downloading…

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C 1613 V2

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.		

KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
10/17/2022 8:16 AM
McHenry County, Illinois
22nd Judicial Circuit
****

ORDER

This matter coming to be heard for continued status on Defendants' Motion for Summary Judgment, and Plaintiff's Motion to Compel/Petition for Rule to Show Cause directed at Julia C. Williams and Edward X. Clinton, it is hereby ordered:

IT IS ORDERED:

1) Plaintiff's motion to compel is granted as follows: Williams and Clinton are ordered to produce all documents responsive to Dulberg's subpoena to the court for an In Camera inspection within 14 days. Williams and Clinton must appear on November 4, 2022 at 9:15. a.m. if they do not produce all responsive documents to the court within 14 days.
2) Plaintiff Paul Dulberg hereby waives attorney-client privilege for the limited purpose Williams' and Clinton's compliance with Plaintiff's subpoenas to them.
3) Plaintiff's response to Popovich's and Mast's Motion for Summary Judgment must be filed and served by December 28, 2022.
4) Popovich's and Mast's reply in support of Motion for Summary Judgment must be filed and served by January 19, 2023.
5) Hearing on Popovich's and Mast's Motion for Summary Judgment is set for February 1, 2023 at 10:00 a.m.

Zoom information for Room 201:
Link: https://zoom.us/my/mchenrycourtroom201;
Meeting ID: 272-959-8070
Personal Link Name: mchenrycourtroom201;
Password: no password required

Prepared by:

Atty. No.	George K. Flynn/ARDC No. 6239349
Name:	Karbal, Cohen, Economou, Silk & Dunne, LLC
Attorney for:	Defendants
Address:	200 S. Wacker Drive, Suite 2550
City:	Chicago, IL 60606
Telephone:	(312) 431-3700
E-Mail:	gfynn@karballaw.com

10/17/2022
……., 2022
ENTER:

Thomas A. Meyer
……
Judge Judge's No.

Thomas Meyer

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

Received 11-01-2022 11:55 AM / Circuit Clerk Accepted on 11-01-2022 12:14 PM / Transaction #20117491 / Case #2017LA000377
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** FILED ** Env: 20107903
McHenry County, Illinois
2017LA000377
Date: 10/31/2022 11:53 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

NOTICE OF MOTION

To: Please see Service List attached

PLEASE TAKE NOTICE that on November 4, 2022 at 9:15 am or as soon thereafter as I may be heard, I will appear via the Court's Zoom procedures, before the Honorable Judge Thomas A. Meyer, or any judge sitting in that Judge's stead, in Courtroom 201 of the Circuit Court of the Twenty-Second Judicial Circuit , McHenry County, 2200 N. Seminary Avenue, Woodstock, Illinois 60098 and present the previously filed and served **PLAINTIFF'S MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TAKEN IN VIOLATION OF SUPREME COURT RULE 206 h(2) REMOTE ELECTRONIC MEANS DEPOSITIONS and ORDERS OF THE ILLINOIS SUPREME COURT In re: ILLINOIS COURTS RESPONSE to COVID-19 EMERGENCY/IMPACT ON DISCOVERY M.R.30370 CORRECTED ORDER APRIL 29, 2020 and M.R.30370 AMENDED ORDER JUNE 4, 2020 and to GRANT LEAVE TO TAKE THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST.**

Received 10-31-2022 12:18 PM / Circuit Clerk Accepted on 10-31-2022 02:55 PM / Transaction #20107903 / Case #2017LA000377
Purchased from re:SearchIL

C 1615 V2

Please note that the undersigned intends to appear via Zoom per the instructions available on the McHenry County Circuit Court Clerk Website:

Meeting ID: 272-959-8070
Password: No Password is required
Telephone: 888-882-6878

Alphonse A. Talarico
ARDC No. 6184530
Law Office of Alphonse A. Talarico
707 Skokie Boulevard #600
Northbrook, Illinois 60062
312.808.1410
contact@lawofficeofalphonsetalarico.com

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

Received 10-31-2022 12:18 PM / Circuit Clerk Accepted on 10-31-2022 02:55 PM / Transaction #20107903 / Case #2017LA000377
Purchased from re:SearchIL

C 1616 V2

SERVICE LIST

GEORGE K. FLYNN
Karbal Cohen Economou Silk Dunne, LLC
200 South Wacker Drive, Suite 2550
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

Received 10-31-2022 12:18 PM / Circuit Clerk Accepted on 10-31-2022 02:55 PM / Transaction #20107903 / Case #2017LA000377

Purchased from re:SearchIL

** FILED ** Env: 20117491
McHenry County, Illinois
2017LA000377
Date: 10/31/2022 5:42 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

NOTICE OF MOTION

To: Please see Amended Service List attached

PLEASE TA E NOTICE that on November 4, 2022 at 9:15 am or as soon thereafter as I may be heard, I will appear via the Court's oom procedures, before the Honorable Judge Thomas A. Meyer, or any judge sitting in that Judge's stead, in Courtroom 201 of the Circuit Court of the Twenty-Second Judicial Circuit , McHenry County, 2200 N. Seminary Avenue, Woodstock, Illinois 60098 and then and there present **PLAINTIFF'S MOTION FOR RULE TO SHOW CAUSE**

Please note that the undersigned intends to appear via oom per the instructions available on the McHenry County Circuit Court Clerk Website:

Meeting ID: 272-959-8070
Password: No Password is required
Telephone: 888-882-6878

Received 11-01-2022 11:55 AM / Circuit Clerk Accepted on 11-01-2022 12:14 PM / Transaction #20117491 / Case #2017LA000377
Purchased from re:SearchIL

C 1618 V2

Alphonse A. Talarico
ARDC No. 6184530
Law Office of Alphonse A. Talarico
707 Skokie Boulevard #600
Northbrook, Illinois 60062
312.808.1410
contact@lawofficeofalphonsetalarico.com

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

s Alphonse A. Talarico
Alphonse A. Talarico

Received 11-01-2022 11:55 AM / Circuit Clerk Accepted on 11-01-2022 12:14 PM / Transaction #20117491 / Case #2017LA000377
Purchased from re:SearchIL

C 1619 V2

SERVICE LIST

GEORGE K. FLYNN
Karbal Cohen Economou Silk Dunne, LLC
200 South Wacker Drive, Suite 2550
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

Edward X. Clinton
Clinton Law firm , LLC
111 West Washington Street Suite 1437
Chicago, Illinois 60602-2708
(312) 357-1515
ed@clintonlaw.net

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This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

** FILED ** Env: 20149722
McHenry County, Illinois
2017LA000377
Date: 11/2/2022 2:38 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS, CIRCUIT COURT

McHenry ☑ **COUNTY**

PROOF OF DELIVERY

For Court Use Only

Instructions

Directly above, enter the name of the county where the case was filed.

Enter the name of the person or company that filed this case as Plaintiff/Petitioner.

Enter the name of the Defendants/ Respondents.

Enter the Case Number given by the Circuit Clerk.

Paul Dulberg
Plaintiff / Petitioner *(First, middle, last name or Company)*

v.

Hans Mast & Law Offices of thomas J. Popovich, P.C.
Defendants / Respondents *(First, middle, last name, or business name)*

17 LA 377
Case Number

In **1**, enter the name of each court document you are sending.

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **1b**, check the box to show how you are sending the document.
CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

In **c**, fill in the date and time that you are sending the document.

1. I am sending the following court document: Dulberg's Supplemental Answers to the Law Offices of Thomas J. Popovich P.C. to Plaintiff (F3) Interrogatories

a. To:

Name: George K. Flynn
First *Middle* *Last*

Address: 200 S. Wacker Drive, Suite 2550 Chicago Illinois 60606
Street, Apt # *City* *State* *ZIP*

Email address: gflynn@karballaw.com

b. By:

☑ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

☐ Personal hand delivery to:
- ☐ The party
- ☐ The party's family member who is 13 or older, at the party's residence
- ☐ The party's lawyer
- ☐ The party's lawyer's office

☐ Mail or third-party carrier

c. On: 11/02/2022 *Date* at: 4:45 *Time* ☐ a.m. ☑ p.m.

Received 11-02-2022 02:56 PM / Circuit Clerk Accepted on 11-02-2022 02:57 PM / Transaction #20149722 / Case #2017LA000377
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C 1621 V2

Enter the Case Number given by the Circuit Clerk: 17 LA 377

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the

In **c**, fill in the date and time that you are sending the document.

If you are sending your document to more than 2 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

2. I am sending this document:

a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:

- ☐ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

c. On: _____ at: _____ ☐ a.m. ☐ p.m.
Date *Time*

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ Alphonse A. Talarico
Your Signature

_____
Street Address

Alphonse A. Talarico
Print Your Name

Northbrook, Illinois 60062
City, State, ZIP

(312) 808-1410
Telephone

contact@lawofficeofalphonsetalarico.com
Email

61684530
Attorney # (if any)

GETTING COURT DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

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Purchased from re:SearchIL

C 1622 V2

** FILED ** Env: 20190031
McHenry County, Illinois
2017LA000377
Date: 11/4/2022 4:09 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF, v. THE LAW OFFICES OF THOMAS POPOVICH, et al. DEFENDANTS.	))))))	Case No. 17 LA 377

NOTICE OF FILING AND CERTIFICATE OF DISCOVERY SERVICE

TO: Attached Service List

PLEASE TAKE NOTICE that on November 4, 2022, the undersigned caused the this Notice of Filing and Certificate of Discovery Service be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, on November 4, 2022, the undersigned, an attorney, certifies that she caused a copy of the foregoing notice and Certificate to be filed upon the Service list via the Court's electronic system and also served via email only to the Service the following discovery responses:

1. Dulberg Clinton Subpoena 1-677.
2. Dulberg Clinton Subpoena Privileged Communication 1-33
3. Dulberg Clinton Subpoena Privileged Communication 34-295
4. Dulberg Subpoena Work Product Privilege 1-13
5. Dulberg Clinton Subpoena Privileged Communication 269-274 Produced in Native Format
6. Privilege Log
7. Document titled "Hans Mas 062520 FULL"
8. Document titled "Hans Mas 062520 MINI"

Received 11-07-2022 09:38 AM / Circuit Clerk Accepted on 11-07-2022 10:39 AM / Transaction #20190031 / Case #2017LA000377

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C 1623 V2

9. Julia C. Williams Second Amended Response to Subpoena for Documents
10. Edward X. Clinton Jr's Amended Response to Subpoena for Documents

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, on November 4, 2022, the undersigned, an attorney, certifies that she served via email only to Alphonse A. Talarico the following documents:

1. Dulberg Clinton Subpoena Privileged Communication 1-33 without redactions
2. Dulberg Clinton Subpoena Privileged Communication 34-295 without redactions
3. Dulberg Subpoena Work Product Privilege 1-13 without redactions

/s/ Julia C. Williams
Julia C. Williams

Service List:

Alphonse A. Talarico
707 Skokie Blvd., Ste. 600
Northbrook, IL 60062
contact@lawofficeofalphnsetalarico.com

George Flynn
Attorney for Defendants
Karbal Cohen Economou Silk Dunne LLC 150 S. Wacker Dr., Ste. 1700
Chicago, IL 60606 gflynn@karballaw.com

Received 11-07-2022 09:38 AM / Circuit Clerk Accepted on 11-07-2022 10:39 AM / Transaction #20190031 / Case #2017LA000377
Purchased from re:SearchIL

C 1624 V2

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
11/09/2022 8:20 AM
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG, Plaintiff,	)	
v.	)	CASE NO. 17 LA 377
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	JUDGE THOMAS A. MEYER

ORDER

This matter coming to be heard on Julia Williams' and Edward X. Clinton Jr.'s Motion to Vacate and Plaintiff's Petition for Rule to Show Cause, Julia Williams, Edward X. Clinton Jr., Defendants' Counsel George Flynn, Plaintiff's Counsel Alphonse Talarico, and Plaintiff Paul Dulberg present via zoom, IT IS HEREBY ORDERED:

1. This Court's October 17, 2022 order granting Plaintiff's Motion to Compel, also listed as a Petition for Rule to Show Cause, is vacated.

2. Plaintiff's Petition for Rule to Show Cause against Edward X. Clinton Jr. and Julia Williams filed on October 31, 2022 is denied.

3. Plaintiff Paul Dulberg hereby waives privilege on a limited basis with respect to attorney client communications and attorney work product to permit compliance with the subpoenas served upon Julia Williams and Edward X. Clinton Jr.

4. Julia Williams and Edward X. Clinton Jr. will produce documents bates stamped as Dulberg Clinton Subpoena Privileged Communication 1-33 and Dulberg Subpoea Work Product Privilege 1-13 that were previously sent to Judge Meyer on or around October 28, 2022 and listed in Julia Williams' and Edward X. Clinton, Jr.'s Motion to Vacate ¶28 E-F, to both Plaintiff's counsel Alphonse Talarico and Defendant's counsel George Flynn by close of business on November 4, 2022.

DATED: 11/9/2022

ENTERED:

Thomas A. Meyer

Judge Judge's No.

Thomas Meyer

Order Prepared By:
Edward X. Clinton, Jr., 6206773
ed@clintonlaw.net
Julia C. Williams, 6296386
juliawilliams@clintonlaw.net
The Clinton Law Firm, LLC
111 West Washington Street, Suite 1437
Chicago, IL 60602

Purchased from re:SearchIL

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Paul Dulberg
Plaintiff

vs

Case Number **17 LA 377**

Hans Mast & Law Offices of Thomas J. Popo
Defendant

KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
11/09/2022 8:27 AM
McHenry County, Illinois
22nd Judicial Circuit
****

ORDER

☑ Plaintiff(s) appear in person/by attorney **Alphonse A. Talarico**

☐ Defendant(s) appear in person/by attorney **George K. Flynn**

☐ Summons not served; alias summons to issue; return date_____, 20_____

☐ Summons has been properly served on Defendant(s)_____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☑ This case is continued on Motion of ☑ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to **December 5**, 20**22** at **9:15**, **a**m. for **Hearing Motion to Exclude**.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☑ **COURT FURTHER ORDERS:** **Plaintiff is granted up to and including November 21, 2022 to file and serve his Amended Motion to Exclude the Discovery Deposition of Hans Mast taken on June 25, 2020 and to retake said Discovery Deposition**

Date: **November 4, 2022**

Thomas A. Meyer
Judge
Thomas Meyer

CV-ORD13: Revised 10/01/08

Purchased from re:SearchIL

** FILED ** Env: 20395347
McHenry County, Illinois
2017LA000377
Date: 11/21/2022 4:54 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST Defendants.	)))))) Case No. 17 LA 377)))))

PLAINTIFF'S AMENDED MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TA EN IN VIOLATION OF SUPREME COURT RULE REMOTE ELECTRONIC MEANS DEPOSITIONS d ORDERS OF THE ILLINOIS SUPREME COURT I r ILLINOIS COURTS RESPONSE COVID-EMERGENCY IMPACT ON DISCOVERY M R CORRECTED ORDER APRIL , d M R AMENDED ORDER JUNE , d GRANT LEAVE TO TA E THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Motion To Exclude the Discovery Deposition of Defendant Hans Mast taken in violation of Supreme Court Rule 206 h(2) and Supreme Court Orders states as follows:

RELEVANT FACTS

1) On June 25, 2020 the Discovery Deposition of Defendant Hans Mast was taken pursuant to a non-filed notice (violation waived) but all 15 exhibits and the questioning

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
Purchased from re:SearchIL

C 1627 V2

of deponent Hans Mast based upon all 15 exhibits violated the Rules and Orders of the Illinois Supreme Court.

2) Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition without any exhibits from Defendants' Attorney's office and the exhibits 1-11 and 13-15 from the Plaintiff's current Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)

3) Plaintiff's current Attorney objected to the use of the discovery deposition of Defendant Hans Mast during the hearing because there's exhibit(s) missing. (Please see Report of Proceedings April 27, 2022 page 31 line 21-24 which is part of the Clerk's online file)

4) Plaintiff's current Attorney more completely explained to the Court that the discovery deposition of Hans Mast in all its variations was missing exhibit 12. (Please see Report of Proceedings April 27, 2022 page 36 line 19-24 to page 37 line 1-3 which is part of the Clerk's online file)

5) Thereafter this Honorable Court asked Defendants' Attorney whether he had exhibit 12. (Please see Report of Proceedings April 27, 2022 page 37 line 19-20 which is part of the Clerk's online file)

6) The Attorney for the Defendants responded "I may. I don't know. I haven't look for it." (Please see Report of Proceedings April 27, 2022 page 37 line 20-21 which is part of the Clerk's online file)

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7) This Honorable Court ordered Defendants' Attorney to produce exhibit 12 if he has it. (Please see Report of Proceedings April 27, 2022 page 39 line 16-21 which is part of the Clerk's online file)

8) On April 28, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney's office with a link at https: www.dropbox.com to access Mast Dep Ex.12. (Please see Plaintiff's Exhibit #1 attached)

9) Plaintiff's current Attorney noticed that the label purporting to be authentic on Hans Mast's discovery deposition exhibit 12 seemed not to match the other 14 exhibit label as to fonts, shape, color, and DEPONENT's NAME (Hans Mist not Hans Mast).

10) On May 18, 2022 Plaintiff's current Attorney caused to be served upon Certified Shorthand Reporter Barbara G. Smith a Subpoena For Records in which she was requested to produce "The original discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic shorthand notes."

11) Certified Shorthand Reporter Barbara G. Smith's complete response submitted on a flash drive was received on June 16, 2022.

12) Contained on the flash drive is a file titled HPSCANS and therein were a series of communications and handwritten notes between the Certified Shorthand Reporter Barbara G. Smith and Noelle Kappes of US Legal Support and Plaintiff's former attorney Julia C. Williams clearly indicating that Hans Mast discovery deposition taken June 25, 2020 did not have exhibit 12 sent before the deposition nor uploaded during the deposition and said exhibit was never in the Certified Shorthand Reporter Barbara G. Smith's possession before, during or after the deposition was taken, transcribed or

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submitted for transmission. (Please see Plaintiff's Group Exhibit #2 Barbara G. Smith job papers0001.pdf and job papers0002.pdf attached)

13) Thereafter, on June 21, 2022 Plaintiff's current Attorney sent Hans Mast's discovery deposition taken on June 25, 2020 with exhibits 1-11 and 13-15, that were located in Plaintiff's former Attorney Julia C. Williams' electronic file with exhibit 12 received from Defendants' Attorney's office on April 28, 2022 with Barbara G. Smith's flash drive to Plaintiff's S. Ct. Rule 213(f)(3) expert Robin D. Williams, MFS, MS, D-BFDE Board Certified, Omni Document Examinations for analysis.

14) On July 11, 2022 Plaintiff's current Attorney received Robin D. Williams's Report of Findings concluding that the label on exhibit 12 did not come from the same group or batch of labels identified as exhibits 1-11 and 13-15. (Please see Plaintiff's Exhibit #3 Robin D. Williams Report of Findings July 11, 2022 attached)

15) On July 11, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney stating that the Hans **MIST EMPHASIS ADDED** exhibit 12 alleged to be part of Defendant Hans Mast's discovery deposition was received separately from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 14, 2020 while the Deposition and Exhibits 1-11 and 13-15 were received from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 10, 2020. (Please see Plaintiff's Exhibit #4 attached)

LAW AND ORDER(S)

Illinois Supreme Court Rule 206. Method of Taking Depositions on Oral Examination

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(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating **c** **EMPHASIS ADDED** the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. (1) Reserved. (2) **A r r d r d c r d d r d r d d c r d r d r r r r d r d r r d , d r c r r d r d**

EMPHASIS ADDED (3) Reserved. (4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties. (5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for

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the deposition set by Rule 206(d), by stipulation, or by court order. (6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

M.R.30370 CORRECTED ORDER APRIL 29, 2020

(Please see Plaintiff's Exhibit #5 attached)

M.R.30370 AMENDED ORDER JUNE 4, 2020

(Please see Plaintiff's Exhibit #6 attached)

ILCS / ro Ch. , par.

Sec. . Po er o co rts to a e r les. a The S pre e Co rt o this State has po er to a e r les o pleading, practice and proced re or the circ it, Appellate and S pre e Co rts s pple entar to, t not inconsistent ith the provisions o this Act, and to a end the sa e, or the p rpose o a ing this Act e ective or the convenient ad inistration o j stice, and other ise si pli ing j dicial proced re, and po er to a e r les governing pleading, practice and proced re in s all clai s actions, incl ding service o process in connection there ith. nless other ise indicated the te t, re erences in this Act to r les are to r les o the S pre e Co rt.

S ject to the r les o the S pre e Co rt, the circ it and

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Appellate Co rts a a e r les reg lating their doc ets, calendars, and siness.

So rce P.A. .

(735 ILCS 5 1-105) (from Ch. 110, par. 1-105)

Sec. 1-105. Enforcement of Act and rules. The Supreme Court may provide by rule for the orderly and expeditious administration and enforcement of this Act and of the rules, including the striking of pleadings, the dismissal of claims, the entry of defaults, the assessment of costs, the assessment against an offending party of the reasonable expenses, including attorney's fees, which any violation causes another party to incur, **r r c**

r r EMPHASIS ADDED

(Source: P.A. 82-280.)

Rule 211. Effect of Errors and Irregularities in Depositions; Objections (a) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice. (b) As to Disqualification of Officer or Person. Objection to taking a deposition because of disqualification of the officer or person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification

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becomes known or could have been discovered with reasonable diligence. (c) As to Competency of Deponent; Admissibility of Testimony; Questions and Answers; Misconduct; Irregularities. (1) Grounds of objection to the competency of the deponent or admissibility of testimony which might have been corrected if presented during the taking of the deposition are waived by failure to make them at that time; otherwise objections to the competency of the deponent or admissibility of testimony may be made when the testimony is offered in evidence. (2) Objections to the form of a question or answer, errors and irregularities occurring at the oral examination in the manner or taking of the deposition, in the oath or affirmation, or in the conduct of any person, and errors and irregularities of any kind which might be corrected if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition. (3) Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving succeeding questions and, in the case of the last questions authori ed, within 7 days after service thereof. (4) A motion to suppress is unnecessary to preserve an objection seasonably made. Any party may, but need not, on notice and motion obtain a ruling by the court on the objections in advance of the trial. (d) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the

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testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after the defect is, or with due diligence might have been, ascertained. Committee Comments This rule is derived from former Rule 19-9. The language is unchanged except that the period for filing objections to the form of written questions has been extended to seven days in subparagraph (c)(3) in keeping with the committee's policy of measuring time periods in multiples of seven days.

VIOLATIONS

A) The exhibits that were decided upon to be used by former counsel Julia C. Williams, and specifically exhibit 12, were not provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition. In fact,

r r d d c r d r EMPHASIS ADDED

A1) On or about April 30, 2020 Defendants' Counsel sent an email to Plaintiff's former Counsel Julia C. Williams indicating an awareness of the current Supreme Court rules regarding depositions when he wrote "The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.." (Please see Plaintiff's Exhibit #7 attached.)

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A2) On or about May 29th 2020 former attorney Julia C. Williams sent an email to Defendants' Counsel indicating an awareness of the current Supreme Court rules regarding depositions when she wrote " …and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option." (Please see Plaintiff's Exhibit #8 attached.)

A2.1) On or about June 19, 2020 Defendants' attorney emailed Plaintiff's former attorney Julia C. Williams stating "Julia: I just received your notice of attorney lien. Will you still be taking the dep next week

My experience with receiving liens at this stage of litigation (in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for the Mast's dep. (Please see Plaintiff's Exhibit 15 attached.)

A3) On or about June 23, 2020 Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 23 exhibits that she **dd d** use in the discovery Deposition of Defendant Hans Mast on June 25, 2020. Additionally she indicated that there **c d dd d r r c** . **dd d** Additionally she wrote "…and I will do my best to send them ahead of time." (Please see Plaintiff's Exhibit #9 attached.)

A3.1) On or about June 24, 2020 at 10:49 AM (less than 24 hours before the start of the discovery deposition of Defendant Hans Mast) Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 1 more exhibit that she **dd d** use. (Please see Plaintiff's Exhibit 9 attached.)

A3.2) On June 25, 2020 the discovery deposition of Hans Mast was called at 10:00 AM "pursuant to subpoena and pursuant to the Code of Civil Procedure of the State of

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Illinois and the **RULES OF THE SUPREME COURT THEREOF, PERTAINING TO THE TA ING OF DEPOSITIONS, EMPHASIS ADDED** (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. and Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment
Exhibit G page 1 lines 15 to 17)

A3.3) On June 25, 2020 at 12:31 PM (approximately 15-30 minutes after the conclusion of the discovery deposition of Defendant Hans Mast, Defendant's attorney sends an email to Plaintiff's former attorney Julia C. Williams discussing what is "…fresh in his mind…" but any conversation regarding errors and irregularities in the just concluded deposition is notably absent. (Please see Plaintiff Exhibit 16 attached.)

A3.4) Shortly after the Deposition ended Barbara G. Smith emailed Julia C. Williams asking for Exhibit 12 and Julia C. Williams responded by sending a blank email. Additionally, Barbara G. Smith called and left a message for Julia C. Williams on July 6, 2020 again requesting Exhibit 12. On July 7, 2020 Barbara G. Smith submitted the June 25, 2020 discovery deposition of Hans Mast to U.S. Legal Support without Exhibit 12. (Please see Plaintiff's Group Exhibit 2 attached).

A3.5) The Deposition of Defendant Hans Mast was received by Plaintiff's former attorney and Defendants' attorney from U.S. Legal Support **H M E EMPHASIS ADDED** on July 10, 2020.

A4) On or about July 13, 2020 Noelle Kappes, Scheduling and Client Solution Manager U.S. Legal Support sends an email to Plaintiff's former attorney Julia C. Williams stating that "the court reporter indicated you would be sending us exhibit 12 from this deposition (discovery deposition of Defendant Hans Mast taken remotely on June 25,

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2020) so that we can include it with the transcript. I don't believe we have received it can you send it tomorrow " (Please see Plaintiff's Exhibit #10 attached)

A5) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams emails to Noelle Kappes "Dear Noelle, I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here." (Please see Plaintiff's Exhibit #10 attached.)

A6) On or about July 14, 2020 wtolliver2uslegalsupport.com emailed to Plaintiff's former attorney and Defendants' attorney that "Exhibit 12 is now available to download" (Please see Plaintiff's Exhibit #11 attached)

A6.1) Exhibit 12 was never presented to the officer administering the oath Barbara G. Smith, CSR, RPR Notary Public but was sent after the deposition of Defendant Hans Mast was taken on June 25, 2020 but sent on July 14, 2020 to Noelle Kappes, Scheduling and Client Solution Manager U.S. Legal Support who forwarded it to wtolliver2, another employee of U.S. Legal Support who created the misspelled, non-conforming HANS M**I**ST [**EMPHASIS ADDED** label.

A7) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams wrote to Plaintiff "Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was [emphasis added] (Please see Plaintiff's Exhibit #12 attached)

A8) On or about August 5, 2022 Plaintiff's former attorney inexplicitly emails to Mary Winch marywinch@clintonlaw.net,ed@clintonlaw.net the same email she sent to the same recipients on July 14, 2020. (Please see A5 above and Plaintiff's Exhibit #13 attached)

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B) The deposition participants were not able to view the exhibits in real time during the deposition.

B1) The following clearly indicated a problem with viewing the exhibits submitted and the Defendant's internet equipment and internet connection and audio during the attempted remote discovery deposition of Defendant Hans Mast:

B1.1) Q. So I'm uploading Exhibit 2, it's titled Dulberg Mast Dep Exhibit 2, and this should be the original complaint filed in the case Dulberg versus Gagnon, et al., 12 LA 178, filed in McHenry County. Do you see that document

A. Yeah. What I'm going off are an email I got with all the exhibits attached, so I'm not that's what I'm looking at.; (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 17 lines 3 to 10 also found on 209 of 464 previously filed.)

B1.2) Q. Okay.

A. Oh, uh, I think It just kicked me off.

Mr. Flynn: I got disconnected, too. It's the Wi-Fi.

By Ms. Williams:

Q. Okay, we'll just wait a minute here.

A. I can hear you. I just can't see you. Q. We'll wait a minute until you can get your video back on.

Mr. Flynn: Julia, we think the Wi-Fi may have dropped **r c dd d**

Ms. Williams: Okay. Well, let's just give a minute and see.; (Please see Defendants'

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The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 22 lines 1 to 10 also found on 211 of 464 previously filed.)

B1.3) Q. Okay. I just uploaded Dulberg Mast Exhibit 4 and it says letter it's "Letter Re Settlement," and that should be still be Exhibit 4 that was emailed around to Counsel so that you would have it. And it is labeled POP192 and POP193. Do you recogni e those documents

A. Wait. I think the Internet, maybe because we were having problems, is the Internet went down, so now my exhibits aren't pulling up. Can you try again Do you have that, George

Mr. Flynn: Yeah, here's the **rd c dd d**

The Witness: I'll look at the **rd c dd d** , so what are you asking

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 26 lines 5 to 17 also found on 212 of 464 previously filed.)

B1.4) Q. Okay. Just uploaded Exhibit 5, and this is email dated October 30, 2013, and it's marked at the bottom 000195.

A. Okay.

Q. Okay, and here in this email it looks like you started this email chain to Paul on October 25, 2013. Do you see that

A. It looks like there s a couple emails here. There's several pages. You just mean the first page

Q. I think It should only be, I believe it's only one page and it looks like

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A. Oh, these aren't part of it Just one page

Q. The document that I have is just one page. Are we looking at the same thing

A. Okay.

Q. It's POP00195 on the bottom.

A. Yeah, he had a couple other pages on it, but okay.

Q. Okay. I just want to make sure that I didn't okay. And on the bottom there of the first sheet, if you have several, **l d r r d dd d ,** it states, "Friday, October 25, 2013," do you see that

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 28 lines 16 to 24 and page 29 lines 1-14 also found on 212 of 464 previously filed.)

B1.5) Q. Okay. So I'm going to upload another file here.

A. Yeah, our internet is down. That's why I can't bring these up.

Q. Okay.

Mr. Flynn: Julia, just so you know, I've got hard copies of the majority of the exhibits you sent with the exception of the larger files, like the insurance policy and the dep transcripts.

MS. Williams: Okay. Okay, great.

Mr. Flynn: I've got some of the deposition transcripts, but I didn't want to waste a lot of paper and ink at home.

MS. Williams: Okay. I think we'll be For the most part, I think we'll be fine and we'll deal with it if and when we get to that point.

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Q. Okay. So the document that I'm looking at now is another email on the it's now titled Exhibit 6. I don't think it was entitled Exhibit 6 in what I sent to George, but it's an email that the first date on the email is November 4, 2013, and the last date is November 5, 2013 email chain and it's at the bottom it's stamped Dulberg001531.

A. What exhibit is it

Q. I think it might have been **-A dd d** to George. It's now exhibit 6 for the purpose of this deposition. (Please note that there never was an exhibit marked 5-A)

A. Yeah, that wasn't part of the download then. Do you have

Mr. Flynn: Yeah, I don't think that was included. (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 31 lines 10 to 24 and page 32 lines 1 to 17 also found on 213 of 464 previously filed.)

B1.6) Q. Okay. Okay, I'm going to stop screen sharing. Okay. I'm going to upload another file. This is Deposition Exhibit 7. George, you probably had it as Exhibit 6, but for the purpose of this deposition right now it's going to be 7 and it's an email chain dated

A. I have these on the computer. You don't need to, unless you want to, but I'm just saying I have these on the computer.

Q. Okay, but Barb needs them, so that's why I keep uploading them, otherwise she doesn't have them. Okay. So Exhibit 7, and it's POP00181 and POP00182,and it's two pages of an email chain, it starts November 15th and

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ends November 19, is that accurate

A. Yes.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 35 lines 5 to 20 and also found on 214 of 464 previously filed.)

B2) From this point on the transcript indicated that the deponent could not view any exhibits uploaded so that Plaintiff's former attorney Julia C. Williams was asking questions based upon her attempted uploads but the deponent Defendant Hans Mast was looking at physical documents to respond based upon the following:

B2.1) Q. Okay. So I'm going to upload another document and then we can keep going here. And then this is Exhibit 8 and for it is a letter from Ronald Barch to you, Hans, and it's POP000667. Do you **dd d** that

A. What date is it

Q. I'm sorry, dated November 18, 2013,

A. Yeah, **I dd d** that.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 36 lines 6 to 13 and also found on 214 of 464 previously filed.)

B2.2) Q. Yep, it's POP000181.

A. What exhibit

Q. It's Exhibit 7.

A. 7, that's the letter.

Q. If may be 6 for you. It may be 6 for you.

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A. Let’s take a look. What page is the email

Q. The date at the top of the email chain is Tuesday, November 19, 2013.

A. Yeah, I **dd d** that.

(Please see Defendants’ The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast’s Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 38 lines 1 to 9 and also found on 215 of 464 previously filed.)

B2.3) Q. I’m going to add another exhibit here. Okay, for the purpose of this deposition it’s Deposition Exhibit 9. This is a memorandum. At the top it will say, “ memorandum,” and the date is November 20, 2013, and at the bottom it is identified as POP and then 3 there’s 000003, I believe. Do you **dd d**

A. What exhibit is it

Q. I think you’re probably going to have it as Exhibit 8, but for the purpose of this deposition it’s actually going to be Exhibit 9.

(Please see Defendants’ The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast’s Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages page 40 lines 12 to 22 and also found on 214 of 464 previously filed.)

B2.4) Q. Okay, I’m uploading Dulberg Mast Dep Exhibit 12. **T d L**

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N r d d ’ d d ’ , ’ r r , ,

D r , r r D r Ac , l’ rr , r ’

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(Please see Defendants’ The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast’s Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 49 lines 20 to 24, page 50 lines 1 to 11 and also found on 217-218 of 464 previously filed.)

C) The case of *Tilschner v. Spangler* No.2-10-0111, 949 N.E.2d 688, 350 Ill.Dec.896, 409 Ill.App.3d 98 (2011) which Plaintiff Paul Dulberg specifically instructed his former attorney Julia C. Williams to include as an exhibit to be the basis of questions to the deponent Defendant Hans Mast because: Mast had personally given a copy of the certified opinion to Dulberg on November 20, 2013; had personally appeared and argued the case along with Thomas J. Popovich, and Mark J. Vogg of Defendant the Law Offices of Thomas J. Popovich, P.C.; and had insisted that the decision in the case was the reason Plaintiff Paul Dulberg would not prevail in the underlying case against the Defendants Carolyn and William (Bill) McGuire. (This is based upon information and belief pending this Honorable Court’s ruling upon Plaintiff’s previously filed Motion To Compel concerning his former attorney Julia C. Williams’ claims of Attorney-Client Privilege and Work Product.) (Please see Plaintiff’s Exhibit 14 *Tilschner v. Spangler* No.2-10-0111 attached)

C1) *Tilschner v. Spangler* No.2-10-0111 was not included in exhibit 12 as constituted, when sent 19 days after the deposition had concluded, in response to the inquires of

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Noelle Kappes Scheduling and Client Solutions Manager U.S. Legal Support (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G found on pages 264 - 290 of 464 previously filed.)

C2) *Tilschner v. Spangler* No.2-10-0111 was inexplicitly replaced with an exact duplicate of the *Lejato v. AT&T, INC.,* No. 1-95-0447 669 N.E.2d 645 283 Ill. App. 3d 126 (1996) (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages 264-285 of 464 previously filed.)

D1) On November 4, 2022 Defendants' attorney was allowed to raise the issue of "waiver" alleging that both Defendant Hans Mast's attorney and Plaintiff Paul Dulberg waived any and all objections by stating " all objections to that manner were waived by both parties." (Please see Report of Proceeding November 4, 2022 page 14 line 14-15 which is contained in the Clerk of Court's electronic file for this matter.

D2) The Illinois General Assembly empowered the Illinois Supreme Court to make and enforce rules for the Circuit, Appellate and Supreme Court. (Please see above - *ILCS / ro Ch. , par.* and (735 ILCS 5 1-105) (from Ch. 110, par. 1-105).

D3) Illinois Supreme Court Rule 211 does not allow opposing attorneys to waive the rules and orders powers granted to the Illinois Supreme Court by the Illinois General Assembly.

D4) It should be noted that:1) there were multiple emails between the Plaintiff and

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Defendants' attorneys as close in time as less than 24 hours before and at most 30 minutes after the deposition and the subject of "waiver" was not discussed. (Please see Exhibits 9, 15 and 16 attached.); 2) On July 30, 2020 Julia C. Williams, in response to Plaintiff's question about the Deposition of Hans Mast did not respond with anything about "waiver" of issues and cavalierly stated "Your future counsel will need to bring that before the Judge at some point" Please see Plaintiff Exhibit 17 attached): 3) Julia C. Williams filed her Motion to Withdraw on behalf of herself and the Clinton Law Firm on August 18, 2020 (Please see the Clerk of McHenry County Circuit Court's electric file for this case.)

W r r , Plaintiff Paul Dulberg prays that Plaintiff's Motion to Exclude the discovery deposition of Defendant Hans Mast taken remotely on June 25, 2020 is granted, that Plaintiff request to take the deposition of Defendant Hans Mast is granted, but if Defendants' verbal request to file a sur-response is allowed then the Plaintiff be granted a reasonable time to file a sur-reply after considering what's left of Plaintiff's time to respond to Defendant's Motion for Summary Judgment and for any other additional relief this Honorable Court deems fair and equitable.

Respectfully submitted,

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/s/ Alphonse A. Talarico

Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

707 Skokie Boulevard Suite 600

Northbrook, Illinois 60022

(312) 808-1410

ARDC No. 6184530

contact@lawofficeofalphonsetalarico.com

alphonsetalarico@gmail.com

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C 1648 V2

RE: Dulberg v. Mast and Popovich

Linda Walters <lwalters@karballaw.com>
Thu 4/28/2022 4:00 PM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please use the below link to access Mast Dep Ex. 12.

https://www.dropbox.com/s/b2lmm0a6s3oex3d/Mast%20Dep%20Ex.%2012.PDF?dl=0

Thank you.

Linda Walters
Asst. to George Flynn

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@karballaw.com

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EXHIBIT 1

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
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Attachment available until Aug 13, 2020

Dear Noelle,

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

put this x in folder on desktop & renamed bad file 12-A - this is the new 12

Click to Download
Dulberg Mast Dep Exh 12 Legal Research .pdf
35.1 MB

still couldn't read 1-22 → "There was a problem reading this document"

On Jul 13, 2020, at 8:37 PM, Noelle Kappes <nkappes@uslegalsupport.com> wrote:

called Noelle - 10:30 - 7-14 - she will have William look at it or email williams

Hi there,

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you,
Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.
Witness: Hans Mast
Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.
Date: 06/25/2020
Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)
Location:

GROUP
EXHIBIT
2

Reporter and all Parties will appear via Video Conference.

Thank you for choosing U.S. Legal Support.
Court Reporting | Record Retrieval | Trial Services

Please note: To ensure your safety and the safety of others, when visiting a U.S. Legal Support office, please practice responsible social distancing measures. We ask that you provide and wear your own mask in common areas (halls, restrooms, break areas, cube areas, conference rooms, etc.). Thank you for your understanding and cooperation.

<CFM923267.PDF>

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Hi Ms. Williams – This is Barb Smith, the court reporter from US Legal that was present at the dep of Hans Mast on 6-25-20. I am currently working on the transcript and while preparing the exhibits I noticed that Exhibit No. 12, which is the 27 pages of legal research, did not download completely. The Exhibit 12 that I have has blank pages 1-22 and only pages 23-27 have print on them. I just wanted to let you know and check if you wanted to resend or if that's how No. 12 is supposed to be.

Thank you.

Barb

7-2-20

Williams responded 7-2-20
but the ~~dept~~ space was
blanks.
called 7-6-20 Left Message
7-7 submitted job and emailed
Noelle about it

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Job 923267

From: Smith Family (barbnwally@att.net)

To: nkappes@uslegalsupport.com

Date: Tuesday, July 7, 2020, 09:32 PM CDT

Hi Noelle -- Hope you're doing well. I just want to let you know I submitted this job, 923267, last night. Two things I wanted to let you know about. First, this job and 925187 were both submitted last night. These are the first two I used Box for the exhibits. I hope I did them correctly. If there's any problems, please let me know.

For 923267 I have another issue. One of the exhibits, #12, was downloaded during the Zoom session. It's 27 pages and when I first looked at it I noticed that pages 1-22 were blank. I emailed Julia Williams, our client, on 7-2 about this. She responded and the message section of her email was blank. I waited for another email but received none. On 7-6 I called and left her a message and have not received a response. I did note all of this information in the email that I sent the job with.

The main reason I'm telling you all of this is that I am going to be out of town Thursday and Friday. My daughter is getting married in Arkansas so I will not be bringing my computer with me and will be quite busy. Hopefully I hear from her on Wednesday.

Thanks,

Barb

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF,	)	
v.	)	No. 17 LA 377
THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	)	

AMENDED NOTICE OF DEPOSITION

TO: **All Attorneys of Record (See Attached Service List)**

YOU ARE HEREBY NOTIFIED, that pursuant to the provisions of Section 2-1003 of the Illinois Code of Civil Procedure and Supreme Court Rule 206, the following deposition will be taken for the purpose of discovery before a Notary Public via remote electronic deposition at the time and place specified, upon oral interrogatories to be propounded to said witness.

Deponent	***Location***	***Date***	***Time***
Hans Mast	Compton Law Group 85 Market St. Elgin, IL 60123 (remote electronic deposition)	June 25, 2020	10:00a.m.

YOU ARE HEREBY FURTHER NOTIFIED that you are by this Notice required to have present at the date, time, and place stated, the said Deponent for oral examination for the purpose of discovery. YOU ARE FURTHER NOTIFIED that PAUL DULBERG, a party to this case, intends to be present at the above noticed deposition.

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed by 5:00 p.m. on June 4, 2020.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Julia C. Williams
Julia C. Williams

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SERVICE LIST:

George Flynn
~~Karbal | Cohen~~ | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

rep dept
ELFPLT

Sps
David Gagnon
Caroline & Bill McGuire
Elder Avenue
Ronald Burch

Exam
Williams 5
Flynn ~~48~~ 76

X
1 - 16
2 - 17
3 - 18
4 - ~~28~~ 26
5 - ~~30~~ 28
6 - ~~34~~ 32
7 - ~~37~~ 35
8 - ~~38~~ 36
9 - ~~40~~ 40
10 - ~~48~~ 46
11 - ~~50~~ 48
12 - ~~51~~ 49
13 - ~~55~~ 53
14 - ~~57~~ 55
15 - ~~66~~ 64

Choi - B - Commonwealth Edison
is the only case I have in
#12 download

/s/ Julia C. Williams
Julia C. Williams

witness said he only has
Lajato case in his #12

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

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C 1655 V2

U.S. Legal Support - Chicago
200 West Jackson
Suite 600
Chicago, IL 60606
Telephone: 312-236-8352
Fax: 312-236-3344

U.S. Legal Support

JOB WORKSHEET

#12 1-22 blank
23-27 only

Resource	**Barbara G. Smith**		
Job No.	**923267**	**Job Type**	**Deposition**
Job Date	**06/25/2020**	**Job Time**	**10:00 AM** (GMT-06:00) Central Time (US & Canada)
Due Date	07/10/2020	**Notation**	R/VC
Witness	Hans Mast		
Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	**17LA377**		
Location	***U.S. Legal Support, Inc. - Remote Video Conference** **Reporter and all Parties will appear via Video Conference.** **Phone:** **Room No.:** **Detail: To join the Video Conference, a website link will be provided by U.S. Legal Support the business day prior to the setting.**		
Remarks	Court Reporter & RemoteDepo *everyone appearing remotely except attorney George Flynn who will be with the deponent REPORTER MUST READ THE ATTACHED READ ON		

83 pgs warned

Client	Clinton Law Firm 111 West Washington Street Suite 1437 Chicago, IL 60602 Phone: 312-357-1515 Fax: 312-201-0737
Contact	Julia Williams
Ordered By	Julia Williams via email
Requested Service	Service Item: RemoteDepo w/InstantExhibit - Videoconferencing — Units: 1.00

rep plf 57 PHAO

julia williams@clintonlaw.net

Thank you for accepting this assignment. Please note that by accepting this assignment, you acknowledge U.S. Legal Support's requirement to have an up-to-date W-9, BAA, and CIA form submitted prior to our releasing payment.

Please provide the transcript to our production team by due date reflected above. Exhibits to be delivered to production within 3 days after deposition.

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C 1656 V2

13 interrog
14 interrogs
15 mtn

16
17
18
19
20

#1 retainer
2 complaint
3 memo
4 ~~settle~~ demand
5 email
6 email
7 email 11-15
8 email
9 memo
10 memo 12-18
11 settlement letter
12 case law

Nov 13

witness & atty flyn in McHenry Co.

start 10:08
end 12:20
#18

AP: Paul
~~Dulberg~~
Dulberg

Mr. Flynn - dept
copy reg + mini

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
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C 1657 V2

OMNI
Document Examinations

Robin D. Williams, MFS, MS, D-BFDE
Board Certified

Bonnie L. Schwid, B.S., D-BFDE
Board Certified

July 11, 2022

Attorney Alphonse A. Talarico
Law Office of Alphonse Talarico
707 Skokie Blvd.
Suite 600
Northbrook, Illinois 60062

REPORT OF FINDINGS

RE: Dulberg v Popovich et al LA 377

Dear Attorney Talarico,
Pursuant to your request, I examined the following documents:
Document containing a disputed Exhibit Label
(machine copy)

Q-1 The first page of a 27-page document containing machine copies of pages from a book or books. The first line on the yellow label reads "Exhibit 12".
The label is in the bottom center of a machine copy of 2 pages. The page number in the upper left corner is 502. The center heading reads: "218 Illinois Decisions".
Dated 6-25-2020.
Some of the pages in the 27-page document are duplications of previous pages.
The page sequencing in the 27-page document is as follows: 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 854, 855, 856, 857, 858.

Document(s) submitted as containing genuine Exhibit Labels
(machine copies):

K-1 The yellow label at the bottom right of the document reads "Exhibit 1".
K-2 The yellow label at the top center of the document reads "Exhibit 2".
K-3 The yellow label at the bottom right of the document reads "Exhibit 3".
K-4 The yellow label at the bottom right of the document reads "Exhibit 4".
K-5 The yellow label at the bottom right of the document reads "Exhibit 5".
K-6 The yellow label at the bottom right of the document reads "Exhibit 6".
K-7 The yellow label at the bottom right of the document reads "Exhibit 7".
K-8 The yellow label at the bottom right of the document reads "Exhibit 8".
K-9 The yellow label at the bottom right of the document reads "Exhibit 9".

EXHIBIT 3

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
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K-10 The yellow label at the bottom right of the document reads "Exhibit 10".
K-11 The yellow label at the bottom right of the document reads "Exhibit 11".
K-13 The yellow label at the bottom right of the document reads "Exhibit 13".
K-14 The yellow label at the top center of the document reads "Exhibit 14".
K-15 The yellow label at the bottom right of the document reads "Exhibit 15".

Assignment

The purpose of the examination was to determine whether the yellow label that is in question on Item Q-1, also identified as Exhibit Label #12 and the labels submitted as genuine on Items K-1 through K-11 and K-13 through K-15 all originated from the same group or batch of labels.

Procedure

The examination consisted of visual and microscopic study of the font styles, the discriminating variations of letter formations, letter designs, beginnings and endings of letters, t-crossings, spelling of words and exterior and interior shapes of the labels.

Opinion

It is the opinion of this examiner that the label in question identified as Q-1, Questioned Label #12, did not come from the same group or batch of labels identified as Items K-1 through K-11 and K-13 through K-15.

Discussion

Item Q-1, Exhibit Label #12 contained a different font in all of the words on the label (except in the word "Date") and in numerals 1 and 2 as illustrated in the attached charts.

It is important to note that the name of Hans *Mast* was misspelled on Item Q-1, Exhibit Label #12, as "Hans *Mist*".

It is noteworthy that in an enlargement of the label identified as Q-1, Exhibit Label #12, is the appearance of a squared outer edge in the upper left corner of the label that can be seen. This differs from the rounded outer edges of the known labels that were used for comparison.

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This examination was conducted from machine copies of the document in question and the exemplars used for comparison. I assume that they are accurate reproductions of the originals. If the original documents become available, I am requesting the opportunity to examine the original documents containing the original labels and revisit my opinion. However, I do not believe my opinion will change.

Please allow four weeks in the event that testimony will be required.

Respectfully submitted,
Omni Document Examinations

Robin D. Williams

Robin D. Williams, MFS, MS, D-BFDE
Diplomate-Board of Forensic Document Examiners

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Dulberg v. Popovich

George Flynn <gflynn@karballaw.com>
Mon 7/11/2022 10:25 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: Linda Walters <lwalters@karballaw.com>

1 attachments (26 MB)
EX 0012 Hans Mast 062520.pdf;

Mr. Talarico:

Below is a copy the transmittal email with exhibit 12 received by my office on July 14, 2020. A previous email from July 10, 2020 from US legal contained the other deposition exhibits. The link contained in the July 14 email produced the attached PDF of exhibit 12.

Regards,

From: "wtolliver@uslegalsupport.com" <wtolliver@uslegalsupport.com>
Date: July 14, 2020 at 11:13:35 AM CDT
To: George Flynn <gflynn@karballaw.com>
Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

U.S. Legal Support has switched to paperless production. Your litigation support package contains digital files of your transcript and exhibits. These files are also readily available 24/7 via our secure Client Online Portal. The certified original will be printed to facilitate lodging with the Court. Should you require a hard certified copy of the transcript or a CD of your files, please contact your local U.S. Legal Support office.

Thank you for choosing U.S. Legal Support.

We have uploaded the following file(s). To open or download, please click on the link(s) below.

File Information

Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Job No.	923267	Job Date	6/25/2020
Witness	H. Mast Exhibits		



If you are unable to see the links or are not redirected to the file(s), please copy and paste the URL below in your browser:
https://share.uslegalsupport.com/docs/download?tk=86791893-4ae0-47ae-884c-52dfe3f186c0

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Available File(s)

File Type	File Name	Description	Size(KB)
Exhibit	EX 0012 Hans Mast 062520.pdf		26741

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George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
Please note our new address below effective May 27, 2022
200 S. Wacker Drive
Suite 2550
Chicago, IL 60606

P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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IN THE
SUPREME COURT OF ILLINOIS

In re: Illinois Courts Response to COVID-19 Emergency/Impact On Discovery	)	M.R.30370

Corrected
Order

In the exercise of the general administrative and supervisory authority over the courts of Illinois conferred on this Court pursuant to Article VI, Section 16 of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VI, sec. 16); and in view of the actions that have been taken by the Governor of the State of Illinois in response to the outbreak of the novel coronavirus (COVID-19); and consistent with the order issued by this Court on March 17, 2020,

IT IS HEREBY ORDERED:

Effective immediately and until further order of the Court, paragraph (h) of Illinois Supreme Court Rule 206 is temporarily amended as follows:

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) Reserved. ~~The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.~~

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

(3) Reserved. ~~Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.~~

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

(5) Time spent at a remote electronic means deposition in addressing necessary

EXHIBIT 5

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
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technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments
(April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Order entered by the Court.

SEAL OF THE SUPREME COURT
STATE OF ILLINOIS
AUG. 26. 1818

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, this 29th day of April, 2020.

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
Purchased from re:SearchIL

IN THE
SUPREME COURT OF ILLINOIS

In re: Illinois Courts Response to COVID-19 Emergency/Impact On Discovery	)	M.R. 30370

Effective immediately, the Court's corrected order of April 29, 2020 regarding Illinois Courts Response to COVID-19 Emergency/Impact On Discovery is amended to add a committee comment concerning the temporary amendment of paragraph (h)(3) of Illinois Supreme Court Rule 206 as follows:

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) Reserved. ~~The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.~~

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

(3) Reserved. ~~Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.~~

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

(5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

EXHIBIT 6

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Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments
(April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Committee Comments
(June 4, 2020)

Paragraph (h)(3)

Subparagraph (h)(3) has been deleted to avoid discovery disputes over physical presence by a party or a party's attorney at a remote deposition. Deletion of the subparagraph does not mean that personal presence by a party or a party's attorney is absolutely prohibited. During the pandemic not all depositions are required to proceed remotely, nor is a continuance automatically required if counsel cannot agree on a remote method. Absent agreement, the circumstances of a remote deposition are within the discretion of the trial court.

Order entered by the Court.

SEAL OF THE SUPREME COURT
STATE OF ILLINOIS
AUG. 26, 1818

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, this 4th day of June, 2020.

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
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C 1666 V2

Good Morning, George,

I hope you are doing well. I would prefer to do an in-person deposition given that the client will likely want to be present and that may present some issues with a video deposition. That being said, I don't want to hold this up indefinitely.

Let's plan for the end of June. If the "stay at home" orders get extended again, we will reconsider the "in person" v "remote" deposition.

I hope you and your family are well.

I am working remotely. If you need to call—the best remote number is 312.508.3376.

Thanks,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Apr 30, 2020, at 11:12 AM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

I hope you and your family are staying safe, healthy, and busy during these uncharted times.

The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.

Otherwise, perhaps we can get a live deposition on the books for some time in June. If so, I would

EXHIBIT 7

suggest the 2nd half of June.

Let me know what you think

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
CONFIDENTIALITY NOTE:
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Hi Julia. I think June 17 will work. Just let me know the details. For the time being, I will plan on being at Hans' office for the deposition.

I am still not sure about June 5. I may attend live, but I should be able to make a decision by Tuesday.

How about touching base on Monday regarding the deposition logistics?

If you need to call, my cell is 773-341-8114.

So far so good here. I hope you and your family are doing well. Thanks

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Friday, May 29, 2020 4:37 PM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: Dulberg v. Popovich

Hi George,

How is the June 16,17, or 18? If not, we should also be open the week after on Wednesday or Thursday—June 24, 25.

I anticipate this will be a video deposition, despite things opening back up, I think it is the safest route for everyone and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option. Details to come on that. We can work that out and a time once we get the date nailed down.

I believe we have a June 5 status date. I believe we are encouraged to either use CourtCall or get an agreed order. I am happy to draft an agreed order setting out a date for close of oral fact discovery (f(1), f(2)) and setting the matter for further status, so we can submit it to the Judge prior to June 5 to avoid the date. Alternatively, I am also happy to appear via CourtCall if you intend to appear.

I hope you and your family are well.

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8

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Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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On May 4, 2020, at 11:43 AM, George Flynn <gflynn@karballaw.com> wrote:

Thanks Julia. So far so good here.

Sounds like a plan. If you have a date in mind for late June, I have a feeling it will work for me. I can pass it along to Hans, so he can hold the date. Please also advise where you want to conduct the deposition.

Take care

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Monday, May 4, 2020 11:37 AM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: Dulberg v. Popovich

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C 1670 V2

From: Julia Williams juliawilliams@clintonlaw.net
Subject: Re: Dulberg v Popovich Firm et al; Mast Deposition Exhibits
Date: June 24, 2020 at 10:49 AM
To: George Flynn gflynn@karballaw.com

Dear George,

Here is one more exhibit that I may use. We are still waiting on the instructions from US Legal which I expect by COB today.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Jun 24, 2020, at 9:31 AM, George Flynn <gflynn@karballaw.com> wrote:

Thanks Julia. I will see you virtually, tomorrow.

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

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EXHIBIT 9

From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Tuesday, June 23, 2020 4:26 PM
To: George Flynn <gflynn@karballaw.com>
Cc: Mary Winch <marywinch@clintonlaw.net>; Ed Clinton <ed@clintonlaw.net>
Subject: Dulberg v Popovich Firm et al; Mast Deposition Exhibits

Dear George,

Attachments available until Jul 23, 2020

I am attaching the deposition exhibits that I *may* use on Thursday. I don't believe there will be any additions between now and then, but if there are they will minor and I will do my best to send them ahead of time. Obviously, I may not use all of these.

I have not used US Legal or done any remote depositions so you will have to forgive any errors. My understanding is that in the video conferencing system I will be able to upload the document in Pdf or other format (I am only using PDFs), then you and the court reporter will be able to download it. The court reporter will label the exhibits and

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include them in the transcript after the deposition is complete. You are not required to print any of the documents—unless of course you would like to do that.

I did my best to label the exhibits in the number order that I believe I will use them. That being said, things change in depositions and they may have to be renumbered. In an effort to not make it super confusing, I used descriptive names as well.

If you have questions/concerns, please let me know. Otherwise, I will see you remotely on Thursday and we'll hope that everything goes smoothly.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Dulberg Mast Dep Exh 1 Retainer Contract.pdf
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Dulberg Mast Dep Exh 4 Letter Re settlement offer $7,500.pdf
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From: **Noelle Kappes** nkappes@uslegalsupport.com
Subject: RE: U.S. Legal Support - Confirmation of Scheduling - Job No. 923267
Date: July 14, 2020 at 11:27 AM
To: Julia WIlliams juliawilliams@clintonlaw.net
Cc: Smith Family barbnwally@att.net, Mary Winch marywinch@clintonlaw.net, Ed Clinton ed@clintonlaw.net

NK

Received, thank you.

Noelle Kappes
Scheduling and Client Solutions Manager I U.S. Legal Support
200 West Jackson Boulevard, Suite 600
Chicago, IL 60606

Direct 312.854.1422 I Main 312.957.4546
nkappes@uslegalsupport.com
www.uslegalsupport.com



From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Tuesday, July 14, 2020 9:41 AM
To: Noelle Kappes <nkappes@uslegalsupport.com>
Cc: Smith Family <barbnwally@att.net>; Mary Winch <marywinch@clintonlaw.net>; Ed Clinton <ed@clintonlaw.net>
Subject: Re: U.S. Legal Support - Confirmation of Scheduling - Job No. 923267
Importance: High

This message has originated from an **External Source.** Please use caution when opening attachments, clicking links, or responding to this email.

Dear Noelle,

Attachment available until Aug 13, 2020

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm

EXHIBIT
10

The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Click to Download
Dulberg Mast Dep Exh 12 Legal Research .pdf
35.1 MB

On Jul 13, 2020, at 8:37 PM, Noelle Kappes <nkappes@uslegalsupport.com> wrote:

Hi there,

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you,
Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.
Witness: Hans Mast
Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.
Date: 06/25/2020
Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)
Location:
Reporter and all Parties will appear via Video Conference.

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<CEM923267.PDF>

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From: wtolliver@uslegalsupport.com
Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:13 AM
To: juliawilliams@clintonlaw.net

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

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Thank you for choosing U.S. Legal Support.

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File Information

Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Job No.	923267	**Job Date**	6/25/2020
Witness	H. Mast Exhibits		

If you are unable to see the links or are not redirected to the file(s), please copy and paste the URL below in your browser:
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Exhibit	EX 0012 Hans Mast 062520.pdf		26741

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From: **Julia Williams** juliawilliams@clintonlaw.net
Subject: Fwd: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:17 AM
To: Paul Dulberg pdulberg@comcast.net
Cc: marywinch@clintonlaw.net, ed@clintonlaw.net

Dear Paul,

Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was blank.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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PDF

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Begin forwarded message:

From: "wtolliver@uslegalsupport.com" <wtolliver@uslegalsupport.com>
Subject: **Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020**
Date: July 14, 2020 at 11:13:26 AM CDT
To: <juliawilliams@clintonlaw.net>

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Case No.	17LA377		
Job No.	923267	**Job Date**	6/25/2020
Witness	H. Mast Exhibits		

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From: **Julia Williams** juliawilliams@clintonlaw.net
Subject: Fwd: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: August 5, 2022 at 10:21 AM
To: Mary Winch marywinch@clintonlaw.net, ed@clintonlaw.net

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Begin forwarded message:

From: "wtolliver@uslegalsupport.com" <wtolliver@uslegalsupport.com>
Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:13:26 AM CDT
To: <juliawilliams@clintonlaw.net>

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

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File Information

Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Job No.	923267	**Job Date**	6/25/2020
Witness	H. Mast Exhibits		

If you are unable to see the links or are not redirected to the file(s), please copy and paste the URL below in your browser:
https://share.uslegalsupport.com/docs/download?tk=ff579b1e-84d2-4656-9fa3-940071d3493b

Available File(s)

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Exhibit	EX 0012 Hans Mast 062520.pdf		26741

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NOTICE
The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 2—10—0111
Opinion filed May 6, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PATRICIA TILSCHNER,	)	Appeal from the Circuit Court
	)	of McHenry County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 08—LA—383
	)	
LOWELL SPANGLER and RALPH M. RUPPEL,	)	
	)	Honorable
	)	Maureen P. McIntyre,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court, with opinion.
Justice Hutchinson concurred in the judgment and opinion.
Justice Hudson specially concurred in the judgment, with opinion.

OPINION

Plaintiff, Patricia Tilschner, appeals from the trial court's orders dismissing count II of her third-amended complaint and denying her motion to reconsider. Patricia claims on appeal that the trial court erred in concluding that this State has not adopted section 318 of the Restatement (Second) of Torts (1965).[1] We affirm.

Patricia was injured during a party at the home of defendant Lowell Spangler when defendant Ralph Ruppel ignited fireworks. Patricia's third amended complaint contained three counts. Count

[1]Patricia raised a similar claim regarding an undifferentiated duty independent of section 318 but abandoned that argument during oral argument.

EXHIBIT 14

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C 1682 V2

I alleged common-law negligence against Spangler. Count II alleged negligence against Spangler pursuant to section 318 of the Restatement (Second) of Torts. Count III alleged common-law negligence against Ruppel. Spangler moved to dismiss count II, pursuant to section 2—615 of the Code of Civil Procedure (735 ILCS 5/2—615 (West 2008)). The trial court granted the motion to dismiss with prejudice and denied Patricia's subsequent motion to reconsider. Patricia filed an application for leave to appeal to this court pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010), which was denied. Patricia was also denied leave to file a fourth amended complaint. She then voluntarily dismissed count I of the third amended complaint, and the trial court found no just reason to delay enforcement or appeal, pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). This appeal followed.

Patricia now contends that the trial court erred in dismissing count II of her third amended complaint. When a defendant challenges the legal sufficiency of a complaint with a section 2—615 motion to dismiss, all well-pleaded facts alleged in the complaint are taken as true. *King v. Senior Services Associates, Inc.*, 341 Ill. App. 3d 264, 266 (2003). On review of a dismissal pursuant to section 2—615, this court must determine whether the allegations of the complaint, when interpreted in the light most favorable to the plaintiff, sufficiently set forth a cause of action on which relief may be granted. *King*, 341 Ill. App. 3d at 266. The motion should be granted only if the plaintiff can prove no set of facts to support her cause of action. *King*, 341 Ill. App. 3d at 266. As this process does not require the trial court to weigh findings of fact or determine credibility, this court is not required to defer to the trial court's judgment, and we will review the matter *de novo*. *King*, 341 Ill. App. 3d at 266.

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To state a cause of action in negligence, a plaintiff must allege facts that establish a duty, a breach of that duty, and proximate causation. *Ryan v. Yarbrough*, 355 Ill. App. 3d 342, 345 (2005). Patricia alleged that Spangler:

> "[o]wed a duty to the Plaintiff and his other invited guests to keep control and care over his property and to protect them against any unreasonable risks of harm known due to acts of a third person under his control, including the Defendant, RALPH RUPPEL, pursuant to the Restatement (Second) of Torts, §318."

Section 318 of the Restatement (Second) of Torts provides:

> "If the actor permits a third person to use land or chattels in his possession otherwise than as a servant, he is, if present, under a duty to exercise reasonable care so to control the conduct of the third person as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if the actor
>
> (a) knows or has reason to know that he has the ability to control the third person, and,
>
> (b) knows or should know of the necessity and opportunity for exercising such control." Restatement (Second) of Torts §318 (1965).

A restatement is not binding on Illinois courts unless it is adopted by our supreme court. *Eckburg v. Presbytery of Blackhawk of the Presbyterian Church (USA)*, 396 Ill. App. 3d 164, 169 (2009); *In re Estate of Lieberman*, 391 Ill. App. 3d 882, 890 (2009). Thus, we must determine whether our supreme court has adopted section 318 of the Restatement (Second) of Torts; if it has not, Spangler owed no duty to Patricia.

Citing a line of both supreme court and appellate court cases, Patricia argues that section 318 has "unquestionably" been adopted in Illinois. However, this is not the first time that this court has

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examined this question and concluded to the contrary. In *Zimring v. Wendrow*, 137 Ill. App. 3d 847, 850 (1985), this court specifically found that "[n]o Illinois case has adopted section 318 of the Restatement (Second) of Torts, upon which plaintiff relies." Ultimately, we concluded that we "need not consider" the sufficiency of the complaint in relation to section 318. *Zimring*, 137 Ill. App. 3d at 853. In *Elizondo v. Ramirez*, 324 Ill. App. 3d 67, 73 (2001), the plaintiff asserted that section 318 "has been adopted in Illinois and cite[d] two cases in support." After analyzing those cases—*Cravens v. Inman*, 223 Ill. App. 3d 1059 (1991), and *Teter v. Clemens*, 112 Ill. 2d 252 (1986)—we concluded that "it is unclear whether these cases represent the law in Illinois" (*Elizondo*, 324 Ill. App. 3d at 73-74), and we declined to "express an opinion on whether section 318 represents the law in Illinois" (*Elizondo*, 324 Ill. App. 3d at 74). We note with interest that Patricia cites to *Elizondo* but fails to mention, let alone address, this court's refusal to find that section 318 had, indeed, been adopted in this state. Patricia now argues, despite our analysis in *Elizondo*, that our supreme court adopted section 318 in *Teter*. We disagree, and we will not revisit our prior analysis and determination in *Elizondo* that there was no clear adoption of section 318 by our supreme court in *Teter*.

While Patricia does not cite to *Cravens*, its ultimate disposition is instructive. In *Cravens*, the First District of the Illinois Appellate Court found a duty and, thus, a claim for negligence, pursuant to section 318 and to *Teter*, in the factual scenario of adults providing alcohol to minor guests who subsequently left in an automobile and were involved in a fatal accident. However, our supreme court in *Charles v. Seigfried*, 165 Ill. 2d 482, 501-02 (1995), concluded that it did "not agree that the views set forth in *Cravens* should be adopted through judicial decision." This court noted the supreme court's refusal, in an admittedly different context, to impose liability pursuant to section 318. See *Elizondo*, 324 Ill. App. 3d at 74.

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Patricia argues that the supreme court "implicitly" adopted section 318 in *Estate of Johnson v. Condell Memorial Hospital*, 119 Ill. 2d 496, 503-04 (1988), in which the court stated:

> "In general, one has no duty to control the conduct of another to prevent him from causing harm to a third party (Restatement (Second) of Torts §315 (1965)), but there are exceptions to this, based on 'special relationships.' Sections 315 through 319 of the Restatement (Second) of Torts (1965) describe these relationships. The 'special relationship' that the plaintiff alleges existed here that would give rise to a duty to protect another from harm is found in section 319 ***."

The court ultimately concluded, "It cannot be reasonably said, based on the complaint's allegations against Condell, that the hospital assumed a duty of care to Holt under section 319 of the Restatement (Second) of Torts (1965)." *Estate of Johnson*, 119 Ill. 2d at 506-07. Patricia argues that the "clear import" of the decision "is that sections 315-319 have been adopted in Illinois." She then cites to a similar statement in *Kirk v. Michael Reese Hospital & Medical Center*, 117 Ill. 2d 507, 530 (1987) ("There are types of relationships that give rise to a duty to control a third party's conduct set out in sections 316 to 319 of the Restatement (Second) of Torts (1965) ***"), to support her conclusion that the supreme court "cited with approval all of the exceptions/duties established in sections 316 through 319." Patricia is not alone in this argument. The First District of the Illinois Appellate Court has boldly stated that the supreme court has adopted sections 315 through 319. See *Brewster v. Rush-Presbyterian-St. Luke's Medical Center*, 361 Ill. App. 3d 32, 36-37 (2005) (citing *Estate of Johnson*, 119 Ill. 2d at 503-04); *Iseberg v. Gross*, 366 Ill. App. 3d 857, 862 (2006) (citing only *Brewster*, which expressly mentions sections 315 through 319, but then mysteriously increasing the number of sections adopted, to include sections 314 through 320).

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However, we first note that neither *Estate of Johnson* nor *Kirk* (nor, for that matter, *Brewster* nor *Iseberg*) involved a claimed application of section 318. Both *Estate of Johnson* and *Kirk* involved claims arising from alleged improper medical treatment of third parties who subsequently injured the plaintiffs; these claims were analyzed under section 319, which speaks to a duty of those in charge of someone having dangerous propensities. See *Estate of Johnson*, 119 Ill. 2d at 503-04; *Kirk*, 117 Ill. 2d at 530-31. The "most relevant" section in *Brewster* was section 317, which addresses the duty of a master to control the conduct of his servants. *Brewster*, 361 Ill. App. 3d at 37; Restatement (Second) of Torts §317 (1965). In *Iseberg*, the plaintiff did not even allege that any of the Restatement sections applied and imposed a duty on the defendants. *Iseberg*, 366 Ill. App. 3d at 862.

Patricia has failed to cite, and our research has not revealed, a single case since *Teter* in which our supreme court has specifically addressed, or even quoted, section 318 of the Restatement (Second) of Torts. We cannot conclude that our supreme court has adopted—explicitly, implicitly, impliedly, or otherwise—a Restatement section that it has not been called upon to analyze, apply, or adopt. Even the cases upon which Patricia relies do little more than acknowledge the existence of section 318. *Estate of Johnson* says that sections 315 through 319 describe " 'special relationships' " that form the bases for exceptions to the general rule of section 315. *Estate of Johnson*, 119 Ill. 2d at 503. *Kirk* merely notes that certain types of relationships set out in sections 316 through 319 give rise to a duty to control a third party's conduct, although none of the types applied there. *Kirk*, 117 Ill. 2d at 530. The mere citation to a cluster of sections, or even the analysis some of the nearby sections, is insufficient to establish the adoption of a restatement section.

The supreme court has addressed more thoroughly and deeply other restatement sections and specifically did *not* adopt them. For example, in a case examining the difference between void and

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voidable judgments, the supreme court compared its conclusions with those that it would have reached if the criteria of section 12 of the Restatement (Second) of Judgments were applied to the facts of the case. *In re Marriage of Mitchell*, 181 Ill. 2d 169, 176 (1998). The court noted that the result in the case was "consistent with the trend of modern authority" as exemplified by the Restatement (Second) of Judgments. *Mitchell*, 181 Ill. 2d at 175. The court then quoted section 12 of the Restatement (Second) of Judgments and applied the criteria of that section to the facts of the case. *Mitchell*, 181 Ill. 2d at 176. After determining that adopting the view expressed in the Restatement would require a re-examination of existing case-law analysis, the court casually noted that "[t]he parties [did] not ask us to adopt the rule expressed in the Restatement, however, and therefore we need not decide in this case whether to take that step." *Mitchell*, 181 Ill. 2d at 177. In *Mitchell*, the court explicitly declined to adopt a restatement section that it specifically quoted, applied to the facts of the case, analyzed, and compared to existing case law, because the parties did not ask for it. Here, Patricia cannot cite to a case wherein the court even cited to section 318, let alone provided the type of analysis that it did in *dictum* in *Mitchell*. With such meager authority, we cannot find the adoption of a restatement section.

Patricia similarly attempts to find adoption of section 318 in this court's decision in *Duncan v. Rzonca*, 133 Ill. App. 3d 184 (1985). Patricia's specific claim is that the *Duncan* court adopted section 316 of the Restatement and that, since sections 316 through 319 are "uniformly discussed together," there is "simply no logical explanation for why section 316 but not section 318 would be adopted in Illinois." We first note that this court does not have the authority to adopt a restatement section; as we have already stated, a restatement is binding on Illinois courts *only if it is adopted by our supreme court*. See *Eckburg*, 396 Ill. App. 3d at 169; *Lieberman*, 391 Ill. App. 3d at 890. In the absence of Illinois law, we often deem secondary sources, such as the Restatement (Second) of

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Torts, to be persuasive. [2] *Eckburg*, 396 Ill. App. 3d at 169. A restatement is a policy statement; this court does not adopt policy, it applies present law to the facts of the case before it. Further, this argument relies on the same fallacy as her prior argument: the "adoption" of a section includes the adoption of other sections "uniformly discussed together." This argument is not only a *non sequitur*, it is irrational as well. *Duncan* does not support Patricia's cause.

The restatement that we adopt today is that our supreme court has not adopted section 318 of the Restatement (Second) of Torts. Therefore, count II of Patricia's third-amended complaint, interpreted in the light most favorable to her, fails to allege a duty recognized by our supreme court and fails to set forth a cause of action on which relief may be granted. The trial court did not err in granting Spangler's section 2—615 motion to dismiss with prejudice.

---

[2]"A secondary source is not the law. It's a commentary on the law. A secondary source can be used for three different purposes: it might educate you about the law, it might direct you to the primary law, or it might serve as persuasive authority. Few sources do all three jobs well. The important classes of legal secondary sources include: treatises, periodical articles, legal encyclopedias, ALR Annotations, *Restatements*, and Looseleaf services. ***

* * *

Restatements

The restatements were developed by legal scholars initially to restate the law, and currently to describe what the law should be. In either case, Restatements are very persuasive although they are not very good at describing the law. They can serve as adequate law finders." (Emphasis added.) *Secondary Sources*, Yale Law School, Lillian Goldman Law Library, http://m-library.law.yale.edu/content/secondary-sources.

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For these reasons, the judgment of the circuit court of McHenry County is affirmed.

Affirmed.

JUSTICE HUDSON, specially concurring:

I agree with much of the majority's analysis in this case as well as the result at which it arrives. However, I would prefer to refrain from making sweeping and unnecessary statements about the authority of this court. It is well established that a court should avoid constitutional questions when a case can be decided on other grounds. *In re Detention of Swope*, 213 Ill. 2d 210, 218 (2004); *Beahringer v. Page*, 204 Ill. 2d 363, 370 (2003). The scope of the authority of this court is a constitutional matter. See *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002).

In this case, the majority rejects plaintiff's contention that this court has adopted section 318 of the Restatement (Second) of Torts, finding plaintiff's argument "irrational." Slip op. at 8. This finding should resolve this question. The majority, nevertheless, goes on to hold that this court does not have the authority to adopt a section of a restatement. It is unnecessary to consider whether this court has such authority in light of the majority's holding that nothing this court previously did would constitute an adoption of section 318. As I believe it improper to address the issue of the authority of this court, I do not join this portion of the majority's opinion.

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United States of America

2-10-0111

PATRICIA TILSCHNER,

Plaintiff-Appellant,

State of Illinois, Appellate Court, Second District, } ss.

v.

LOWELL SPANGLER and RALPH M. RUPPEL,

Defendants-Appellees.

I, ROBERT J. MANGAN, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the decision of the said Appellate Court in the above entitled cause of record in my said office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this

6th *day of* May, *A.D. 20* 2011

Robert J. Mangan

Clerk Appellate Court, Second District

(RO-2131 — 5M — 3/02)

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C 1691 V2

From: George Flynn gflynn@karballaw.com
Subject: Re: Dulberg
Date: June 19, 2020 at 2:56 PM
To: Julia WIlliams juliawilliams@clintonlaw.net

Ok glad to hear. Thanks Julia.

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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> On Jun 19, 2020, at 2:54 PM, Julia WIlliams <juliawilliams@clintonlaw.net> wrote:
>
> Thanks George. We are still on. This will be the first remote deposition that I have taken so I am still working on figuring out the exhibits. I believe that I can upload them to the US Legal system and then share them during the deposition. But, if not, I will be sure to have them to you no later than Tuesday by 5pm.
>
> Best Regards,
>
> Julia Williams
> Of Counsel
> The Clinton Law Firm
> 111 W. Washington, Ste. 1437
> Chicago, IL 60602
> P:312.357.1515
> F: 312.201.0737
> juliawilliams@clintonlaw.net
>
> This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.
>
> > On Jun 19, 2020, at 2:54 PM, George Flynn <gflynn@karballaw.com> wrote:
> >
> > Julia: I just received your notice of attorney lien. Will you still be taking the dep next week?
> >
> > My experience with receiving liens at this stage of litigation(in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for Mast's dep.
> >
> > Thanks
> >
> > George Flynn
> >
> > Karbal | Cohen | Economou | Silk | Dunne | LLC
> > 150 S. Wacker Drive
> > Suite 1700
> > Chicago, IL 60606
> > <phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
> > <fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
> > <envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
> >
> > CONFIDENTIALITY NOTE:
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EXHIBIT 15

Dunne, LLC, which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

From: George Flynn gflynn@karballaw.com
Subject: RE: Dulberg
Date: June 26, 2020 at 1:13 PM
To: Julia WIlliams juliawilliams@clintonlaw.net

GF

Sure, feel free to give me a call.

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Friday, June 26, 2020 12:13 PM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: Dulberg

Dear George,

Thank you for the follow up. I am working on the production today. Are you around on Monday—can we chat then?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

EXHIBIT 16

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Jun 25, 2020, at 12:31 PM, George Flynn <gflynn@karballaw.com> wrote:

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Julia:

Just wanted to write while it is fresh in my mind, but I'd like to close the dangling issues from your client's deposition, including the production of communications with Mr. Gooch in view of the "discovery rule" issues.

Please advise

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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From: **Julia WIlliams** juliawilliams@clintonlaw.net
Subject: Re: Need clarification on outstanding issues before your departure
Date: July 30, 2020 at 10:05 AM
To: Paul Dulberg Paul_Dulberg@comcast.net
Cc: Ed Clinton ed@clintonlaw.net, Mary Winch marywinch@clintonlaw.net

Dear Paul,

Please see my responses below.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

[redacted]

> 3. Similar to the last question, Have the objections in the Mast deposition been worked out or ruled on by judge Meyer?

There has been no motion practice on the issue and thus, there is no ruling. Your future counsel will need to bring that before the Judge at some point.

[redacted]

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Katherine M. Keefe
Clerk of the Circuit Court

THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)
	)
Plaintiff,	)
	)
	)
v.	) Case No. 17 LA 377
	)
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)
	)
Defendants.	)

NOTICE OF FILING

TO A Attorneys **R c rd P c d S r c L**

PLEASE TA E NOTICE that on the 21 day of November 2022, I filed with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, **PLAINTIFF'S AMENDED MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TA EN IN VIOLATION OF SUPREME COURT RULE REMOTE ELECTRONIC MEANS DEPOSITIONS d ORDERS OF THE ILLINOIS SUPREME COURT I r ILLINOIS COURTS RESPONSE COVID- EMERGENCY IMPACT ON DISCOVERY M R CORRECTED ORDER APRIL , d M R AMENDED ORDER JUNE , d GRANT LEAVE TO TA E THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST** a copy of which is attached and hereby served upon you.

November 21, 2022

ALPHONSE A. TALARICO
Law Office of Alphonse A. Talarico
ARDC No. 6184530
707 Skokie Boulevard, Suite 600
Northbrook, Illinois 60062
(312) 808-1410

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Attorney for Plaintiff Paul Dulberg
contact@lawofficeofalphonsetalarico.com

AFFIDAVIT OF SERVICE

I, the undersigned attorney, certify that this Notice was served to all parties listed on the attached **S r c L** by E-filing with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, **PLAINTIFF'S AMENDED MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TA EN IN VIOLATION OF SUPREME COURT RULE REMOTE ELECTRONIC MEANS DEPOSITIONS d ORDERS OF THE ILLINOIS SUPREME COURT I r ILLINOIS COURTS RESPONSE COVID- EMERGENCY IMPACT ON DISCOVERY M R CORRECTED ORDER APRIL , d M R AMENDED ORDER JUNE , d GRANT LEAVE TO TA E THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST** and by email on November 21, 2022.

Under penalties as provided by law pursuant to 735 ILCS 5 1-109, I certify that the statements set forth herein are true and correct.

s Alphonse A. Talarico
Alphonse A. Talarico

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SERVICE LIST

GEORGE FLYNN
arbal Cohen Economou Sil Dunne, LLC
South ac er Drive, Suite
Chicago, Illinois
( )
Attorneys for Defendants
gflynn arballa com

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST Defendants.	)))))) Case No. 17 LA 377)))))

PLAINTIFF'S AMENDED MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TA EN IN VIOLATION OF SUPREME COURT RULE REMOTE ELECTRONIC MEANS DEPOSITIONS d ORDERS OF THE ILLINOIS SUPREME COURT I r ILLINOIS COURTS RESPONSE COVID- EMERGENCY IMPACT ON DISCOVERY M R CORRECTED ORDER APRIL , d M R AMENDED ORDER JUNE , d GRANT LEAVE TO TA E THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Motion To Exclude the Discovery Deposition of Defendant Hans Mast taken in violation of Supreme Court Rule 206 h(2) and Supreme Court Orders states as follows:

RELEVANT FACTS

1) On June 25, 2020 the Discovery Deposition of Defendant Hans Mast was taken pursuant to a non-filed notice (violation waived) but all 15 exhibits and the questioning

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of deponent Hans Mast based upon all 15 exhibits violated the Rules and Orders of the Illinois Supreme Court.

2) Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition without any exhibits from Defendants' Attorney's office and the exhibits 1-11 and 13-15 from the Plaintiff's current Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)

3) Plaintiff's current Attorney objected to the use of the discovery deposition of Defendant Hans Mast during the hearing because there's exhibit(s) missing. (Please see Report of Proceedings April 27, 2022 page 31 line 21-24 which is part of the Clerk's online file)

4) Plaintiff's current Attorney more completely explained to the Court that the discovery deposition of Hans Mast in all its variations was missing exhibit 12. (Please see Report of Proceedings April 27, 2022 page 36 line 19-24 to page 37 line 1-3 which is part of the Clerk's online file)

5) Thereafter this Honorable Court asked Defendants' Attorney whether he had exhibit 12. (Please see Report of Proceedings April 27, 2022 page 37 line 19-20 which is part of the Clerk's online file)

6) The Attorney for the Defendants responded "I may. I don't know. I haven't look for it." (Please see Report of Proceedings April 27, 2022 page 37 line 20-21 which is part of the Clerk's online file)

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7) This Honorable Court ordered Defendants' Attorney to produce exhibit 12 if he has it. (Please see Report of Proceedings April 27, 2022 page 39 line 16-21 which is part of the Clerk's online file)

8) On April 28, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney's office with a link at https: www.dropbox.com to access Mast Dep Ex.12. (Please see Plaintiff's Exhibit #1 attached)

9) Plaintiff's current Attorney noticed that the label purporting to be authentic on Hans Mast's discovery deposition exhibit 12 seemed not to match the other 14 exhibit label as to fonts, shape, color, and DEPONENT's NAME (Hans Mist not Hans Mast).

10) On May 18, 2022 Plaintiff's current Attorney caused to be served upon Certified Shorthand Reporter Barbara G. Smith a Subpoena For Records in which she was requested to produce "The original discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic shorthand notes."

11) Certified Shorthand Reporter Barbara G. Smith's complete response submitted on a flash drive was received on June 16, 2022.

12) Contained on the flash drive is a file titled HPSCANS and therein were a series of communications and handwritten notes between the Certified Shorthand Reporter Barbara G. Smith and Noelle Kappes of US Legal Support and Plaintiff's former attorney Julia C. Williams clearly indicating that Hans Mast discovery deposition taken June 25, 2020 did not have exhibit 12 sent before the deposition nor uploaded during the deposition and said exhibit was never in the Certified Shorthand Reporter Barbara G. Smith's possession before, during or after the deposition was taken, transcribed or

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submitted for transmission. (Please see Plaintiff's Group Exhibit #2 Barbara G. Smith job papers0001.pdf and job papers0002.pdf attached)

13) Thereafter, on June 21, 2022 Plaintiff's current Attorney sent Hans Mast's discovery deposition taken on June 25, 2020 with exhibits 1-11 and 13-15, that were located in Plaintiff's former Attorney Julia C. Williams' electronic file with exhibit 12 received from Defendants' Attorney's office on April 28, 2022 with Barbara G. Smith's flash drive to Plaintiff's S. Ct. Rule 213(f)(3) expert Robin D. Williams, MFS, MS, D-BFDE Board Certified, Omni Document Examinations for analysis.

14) On July 11, 2022 Plaintiff's current Attorney received Robin D. Williams's Report of Findings concluding that the label on exhibit 12 did not come from the same group or batch of labels identified as exhibits 1-11 and 13-15. (Please see Plaintiff's Exhibit #3 Robin D. Williams Report of Findings July 11, 2022 attached)

15) On July 11, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney stating that the Hans **MIST EMPHASIS ADDED** exhibit 12 alleged to be part of Defendant Hans Mast's discovery deposition was received separately from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 14, 2020 while the Deposition and Exhibits 1-11 and 13-15 were received from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 10, 2020. (Please see Plaintiff's Exhibit #4 attached)

LAW AND ORDER(S)

Illinois Supreme Court Rule 206. Method of Taking Depositions on Oral Examination

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(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating **c**

EMPHASIS ADDED the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. (1) Reserved. (2) **A r r d r d c r d d r d r d d c r d r d r r r r d r d r r d , d r c r r d r d**

EMPHASIS ADDED (3) Reserved. (4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties. (5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for

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the deposition set by Rule 206(d), by stipulation, or by court order. (6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

M.R.30370 CORRECTED ORDER APRIL 29, 2020

(Please see Plaintiff's Exhibit #5 attached)

M.R.30370 AMENDED ORDER JUNE 4, 2020

(Please see Plaintiff's Exhibit #6 attached)

ILCS / ro Ch. , par.

Sec. . Po er o co rts to a e r les. a The S pre e Co rt o this State has po er to a e r les o pleading, practice and proced re or the circ it, Appellate and S pre e Co rts s pple entar to, t not inconsistent ith the provisions o this Act, and to a end the sa e, or the p rpose o a ing this Act e ective or the convenient ad inistration o j stice, and other ise si pli ing j dicial proced re, and po er to a e r les governing pleading, practice and proced re in s all clai s actions, incl ding service o process in connection there ith. nless other ise indicated the te t, re erences in this Act to r les are to r les o the S pre e Co rt.

S ject to the r les o the S pre e Co rt, the circ it and

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Appellate Co rts a a e r les reg lating their doc ets, calendars, and siness.

So rce P.A. .

(735 ILCS 5 1-105) (from Ch. 110, par. 1-105)

Sec. 1-105. Enforcement of Act and rules. The Supreme Court may provide by rule for the orderly and expeditious administration and enforcement of this Act and of the rules, including the striking of pleadings, the dismissal of claims, the entry of defaults, the assessment of costs, the assessment against an offending party of the reasonable expenses, including attorney's fees, which any violation causes another party to incur, **r r c**

r r EMPHASIS ADDED

(Source: P.A. 82-280.)

Rule 211. Effect of Errors and Irregularities in Depositions; Objections (a) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice. (b) As to Disqualification of Officer or Person. Objection to taking a deposition because of disqualification of the officer or person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification

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becomes known or could have been discovered with reasonable diligence. (c) As to Competency of Deponent; Admissibility of Testimony; Questions and Answers; Misconduct; Irregularities. (1) Grounds of objection to the competency of the deponent or admissibility of testimony which might have been corrected if presented during the taking of the deposition are waived by failure to make them at that time; otherwise objections to the competency of the deponent or admissibility of testimony may be made when the testimony is offered in evidence. (2) Objections to the form of a question or answer, errors and irregularities occurring at the oral examination in the manner or taking of the deposition, in the oath or affirmation, or in the conduct of any person, and errors and irregularities of any kind which might be corrected if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition. (3) Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving succeeding questions and, in the case of the last questions authori ed, within 7 days after service thereof. (4) A motion to suppress is unnecessary to preserve an objection seasonably made. Any party may, but need not, on notice and motion obtain a ruling by the court on the objections in advance of the trial. (d) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the

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testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after the defect is, or with due diligence might have been, ascertained. Committee Comments This rule is derived from former Rule 19-9. The language is unchanged except that the period for filing objections to the form of written questions has been extended to seven days in subparagraph (c)(3) in keeping with the committee's policy of measuring time periods in multiples of seven days.

VIOLATIONS

A) The exhibits that were decided upon to be used by former counsel Julia C. Williams, and specifically exhibit 12, were not provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition. In fact,

r r d d c r d r EMPHASIS ADDED

A1) On or about April 30, 2020 Defendants' Counsel sent an email to Plaintiff's former Counsel Julia C. Williams indicating an awareness of the current Supreme Court rules regarding depositions when he wrote "The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.." (Please see Plaintiff's Exhibit #7 attached.)

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A2) On or about May 29th 2020 former attorney Julia C. Williams sent an email to Defendants' Counsel indicating an awareness of the current Supreme Court rules regarding depositions when she wrote " …and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option." (Please see Plaintiff's Exhibit #8 attached.)

A2.1) On or about June 19, 2020 Defendants' attorney emailed Plaintiff's former attorney Julia C. Williams stating "Julia: I just received your notice of attorney lien. Will you still be taking the dep next week

My experience with receiving liens at this stage of litigation (in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for the Mast's dep. (Please see Plaintiff's Exhibit 15 attached.)

A3) On or about June 23, 2020 Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 23 exhibits that she **dd d** use in the discovery Deposition of Defendant Hans Mast on June 25, 2020. Additionally she indicated that there **c d dd d r r c** . **dd d** Additionally she wrote "…and I will do my best to send them ahead of time." (Please see Plaintiff's Exhibit #9 attached.)

A3.1) On or about June 24, 2020 at 10:49 AM (less than 24 hours before the start of the discovery deposition of Defendant Hans Mast) Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 1 more exhibit that she **dd d** use. (Please see Plaintiff's Exhibit 9 attached.)

A3.2) On June 25, 2020 the discovery deposition of Hans Mast was called at 10:00 AM "pursuant to subpoena and pursuant to the Code of Civil Procedure of the State of

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Illinois and the **RULES OF THE SUPREME COURT THEREOF, PERTAINING TO THE TA ING OF DEPOSITIONS, EMPHASIS ADDED** (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. and Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment
Exhibit G page 1 lines 15 to 17)

A3.3) On June 25, 2020 at 12:31 PM (approximately 15-30 minutes after the conclusion of the discovery deposition of Defendant Hans Mast, Defendant's attorney sends an email to Plaintiff's former attorney Julia C. Williams discussing what is "…fresh in his mind…" but any conversation regarding errors and irregularities in the just concluded deposition is notably absent. (Please see Plaintiff Exhibit 16 attached.)

A3.4) Shortly after the Deposition ended Barbara G. Smith emailed Julia C. Williams asking for Exhibit 12 and Julia C. Williams responded by sending a blank email. Additionally, Barbara G. Smith called and left a message for Julia C. Williams on July 6, 2020 again requesting Exhibit 12. On July 7, 2020 Barbara G. Smith submitted the June 25, 2020 discovery deposition of Hans Mast to U.S. Legal Support without Exhibit 12. (Please see Plaintiff's Group Exhibit 2 attached).

A3.5) The Deposition of Defendant Hans Mast was received by Plaintiff's former attorney and Defendants' attorney from U.S. Legal Support **H M E EMPHASIS ADDED** on July 10, 2020.

A4) On or about July 13, 2020 Noelle Kappes, Scheduling and Client Solution Manager U.S. Legal Support sends an email to Plaintiff's former attorney Julia C. Williams stating that "the court reporter indicated you would be sending us exhibit 12 from this deposition (discovery deposition of Defendant Hans Mast taken remotely on June 25,

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2020) so that we can include it with the transcript. I don't believe we have received it can you send it tomorrow " (Please see Plaintiff's Exhibit #10 attached)

A5) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams emails to Noelle Kappes "Dear Noelle, I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here." (Please see Plaintiff's Exhibit #10 attached.)

A6) On or about July 14, 2020 wtolliver2uslegalsupport.com emailed to Plaintiff's former attorney and Defendants' attorney that "Exhibit 12 is now available to download" (Please see Plaintiff's Exhibit #11 attached)

A6.1) Exhibit 12 was never presented to the officer administering the oath Barbara G. Smith, CSR, RPR Notary Public but was sent after the deposition of Defendant Hans Mast was taken on June 25, 2020 but sent on July 14, 2020 to Noelle Kappes, Scheduling and Client Solution Manager U.S. Legal Support who forwarded it to wtolliver2, another employee of U.S. Legal Support who created the misspelled, non-conforming HANS M**I**ST [**EMPHASIS ADDED** label.

A7) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams wrote to Plaintiff "Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was [emphasis added] (Please see Plaintiff's Exhibit #12 attached)

A8) On or about August 5, 2022 Plaintiff's former attorney inexplicitly emails to Mary Winch marywinch@clintonlaw.net,ed@clintonlaw.net the same email she sent to the same recipients on July 14, 2020. (Please see A5 above and Plaintiff's Exhibit #13 attached)

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B) The deposition participants were not able to view the exhibits in real time during the deposition.

B1) The following clearly indicated a problem with viewing the exhibits submitted and the Defendant's internet equipment and internet connection and audio during the attempted remote discovery deposition of Defendant Hans Mast:

B1.1) Q. So I'm uploading Exhibit 2, it's titled Dulberg Mast Dep Exhibit 2, and this should be the original complaint filed in the case Dulberg versus Gagnon, et al., 12 LA 178, filed in McHenry County. Do you see that document

A. Yeah. What I'm going off are an email I got with all the exhibits attached, so I'm not that's what I'm looking at.; (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 17 lines 3 to 10 also found on 209 of 464 previously filed.)

B1.2) Q. Okay.

A. Oh, uh, I think It just kicked me off.

Mr. Flynn: I got disconnected, too. It's the Wi-Fi.

By Ms. Williams:

Q. Okay, we'll just wait a minute here.

A. I can hear you. I just can't see you. Q. We'll wait a minute until you can get your video back on.

Mr. Flynn: Julia, we think the Wi-Fi may have dropped **r c dd d**

Ms. Williams: Okay. Well, let's just give a minute and see.; (Please see Defendants'

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The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 22 lines 1 to 10 also found on 211 of 464 previously filed.)

B1.3) Q. Okay. I just uploaded Dulberg Mast Exhibit 4 and it says letter it's "Letter Re Settlement," and that should be still be Exhibit 4 that was emailed around to Counsel so that you would have it. And it is labeled POP192 and POP193. Do you recogni e those documents

A. Wait. I think the Internet, maybe because we were having problems, is the Internet went down, so now my exhibits aren't pulling up. Can you try again Do you have that, George

Mr. Flynn: Yeah, here's the **rd c dd d**

The Witness: I'll look at the **rd c dd d** , so what are you asking

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 26 lines 5 to 17 also found on 212 of 464 previously filed.)

B1.4) Q. Okay. Just uploaded Exhibit 5, and this is email dated October 30, 2013, and it's marked at the bottom 000195.

A. Okay.

Q. Okay, and here in this email it looks like you started this email chain to Paul on October 25, 2013. Do you see that

A. It looks like there s a couple emails here. There's several pages. You just mean the first page

Q. I think It should only be, I believe it's only one page and it looks like

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A. Oh, these aren't part of it Just one page

Q. The document that I have is just one page. Are we looking at the same thing

A. Okay.

Q. It's POP00195 on the bottom.

A. Yeah, he had a couple other pages on it, but okay.

Q. Okay. I just want to make sure that I didn't okay. And on the bottom there of the first sheet, if you have several, **l d r r d dd d ,** it states, "Friday, October 25, 2013," do you see that

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 28 lines 16 to 24 and page 29 lines 1-14 also found on 212 of 464 previously filed.)

B1.5) Q. Okay. So I'm going to upload another file here.

A. Yeah, our internet is down. That's why I can't bring these up.

Q. Okay.

Mr. Flynn: Julia, just so you know, I've got hard copies of the majority of the exhibits you sent with the exception of the larger files, like the insurance policy and the dep transcripts.

MS. Williams: Okay. Okay, great.

Mr. Flynn: I've got some of the deposition transcripts, but I didn't want to waste a lot of paper and ink at home.

MS. Williams: Okay. I think we'll be For the most part, I think we'll be fine and we'll deal with it if and when we get to that point.

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Q. Okay. So the document that I'm looking at now is another email on the it's now titled Exhibit 6. I don't think it was entitled Exhibit 6 in what I sent to George, but it's an email that the first date on the email is November 4, 2013, and the last date is November 5, 2013 email chain and it's at the bottom it's stamped Dulberg001531.

A. What exhibit is it

Q. I think it might have been **-A dd d** to George. It's now exhibit 6 for the purpose of this deposition. (Please note that there never was an exhibit marked 5-A)

A. Yeah, that wasn't part of the download then. Do you have

Mr. Flynn: Yeah, I don't think that was included. (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 31 lines 10 to 24 and page 32 lines 1 to 17 also found on 213 of 464 previously filed.)

B1.6) Q. Okay. Okay, I'm going to stop screen sharing. Okay. I'm going to upload another file. This is Deposition Exhibit 7. George, you probably had it as Exhibit 6, but for the purpose of this deposition right now it's going to be 7 and it's an email chain dated

A. I have these on the computer. You don't need to, unless you want to, but I'm just saying I have these on the computer.

Q. Okay, but Barb needs them, so that's why I keep uploading them, otherwise she doesn't have them. Okay. So Exhibit 7, and it's POP00181 and POP00182,and it's two pages of an email chain, it starts November 15th and

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ends November 19, is that accurate

A. Yes.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 35 lines 5 to 20 and also found on 214 of 464 previously filed.)

B2) From this point on the transcript indicated that the deponent could not view any exhibits uploaded so that Plaintiff's former attorney Julia C. Williams was asking questions based upon her attempted uploads but the deponent Defendant Hans Mast was looking at physical documents to respond based upon the following:

B2.1) Q. Okay. So I'm going to upload another document and then we can keep going here. And then this is Exhibit 8 and for it is a letter from Ronald Barch to you, Hans, and it's POP000667. Do you **dd d** that

A. What date is it

Q. I'm sorry, dated November 18, 2013,

A. Yeah, **I dd d** that.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 36 lines 6 to 13 and also found on 214 of 464 previously filed.)

B2.2) Q. Yep, it's POP000181.

A. What exhibit

Q. It's Exhibit 7.

A. 7, that's the letter.

Q. If may be 6 for you. It may be 6 for you.

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A. Let’s take a look. What page is the email

Q. The date at the top of the email chain is Tuesday, November 19, 2013.

A. Yeah, I **dd d** that.

(Please see Defendants’ The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast’s Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 38 lines 1 to 9 and also found on 215 of 464 previously filed.)

B2.3) Q. I’m going to add another exhibit here. Okay, for the purpose of this deposition it’s Deposition Exhibit 9. This is a memorandum. At the top it will say, “ memorandum,” and the date is November 20, 2013, and at the bottom it is identified as POP and then there’s 000003, I believe. Do you **dd d**

A. What exhibit is it

Q. I think you’re probably going to have it as Exhibit 8, but for the purpose of this deposition it’s actually going to be Exhibit 9.

(Please see Defendants’ The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast’s Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages page 40 lines 12 to 22 and also found on 214 of 464 previously filed.)

B2.4) Q. Okay, I’m uploading Dulberg Mast Dep Exhibit 12. **T d L**

R rc A d rd c r ’ ’ S

B r , r c , l

N r d d ’ d d ’ , ’ r r , ,

D r , r r D r Ac , l’ rr , r ’

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(Please see Defendants’ The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast’s Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 49 lines 20 to 24, page 50 lines 1 to 11 and also found on 217-218 of 464 previously filed.)

C) The case of *Tilschner v. Spangler* No.2-10-0111, 949 N.E.2d 688, 350 Ill.Dec.896, 409 Ill.App.3d 98 (2011) which Plaintiff Paul Dulberg specifically instructed his former attorney Julia C. Williams to include as an exhibit to be the basis of questions to the deponent Defendant Hans Mast because: Mast had personally given a copy of the certified opinion to Dulberg on November 20, 2013; had personally appeared and argued the case along with Thomas J. Popovich, and Mark J. Vogg of Defendant the Law Offices of Thomas J. Popovich, P.C.; and had insisted that the decision in the case was the reason Plaintiff Paul Dulberg would not prevail in the underlying case against the Defendants Carolyn and William (Bill) McGuire. (This is based upon information and belief pending this Honorable Court’s ruling upon Plaintiff’s previously filed Motion To Compel concerning his former attorney Julia C. Williams’ claims of Attorney-Client Privilege and Work Product.) (Please see Plaintiff’s Exhibit 14 *Tilschner v. Spangler* No.2-10-0111 attached)

C1) *Tilschner v. Spangler* No.2-10-0111 was not included in exhibit 12 as constituted, when sent 19 days after the deposition had concluded, in response to the inquires of

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Noelle Kappes Scheduling and Client Solutions Manager U.S. Legal Support (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G found on pages 264 - 290 of 464 previously filed.)

C2) *Tilschner v. Spangler* No.2-10-0111 was inexplicitly replaced with an exact duplicate of the *Lejato v. AT&T, INC.,* No. 1-95-0447 669 N.E.2d 645 283 Ill. App. 3d 126 (1996) (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages 264-285 of 464 previously filed.)

D1) On November 4, 2022 Defendants' attorney was allowed to raise the issue of "waiver" alleging that both Defendant Hans Mast's attorney and Plaintiff Paul Dulberg waived any and all objections by stating " all objections to that manner were waived by both parties." (Please see Report of Proceeding November 4, 2022 page 14 line 14-15 which is contained in the Clerk of Court's electronic file for this matter.

D2) The Illinois General Assembly empowered the Illinois Supreme Court to make and enforce rules for the Circuit, Appellate and Supreme Court. (Please see above - *ILCS / ro Ch. , par.* and (735 ILCS 5 1-105) (from Ch. 110, par. 1-105).

D3) Illinois Supreme Court Rule 211 does not allow opposing attorneys to waive the rules and orders powers granted to the Illinois Supreme Court by the Illinois General Assembly.

D4) It should be noted that:1) there were multiple emails between the Plaintiff and

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Defendants' attorneys as close in time as less than 24 hours before and at most 30 minutes after the deposition and the subject of "waiver" was not discussed. (Please see Exhibits 9, 15 and 16 attached.); 2) On July 30, 2020 Julia C. Williams, in response to Plaintiff's question about the Deposition of Hans Mast did not respond with anything about "waiver" of issues and cavalierly stated "Your future counsel will need to bring that before the Judge at some point" Please see Plaintiff Exhibit 17 attached): 3) Julia C. Williams filed her Motion to Withdraw on behalf of herself and the Clinton Law Firm on August 18, 2020 (Please see the Clerk of McHenry County Circuit Court's electric file for this case.)

W r r , Plaintiff Paul Dulberg prays that Plaintiff's Motion to Exclude the discovery deposition of Defendant Hans Mast taken remotely on June 25, 2020 is granted, that Plaintiff request to take the deposition of Defendant Hans Mast is granted, but if Defendants' verbal request to file a sur-response is allowed then the Plaintiff be granted a reasonable time to file a sur-reply after considering what's left of Plaintiff's time to respond to Defendant's Motion for Summary Judgment and for any other additional relief this Honorable Court deems fair and equitable.

Respectfully submitted,

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C 1720 V2

/s/ Alphonse A. Talarico

Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

707 Skokie Boulevard Suite 600

Northbrook, Illinois 60022

(312) 808-1410

ARDC No. 6184530

contact@lawofficeofalphonsetalarico.com

alphonsetalarico@gmail.com

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Page 25 of 73
C 1721 V2

RE: Dulberg v. Mast and Popovich

Linda Walters <lwalters@karballaw.com>
Thu 4/28/2022 4:00 PM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please use the below link to access Mast Dep Ex. 12.

https://www.dropbox.com/s/b2lmm0a6s3oex3d/Mast%20Dep%20Ex.%2012.PDF?dl=0

Thank you.

Linda Walters
Asst. to George Flynn

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@karballaw.com

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EXHIBIT 1

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
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Attachment available until Aug 13, 2020

Dear Noelle,

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

put this X in folder on desktop & renamed bad file 12-A - this is the new 12

Click to Download
Dulberg Mast Dep Exh 12 Legal Research .pdf
35.1 MB

still couldn't send 1-22-21 There was a problem reading this document.

On Jul 13, 2020, at 8:37 PM, Noelle Kappes <nkappes@uslegalsupport.com> wrote:

called Noelle - 10:30 - 7-14 - she will have William look at it or email us/Julia

Hi there,

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you,
Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.
Witness: Hans Mast
Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.
Date: 06/25/2020
Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)
Location:

GROUP EXHIBIT 2

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
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Reporter and all Parties will appear via Video Conference.

Thank you for choosing U.S. Legal Support.
Court Reporting | Record Retrieval | Trial Services

Please note: To ensure your safety and the safety of others, when visiting a U.S. Legal Support office, please practice responsible social distancing measures. We ask that you provide and wear your own mask in common areas (halls, restrooms, break areas, cube areas, conference rooms, etc.). Thank you for your understanding and cooperation.

<CFM923267.PDF>

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
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Hi Ms. Williams – This is Barb Smith, the court reporter from US Legal that was present at the dep of Hans Mast on 6-25-20. I am currently working on the transcript and while preparing the exhibits I noticed that Exhibit No. 12, which is the 27 pages of legal research, did not download completely. The Exhibit 12 that I have has blank pages 1-22 and only pages 23-27 have print on them. I just wanted to let you know and check if you wanted to resend or if that's how No. 12 is supposed to be.

Thank you.

Barb

7-2-20

Williams responded 7-2-20
but the ~~dept~~ space was
blanks.
called 7-6-20 Left Message
7-7 submitted job and emailed
Noelle about it

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
Purchased from re:SearchIL

Job 923267

From: Smith Family (barbnwally@att.net)

To: nkappes@uslegalsupport.com

Date: Tuesday, July 7, 2020, 09:32 PM CDT

Hi Noelle -- Hope you're doing well. I just want to let you know I submitted this job, 923267, last night. Two things I wanted to let you know about. First, this job and 925187 were both submitted last night. These are the first two I used Box for the exhibits. I hope I did them correctly. If there's any problems, please let me know.

For 923267 I have another issue. One of the exhibits, #12, was downloaded during the Zoom session. It's 27 pages and when I first looked at it I noticed that pages 1-22 were blank. I emailed Julia Williams, our client, on 7-2 about this. She responded and the message section of her email was blank. I waited for another email but received none. On 7-6 I called and left her a message and have not received a response. I did note all of this information in the email that I sent the job with.

The main reason I'm telling you all of this is that I am going to be out of town Thursday and Friday. My daughter is getting married in Arkansas so I will not be bringing my computer with me and will be quite busy. Hopefully I hear from her on Wednesday.

Thanks,

Barb

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C 1726 V2

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF,	)	
v.	)	No. 17 LA 377
THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	)	

AMENDED NOTICE OF DEPOSITION

TO: **All Attorneys of Record (See Attached Service List)**

YOU ARE HEREBY NOTIFIED, that pursuant to the provisions of Section 2-1003 of the Illinois Code of Civil Procedure and Supreme Court Rule 206, the following deposition will be taken for the purpose of discovery before a Notary Public via remote electronic deposition at the time and place specified, upon oral interrogatories to be propounded to said witness.

Deponent	***Location***	***Date***	***Time***
Hans Mast	Compton Law Group 85 Market St. Elgin, IL 60123 (remote electronic deposition)	June 25, 2020	10:00a.m.

YOU ARE HEREBY FURTHER NOTIFIED that you are by this Notice required to have present at the date, time, and place stated, the said Deponent for oral examination for the purpose of discovery. YOU ARE FURTHER NOTIFIED that PAUL DULBERG, a party to this case, intends to be present at the above noticed deposition.

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed by 5:00 p.m. on June 4, 2020.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Julia C. Williams
Julia C. Williams

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SERVICE LIST:

George Flynn
~~Karbal | Cohen~~ | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

rep deft
ELFPLT

Sps
David Gagnon
Caroline & Bill McGuire
Elder Avenue
Ronald Burch

Exam
Williams 5
Flynn ~~48~~ 76

X
1 - 16
2 - 17
3 - 18
4 - ~~28~~ 26
5 - ~~30~~ 28
6 - ~~34~~ 32
7 - ~~37~~ 35
8 - ~~38~~ 36
9 - ~~40~~ 40
10 - ~~48~~ 46
11 - ~~50~~ 48
12 - ~~51~~ 49
13 - ~~55~~ 53
14 - ~~57~~ 55
15 - ~~66~~ 64

Choi - B - Commonwealth Edison is the only case I have in #12 download

/s/ Julia C. Williams
Julia C. Williams

witness said he only has Lajato case in his #12

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

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C 1728 V2

U.S. Legal Support - Chicago
200 West Jackson
Suite 600
Chicago, IL 60606
Telephone: 312-236-8352
Fax: 312-236-3344

U.S. Legal Support

JOB WORKSHEET

#12 1-22 blank
23-27 only

Resource	**Barbara G. Smith**		
Job No.	**923267**	**Job Type**	**Deposition**
Job Date	**06/25/2020**	**Job Time**	**10:00 AM** (GMT-06:00) Central Time (US & Canada)
Due Date	07/10/2020	**Notation**	R/VC
Witness	Hans Mast		
Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	**17LA377**		
Location	***U.S. Legal Support, Inc. - Remote Video Conference** **Reporter and all Parties will appear via Video Conference.** **Phone:** **Room No.:** **Detail: To join the Video Conference, a website link will be provided by U.S. Legal Support the business day prior to the setting.**		
Remarks	Court Reporter & RemoteDepo *everyone appearing remotely except attorney George Flynn who will be with the deponent REPORTER MUST READ THE ATTACHED READ ON		

83 pgs warned

Client	Clinton Law Firm 111 West Washington Street Suite 1437 Chicago, IL 60602 Phone: 312-357-1515 Fax: 312-201-0737
Contact	Julia Williams
Ordered By	Julia Williams via email
Requested Service	Service Item: RemoteDepo w/InstantExhibit - Videoconferencing — Units: 1.00

rep plf 57 PHAO

julia williams@clintonlaw.net

Thank you for accepting this assignment. Please note that by accepting this assignment, you acknowledge U.S. Legal Support's requirement to have an up-to-date W-9, BAA, and CIA form submitted prior to our releasing payment.

Please provide the transcript to our production team by due date reflected above. Exhibits to be delivered to production within 3 days after deposition.

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Page 33 of 73
C 1729 V2

13 interrog
14 interrogs
15 mtn

16
17
18
19
20

#1 retainer
2 complaint
3 memo
4 ~~settle~~ demand
5 email
6 email
7 email 11-15
8 email
9 memo
10 memo 12-18
11 settlement letter
12 case law

Nov 13

witness & atty flyn in McHenry Co.

start 10:08
end 12:20
#18

AP: Paul
~~Dulberg~~
Dulberg

Mr. Flynn - dept
copy reg + mini

OMNI
Document Examinations

Robin D. Williams, MFS, MS, D-BFDE
Board Certified

Bonnie L. Schwid, B.S., D-BFDE
Board Certified

July 11, 2022

Attorney Alphonse A. Talarico
Law Office of Alphonse Talarico
707 Skokie Blvd.
Suite 600
Northbrook, Illinois 60062

REPORT OF FINDINGS

RE: Dulberg v Popovich et al LA 377

Dear Attorney Talarico,
Pursuant to your request, I examined the following documents:
Document containing a disputed Exhibit Label
(machine copy)

Q-1 The first page of a 27-page document containing machine copies of pages from a book or books. The first line on the yellow label reads "Exhibit 12".
The label is in the bottom center of a machine copy of 2 pages. The page number in the upper left corner is 502. The center heading reads: "218 Illinois Decisions".
Dated 6-25-2020.
Some of the pages in the 27-page document are duplications of previous pages.
The page sequencing in the 27-page document is as follows: 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 854, 855, 856, 857, 858.

Document(s) submitted as containing genuine Exhibit Labels
(machine copies):

K-1 The yellow label at the bottom right of the document reads "Exhibit 1".
K-2 The yellow label at the top center of the document reads "Exhibit 2".
K-3 The yellow label at the bottom right of the document reads "Exhibit 3".
K-4 The yellow label at the bottom right of the document reads "Exhibit 4".
K-5 The yellow label at the bottom right of the document reads "Exhibit 5".
K-6 The yellow label at the bottom right of the document reads "Exhibit 6".
K-7 The yellow label at the bottom right of the document reads "Exhibit 7".
K-8 The yellow label at the bottom right of the document reads "Exhibit 8".
K-9 The yellow label at the bottom right of the document reads "Exhibit 9".

EXHIBIT 3

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
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K-10 The yellow label at the bottom right of the document reads "Exhibit 10".
K-11 The yellow label at the bottom right of the document reads "Exhibit 11".
K-13 The yellow label at the bottom right of the document reads "Exhibit 13".
K-14 The yellow label at the top center of the document reads "Exhibit 14".
K-15 The yellow label at the bottom right of the document reads "Exhibit 15".

Assignment

The purpose of the examination was to determine whether the yellow label that is in question on Item Q-1, also identified as Exhibit Label #12 and the labels submitted as genuine on Items K-1 through K-11 and K-13 through K-15 all originated from the same group or batch of labels.

Procedure

The examination consisted of visual and microscopic study of the font styles, the discriminating variations of letter formations, letter designs, beginnings and endings of letters, t-crossings, spelling of words and exterior and interior shapes of the labels.

Opinion

It is the opinion of this examiner that the label in question identified as Q-1, Questioned Label #12, did not come from the same group or batch of labels identified as Items K-1 through K-11 and K-13 through K-15.

Discussion

Item Q-1, Exhibit Label #12 contained a different font in all of the words on the label (except in the word "Date") and in numerals 1 and 2 as illustrated in the attached charts.

It is important to note that the name of Hans *Mast* was misspelled on Item Q-1, Exhibit Label #12, as "Hans *Mist*".

It is noteworthy that in an enlargement of the label identified as Q-1, Exhibit Label #12, is the appearance of a squared outer edge in the upper left corner of the label that can be seen. This differs from the rounded outer edges of the known labels that were used for comparison.

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This examination was conducted from machine copies of the document in question and the exemplars used for comparison. I assume that they are accurate reproductions of the originals. If the original documents become available, I am requesting the opportunity to examine the original documents containing the original labels and revisit my opinion. However, I do not believe my opinion will change.

Please allow four weeks in the event that testimony will be required.

Respectfully submitted,
Omni Document Examinations

Robin D. Williams

Robin D. Williams, MFS, MS, D-BFDE
Diplomate-Board of Forensic Document Examiners

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Dulberg v. Popovich

George Flynn <gflynn@karballaw.com>
Mon 7/11/2022 10:25 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: Linda Walters <lwalters@karballaw.com>

1 attachments (26 MB)
EX 0012 Hans Mast 062520.pdf;

Mr. Talarico:

Below is a copy the transmittal email with exhibit 12 received by my office on July 14, 2020. A previous email from July 10, 2020 from US legal contained the other deposition exhibits. The link contained in the July 14 email produced the attached PDF of exhibit 12.

Regards,

From: "wtolliver@uslegalsupport.com" <wtolliver@uslegalsupport.com>
Date: July 14, 2020 at 11:13:35 AM CDT
To: George Flynn <gflynn@karballaw.com>
Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

U.S. Legal Support has switched to paperless production. Your litigation support package contains digital files of your transcript and exhibits. These files are also readily available 24/7 via our secure Client Online Portal. The certified original will be printed to facilitate lodging with the Court. Should you require a hard certified copy of the transcript or a CD of your files, please contact your local U.S. Legal Support office.

Thank you for choosing U.S. Legal Support.

We have uploaded the following file(s). To open or download, please click on the link(s) below.

File Information

Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Job No.	923267	Job Date	6/25/2020
Witness	H. Mast Exhibits		



If you are unable to see the links or are not redirected to the file(s), please copy and paste the URL below in your browser:
https://share.uslegalsupport.com/docs/download?tk=86791893-4ae0-47ae-884c-52dfe3f186c0

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377

Purchased from re:SearchIL

Available File(s)

File Type	File Name	Description	Size(KB)
Exhibit	EX 0012 Hans Mast 062520.pdf		26741

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George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
Please note our new address below effective May 27, 2022
200 S. Wacker Drive
Suite 2550
Chicago, IL 60606

P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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IN THE
SUPREME COURT OF ILLINOIS

In re: Illinois Courts Response to COVID-19 Emergency/Impact On Discovery	)	M.R.30370

Corrected
Order

In the exercise of the general administrative and supervisory authority over the courts of Illinois conferred on this Court pursuant to Article VI, Section 16 of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VI, sec. 16); and in view of the actions that have been taken by the Governor of the State of Illinois in response to the outbreak of the novel coronavirus (COVID-19); and consistent with the order issued by this Court on March 17, 2020,

IT IS HEREBY ORDERED:

Effective immediately and until further order of the Court, paragraph (h) of Illinois Supreme Court Rule 206 is temporarily amended as follows:

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) Reserved. ~~The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.~~

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

(3) Reserved. ~~Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.~~

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

(5) Time spent at a remote electronic means deposition in addressing necessary

EXHIBIT 5

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
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technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments
(April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Order entered by the Court.

SEAL OF THE SUPREME COURT
STATE OF ILLINOIS
AUG. 26. 1818

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, this 29th day of April, 2020.

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
Purchased from re:SearchIL

IN THE
SUPREME COURT OF ILLINOIS

In re: Illinois Courts Response to COVID-19 Emergency/Impact On Discovery	)	M.R. 30370

Effective immediately, the Court's corrected order of April 29, 2020 regarding Illinois Courts Response to COVID-19 Emergency/Impact On Discovery is amended to add a committee comment concerning the temporary amendment of paragraph (h)(3) of Illinois Supreme Court Rule 206 as follows:

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) Reserved. ~~The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.~~

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

(3) Reserved. ~~Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.~~

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

(5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

EXHIBIT 6

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
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Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments
(April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Committee Comments
(June 4, 2020)

Paragraph (h)(3)

Subparagraph (h)(3) has been deleted to avoid discovery disputes over physical presence by a party or a party's attorney at a remote deposition. Deletion of the subparagraph does not mean that personal presence by a party or a party's attorney is absolutely prohibited. During the pandemic not all depositions are required to proceed remotely, nor is a continuance automatically required if counsel cannot agree on a remote method. Absent agreement, the circumstances of a remote deposition are within the discretion of the trial court.

Order entered by the Court.

SEAL OF THE SUPREME COURT
STATE OF ILLINOIS
AUG. 26, 1818

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, this 4th day of June, 2020.

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
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Good Morning, George,

I hope you are doing well. I would prefer to do an in-person deposition given that the client will likely want to be present and that may present some issues with a video deposition. That being said, I don't want to hold this up indefinitely.

Let's plan for the end of June. If the "stay at home" orders get extended again, we will reconsider the "in person" v "remote" deposition.

I hope you and your family are well.

I am working remotely. If you need to call—the best remote number is 312.508.3376.

Thanks,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Apr 30, 2020, at 11:12 AM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

I hope you and your family are staying safe, healthy, and busy during these uncharted times.

The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.

Otherwise, perhaps we can get a live deposition on the books for some time in June. If so, I would

EXHIBIT 7

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suggest the 2nd half of June.

Let me know what you think

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
CONFIDENTIALITY NOTE:
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Hi Julia. I think June 17 will work. Just let me know the details. For the time being, I will plan on being at Hans' office for the deposition.

I am still not sure about June 5. I may attend live, but I should be able to make a decision by Tuesday.

How about touching base on Monday regarding the deposition logistics?

If you need to call, my cell is 773-341-8114.

So far so good here. I hope you and your family are doing well. Thanks

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Friday, May 29, 2020 4:37 PM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: Dulberg v. Popovich

Hi George,

How is the June 16,17, or 18? If not, we should also be open the week after on Wednesday or Thursday—June 24, 25.

I anticipate this will be a video deposition, despite things opening back up, I think it is the safest route for everyone and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option. Details to come on that. We can work that out and a time once we get the date nailed down.

I believe we have a June 5 status date. I believe we are encouraged to either use CourtCall or get an agreed order. I am happy to draft an agreed order setting out a date for close of oral fact discovery (f(1), f(2)) and setting the matter for further status, so we can submit it to the Judge prior to June 5 to avoid the date. Alternatively, I am also happy to appear via CourtCall if you intend to appear.

I hope you and your family are well.

EXHIBIT
8

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Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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On May 4, 2020, at 11:43 AM, George Flynn <gflynn@karballaw.com> wrote:

Thanks Julia. So far so good here.

Sounds like a plan. If you have a date in mind for late June, I have a feeling it will work for me. I can pass it along to Hans, so he can hold the date. Please also advise where you want to conduct the deposition.

Take care

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Monday, May 4, 2020 11:37 AM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: Dulberg v. Popovich

Received 11-22-2022 08:10 AM / Circuit Clerk Accepted on 11-22-2022 08:47 AM / Transaction #20395347 / Case #2017LA000377
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C 1743 V2

From: Julia Williams juliawilliams@clintonlaw.net
Subject: Re: Dulberg v Popovich Firm et al; Mast Deposition Exhibits
Date: June 24, 2020 at 10:49 AM
To: George Flynn gflynn@karballaw.com

Dear George,

Here is one more exhibit that I may use. We are still waiting on the instructions from US Legal which I expect by COB today.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Jun 24, 2020, at 9:31 AM, George Flynn <gflynn@karballaw.com> wrote:

Thanks Julia. I will see you virtually, tomorrow.

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

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EXHIBIT 9

From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Tuesday, June 23, 2020 4:26 PM
To: George Flynn <gflynn@karballaw.com>
Cc: Mary Winch <marywinch@clintonlaw.net>; Ed Clinton <ed@clintonlaw.net>
Subject: Dulberg v Popovich Firm et al; Mast Deposition Exhibits

Dear George,

Attachments available until Jul 23, 2020

I am attaching the deposition exhibits that I *may* use on Thursday. I don't believe there will be any additions between now and then, but if there are they will minor and I will do my best to send them ahead of time. Obviously, I may not use all of these.

I have not used US Legal or done any remote depositions so you will have to forgive any errors. My understanding is that in the video conferencing system I will be able to upload the document in Pdf or other format (I am only using PDFs), then you and the court reporter will be able to download it. The court reporter will label the exhibits and

include them in the transcript after the deposition is complete. You are not required to print any of the documents—unless of course you would like to do that.

I did my best to label the exhibits in the number order that I believe I will use them. That being said, things change in depositions and they may have to be renumbered. In an effort to not make it super confusing, I used descriptive names as well.

If you have questions/concerns, please let me know. Otherwise, I will see you remotely on Thursday and we'll hope that everything goes smoothly.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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From: **Noelle Kappes** nkappes@uslegalsupport.com
Subject: RE: U.S. Legal Support - Confirmation of Scheduling - Job No. 923267
Date: July 14, 2020 at 11:27 AM
To: Julia WIlliams juliawilliams@clintonlaw.net
Cc: Smith Family barbnwally@att.net, Mary Winch marywinch@clintonlaw.net, Ed Clinton ed@clintonlaw.net

NK

Received, thank you.

Noelle Kappes
Scheduling and Client Solutions Manager I U.S. Legal Support
200 West Jackson Boulevard, Suite 600
Chicago, IL 60606

Direct 312.854.1422 I Main 312.957.4546
nkappes@uslegalsupport.com
www.uslegalsupport.com



From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Tuesday, July 14, 2020 9:41 AM
To: Noelle Kappes <nkappes@uslegalsupport.com>
Cc: Smith Family <barbnwally@att.net>; Mary Winch <marywinch@clintonlaw.net>; Ed Clinton <ed@clintonlaw.net>
Subject: Re: U.S. Legal Support - Confirmation of Scheduling - Job No. 923267
Importance: High

This message has originated from an **External Source.** Please use caution when opening attachments, clicking links, or responding to this email.

Dear Noelle,

Attachment available until Aug 13, 2020

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm

EXHIBIT
10

The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Dulberg Mast Dep Exh 12 Legal Research .pdf
35.1 MB

On Jul 13, 2020, at 8:37 PM, Noelle Kappes <nkappes@uslegalsupport.com> wrote:

Hi there,

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you,
Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.
Witness: Hans Mast
Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.
Date: 06/25/2020
Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)
Location:
Reporter and all Parties will appear via Video Conference.

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From: wtolliver@uslegalsupport.com
Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:13 AM
To: juliawilliams@clintonlaw.net

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

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Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Job No.	923267	**Job Date**	6/25/2020
Witness	H. Mast Exhibits		

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Exhibit	EX 0012 Hans Mast 062520.pdf		26741

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From: **Julia Williams** juliawilliams@clintonlaw.net
Subject: Fwd: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:17 AM
To: Paul Dulberg pdulberg@comcast.net
Cc: marywinch@clintonlaw.net, ed@clintonlaw.net

Dear Paul,

Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was blank.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Subject: **Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020**
Date: July 14, 2020 at 11:13:26 AM CDT
To: <juliawilliams@clintonlaw.net>

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Case No.	17LA377		
Job No.	923267	**Job Date**	6/25/2020
Witness	H. Mast Exhibits		

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From: **Julia Williams** juliawilliams@clintonlaw.net
Subject: Fwd: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: August 5, 2022 at 10:21 AM
To: Mary Winch marywinch@clintonlaw.net, ed@clintonlaw.net

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Begin forwarded message:

From: "wtolliver@uslegalsupport.com" <wtolliver@uslegalsupport.com>
Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:13:26 AM CDT
To: <juliawilliams@clintonlaw.net>

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

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File Information

Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Job No.	923267	**Job Date**	6/25/2020
Witness	H. Mast Exhibits		

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Exhibit	EX 0012 Hans Mast 062520.pdf		26741

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NOTICE
The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 2—10—0111
Opinion filed May 6, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PATRICIA TILSCHNER,	)	Appeal from the Circuit Court
	)	of McHenry County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 08—LA—383
	)	
LOWELL SPANGLER and RALPH M. RUPPEL,	)	
	)	Honorable
	)	Maureen P. McIntyre,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court, with opinion.
Justice Hutchinson concurred in the judgment and opinion.
Justice Hudson specially concurred in the judgment, with opinion.

OPINION

Plaintiff, Patricia Tilschner, appeals from the trial court's orders dismissing count II of her third-amended complaint and denying her motion to reconsider. Patricia claims on appeal that the trial court erred in concluding that this State has not adopted section 318 of the Restatement (Second) of Torts (1965).[1] We affirm.

Patricia was injured during a party at the home of defendant Lowell Spangler when defendant Ralph Ruppel ignited fireworks. Patricia's third amended complaint contained three counts. Count

[1]Patricia raised a similar claim regarding an undifferentiated duty independent of section 318 but abandoned that argument during oral argument.

EXHIBIT 14

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I alleged common-law negligence against Spangler. Count II alleged negligence against Spangler pursuant to section 318 of the Restatement (Second) of Torts. Count III alleged common-law negligence against Ruppel. Spangler moved to dismiss count II, pursuant to section 2—615 of the Code of Civil Procedure (735 ILCS 5/2—615 (West 2008)). The trial court granted the motion to dismiss with prejudice and denied Patricia's subsequent motion to reconsider. Patricia filed an application for leave to appeal to this court pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010), which was denied. Patricia was also denied leave to file a fourth amended complaint. She then voluntarily dismissed count I of the third amended complaint, and the trial court found no just reason to delay enforcement or appeal, pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). This appeal followed.

Patricia now contends that the trial court erred in dismissing count II of her third amended complaint. When a defendant challenges the legal sufficiency of a complaint with a section 2—615 motion to dismiss, all well-pleaded facts alleged in the complaint are taken as true. *King v. Senior Services Associates, Inc.*, 341 Ill. App. 3d 264, 266 (2003). On review of a dismissal pursuant to section 2—615, this court must determine whether the allegations of the complaint, when interpreted in the light most favorable to the plaintiff, sufficiently set forth a cause of action on which relief may be granted. *King*, 341 Ill. App. 3d at 266. The motion should be granted only if the plaintiff can prove no set of facts to support her cause of action. *King*, 341 Ill. App. 3d at 266. As this process does not require the trial court to weigh findings of fact or determine credibility, this court is not required to defer to the trial court's judgment, and we will review the matter *de novo*. *King*, 341 Ill. App. 3d at 266.

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To state a cause of action in negligence, a plaintiff must allege facts that establish a duty, a breach of that duty, and proximate causation. *Ryan v. Yarbrough*, 355 Ill. App. 3d 342, 345 (2005). Patricia alleged that Spangler:

> "[o]wed a duty to the Plaintiff and his other invited guests to keep control and care over his property and to protect them against any unreasonable risks of harm known due to acts of a third person under his control, including the Defendant, RALPH RUPPEL, pursuant to the Restatement (Second) of Torts, §318."

Section 318 of the Restatement (Second) of Torts provides:

> "If the actor permits a third person to use land or chattels in his possession otherwise than as a servant, he is, if present, under a duty to exercise reasonable care so to control the conduct of the third person as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if the actor
>
> (a) knows or has reason to know that he has the ability to control the third person, and,
>
> (b) knows or should know of the necessity and opportunity for exercising such control." Restatement (Second) of Torts §318 (1965).

A restatement is not binding on Illinois courts unless it is adopted by our supreme court. *Eckburg v. Presbytery of Blackhawk of the Presbyterian Church (USA)*, 396 Ill. App. 3d 164, 169 (2009); *In re Estate of Lieberman*, 391 Ill. App. 3d 882, 890 (2009). Thus, we must determine whether our supreme court has adopted section 318 of the Restatement (Second) of Torts; if it has not, Spangler owed no duty to Patricia.

Citing a line of both supreme court and appellate court cases, Patricia argues that section 318 has "unquestionably" been adopted in Illinois. However, this is not the first time that this court has

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examined this question and concluded to the contrary. In *Zimring v. Wendrow*, 137 Ill. App. 3d 847, 850 (1985), this court specifically found that "[n]o Illinois case has adopted section 318 of the Restatement (Second) of Torts, upon which plaintiff relies." Ultimately, we concluded that we "need not consider" the sufficiency of the complaint in relation to section 318. *Zimring*, 137 Ill. App. 3d at 853. In *Elizondo v. Ramirez*, 324 Ill. App. 3d 67, 73 (2001), the plaintiff asserted that section 318 "has been adopted in Illinois and cite[d] two cases in support." After analyzing those cases—*Cravens v. Inman*, 223 Ill. App. 3d 1059 (1991), and *Teter v. Clemens*, 112 Ill. 2d 252 (1986)—we concluded that "it is unclear whether these cases represent the law in Illinois" (*Elizondo*, 324 Ill. App. 3d at 73-74), and we declined to "express an opinion on whether section 318 represents the law in Illinois" (*Elizondo*, 324 Ill. App. 3d at 74). We note with interest that Patricia cites to *Elizondo* but fails to mention, let alone address, this court's refusal to find that section 318 had, indeed, been adopted in this state. Patricia now argues, despite our analysis in *Elizondo*, that our supreme court adopted section 318 in *Teter*. We disagree, and we will not revisit our prior analysis and determination in *Elizondo* that there was no clear adoption of section 318 by our supreme court in *Teter*.

While Patricia does not cite to *Cravens*, its ultimate disposition is instructive. In *Cravens*, the First District of the Illinois Appellate Court found a duty and, thus, a claim for negligence, pursuant to section 318 and to *Teter*, in the factual scenario of adults providing alcohol to minor guests who subsequently left in an automobile and were involved in a fatal accident. However, our supreme court in *Charles v. Seigfried*, 165 Ill. 2d 482, 501-02 (1995), concluded that it did "not agree that the views set forth in *Cravens* should be adopted through judicial decision." This court noted the supreme court's refusal, in an admittedly different context, to impose liability pursuant to section 318. See *Elizondo*, 324 Ill. App. 3d at 74.

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Patricia argues that the supreme court "implicitly" adopted section 318 in *Estate of Johnson v. Condell Memorial Hospital*, 119 Ill. 2d 496, 503-04 (1988), in which the court stated:

> "In general, one has no duty to control the conduct of another to prevent him from causing harm to a third party (Restatement (Second) of Torts §315 (1965)), but there are exceptions to this, based on 'special relationships.' Sections 315 through 319 of the Restatement (Second) of Torts (1965) describe these relationships. The 'special relationship' that the plaintiff alleges existed here that would give rise to a duty to protect another from harm is found in section 319 ***."

The court ultimately concluded, "It cannot be reasonably said, based on the complaint's allegations against Condell, that the hospital assumed a duty of care to Holt under section 319 of the Restatement (Second) of Torts (1965)." *Estate of Johnson*, 119 Ill. 2d at 506-07. Patricia argues that the "clear import" of the decision "is that sections 315-319 have been adopted in Illinois." She then cites to a similar statement in *Kirk v. Michael Reese Hospital & Medical Center*, 117 Ill. 2d 507, 530 (1987) ("There are types of relationships that give rise to a duty to control a third party's conduct set out in sections 316 to 319 of the Restatement (Second) of Torts (1965) ***"), to support her conclusion that the supreme court "cited with approval all of the exceptions/duties established in sections 316 through 319." Patricia is not alone in this argument. The First District of the Illinois Appellate Court has boldly stated that the supreme court has adopted sections 315 through 319. See *Brewster v. Rush-Presbyterian-St. Luke's Medical Center*, 361 Ill. App. 3d 32, 36-37 (2005) (citing *Estate of Johnson*, 119 Ill. 2d at 503-04); *Iseberg v. Gross*, 366 Ill. App. 3d 857, 862 (2006) (citing only *Brewster*, which expressly mentions sections 315 through 319, but then mysteriously increasing the number of sections adopted, to include sections 314 through 320).

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However, we first note that neither *Estate of Johnson* nor *Kirk* (nor, for that matter, *Brewster* nor *Iseberg*) involved a claimed application of section 318. Both *Estate of Johnson* and *Kirk* involved claims arising from alleged improper medical treatment of third parties who subsequently injured the plaintiffs; these claims were analyzed under section 319, which speaks to a duty of those in charge of someone having dangerous propensities. See *Estate of Johnson*, 119 Ill. 2d at 503-04; *Kirk*, 117 Ill. 2d at 530-31. The "most relevant" section in *Brewster* was section 317, which addresses the duty of a master to control the conduct of his servants. *Brewster*, 361 Ill. App. 3d at 37; Restatement (Second) of Torts §317 (1965). In *Iseberg*, the plaintiff did not even allege that any of the Restatement sections applied and imposed a duty on the defendants. *Iseberg*, 366 Ill. App. 3d at 862.

Patricia has failed to cite, and our research has not revealed, a single case since *Teter* in which our supreme court has specifically addressed, or even quoted, section 318 of the Restatement (Second) of Torts. We cannot conclude that our supreme court has adopted—explicitly, implicitly, impliedly, or otherwise—a Restatement section that it has not been called upon to analyze, apply, or adopt. Even the cases upon which Patricia relies do little more than acknowledge the existence of section 318. *Estate of Johnson* says that sections 315 through 319 describe " 'special relationships' " that form the bases for exceptions to the general rule of section 315. *Estate of Johnson*, 119 Ill. 2d at 503. *Kirk* merely notes that certain types of relationships set out in sections 316 through 319 give rise to a duty to control a third party's conduct, although none of the types applied there. *Kirk*, 117 Ill. 2d at 530. The mere citation to a cluster of sections, or even the analysis some of the nearby sections, is insufficient to establish the adoption of a restatement section.

The supreme court has addressed more thoroughly and deeply other restatement sections and specifically did *not* adopt them. For example, in a case examining the difference between void and

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voidable judgments, the supreme court compared its conclusions with those that it would have reached if the criteria of section 12 of the Restatement (Second) of Judgments were applied to the facts of the case. *In re Marriage of Mitchell*, 181 Ill. 2d 169, 176 (1998). The court noted that the result in the case was "consistent with the trend of modern authority" as exemplified by the Restatement (Second) of Judgments. *Mitchell*, 181 Ill. 2d at 175. The court then quoted section 12 of the Restatement (Second) of Judgments and applied the criteria of that section to the facts of the case. *Mitchell*, 181 Ill. 2d at 176. After determining that adopting the view expressed in the Restatement would require a re-examination of existing case-law analysis, the court casually noted that "[t]he parties [did] not ask us to adopt the rule expressed in the Restatement, however, and therefore we need not decide in this case whether to take that step." *Mitchell*, 181 Ill. 2d at 177. In *Mitchell*, the court explicitly declined to adopt a restatement section that it specifically quoted, applied to the facts of the case, analyzed, and compared to existing case law, because the parties did not ask for it. Here, Patricia cannot cite to a case wherein the court even cited to section 318, let alone provided the type of analysis that it did in *dictum* in *Mitchell*. With such meager authority, we cannot find the adoption of a restatement section.

Patricia similarly attempts to find adoption of section 318 in this court's decision in *Duncan v. Rzonca*, 133 Ill. App. 3d 184 (1985). Patricia's specific claim is that the *Duncan* court adopted section 316 of the Restatement and that, since sections 316 through 319 are "uniformly discussed together," there is "simply no logical explanation for why section 316 but not section 318 would be adopted in Illinois." We first note that this court does not have the authority to adopt a restatement section; as we have already stated, a restatement is binding on Illinois courts *only if it is adopted by our supreme court*. See *Eckburg*, 396 Ill. App. 3d at 169; *Lieberman*, 391 Ill. App. 3d at 890. In the absence of Illinois law, we often deem secondary sources, such as the Restatement (Second) of

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Torts, to be persuasive. [2] *Eckburg*, 396 Ill. App. 3d at 169. A restatement is a policy statement; this court does not adopt policy, it applies present law to the facts of the case before it. Further, this argument relies on the same fallacy as her prior argument: the "adoption" of a section includes the adoption of other sections "uniformly discussed together." This argument is not only a *non sequitur*, it is irrational as well. *Duncan* does not support Patricia's cause.

The restatement that we adopt today is that our supreme court has not adopted section 318 of the Restatement (Second) of Torts. Therefore, count II of Patricia's third-amended complaint, interpreted in the light most favorable to her, fails to allege a duty recognized by our supreme court and fails to set forth a cause of action on which relief may be granted. The trial court did not err in granting Spangler's section 2—615 motion to dismiss with prejudice.

---

[2]"A secondary source is not the law. It's a commentary on the law. A secondary source can be used for three different purposes: it might educate you about the law, it might direct you to the primary law, or it might serve as persuasive authority. Few sources do all three jobs well. The important classes of legal secondary sources include: treatises, periodical articles, legal encyclopedias, ALR Annotations, *Restatements*, and Looseleaf services. ***

* * *

Restatements

The restatements were developed by legal scholars initially to restate the law, and currently to describe what the law should be. In either case, Restatements are very persuasive although they are not very good at describing the law. They can serve as adequate law finders." (Emphasis added.) *Secondary Sources*, Yale Law School, Lillian Goldman Law Library, http://m-library.law.yale.edu/content/secondary-sources.

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For these reasons, the judgment of the circuit court of McHenry County is affirmed.

Affirmed.

JUSTICE HUDSON, specially concurring:

I agree with much of the majority's analysis in this case as well as the result at which it arrives. However, I would prefer to refrain from making sweeping and unnecessary statements about the authority of this court. It is well established that a court should avoid constitutional questions when a case can be decided on other grounds. *In re Detention of Swope*, 213 Ill. 2d 210, 218 (2004); *Beahringer v. Page*, 204 Ill. 2d 363, 370 (2003). The scope of the authority of this court is a constitutional matter. See *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002).

In this case, the majority rejects plaintiff's contention that this court has adopted section 318 of the Restatement (Second) of Torts, finding plaintiff's argument "irrational." Slip op. at 8. This finding should resolve this question. The majority, nevertheless, goes on to hold that this court does not have the authority to adopt a section of a restatement. It is unnecessary to consider whether this court has such authority in light of the majority's holding that nothing this court previously did would constitute an adoption of section 318. As I believe it improper to address the issue of the authority of this court, I do not join this portion of the majority's opinion.

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United States of America

2-10-0111

PATRICIA TILSCHNER,

State of Illinois, Appellate Court, Second District, } ss.

Plaintiff-Appellant,

v.

LOWELL SPANGLER and RALPH M. RUPPEL,

Defendants-Appellees.

I, ROBERT J. MANGAN, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the decision of the said Appellate Court in the above entitled cause of record in my said office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this

6th *day of* May, *A.D. 20* 2011

Robert J. Mangan

Clerk Appellate Court, Second District

(RO-2131 — 5M — 3/02)

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From: George Flynn gflynn@karballaw.com
Subject: Re: Dulberg
Date: June 19, 2020 at 2:56 PM
To: Julia WIlliams juliawilliams@clintonlaw.net

Ok glad to hear. Thanks Julia.

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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> On Jun 19, 2020, at 2:54 PM, Julia WIlliams <juliawilliams@clintonlaw.net> wrote:
>
> Thanks George. We are still on. This will be the first remote deposition that I have taken so I am still working on figuring out the exhibits. I believe that I can upload them to the US Legal system and then share them during the deposition. But, if not, I will be sure to have them to you no later than Tuesday by 5pm.
>
> Best Regards,
>
> Julia Williams
> Of Counsel
> The Clinton Law Firm
> 111 W. Washington, Ste. 1437
> Chicago, IL 60602
> P:312.357.1515
> F: 312.201.0737
> juliawilliams@clintonlaw.net
>
> This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.
>
> > On Jun 19, 2020, at 2:54 PM, George Flynn <gflynn@karballaw.com> wrote:
> >
> > Julia: I just received your notice of attorney lien. Will you still be taking the dep next week?
> >
> > My experience with receiving liens at this stage of litigation(in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for Mast's dep.
> >
> > Thanks
> >
> > George Flynn
> >
> > Karbal | Cohen | Economou | Silk | Dunne | LLC
> > 150 S. Wacker Drive
> > Suite 1700
> > Chicago, IL 60606
> > <phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
> > <fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
> > <envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
> >
> > CONFIDENTIALITY NOTE:
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EXHIBIT 15

Dunne, LLC, which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

From: George Flynn gflynn@karballaw.com
Subject: RE: Dulberg
Date: June 26, 2020 at 1:13 PM
To: Julia WIlliams juliawilliams@clintonlaw.net

GF

Sure, feel free to give me a call.

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Friday, June 26, 2020 12:13 PM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: Dulberg

Dear George,

Thank you for the follow up. I am working on the production today. Are you around on Monday—can we chat then?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

EXHIBIT 16

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Jun 25, 2020, at 12:31 PM, George Flynn <gflynn@karballaw.com> wrote:

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Julia:

Just wanted to write while it is fresh in my mind, but I'd like to close the dangling issues from your client's deposition, including the production of communications with Mr. Gooch in view of the "discovery rule" issues.

Please advise

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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From: **Julia WIlliams** juliawilliams@clintonlaw.net
Subject: Re: Need clarification on outstanding issues before your departure
Date: July 30, 2020 at 10:05 AM
To: Paul Dulberg Paul_Dulberg@comcast.net
Cc: Ed Clinton ed@clintonlaw.net, Mary Winch marywinch@clintonlaw.net

Dear Paul,

Please see my responses below.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

[redacted]

> 3. Similar to the last question, Have the objections in the Mast deposition been worked out or ruled on by judge Meyer?

There has been no motion practice on the issue and thus, there is no ruling. Your future counsel will need to bring that before the Judge at some point.

[redacted]

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Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TA EN IN VIOLATION OF SUPREME COURT RULE REMOTE ELECTRONIC MEANS DEPOSITIONS d ORDERS OF THE ILLINOIS SUPREME COURT I r ILLINOIS COURTS RESPONSE COVID- EMERGENCY IMPACT ON DISCOVERY M R CORRECTED ORDER APRIL , d M R AMENDED ORDER JUNE , d GRANT LEAVE TO TA E THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Motion To Exclude the Discovery Deposition of Defendant Hans Mast taken in violation of Supreme Court Rule 206 h(2) and Supreme Court Orders states as follows:

RELEVANT FACTS

1) On June 25, 2020 the Discovery Deposition of Defendant Hans Mast was taken pursuant to a non-filed notice (violation waived) but all 15 exhibits and the questioning

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of deponent Hans Mast based upon all 15 exhibits violated the Rules and Orders of the Illinois Supreme Court.

2) Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition without any exhibits from Defendants' Attorney's office and the exhibits 1-11 and 13-15 from the Plaintiff's current Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)

3) Plaintiff's current Attorney objected to the use of the discovery deposition of Defendant Hans Mast during the hearing because there's exhibit(s) missing. (Please see Report of Proceedings April 27, 2022 page 31 line 21-24 which is part of the Clerk's online file)

4) Plaintiff's current Attorney more completely explained to the Court that the discovery deposition of Hans Mast in all its variations was missing exhibit 12. (Please see Report of Proceedings April 27, 2022 page 36 line 19-24 to page 37 line 1-3 which is part of the Clerk's online file)

5) Thereafter this Honorable Court asked Defendants' Attorney whether he had exhibit 12. (Please see Report of Proceedings April 27, 2022 page 37 line 19-20 which is part of the Clerk's online file)

6) The Attorney for the Defendants responded "I may. I don't know. I haven't look for it." (Please see Report of Proceedings April 27, 2022 page 37 line 20-21 which is part of the Clerk's online file)

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7) This Honorable Court ordered Defendants' Attorney to produce exhibit 12 if he has it. (Please see Report of Proceedings April 27, 2022 page 39 line 16-21 which is part of the Clerk's online file)

8) On April 28, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney's office with a link at https: www.dropbox.com to access Mast Dep Ex.12. (Please see Plaintiff's Exhibit #1 attached)

9) Plaintiff's current Attorney noticed that the label purporting to be authentic on Hans Mast's discovery deposition exhibit 12 seemed not to match the other 14 exhibit label as to fonts, shape, color, and DEPONENT's NAME (Hans Mist not Hans Mast).

10) On May 18, 2022 Plaintiff's current Attorney caused to be served upon Certified Shorthand Reporter Barbara G. Smith a Subpoena For Records in which she was requested to produce "The original discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic shorthand notes."

11) Certified Shorthand Reporter Barbara G. Smith's complete response submitted on a flash drive was received on June 16, 2022.

12) Contained on the flash drive is a file titled HPSCANS and therein were a series of communications and handwritten notes between the Certified Shorthand Reporter Barbara G. Smith and Noelle Kappes of US Legal Support and Plaintiff's former attorney Julia C. Williams clearly indicating that Hans Mast discovery deposition taken June 25, 2020 did not have exhibit 12 sent before the deposition nor uploaded during the deposition and said exhibit was never in the Certified Shorthand Reporter Barbara G. Smith's possession before, during or after the deposition was taken, transcribed or

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submitted for transmission. (Please see Plaintiff's Group Exhibit #2 Barbara G. Smith job papers0001.pdf and job papers0002.pdf attached)

13) Thereafter, on June 21, 2022 Plaintiff's current Attorney sent Hans Mast's discovery deposition taken on June 25, 2020 with exhibits 1-11 and 13-15, that were located in Plaintiff's former Attorney Julia C. Williams' electronic file with exhibit 12 received from Defendants' Attorney's office on April 28, 2022 with Barbara G. Smith's flash drive to Plaintiff's S. Ct. Rule 213(f)(3) expert Robin D. Williams, MFS, MS, D-BFDE Board Certified, Omni Document Examinations for analysis.

14) On July 11, 2022 Plaintiff's current Attorney received Robin D. Williams's Report of Findings concluding that the label on exhibit 12 did not come from the same group or batch of labels identified as exhibits 1-11 and 13-15. (Please see Plaintiff's Exhibit #3 Robin D. Williams Report of Findings July 11, 2022 attached)

15) On July 11, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney stating that the Hans **MIST EMPHASIS ADDED** exhibit 12 alleged to be part of Defendant Hans Mast's discovery deposition was received separately from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 14, 2020 while the Deposition and Exhibits 1-11 and 13-15 were received from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 10, 2020. (Please see Plaintiff's Exhibit #4 attached)

LAW AND ORDER(S)

Illinois Supreme Court Rule 206. Method of Taking Depositions on Oral Examination

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(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating **c**

EMPHASIS ADDED the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. (1) Reserved. (2) **A r r d r d c r d d r d r d d c r d r d r r r r d r d r r d , d r c r r d r d**

EMPHASIS ADDED (3) Reserved. (4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties. (5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for

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the deposition set by Rule 206(d), by stipulation, or by court order. (6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

M.R.30370 CORRECTED ORDER APRIL 29, 2020

(Please see Plaintiff's Exhibit #5 attached)

M.R.30370 AMENDED ORDER JUNE 4, 2020

(Please see Plaintiff's Exhibit #6 attached)

ILCS / ro Ch. , par.

Sec. . Po er o co rts to a e r les. a The S pre e Co rt o this State has po er to a e r les o pleading, practice and proced re or the circ it, Appellate and S pre e Co rts s pple entar to, t not inconsistent ith the provisions o this Act, and to a end the sa e, or the p rpose o a ing this Act e ective or the convenient ad inistration o j stice, and other ise si pli ing j dicial proced re, and po er to a e r les governing pleading, practice and proced re in s all clai s actions, incl ding service o process in connection there ith. nless other ise indicated the te t, re erences in this Act to r les are to r les o the S pre e Co rt.

S ject to the r les o the S pre e Co rt, the circ it and

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Appellate Co rts a a e r les reg lating their doc ets, calendars, and siness.

So rce P.A. .

(735 ILCS 5 1-105) (from Ch. 110, par. 1-105)

Sec. 1-105. Enforcement of Act and rules. The Supreme Court may provide by rule for the orderly and expeditious administration and enforcement of this Act and of the rules, including the striking of pleadings, the dismissal of claims, the entry of defaults, the assessment of costs, the assessment against an offending party of the reasonable expenses, including attorney's fees, which any violation causes another party to incur, **r r c**

r r EMPHASIS ADDED

(Source: P.A. 82-280.)

Rule 211. Effect of Errors and Irregularities in Depositions; Objections (a) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice. (b) As to Disqualification of Officer or Person. Objection to taking a deposition because of disqualification of the officer or person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification

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becomes known or could have been discovered with reasonable diligence. (c) As to Competency of Deponent; Admissibility of Testimony; Questions and Answers; Misconduct; Irregularities. (1) Grounds of objection to the competency of the deponent or admissibility of testimony which might have been corrected if presented during the taking of the deposition are waived by failure to make them at that time; otherwise objections to the competency of the deponent or admissibility of testimony may be made when the testimony is offered in evidence. (2) Objections to the form of a question or answer, errors and irregularities occurring at the oral examination in the manner or taking of the deposition, in the oath or affirmation, or in the conduct of any person, and errors and irregularities of any kind which might be corrected if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition. (3) Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving succeeding questions and, in the case of the last questions authori ed, within 7 days after service thereof. (4) A motion to suppress is unnecessary to preserve an objection seasonably made. Any party may, but need not, on notice and motion obtain a ruling by the court on the objections in advance of the trial. (d) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the

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testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after the defect is, or with due diligence might have been, ascertained. Committee Comments This rule is derived from former Rule 19-9. The language is unchanged except that the period for filing objections to the form of written questions has been extended to seven days in subparagraph (c)(3) in keeping with the committee's policy of measuring time periods in multiples of seven days.

VIOLATIONS

A) The exhibits that were decided upon to be used by former counsel Julia C. Williams, and specifically exhibit 12, were not provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition. In fact,

r r d d c r d r EMPHASIS ADDED

A1) On or about April 30, 2020 Defendants' Counsel sent an email to Plaintiff's former Counsel Julia C. Williams indicating an awareness of the current Supreme Court rules regarding depositions when he wrote "The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.." (Please see Plaintiff's Exhibit #7 attached.)

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A2) On or about May 29th 2020 former attorney Julia C. Williams sent an email to Defendants' Counsel indicating an awareness of the current Supreme Court rules regarding depositions when she wrote " …and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option." (Please see Plaintiff's Exhibit #8 attached.)

A2.1) On or about June 19, 2020 Defendants' attorney emailed Plaintiff's former attorney Julia C. Williams stating "Julia: I just received your notice of attorney lien. Will you still be taking the dep next week

My experience with receiving liens at this stage of litigation (in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for the Mast's dep. (Please see Plaintiff's Exhibit 15 attached.)

A3) On or about June 23, 2020 Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 23 exhibits that she **dd d** use in the discovery Deposition of Defendant Hans Mast on June 25, 2020. Additionally she indicated that there **c d dd d r r c** . **dd d** Additionally she wrote "…and I will do my best to send them ahead of time." (Please see Plaintiff's Exhibit #9 attached.)

A3.1) On or about June 24, 2020 at 10:49 AM (less than 24 hours before the start of the discovery deposition of Defendant Hans Mast) Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 1 more exhibit that she **dd d** use. (Please see Plaintiff's Exhibit 9 attached.)

A3.2) On June 25, 2020 the discovery deposition of Hans Mast was called at 10:00 AM "pursuant to subpoena and pursuant to the Code of Civil Procedure of the State of

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Illinois and the **RULES OF THE SUPREME COURT THEREOF, PERTAINING TO THE TA ING OF DEPOSITIONS, EMPHASIS ADDED** (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. and Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment
Exhibit G page 1 lines 15 to 17)

A3.3) On June 25, 2020 at 12:31 PM (approximately 15-30 minutes after the conclusion of the discovery deposition of Defendant Hans Mast, Defendant's attorney sends an email to Plaintiff's former attorney Julia C. Williams discussing what is "…fresh in his mind…" but any conversation regarding errors and irregularities in the just concluded deposition is notably absent. (Please see Plaintiff Exhibit 16 attached.)

A3.4) Shortly after the Deposition ended Barbara G. Smith emailed Julia C. Williams asking for Exhibit 12 and Julia C. Williams responded by sending a blank email. Additionally, Barbara G. Smith called and left a message for Julia C. Williams on July 6, 2020 again requesting Exhibit 12. On July 7, 2020 Barbara G. Smith submitted the June 25, 2020 discovery deposition of Hans Mast to U.S. Legal Support without Exhibit 12. (Please see Plaintiff's Group Exhibit 2 attached).

A3.5) The Deposition of Defendant Hans Mast was received by Plaintiff's former attorney and Defendants' attorney from U.S. Legal Support **H M E EMPHASIS ADDED** on July 10, 2020.

A4) On or about July 13, 2020 Noelle Kappes, Scheduling and Client Solution Manager U.S. Legal Support sends an email to Plaintiff's former attorney Julia C. Williams stating that "the court reporter indicated you would be sending us exhibit 12 from this deposition (discovery deposition of Defendant Hans Mast taken remotely on June 25,

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2020) so that we can include it with the transcript. I don't believe we have received it can you send it tomorrow " (Please see Plaintiff's Exhibit #10 attached)

A5) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams emails to Noelle Kappes "Dear Noelle, I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here." (Please see Plaintiff's Exhibit #10 attached.)

A6) On or about July 14, 2020 wtolliver2uslegalsupport.com emailed to Plaintiff's former attorney and Defendants' attorney that "Exhibit 12 is now available to download" (Please see Plaintiff's Exhibit #11 attached)

A6.1) Exhibit 12 was never presented to the officer administering the oath Barbara G. Smith, CSR, RPR Notary Public but was sent after the deposition of Defendant Hans Mast was taken on June 25, 2020 but sent on July 14, 2020 to Noelle Kappes, Scheduling and Client Solution Manager U.S. Legal Support who forwarded it to wtolliver2, another employee of U.S. Legal Support who created the misspelled, non-conforming HANS M**I**ST [**EMPHASIS ADDED** label.

A7) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams wrote to Plaintiff "Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was [emphasis added] (Please see Plaintiff's Exhibit #12 attached)

A8) On or about August 5, 2022 Plaintiff's former attorney inexplicitly emails to Mary Winch marywinch@clintonlaw.net,ed@clintonlaw.net the same email she sent to the same recipients on July 14, 2020. (Please see A5 above and Plaintiff's Exhibit #13 attached)

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B) The deposition participants were not able to view the exhibits in real time during the deposition.

B1) The following clearly indicated a problem with viewing the exhibits submitted and the Defendant's internet equipment and internet connection and audio during the attempted remote discovery deposition of Defendant Hans Mast:

B1.1) Q. So I'm uploading Exhibit 2, it's titled Dulberg Mast Dep Exhibit 2, and this should be the original complaint filed in the case Dulberg versus Gagnon, et al., 12 LA 178, filed in McHenry County. Do you see that document

A. Yeah. What I'm going off are an email I got with all the exhibits attached, so I'm not that's what I'm looking at.; (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 17 lines 3 to 10 also found on 209 of 464 previously filed.)

B1.2) Q. Okay.

A. Oh, uh, I think It just kicked me off.

Mr. Flynn: I got disconnected, too. It's the Wi-Fi.

By Ms. Williams:

Q. Okay, we'll just wait a minute here.

A. I can hear you. I just can't see you. Q. We'll wait a minute until you can get your video back on.

Mr. Flynn: Julia, we think the Wi-Fi may have dropped **r c dd d**

Ms. Williams: Okay. Well, let's just give a minute and see.; (Please see Defendants'

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The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 22 lines 1 to 10 also found on 211 of 464 previously filed.)

B1.3) Q. Okay. I just uploaded Dulberg Mast Exhibit 4 and it says letter it's "Letter Re Settlement," and that should be still be Exhibit 4 that was emailed around to Counsel so that you would have it. And it is labeled POP192 and POP193. Do you recogni e those documents

A. Wait. I think the Internet, maybe because we were having problems, is the Internet went down, so now my exhibits aren't pulling up. Can you try again Do you have that, George

Mr. Flynn: Yeah, here's the **rd c dd d**

The Witness: I'll look at the **rd c dd d** , so what are you asking

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 26 lines 5 to 17 also found on 212 of 464 previously filed.)

B1.4) Q. Okay. Just uploaded Exhibit 5, and this is email dated October 30, 2013, and it's marked at the bottom 000195.

A. Okay.

Q. Okay, and here in this email it looks like you started this email chain to Paul on October 25, 2013. Do you see that

A. It looks like there s a couple emails here. There's several pages. You just mean the first page

Q. I think It should only be, I believe it's only one page and it looks like

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A. Oh, these aren't part of it Just one page

Q. The document that I have is just one page. Are we looking at the same thing

A. Okay.

Q. It's POP00195 on the bottom.

A. Yeah, he had a couple other pages on it, but okay.

Q. Okay. I just want to make sure that I didn't okay. And on the bottom there of the first sheet, if you have several, **l d r r d dd d ,** it states, "Friday, October 25, 2013," do you see that

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 28 lines 16 to 24 and page 29 lines 1-14 also found on 212 of 464 previously filed.)

B1.5) Q. Okay. So I'm going to upload another file here.

A. Yeah, our internet is down. That's why I can't bring these up.

Q. Okay.

Mr. Flynn: Julia, just so you know, I've got hard copies of the majority of the exhibits you sent with the exception of the larger files, like the insurance policy and the dep transcripts.

MS. Williams: Okay. Okay, great.

Mr. Flynn: I've got some of the deposition transcripts, but I didn't want to waste a lot of paper and ink at home.

MS. Williams: Okay. I think we'll be For the most part, I think we'll be fine and we'll deal with it if and when we get to that point.

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Q. Okay. So the document that I'm looking at now is another email on the it's now titled Exhibit 6. I don't think it was entitled Exhibit 6 in what I sent to George, but it's an email that the first date on the email is November 4, 2013, and the last date is November 5, 2013 email chain and it's at the bottom it's stamped Dulberg001531.

A. What exhibit is it

Q. I think it might have been **-A dd d** to George. It's now exhibit 6 for the purpose of this deposition. (Please note that there never was an exhibit marked 5-A)

A. Yeah, that wasn't part of the download then. Do you have

Mr. Flynn: Yeah, I don't think that was included. (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 31 lines 10 to 24 and page 32 lines 1 to 17 also found on 213 of 464 previously filed.)

B1.6) Q. Okay. Okay, I'm going to stop screen sharing. Okay. I'm going to upload another file. This is Deposition Exhibit 7. George, you probably had it as Exhibit 6, but for the purpose of this deposition right now it's going to be 7 and it's an email chain dated

A. I have these on the computer. You don't need to, unless you want to, but I'm just saying I have these on the computer.

Q. Okay, but Barb needs them, so that's why I keep uploading them, otherwise she doesn't have them. Okay. So Exhibit 7, and it's POP00181 and POP00182,and it's two pages of an email chain, it starts November 15th and

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ends November 19, is that accurate

A. Yes.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 35 lines 5 to 20 and also found on 214 of 464 previously filed.)

B2) From this point on the transcript indicated that the deponent could not view any exhibits uploaded so that Plaintiff's former attorney Julia C. Williams was asking questions based upon her attempted uploads but the deponent Defendant Hans Mast was looking at physical documents to respond based upon the following:

B2.1) Q. Okay. So I'm going to upload another document and then we can keep going here. And then this is Exhibit 8 and for it is a letter from Ronald Barch to you, Hans, and it's POP000667. Do you **dd d** that

A. What date is it

Q. I'm sorry, dated November 18, 2013,

A. Yeah, **I dd d** that.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 36 lines 6 to 13 and also found on 214 of 464 previously filed.)

B2.2) Q. Yep, it's POP000181.

A. What exhibit

Q. It's Exhibit 7.

A. 7, that's the letter.

Q. If may be 6 for you. It may be 6 for you.

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A. Let's take a look. What page is the email

Q. The date at the top of the email chain is Tuesday, November 19, 2013.

A. Yeah, I **dd d** that.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 38 lines 1 to 9 and also found on 215 of 464 previously filed.)

B2.3) Q. I'm going to add another exhibit here. Okay, for the purpose of this deposition it's Deposition Exhibit 9. This is a memorandum. At the top it will say, " memorandum," and the date is November 20, 2013, and at the bottom it is identified as POP and then 3 there's 000003, I believe. Do you **dd d**

A. What exhibit is it

Q. I think you're probably going to have it as Exhibit 8, but for the purpose of this deposition it's actually going to be Exhibit 9.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages page 40 lines 12 to 22 and also found on 214 of 464 previously filed.)

B2.4) Q. Okay, I'm uploading Dulberg Mast Dep Exhibit 12. **T d L**

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B r , r c , l

N r d d ' d d ' , ' r r , ,

D r , r r D r Ac , l' rr , r '

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A T r , ’ LAJATO dd d

(Please see Defendants’ The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast’s Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 49 lines 20 to 24, page 50 lines 1 to 11 and also found on 217-218 of 464 previously filed.)

C) The case of *Tilschner v. Spangler* No.2-10-0111, 949 N.E.2d 688, 350 Ill.Dec.896, 409 Ill.App.3d 98 (2011) which Plaintiff Paul Dulberg specifically instructed his former attorney Julia C. Williams to include as an exhibit to be the basis of questions to the deponent Defendant Hans Mast because: Mast had personally given a copy of the certified opinion to Dulberg on November 20, 2013; had personally appeared and argued the case along with Thomas J. Popovich, and Mark J. Vogg of Defendant the Law Offices of Thomas J. Popovich, P.C.; and had insisted that the decision in the case was the reason Plaintiff Paul Dulberg would not prevail in the underlying case against the Defendants Carolyn and William (Bill) McGuire. (This is based upon information and belief pending this Honorable Court’s ruling upon Plaintiff’s previously filed Motion To Compel concerning his former attorney Julia C. Williams’ claims of Attorney-Client Privilege and Work Product.) (Please see Plaintiff’s Exhibit 14 *Tilschner v. Spangler* No.2-10-0111 attached)

C1) *Tilschner v. Spangler* No.2-10-0111 was not included in exhibit 12 as constituted, when sent 19 days after the deposition had concluded, in response to the inquires of

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Noelle Kappes Scheduling and Client Solutions Manager U.S. Legal Support (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G found on pages 264 - 290 of 464 previously filed.)

C2) *Tilschner v. Spangler* No.2-10-0111 was inexplicitly replaced with an exact duplicate of the *Lejato v. AT&T, INC.,* No. 1-95-0447 669 N.E.2d 645 283 Ill. App. 3d 126 (1996) (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages 264-285 of 464 previously filed.)

D1) On November 4, 2022 Defendants' attorney was allowed to raise the issue of "waiver" alleging that both Defendant Hans Mast's attorney and Plaintiff Paul Dulberg waived any and all objections by stating " all objections to that manner were waived by both parties." (Please see Report of Proceeding November 4, 2022 page 14 line 14-15 which is contained in the Clerk of Court's electronic file for this matter.

D2) The Illinois General Assembly empowered the Illinois Supreme Court to make and enforce rules for the Circuit, Appellate and Supreme Court. (Please see above - *ILCS / ro Ch. , par.* and (735 ILCS 5 1-105) (from Ch. 110, par. 1-105).

D3) Illinois Supreme Court Rule 211 does not allow opposing attorneys to waive the rules and orders powers granted to the Illinois Supreme Court by the Illinois General Assembly.

D4) It should be noted that:1) there were multiple emails between the Plaintiff and

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Defendants' attorneys as close in time as less than 24 hours before and at most 30 minutes after the deposition and the subject of "waiver" was not discussed. (Please see Exhibits 9, 15 and 16 attached.); 2) On July 30, 2020 Julia C. Williams, in response to Plaintiff's question about the Deposition of Hans Mast did not respond with anything about "waiver" of issues and cavalierly stated "Your future counsel will need to bring that before the Judge at some point" Please see Plaintiff Exhibit 17 attached): 3) Julia C. Williams filed her Motion to Withdraw on behalf of herself and the Clinton Law Firm on August 18, 2020 (Please see the Clerk of McHenry County Circuit Court's electric file for this case.)

W r r , Plaintiff Paul Dulberg prays that Plaintiff's Motion to Exclude the discovery deposition of Defendant Hans Mast taken remotely on June 25, 2020 is granted, that Plaintiff request to take the deposition of Defendant Hans Mast is granted, but if Defendants' verbal request to file a sur-response is allowed then the Plaintiff be granted a reasonable time to file a sur-reply after considering what's left of Plaintiff's time to respond to Defendant's Motion for Summary Judgment and for any other additional relief this Honorable Court deems fair and equitable.

Respectfully submitted,

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/s/ Alphonse A. Talarico

Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

707 Skokie Boulevard Suite 600

Northbrook, Illinois 60022

(312) 808-1410

ARDC No. 6184530

contact@lawofficeofalphonsetalarico.com

alphonsetalarico@gmail.com

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RE: Dulberg v. Mast and Popovich

Linda Walters <lwalters@karballaw.com>
Thu 4/28/2022 4:00 PM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please use the below link to access Mast Dep Ex. 12.

https://www.dropbox.com/s/b2lmm0a6s3oex3d/Mast%20Dep%20Ex.%2012.PDF?dl=0

Thank you.

Linda Walters
Asst. to George Flynn

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@karballaw.com

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EXHIBIT 1

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Attachment available until Aug 13, 2020

Dear Noelle,

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

put this x in folder on desktop & renamed bad file 12-A - this is the new 12

Click to Download
Dulberg Mast Dep Exh 12 Legal Research .pdf
35.1 MB

still couldn't read 1-22 → "There was a problem reading this document"

On Jul 13, 2020, at 8:37 PM, Noelle Kappes <nkappes@uslegalsupport.com> wrote:

called Noelle - 10:30 - 7-14 - she will have William look at it or email williams

Hi there,

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you,
Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.
Witness: Hans Mast
Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.
Date: 06/25/2020
Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)
Location:

GROUP
EXHIBIT
2

Reporter and all Parties will appear via Video Conference.

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Hi Ms. Williams – This is Barb Smith, the court reporter from US Legal that was present at the dep of Hans Mast on 6-25-20. I am currently working on the transcript and while preparing the exhibits I noticed that Exhibit No. 12, which is the 27 pages of legal research, did not download completely. The Exhibit 12 that I have has blank pages 1-22 and only pages 23-27 have print on them. I just wanted to let you know and check if you wanted to resend or if that's how No. 12 is supposed to be.

Thank you.

Barb

7-2-20

Williams responded 7-2-20
but the ~~dept~~ space was
blanks.
called 7-6-20 Left Message
7-7 submitted job and emailed
Noelle about it

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Job 923267

From: Smith Family (barbnwally@att.net)

To: nkappes@uslegalsupport.com

Date: Tuesday, July 7, 2020, 09:32 PM CDT

Hi Noelle -- Hope you're doing well. I just want to let you know I submitted this job, 923267, last night. Two things I wanted to let you know about. First, this job and 925187 were both submitted last night. These are the first two I used Box for the exhibits. I hope I did them correctly. If there's any problems, please let me know.

For 923267 I have another issue. One of the exhibits, #12, was downloaded during the Zoom session. It's 27 pages and when I first looked at it I noticed that pages 1-22 were blank. I emailed Julia Williams, our client, on 7-2 about this. She responded and the message section of her email was blank. I waited for another email but received none. On 7-6 I called and left her a message and have not received a response. I did note all of this information in the email that I sent the job with.

The main reason I'm telling you all of this is that I am going to be out of town Thursday and Friday. My daughter is getting married in Arkansas so I will not be bringing my computer with me and will be quite busy. Hopefully I hear from her on Wednesday.

Thanks,

Barb

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C 1796 V2

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF,	)	
v.	)	No. 17 LA 377
THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	)	

AMENDED NOTICE OF DEPOSITION

TO: **All Attorneys of Record (See Attached Service List)**

YOU ARE HEREBY NOTIFIED, that pursuant to the provisions of Section 2-1003 of the Illinois Code of Civil Procedure and Supreme Court Rule 206, the following deposition will be taken for the purpose of discovery before a Notary Public via remote electronic deposition at the time and place specified, upon oral interrogatories to be propounded to said witness.

Deponent	***Location***	***Date***	***Time***
Hans Mast	Compton Law Group 85 Market St. Elgin, IL 60123 (remote electronic deposition)	June 25, 2020	10:00a.m.

YOU ARE HEREBY FURTHER NOTIFIED that you are by this Notice required to have present at the date, time, and place stated, the said Deponent for oral examination for the purpose of discovery. YOU ARE FURTHER NOTIFIED that PAUL DULBERG, a party to this case, intends to be present at the above noticed deposition.

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed by 5:00 p.m. on June 4, 2020.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Julia C. Williams
Julia C. Williams

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SERVICE LIST:

George Flynn
~~Karbal | Cohen~~ | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Julia C. Williams
Julia C. Williams

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U.S. Legal Support - Chicago
200 West Jackson
Suite 600
Chicago, IL 60606
Telephone: 312-236-8352
Fax: 312-236-3344

U.S. Legal Support

JOB WORKSHEET

#12 1-22 blank
23-27 only

Resource	**Barbara G. Smith**		
Job No.	**923267**	**Job Type**	**Deposition**
Job Date	**06/25/2020**	**Job Time**	**10:00 AM** (GMT-06:00) Central Time (US & Canada)
Due Date	07/10/2020	**Notation**	R/VC
Witness	Hans Mast		
Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	**17LA377**		
Location	***U.S. Legal Support, Inc. - Remote Video Conference** **Reporter and all Parties will appear via Video Conference.** **Phone:** **Room No.:** **Detail: To join the Video Conference, a website link will be provided by U.S. Legal Support the business day prior to the setting.**		
Remarks	Court Reporter & RemoteDepo *everyone appearing remotely except attorney George Flynn who will be with the deponent REPORTER MUST READ THE ATTACHED READ ON		

83 pgs warned

Client	Clinton Law Firm 111 West Washington Street Suite 1437 Chicago, IL 60602 Phone: 312-357-1515 Fax: 312-201-0737
Contact	Julia Williams
Ordered By	Julia Williams via email
Requested Service	Service Item: RemoteDepo w/InstantExhibit - Videoconferencing Units: 1.00

rep plf 57 PHAO

julia williams@clintonlaw.net

Thank you for accepting this assignment. Please note that by accepting this assignment, you acknowledge U.S. Legal Support's requirement to have an up-to-date W-9, BAA, and CIA form submitted prior to our releasing payment.

Please provide the transcript to our production team by due date reflected above. Exhibits to be delivered to production within 3 days after deposition.

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13 interrog
14 interrogs
15 mtn

16
17
18
19
20

#1 retainer
2 complaint
3 memo
4 ~~settle~~ demand
5 email
6 email
7 email 11-15
8 email
9 memo
10 memo 12-18
11 settlement letter
12 case law

Nov 13

witness & atty flyn in McHenry Co.

start 10:08
end 12:20
#18

AP: Paul
~~Dulberg~~
Dulberg

Mr. Flynn - dept
copy reg + mini

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Page 31 of 70
C 1800 V2

OMNI
Document Examinations

Robin D. Williams, MFS, MS, D-BFDE
Board Certified

Bonnie L. Schwid, B.S., D-BFDE
Board Certified

July 11, 2022

Attorney Alphonse A. Talarico
Law Office of Alphonse Talarico
707 Skokie Blvd.
Suite 600
Northbrook, Illinois 60062

REPORT OF FINDINGS

RE: Dulberg v Popovich et al LA 377

Dear Attorney Talarico,
Pursuant to your request, I examined the following documents:
Document containing a disputed Exhibit Label
(machine copy)

Q-1 The first page of a 27-page document containing machine copies of pages from a book or books. The first line on the yellow label reads "Exhibit 12".
The label is in the bottom center of a machine copy of 2 pages. The page number in the upper left corner is 502. The center heading reads: "218 Illinois Decisions".
Dated 6-25-2020.
Some of the pages in the 27-page document are duplications of previous pages.
The page sequencing in the 27-page document is as follows: 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 854, 855, 856, 857, 858.

Document(s) submitted as containing genuine Exhibit Labels
(machine copies):

K-1 The yellow label at the bottom right of the document reads "Exhibit 1".
K-2 The yellow label at the top center of the document reads "Exhibit 2".
K-3 The yellow label at the bottom right of the document reads "Exhibit 3".
K-4 The yellow label at the bottom right of the document reads "Exhibit 4".
K-5 The yellow label at the bottom right of the document reads "Exhibit 5".
K-6 The yellow label at the bottom right of the document reads "Exhibit 6".
K-7 The yellow label at the bottom right of the document reads "Exhibit 7".
K-8 The yellow label at the bottom right of the document reads "Exhibit 8".
K-9 The yellow label at the bottom right of the document reads "Exhibit 9".

EXHIBIT 3

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K-10 The yellow label at the bottom right of the document reads "Exhibit 10".
K-11 The yellow label at the bottom right of the document reads "Exhibit 11".
K-13 The yellow label at the bottom right of the document reads "Exhibit 13".
K-14 The yellow label at the top center of the document reads "Exhibit 14".
K-15 The yellow label at the bottom right of the document reads "Exhibit 15".

Assignment

The purpose of the examination was to determine whether the yellow label that is in question on Item Q-1, also identified as Exhibit Label #12 and the labels submitted as genuine on Items K-1 through K-11 and K-13 through K-15 all originated from the same group or batch of labels.

Procedure

The examination consisted of visual and microscopic study of the font styles, the discriminating variations of letter formations, letter designs, beginnings and endings of letters, t-crossings, spelling of words and exterior and interior shapes of the labels.

Opinion

It is the opinion of this examiner that the label in question identified as Q-1, Questioned Label #12, did not come from the same group or batch of labels identified as Items K-1 through K-11 and K-13 through K-15.

Discussion

Item Q-1, Exhibit Label #12 contained a different font in all of the words on the label (except in the word "Date") and in numerals 1 and 2 as illustrated in the attached charts.

It is important to note that the name of Hans *Mast* was misspelled on Item Q-1, Exhibit Label #12, as "Hans *Mist*".

It is noteworthy that in an enlargement of the label identified as Q-1, Exhibit Label #12, is the appearance of a squared outer edge in the upper left corner of the label that can be seen. This differs from the rounded outer edges of the known labels that were used for comparison.

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This examination was conducted from machine copies of the document in question and the exemplars used for comparison. I assume that they are accurate reproductions of the originals. If the original documents become available, I am requesting the opportunity to examine the original documents containing the original labels and revisit my opinion. However, I do not believe my opinion will change.

Please allow four weeks in the event that testimony will be required.

Respectfully submitted,
Omni Document Examinations

Robin D. Williams

Robin D. Williams, MFS, MS, D-BFDE
Diplomate-Board of Forensic Document Examiners

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Dulberg v. Popovich

George Flynn <gflynn@karballaw.com>
Mon 7/11/2022 10:25 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: Linda Walters <lwalters@karballaw.com>

1 attachments (26 MB)
EX 0012 Hans Mast 062520.pdf;

Mr. Talarico:

Below is a copy the transmittal email with exhibit 12 received by my office on July 14, 2020. A previous email from July 10, 2020 from US legal contained the other deposition exhibits. The link contained in the July 14 email produced the attached PDF of exhibit 12.

Regards,

From: "wtolliver@uslegalsupport.com" <wtolliver@uslegalsupport.com>
Date: July 14, 2020 at 11:13:35 AM CDT
To: George Flynn <gflynn@karballaw.com>
Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

U.S. Legal Support has switched to paperless production. Your litigation support package contains digital files of your transcript and exhibits. These files are also readily available 24/7 via our secure Client Online Portal. The certified original will be printed to facilitate lodging with the Court. Should you require a hard certified copy of the transcript or a CD of your files, please contact your local U.S. Legal Support office.

Thank you for choosing U.S. Legal Support.

We have uploaded the following file(s). To open or download, please click on the link(s) below.

File Information

Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Job No.	923267	Job Date	6/25/2020
Witness	H. Mast Exhibits		



If you are unable to see the links or are not redirected to the file(s), please copy and paste the URL below in your browser:
https://share.uslegalsupport.com/docs/download?tk=86791893-4ae0-47ae-884c-52dfe3f186c0

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Available File(s)

File Type	File Name	Description	Size(KB)
Exhibit	EX 0012 Hans Mast 062520.pdf		26741

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George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
Please note our new address below effective May 27, 2022
200 S. Wacker Drive
Suite 2550
Chicago, IL 60606

P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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IN THE
SUPREME COURT OF ILLINOIS

In re: Illinois Courts Response to COVID-19 Emergency/Impact On Discovery	)	M.R.30370

Corrected
Order

In the exercise of the general administrative and supervisory authority over the courts of Illinois conferred on this Court pursuant to Article VI, Section 16 of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VI, sec. 16); and in view of the actions that have been taken by the Governor of the State of Illinois in response to the outbreak of the novel coronavirus (COVID-19); and consistent with the order issued by this Court on March 17, 2020,

IT IS HEREBY ORDERED:

Effective immediately and until further order of the Court, paragraph (h) of Illinois Supreme Court Rule 206 is temporarily amended as follows:

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) Reserved. ~~The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.~~

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

(3) Reserved. ~~Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.~~

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

(5) Time spent at a remote electronic means deposition in addressing necessary

EXHIBIT 5

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technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments
(April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Order entered by the Court.

SEAL OF THE SUPREME COURT
STATE OF ILLINOIS
AUG. 26. 1818

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, this 29th day of April, 2020.

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois

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IN THE
SUPREME COURT OF ILLINOIS

In re: Illinois Courts Response to COVID-19 Emergency/Impact On Discovery	)	M.R. 30370

Effective immediately, the Court's corrected order of April 29, 2020 regarding Illinois Courts Response to COVID-19 Emergency/Impact On Discovery is amended to add a committee comment concerning the temporary amendment of paragraph (h)(3) of Illinois Supreme Court Rule 206 as follows:

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) Reserved. ~~The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.~~

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

(3) Reserved. ~~Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.~~

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

(5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

EXHIBIT 6

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Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments
(April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Committee Comments
(June 4, 2020)

Paragraph (h)(3)

Subparagraph (h)(3) has been deleted to avoid discovery disputes over physical presence by a party or a party's attorney at a remote deposition. Deletion of the subparagraph does not mean that personal presence by a party or a party's attorney is absolutely prohibited. During the pandemic not all depositions are required to proceed remotely, nor is a continuance automatically required if counsel cannot agree on a remote method. Absent agreement, the circumstances of a remote deposition are within the discretion of the trial court.

Order entered by the Court.

SEAL OF THE SUPREME COURT
STATE OF ILLINOIS
AUG. 26, 1818

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, this 4th day of June, 2020.

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois

Received 11-23-2022 12:30 PM / Circuit Clerk Accepted on 11-23-2022 01:35 PM / Transaction #20425983 / Case #2017LA000377
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Good Morning, George,

I hope you are doing well. I would prefer to do an in-person deposition given that the client will likely want to be present and that may present some issues with a video deposition. That being said, I don't want to hold this up indefinitely.

Let's plan for the end of June. If the "stay at home" orders get extended again, we will reconsider the "in person" v "remote" deposition.

I hope you and your family are well.

I am working remotely. If you need to call—the best remote number is 312.508.3376.

Thanks,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Apr 30, 2020, at 11:12 AM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

I hope you and your family are staying safe, healthy, and busy during these uncharted times.

The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.

Otherwise, perhaps we can get a live deposition on the books for some time in June. If so, I would

EXHIBIT 7

suggest the 2nd half of June.

Let me know what you think

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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Hi Julia. I think June 17 will work. Just let me know the details. For the time being, I will plan on being at Hans' office for the deposition.

I am still not sure about June 5. I may attend live, but I should be able to make a decision by Tuesday.

How about touching base on Monday regarding the deposition logistics?

If you need to call, my cell is 773-341-8114.

So far so good here. I hope you and your family are doing well. Thanks

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Friday, May 29, 2020 4:37 PM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: Dulberg v. Popovich

Hi George,

How is the June 16,17, or 18? If not, we should also be open the week after on Wednesday or Thursday—June 24, 25.

I anticipate this will be a video deposition, despite things opening back up, I think it is the safest route for everyone and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option. Details to come on that. We can work that out and a time once we get the date nailed down.

I believe we have a June 5 status date. I believe we are encouraged to either use CourtCall or get an agreed order. I am happy to draft an agreed order setting out a date for close of oral fact discovery (f(1), f(2)) and setting the matter for further status, so we can submit it to the Judge prior to June 5 to avoid the date. Alternatively, I am also happy to appear via CourtCall if you intend to appear.

I hope you and your family are well.

EXHIBIT
8

Received 11-23-2022 12:30 PM / Circuit Clerk Accepted on 11-23-2022 01:35 PM / Transaction #20425983 / Case #2017LA000377
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Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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On May 4, 2020, at 11:43 AM, George Flynn <gflynn@karballaw.com> wrote:

Thanks Julia. So far so good here.

Sounds like a plan. If you have a date in mind for late June, I have a feeling it will work for me. I can pass it along to Hans, so he can hold the date. Please also advise where you want to conduct the deposition.

Take care

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Monday, May 4, 2020 11:37 AM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: Dulberg v. Popovich

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From: Julia Williams juliawilliams@clintonlaw.net
Subject: Re: Dulberg v Popovich Firm et al; Mast Deposition Exhibits
Date: June 24, 2020 at 10:49 AM
To: George Flynn gflynn@karballaw.com

Dear George,

Here is one more exhibit that I may use. We are still waiting on the instructions from US Legal which I expect by COB today.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
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On Jun 24, 2020, at 9:31 AM, George Flynn <gflynn@karballaw.com> wrote:

Thanks Julia. I will see you virtually, tomorrow.

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
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EXHIBIT 9

From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Tuesday, June 23, 2020 4:26 PM
To: George Flynn <gflynn@karballaw.com>
Cc: Mary Winch <marywinch@clintonlaw.net>; Ed Clinton <ed@clintonlaw.net>
Subject: Dulberg v Popovich Firm et al; Mast Deposition Exhibits

Dear George,

Attachments available until Jul 23, 2020

I am attaching the deposition exhibits that I *may* use on Thursday. I don't believe there will be any additions between now and then, but if there are they will minor and I will do my best to send them ahead of time. Obviously, I may not use all of these.

I have not used US Legal or done any remote depositions so you will have to forgive any errors. My understanding is that in the video conferencing system I will be able to upload the document in Pdf or other format (I am only using PDFs), then you and the court reporter will be able to download it. The court reporter will label the exhibits and

include them in the transcript after the deposition is complete. You are not required to print any of the documents—unless of course you would like to do that.

I did my best to label the exhibits in the number order that I believe I will use them. That being said, things change in depositions and they may have to be renumbered. In an effort to not make it super confusing, I used descriptive names as well.

If you have questions/concerns, please let me know. Otherwise, I will see you remotely on Thursday and we'll hope that everything goes smoothly.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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From: **Noelle Kappes** nkappes@uslegalsupport.com
Subject: RE: U.S. Legal Support - Confirmation of Scheduling - Job No. 923267
Date: July 14, 2020 at 11:27 AM
To: Julia WIlliams juliawilliams@clintonlaw.net
Cc: Smith Family barbnwally@att.net, Mary Winch marywinch@clintonlaw.net, Ed Clinton ed@clintonlaw.net

NK

Received, thank you.

Noelle Kappes
Scheduling and Client Solutions Manager I U.S. Legal Support
200 West Jackson Boulevard, Suite 600
Chicago, IL 60606

Direct 312.854.1422 I Main 312.957.4546
nkappes@uslegalsupport.com
www.uslegalsupport.com



From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Tuesday, July 14, 2020 9:41 AM
To: Noelle Kappes <nkappes@uslegalsupport.com>
Cc: Smith Family <barbnwally@att.net>; Mary Winch <marywinch@clintonlaw.net>; Ed Clinton <ed@clintonlaw.net>
Subject: Re: U.S. Legal Support - Confirmation of Scheduling - Job No. 923267
Importance: High

This message has originated from an **External Source.** Please use caution when opening attachments, clicking links, or responding to this email.

Dear Noelle,

Attachment available until Aug 13, 2020

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm

EXHIBIT
10

The Clinton Law Firm
111 W. Washington, Ste. 1437
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juliawilliams@clintonlaw.net

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On Jul 13, 2020, at 8:37 PM, Noelle Kappes <nkappes@uslegalsupport.com> wrote:

Hi there,

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you,
Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.
Witness: Hans Mast
Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.
Date: 06/25/2020
Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)
Location:
Reporter and all Parties will appear via Video Conference.

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From: wtolliver@uslegalsupport.com
Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:13 AM
To: juliawilliams@clintonlaw.net

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

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Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Job No.	923267	**Job Date**	6/25/2020
Witness	H. Mast Exhibits		

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Exhibit	EX 0012 Hans Mast 062520.pdf		26741

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Subject: Fwd: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:17 AM
To: Paul Dulberg pdulberg@comcast.net
Cc: marywinch@clintonlaw.net, ed@clintonlaw.net

Dear Paul,

Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was blank.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
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juliawilliams@clintonlaw.net

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Subject: **Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020**
Date: July 14, 2020 at 11:13:26 AM CDT
To: <juliawilliams@clintonlaw.net>

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From: **Julia Williams** juliawilliams@clintonlaw.net
Subject: Fwd: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: August 5, 2022 at 10:21 AM
To: Mary Winch marywinch@clintonlaw.net, ed@clintonlaw.net

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Begin forwarded message:

From: "wtolliver@uslegalsupport.com" <wtolliver@uslegalsupport.com>
Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:13:26 AM CDT
To: <juliawilliams@clintonlaw.net>

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Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Job No.	923267	**Job Date**	6/25/2020
Witness	H. Mast Exhibits		

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EXHIBIT 13

NOTICE
The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 2—10—0111
Opinion filed May 6, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PATRICIA TILSCHNER,	)	Appeal from the Circuit Court
	)	of McHenry County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 08—LA—383
	)	
LOWELL SPANGLER and RALPH M. RUPPEL,	)	
	)	Honorable
	)	Maureen P. McIntyre,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court, with opinion.
Justice Hutchinson concurred in the judgment and opinion.
Justice Hudson specially concurred in the judgment, with opinion.

OPINION

Plaintiff, Patricia Tilschner, appeals from the trial court's orders dismissing count II of her third-amended complaint and denying her motion to reconsider. Patricia claims on appeal that the trial court erred in concluding that this State has not adopted section 318 of the Restatement (Second) of Torts (1965).[1] We affirm.

Patricia was injured during a party at the home of defendant Lowell Spangler when defendant Ralph Ruppel ignited fireworks. Patricia's third amended complaint contained three counts. Count

[1]Patricia raised a similar claim regarding an undifferentiated duty independent of section 318 but abandoned that argument during oral argument.

EXHIBIT 14

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I alleged common-law negligence against Spangler. Count II alleged negligence against Spangler pursuant to section 318 of the Restatement (Second) of Torts. Count III alleged common-law negligence against Ruppel. Spangler moved to dismiss count II, pursuant to section 2—615 of the Code of Civil Procedure (735 ILCS 5/2—615 (West 2008)). The trial court granted the motion to dismiss with prejudice and denied Patricia's subsequent motion to reconsider. Patricia filed an application for leave to appeal to this court pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010), which was denied. Patricia was also denied leave to file a fourth amended complaint. She then voluntarily dismissed count I of the third amended complaint, and the trial court found no just reason to delay enforcement or appeal, pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). This appeal followed.

Patricia now contends that the trial court erred in dismissing count II of her third amended complaint. When a defendant challenges the legal sufficiency of a complaint with a section 2—615 motion to dismiss, all well-pleaded facts alleged in the complaint are taken as true. *King v. Senior Services Associates, Inc.*, 341 Ill. App. 3d 264, 266 (2003). On review of a dismissal pursuant to section 2—615, this court must determine whether the allegations of the complaint, when interpreted in the light most favorable to the plaintiff, sufficiently set forth a cause of action on which relief may be granted. *King*, 341 Ill. App. 3d at 266. The motion should be granted only if the plaintiff can prove no set of facts to support her cause of action. *King*, 341 Ill. App. 3d at 266. As this process does not require the trial court to weigh findings of fact or determine credibility, this court is not required to defer to the trial court's judgment, and we will review the matter *de novo*. *King*, 341 Ill. App. 3d at 266.

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To state a cause of action in negligence, a plaintiff must allege facts that establish a duty, a breach of that duty, and proximate causation. *Ryan v. Yarbrough*, 355 Ill. App. 3d 342, 345 (2005). Patricia alleged that Spangler:

> "[o]wed a duty to the Plaintiff and his other invited guests to keep control and care over his property and to protect them against any unreasonable risks of harm known due to acts of a third person under his control, including the Defendant, RALPH RUPPEL, pursuant to the Restatement (Second) of Torts, §318."

Section 318 of the Restatement (Second) of Torts provides:

> "If the actor permits a third person to use land or chattels in his possession otherwise than as a servant, he is, if present, under a duty to exercise reasonable care so to control the conduct of the third person as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if the actor
>
> (a) knows or has reason to know that he has the ability to control the third person, and,
>
> (b) knows or should know of the necessity and opportunity for exercising such control." Restatement (Second) of Torts §318 (1965).

A restatement is not binding on Illinois courts unless it is adopted by our supreme court. *Eckburg v. Presbytery of Blackhawk of the Presbyterian Church (USA)*, 396 Ill. App. 3d 164, 169 (2009); *In re Estate of Lieberman*, 391 Ill. App. 3d 882, 890 (2009). Thus, we must determine whether our supreme court has adopted section 318 of the Restatement (Second) of Torts; if it has not, Spangler owed no duty to Patricia.

Citing a line of both supreme court and appellate court cases, Patricia argues that section 318 has "unquestionably" been adopted in Illinois. However, this is not the first time that this court has

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examined this question and concluded to the contrary. In *Zimring v. Wendrow*, 137 Ill. App. 3d 847, 850 (1985), this court specifically found that "[n]o Illinois case has adopted section 318 of the Restatement (Second) of Torts, upon which plaintiff relies." Ultimately, we concluded that we "need not consider" the sufficiency of the complaint in relation to section 318. *Zimring*, 137 Ill. App. 3d at 853. In *Elizondo v. Ramirez*, 324 Ill. App. 3d 67, 73 (2001), the plaintiff asserted that section 318 "has been adopted in Illinois and cite[d] two cases in support." After analyzing those cases—*Cravens v. Inman*, 223 Ill. App. 3d 1059 (1991), and *Teter v. Clemens*, 112 Ill. 2d 252 (1986)—we concluded that "it is unclear whether these cases represent the law in Illinois" (*Elizondo*, 324 Ill. App. 3d at 73-74), and we declined to "express an opinion on whether section 318 represents the law in Illinois" (*Elizondo*, 324 Ill. App. 3d at 74). We note with interest that Patricia cites to *Elizondo* but fails to mention, let alone address, this court's refusal to find that section 318 had, indeed, been adopted in this state. Patricia now argues, despite our analysis in *Elizondo*, that our supreme court adopted section 318 in *Teter*. We disagree, and we will not revisit our prior analysis and determination in *Elizondo* that there was no clear adoption of section 318 by our supreme court in *Teter*.

While Patricia does not cite to *Cravens*, its ultimate disposition is instructive. In *Cravens*, the First District of the Illinois Appellate Court found a duty and, thus, a claim for negligence, pursuant to section 318 and to *Teter*, in the factual scenario of adults providing alcohol to minor guests who subsequently left in an automobile and were involved in a fatal accident. However, our supreme court in *Charles v. Seigfried*, 165 Ill. 2d 482, 501-02 (1995), concluded that it did "not agree that the views set forth in *Cravens* should be adopted through judicial decision." This court noted the supreme court's refusal, in an admittedly different context, to impose liability pursuant to section 318. See *Elizondo*, 324 Ill. App. 3d at 74.

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Patricia argues that the supreme court "implicitly" adopted section 318 in *Estate of Johnson v. Condell Memorial Hospital*, 119 Ill. 2d 496, 503-04 (1988), in which the court stated:

> "In general, one has no duty to control the conduct of another to prevent him from causing harm to a third party (Restatement (Second) of Torts §315 (1965)), but there are exceptions to this, based on 'special relationships.' Sections 315 through 319 of the Restatement (Second) of Torts (1965) describe these relationships. The 'special relationship' that the plaintiff alleges existed here that would give rise to a duty to protect another from harm is found in section 319 ***."

The court ultimately concluded, "It cannot be reasonably said, based on the complaint's allegations against Condell, that the hospital assumed a duty of care to Holt under section 319 of the Restatement (Second) of Torts (1965)." *Estate of Johnson*, 119 Ill. 2d at 506-07. Patricia argues that the "clear import" of the decision "is that sections 315-319 have been adopted in Illinois." She then cites to a similar statement in *Kirk v. Michael Reese Hospital & Medical Center*, 117 Ill. 2d 507, 530 (1987) ("There are types of relationships that give rise to a duty to control a third party's conduct set out in sections 316 to 319 of the Restatement (Second) of Torts (1965) ***"), to support her conclusion that the supreme court "cited with approval all of the exceptions/duties established in sections 316 through 319." Patricia is not alone in this argument. The First District of the Illinois Appellate Court has boldly stated that the supreme court has adopted sections 315 through 319. See *Brewster v. Rush-Presbyterian-St. Luke's Medical Center*, 361 Ill. App. 3d 32, 36-37 (2005) (citing *Estate of Johnson*, 119 Ill. 2d at 503-04); *Iseberg v. Gross*, 366 Ill. App. 3d 857, 862 (2006) (citing only *Brewster*, which expressly mentions sections 315 through 319, but then mysteriously increasing the number of sections adopted, to include sections 314 through 320).

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However, we first note that neither *Estate of Johnson* nor *Kirk* (nor, for that matter, *Brewster* nor *Iseberg*) involved a claimed application of section 318. Both *Estate of Johnson* and *Kirk* involved claims arising from alleged improper medical treatment of third parties who subsequently injured the plaintiffs; these claims were analyzed under section 319, which speaks to a duty of those in charge of someone having dangerous propensities. See *Estate of Johnson*, 119 Ill. 2d at 503-04; *Kirk*, 117 Ill. 2d at 530-31. The "most relevant" section in *Brewster* was section 317, which addresses the duty of a master to control the conduct of his servants. *Brewster*, 361 Ill. App. 3d at 37; Restatement (Second) of Torts §317 (1965). In *Iseberg*, the plaintiff did not even allege that any of the Restatement sections applied and imposed a duty on the defendants. *Iseberg*, 366 Ill. App. 3d at 862.

Patricia has failed to cite, and our research has not revealed, a single case since *Teter* in which our supreme court has specifically addressed, or even quoted, section 318 of the Restatement (Second) of Torts. We cannot conclude that our supreme court has adopted—explicitly, implicitly, impliedly, or otherwise—a Restatement section that it has not been called upon to analyze, apply, or adopt. Even the cases upon which Patricia relies do little more than acknowledge the existence of section 318. *Estate of Johnson* says that sections 315 through 319 describe " 'special relationships' " that form the bases for exceptions to the general rule of section 315. *Estate of Johnson*, 119 Ill. 2d at 503. *Kirk* merely notes that certain types of relationships set out in sections 316 through 319 give rise to a duty to control a third party's conduct, although none of the types applied there. *Kirk*, 117 Ill. 2d at 530. The mere citation to a cluster of sections, or even the analysis some of the nearby sections, is insufficient to establish the adoption of a restatement section.

The supreme court has addressed more thoroughly and deeply other restatement sections and specifically did *not* adopt them. For example, in a case examining the difference between void and

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voidable judgments, the supreme court compared its conclusions with those that it would have reached if the criteria of section 12 of the Restatement (Second) of Judgments were applied to the facts of the case. *In re Marriage of Mitchell*, 181 Ill. 2d 169, 176 (1998). The court noted that the result in the case was "consistent with the trend of modern authority" as exemplified by the Restatement (Second) of Judgments. *Mitchell*, 181 Ill. 2d at 175. The court then quoted section 12 of the Restatement (Second) of Judgments and applied the criteria of that section to the facts of the case. *Mitchell*, 181 Ill. 2d at 176. After determining that adopting the view expressed in the Restatement would require a re-examination of existing case-law analysis, the court casually noted that "[t]he parties [did] not ask us to adopt the rule expressed in the Restatement, however, and therefore we need not decide in this case whether to take that step." *Mitchell*, 181 Ill. 2d at 177. In *Mitchell*, the court explicitly declined to adopt a restatement section that it specifically quoted, applied to the facts of the case, analyzed, and compared to existing case law, because the parties did not ask for it. Here, Patricia cannot cite to a case wherein the court even cited to section 318, let alone provided the type of analysis that it did in *dictum* in *Mitchell*. With such meager authority, we cannot find the adoption of a restatement section.

Patricia similarly attempts to find adoption of section 318 in this court's decision in *Duncan v. Rzonca*, 133 Ill. App. 3d 184 (1985). Patricia's specific claim is that the *Duncan* court adopted section 316 of the Restatement and that, since sections 316 through 319 are "uniformly discussed together," there is "simply no logical explanation for why section 316 but not section 318 would be adopted in Illinois." We first note that this court does not have the authority to adopt a restatement section; as we have already stated, a restatement is binding on Illinois courts *only if it is adopted by our supreme court*. See *Eckburg*, 396 Ill. App. 3d at 169; *Lieberman*, 391 Ill. App. 3d at 890. In the absence of Illinois law, we often deem secondary sources, such as the Restatement (Second) of

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Torts, to be persuasive. [2] *Eckburg*, 396 Ill. App. 3d at 169. A restatement is a policy statement; this court does not adopt policy, it applies present law to the facts of the case before it. Further, this argument relies on the same fallacy as her prior argument: the "adoption" of a section includes the adoption of other sections "uniformly discussed together." This argument is not only a *non sequitur*, it is irrational as well. *Duncan* does not support Patricia's cause.

The restatement that we adopt today is that our supreme court has not adopted section 318 of the Restatement (Second) of Torts. Therefore, count II of Patricia's third-amended complaint, interpreted in the light most favorable to her, fails to allege a duty recognized by our supreme court and fails to set forth a cause of action on which relief may be granted. The trial court did not err in granting Spangler's section 2—615 motion to dismiss with prejudice.

---

[2]"A secondary source is not the law. It's a commentary on the law. A secondary source can be used for three different purposes: it might educate you about the law, it might direct you to the primary law, or it might serve as persuasive authority. Few sources do all three jobs well. The important classes of legal secondary sources include: treatises, periodical articles, legal encyclopedias, ALR Annotations, *Restatements*, and Looseleaf services. ***

* * *

Restatements

The restatements were developed by legal scholars initially to restate the law, and currently to describe what the law should be. In either case, Restatements are very persuasive although they are not very good at describing the law. They can serve as adequate law finders." (Emphasis added.) *Secondary Sources*, Yale Law School, Lillian Goldman Law Library, http://m-library.law.yale.edu/content/secondary-sources.

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For these reasons, the judgment of the circuit court of McHenry County is affirmed.

Affirmed.

JUSTICE HUDSON, specially concurring:

I agree with much of the majority's analysis in this case as well as the result at which it arrives. However, I would prefer to refrain from making sweeping and unnecessary statements about the authority of this court. It is well established that a court should avoid constitutional questions when a case can be decided on other grounds. *In re Detention of Swope*, 213 Ill. 2d 210, 218 (2004); *Beahringer v. Page*, 204 Ill. 2d 363, 370 (2003). The scope of the authority of this court is a constitutional matter. See *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002).

In this case, the majority rejects plaintiff's contention that this court has adopted section 318 of the Restatement (Second) of Torts, finding plaintiff's argument "irrational." Slip op. at 8. This finding should resolve this question. The majority, nevertheless, goes on to hold that this court does not have the authority to adopt a section of a restatement. It is unnecessary to consider whether this court has such authority in light of the majority's holding that nothing this court previously did would constitute an adoption of section 318. As I believe it improper to address the issue of the authority of this court, I do not join this portion of the majority's opinion.

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United States of America

2-10-0111

PATRICIA TILSCHNER,

Plaintiff-Appellant,

State of Illinois, Appellate Court, Second District, } ss.

v.

LOWELL SPANGLER and RALPH M. RUPPEL,

Defendants-Appellees.

I, ROBERT J. MANGAN, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the decision of the said Appellate Court in the above entitled cause of record in my said office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this

6th *day of* May, *A.D. 20* 2011

Clerk Appellate Court, Second District

(RO-2131 — 5M — 3/02)

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From: George Flynn gflynn@karballaw.com
Subject: Re: Dulberg
Date: June 19, 2020 at 2:56 PM
To: Julia WIlliams juliawilliams@clintonlaw.net

Ok glad to hear. Thanks Julia.

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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> On Jun 19, 2020, at 2:54 PM, Julia WIlliams <juliawilliams@clintonlaw.net> wrote:
>
> Thanks George. We are still on. This will be the first remote deposition that I have taken so I am still working on figuring out the exhibits. I believe that I can upload them to the US Legal system and then share them during the deposition. But, if not, I will be sure to have them to you no later than Tuesday by 5pm.
>
> Best Regards,
>
> Julia Williams
> Of Counsel
> The Clinton Law Firm
> 111 W. Washington, Ste. 1437
> Chicago, IL 60602
> P:312.357.1515
> F: 312.201.0737
> juliawilliams@clintonlaw.net
>
> This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.
>
> > On Jun 19, 2020, at 2:54 PM, George Flynn <gflynn@karballaw.com> wrote:
> >
> > Julia: I just received your notice of attorney lien. Will you still be taking the dep next week?
> >
> > My experience with receiving liens at this stage of litigation(in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for Mast's dep.
> >
> > Thanks
> >
> > George Flynn
> >
> > Karbal | Cohen | Economou | Silk | Dunne | LLC
> > 150 S. Wacker Drive
> > Suite 1700
> > Chicago, IL 60606
> > <phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
> > <fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
> > <envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
> >
> > CONFIDENTIALITY NOTE:
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EXHIBIT 15

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From: George Flynn gflynn@karballaw.com
Subject: RE: Dulberg
Date: June 26, 2020 at 1:13 PM
To: Julia WIlliams juliawilliams@clintonlaw.net

GF

Sure, feel free to give me a call.

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Friday, June 26, 2020 12:13 PM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: Dulberg

Dear George,

Thank you for the follow up. I am working on the production today. Are you around on Monday—can we chat then?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Jun 25, 2020, at 12:31 PM, George Flynn <gflynn@karballaw.com> wrote:

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Julia:

Just wanted to write while it is fresh in my mind, but I'd like to close the dangling issues from your client's deposition, including the production of communications with Mr. Gooch in view of the "discovery rule" issues.

Please advise

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

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From: **Julia WIlliams** juliawilliams@clintonlaw.net
Subject: Re: Need clarification on outstanding issues before your departure
Date: July 30, 2020 at 10:05 AM
To: Paul Dulberg Paul_Dulberg@comcast.net
Cc: Ed Clinton ed@clintonlaw.net, Mary Winch marywinch@clintonlaw.net

Dear Paul,

Please see my responses below.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

[redacted]

> 3. Similar to the last question, Have the objections in the Mast deposition been worked out or ruled on by judge Meyer?

There has been no motion practice on the issue and thus, there is no ruling. Your future counsel will need to bring that before the Judge at some point.

[redacted]

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EXHIBIT 17

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Katherine M. Keefe
Clerk of the Circuit Court

THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST Defendants.	)))))) Case No. 17 LA 377)))))

AMENDED NOTICE OF FILING

TO A Attorneys **R c rd P c d S r c L**

PLEASE TA E NOTICE that on the 23 day of November 2022, I filed with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, **PLAINTIFF'S AMENDED MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TA EN IN VIOLATION OF SUPREME COURT RULE REMOTE ELECTRONIC MEANS DEPOSITIONS d ORDERS OF THE ILLINOIS SUPREME COURT I r ILLINOIS COURTS RESPONSE COVID- EMERGENCY IMPACT ON DISCOVERY M R CORRECTED ORDER APRIL , d M R AMENDED ORDER JUNE , d GRANT LEAVE TO TA E THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST** a copy of which is attached and hereby served upon you.

November 23, 2022

ALPHONSE A. TALARICO
Law Office of Alphonse A. Talarico
ARDC No. 6184530
707 Skokie Boulevard, Suite 600
Northbrook, Illinois 60062
(312) 808-1410

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Attorney for Plaintiff Paul Dulberg
contact@lawofficeofalphonsetalarico.com

AFFIDAVIT OF SERVICE

I, the undersigned attorney, certify that this Notice was served to all parties listed on the attached **S r c L** by E-filing with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, **PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TA EN IN VIOLATION OF SUPREME COURT RULE REMOTE ELECTRONIC MEANS DEPOSITIONS d ORDERS OF THE ILLINOIS SUPREME COURT I r ILLINOIS COURTS RESPONSE COVID- EMERGENCY IMPACT ON DISCOVERY M R CORRECTED ORDER APRIL , d M R AMENDED ORDER JUNE , d GRANT LEAVE TO TA E THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST** and by email on November 23, 2022.

Under penalties as provided by law pursuant to 735 ILCS 5 1-109, I certify that the statements set forth herein are true and correct.

s Alphonse A. Talarico
Alphonse A. Talarico

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SERVICE LIST

GEORGE FLYNN
arbal Cohen Economou Sil Dunne, LLC
South ac er Drive, Suite
Chicago, Illinois
( )
Attorneys for Defendants
gflynn arballa com

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST Defendants.	)))))) Case No. 17 LA 377)))))

PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TA EN IN VIOLATION OF SUPREME COURT RULE REMOTE ELECTRONIC MEANS DEPOSITIONS d ORDERS OF THE ILLINOIS SUPREME COURT I r ILLINOIS COURTS RESPONSE COVID- EMERGENCY IMPACT ON DISCOVERY M R CORRECTED ORDER APRIL , d M R AMENDED ORDER JUNE , d GRANT LEAVE TO TA E THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Motion To Exclude the Discovery Deposition of Defendant Hans Mast taken in violation of Supreme Court Rule 206 h(2) and Supreme Court Orders states as follows:

RELEVANT FACTS

1) On June 25, 2020 the Discovery Deposition of Defendant Hans Mast was taken pursuant to a non-filed notice (violation waived) but all 15 exhibits and the questioning

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of deponent Hans Mast based upon all 15 exhibits violated the Rules and Orders of the Illinois Supreme Court.

2) Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition without any exhibits from Defendants' Attorney's office and the exhibits 1-11 and 13-15 from the Plaintiff's current Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)

3) Plaintiff's current Attorney objected to the use of the discovery deposition of Defendant Hans Mast during the hearing because there's exhibit(s) missing. (Please see Report of Proceedings April 27, 2022 page 31 line 21-24 which is part of the Clerk's online file)

4) Plaintiff's current Attorney more completely explained to the Court that the discovery deposition of Hans Mast in all its variations was missing exhibit 12. (Please see Report of Proceedings April 27, 2022 page 36 line 19-24 to page 37 line 1-3 which is part of the Clerk's online file)

5) Thereafter this Honorable Court asked Defendants' Attorney whether he had exhibit 12. (Please see Report of Proceedings April 27, 2022 page 37 line 19-20 which is part of the Clerk's online file)

6) The Attorney for the Defendants responded "I may. I don't know. I haven't look for it." (Please see Report of Proceedings April 27, 2022 page 37 line 20-21 which is part of the Clerk's online file)

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7) This Honorable Court ordered Defendants' Attorney to produce exhibit 12 if he has it. (Please see Report of Proceedings April 27, 2022 page 39 line 16-21 which is part of the Clerk's online file)

8) On April 28, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney's office with a link at https: www.dropbox.com to access Mast Dep Ex.12. (Please see Plaintiff's Exhibit #1 attached)

9) Plaintiff's current Attorney noticed that the label purporting to be authentic on Hans Mast's discovery deposition exhibit 12 seemed not to match the other 14 exhibit label as to fonts, shape, color, and DEPONENT's NAME (Hans Mist not Hans Mast).

10) On May 18, 2022 Plaintiff's current Attorney caused to be served upon Certified Shorthand Reporter Barbara G. Smith a Subpoena For Records in which she was requested to produce "The original discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic shorthand notes."

11) Certified Shorthand Reporter Barbara G. Smith's complete response submitted on a flash drive was received on June 16, 2022.

12) Contained on the flash drive is a file titled HPSCANS and therein were a series of communications and handwritten notes between the Certified Shorthand Reporter Barbara G. Smith and Noelle Kappes of US Legal Support and Plaintiff's former attorney Julia C. Williams clearly indicating that Hans Mast discovery deposition taken June 25, 2020 did not have exhibit 12 sent before the deposition nor uploaded during the deposition and said exhibit was never in the Certified Shorthand Reporter Barbara G. Smith's possession before, during or after the deposition was taken, transcribed or

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submitted for transmission. (Please see Plaintiff's Group Exhibit #2 Barbara G. Smith job papers0001.pdf and job papers0002.pdf attached)

13) Thereafter, on June 21, 2022 Plaintiff's current Attorney sent Hans Mast's discovery deposition taken on June 25, 2020 with exhibits 1-11 and 13-15, that were located in Plaintiff's former Attorney Julia C. Williams' electronic file with exhibit 12 received from Defendants' Attorney's office on April 28, 2022 with Barbara G. Smith's flash drive to Plaintiff's S. Ct. Rule 213(f)(3) expert Robin D. Williams, MFS, MS, D-BFDE Board Certified, Omni Document Examinations for analysis.

14) On July 11, 2022 Plaintiff's current Attorney received Robin D. Williams's Report of Findings concluding that the label on exhibit 12 did not come from the same group or batch of labels identified as exhibits 1-11 and 13-15. (Please see Plaintiff's Exhibit #3 Robin D. Williams Report of Findings July 11, 2022 attached)

15) On July 11, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney stating that the Hans **MIST EMPHASIS ADDED** exhibit 12 alleged to be part of Defendant Hans Mast's discovery deposition was received separately from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 14, 2020 while the Deposition and Exhibits 1-11 and 13-15 were received from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 10, 2020. (Please see Plaintiff's Exhibit #4 attached)

LAW AND ORDER(S)

Illinois Supreme Court Rule 206. Method of Taking Depositions on Oral Examination

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(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating **c**

EMPHASIS ADDED the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. (1) Reserved. (2) **A r r d r d c r d d r d r d d c r d r d r r r r d r d r r d , d r c r r d r d**

EMPHASIS ADDED (3) Reserved. (4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties. (5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for

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the deposition set by Rule 206(d), by stipulation, or by court order. (6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

M.R.30370 CORRECTED ORDER APRIL 29, 2020

(Please see Plaintiff's Exhibit #5 attached)

M.R.30370 AMENDED ORDER JUNE 4, 2020

(Please see Plaintiff's Exhibit #6 attached)

ILCS / ro Ch. , par.

Sec. . Po er o co rts to a e r les. a The S pre e Co rt o this State has po er to a e r les o pleading, practice and proced re or the circ it, Appellate and S pre e Co rts s pple entar to, t not inconsistent ith the provisions o this Act, and to a end the sa e, or the p rpose o a ing this Act e ective or the convenient ad inistration o j stice, and other ise si pli ing j dicial proced re, and po er to a e r les governing pleading, practice and proced re in s all clai s actions, incl ding service o process in connection there ith. nless other ise indicated the te t, re erences in this Act to r les are to r les o the S pre e Co rt.

S ject to the r les o the S pre e Co rt, the circ it and

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Appellate Co rts a a e r les reg lating their doc ets, calendars, and siness.

So rce P.A. .

(735 ILCS 5 1-105) (from Ch. 110, par. 1-105)

Sec. 1-105. Enforcement of Act and rules. The Supreme Court may provide by rule for the orderly and expeditious administration and enforcement of this Act and of the rules, including the striking of pleadings, the dismissal of claims, the entry of defaults, the assessment of costs, the assessment against an offending party of the reasonable expenses, including attorney's fees, which any violation causes another party to incur, **r r c**

r r EMPHASIS ADDED

(Source: P.A. 82-280.)

Rule 211. Effect of Errors and Irregularities in Depositions; Objections (a) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice. (b) As to Disqualification of Officer or Person. Objection to taking a deposition because of disqualification of the officer or person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification

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becomes known or could have been discovered with reasonable diligence. (c) As to Competency of Deponent; Admissibility of Testimony; Questions and Answers; Misconduct; Irregularities. (1) Grounds of objection to the competency of the deponent or admissibility of testimony which might have been corrected if presented during the taking of the deposition are waived by failure to make them at that time; otherwise objections to the competency of the deponent or admissibility of testimony may be made when the testimony is offered in evidence. (2) Objections to the form of a question or answer, errors and irregularities occurring at the oral examination in the manner or taking of the deposition, in the oath or affirmation, or in the conduct of any person, and errors and irregularities of any kind which might be corrected if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition. (3) Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving succeeding questions and, in the case of the last questions authori ed, within 7 days after service thereof. (4) A motion to suppress is unnecessary to preserve an objection seasonably made. Any party may, but need not, on notice and motion obtain a ruling by the court on the objections in advance of the trial. (d) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the

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testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after the defect is, or with due diligence might have been, ascertained. Committee Comments This rule is derived from former Rule 19-9. The language is unchanged except that the period for filing objections to the form of written questions has been extended to seven days in subparagraph (c)(3) in keeping with the committee's policy of measuring time periods in multiples of seven days.

VIOLATIONS

A) The exhibits that were decided upon to be used by former counsel Julia C. Williams, and specifically exhibit 12, were not provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition. In fact,

r r d d c r d r EMPHASIS ADDED

A1) On or about April 30, 2020 Defendants' Counsel sent an email to Plaintiff's former Counsel Julia C. Williams indicating an awareness of the current Supreme Court rules regarding depositions when he wrote "The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.." (Please see Plaintiff's Exhibit #7 attached.)

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A2) On or about May 29th 2020 former attorney Julia C. Williams sent an email to Defendants' Counsel indicating an awareness of the current Supreme Court rules regarding depositions when she wrote " …and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option." (Please see Plaintiff's Exhibit #8 attached.)

A2.1) On or about June 19, 2020 Defendants' attorney emailed Plaintiff's former attorney Julia C. Williams stating "Julia: I just received your notice of attorney lien. Will you still be taking the dep next week

My experience with receiving liens at this stage of litigation (in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for the Mast's dep. (Please see Plaintiff's Exhibit 15 attached.)

A3) On or about June 23, 2020 Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 23 exhibits that she **dd d** use in the discovery Deposition of Defendant Hans Mast on June 25, 2020. Additionally she indicated that there **c d dd d r r c** . **dd d** Additionally she wrote "…and I will do my best to send them ahead of time." (Please see Plaintiff's Exhibit #9 attached.)

A3.1) On or about June 24, 2020 at 10:49 AM (less than 24 hours before the start of the discovery deposition of Defendant Hans Mast) Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 1 more exhibit that she **dd d** use. (Please see Plaintiff's Exhibit 9 attached.)

A3.2) On June 25, 2020 the discovery deposition of Hans Mast was called at 10:00 AM "pursuant to subpoena and pursuant to the Code of Civil Procedure of the State of

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Illinois and the **RULES OF THE SUPREME COURT THEREOF, PERTAINING TO THE TA ING OF DEPOSITIONS, EMPHASIS ADDED** (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. and Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment
Exhibit G page 1 lines 15 to 17)

A3.3) On June 25, 2020 at 12:31 PM (approximately 15-30 minutes after the conclusion of the discovery deposition of Defendant Hans Mast, Defendant's attorney sends an email to Plaintiff's former attorney Julia C. Williams discussing what is "…fresh in his mind…" but any conversation regarding errors and irregularities in the just concluded deposition is notably absent. (Please see Plaintiff Exhibit 16 attached.)

A3.4) Shortly after the Deposition ended Barbara G. Smith emailed Julia C. Williams asking for Exhibit 12 and Julia C. Williams responded by sending a blank email. Additionally, Barbara G. Smith called and left a message for Julia C. Williams on July 6, 2020 again requesting Exhibit 12. On July 7, 2020 Barbara G. Smith submitted the June 25, 2020 discovery deposition of Hans Mast to U.S. Legal Support without Exhibit 12. (Please see Plaintiff's Group Exhibit 2 attached).

A3.5) The Deposition of Defendant Hans Mast was received by Plaintiff's former attorney and Defendants' attorney from U.S. Legal Support **H M E EMPHASIS ADDED** on July 10, 2020.

A4) On or about July 13, 2020 Noelle Kappes, Scheduling and Client Solution Manager U.S. Legal Support sends an email to Plaintiff's former attorney Julia C. Williams stating that "the court reporter indicated you would be sending us exhibit 12 from this deposition (discovery deposition of Defendant Hans Mast taken remotely on June 25,

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2020) so that we can include it with the transcript. I don't believe we have received it can you send it tomorrow " (Please see Plaintiff's Exhibit #10 attached)

A5) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams emails to Noelle Kappes "Dear Noelle, I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here." (Please see Plaintiff's Exhibit #10 attached.)

A6) On or about July 14, 2020 wtolliver2uslegalsupport.com emailed to Plaintiff's former attorney and Defendants' attorney that "Exhibit 12 is now available to download" (Please see Plaintiff's Exhibit #11 attached)

A6.1) Exhibit 12 was never presented to the officer administering the oath Barbara G. Smith, CSR, RPR Notary Public but was sent after the deposition of Defendant Hans Mast was taken on June 25, 2020 but sent on July 14, 2020 to Noelle Kappes, Scheduling and Client Solution Manager U.S. Legal Support who forwarded it to wtolliver2, another employee of U.S. Legal Support who created the misspelled, non-conforming HANS M**I**ST [**EMPHASIS ADDED** label.

A7) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams wrote to Plaintiff "Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was [emphasis added] (Please see Plaintiff's Exhibit #12 attached)

A8) On or about August 5, 2022 Plaintiff's former attorney inexplicitly emails to Mary Winch marywinch@clintonlaw.net,ed@clintonlaw.net the same email she sent to the same recipients on July 14, 2020. (Please see A5 above and Plaintiff's Exhibit #13 attached)

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B) The deposition participants were not able to view the exhibits in real time during the deposition.

B1) The following clearly indicated a problem with viewing the exhibits submitted and the Defendant's internet equipment and internet connection and audio during the attempted remote discovery deposition of Defendant Hans Mast:

B1.1) Q. So I'm uploading Exhibit 2, it's titled Dulberg Mast Dep Exhibit 2, and this should be the original complaint filed in the case Dulberg versus Gagnon, et al., 12 LA 178, filed in McHenry County. Do you see that document

A. Yeah. What I'm going off are an email I got with all the exhibits attached, so I'm not that's what I'm looking at.; (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 17 lines 3 to 10 also found on 209 of 464 previously filed.)

B1.2) Q. Okay.

A. Oh, uh, I think It just kicked me off.

Mr. Flynn: I got disconnected, too. It's the Wi-Fi.

By Ms. Williams:

Q. Okay, we'll just wait a minute here.

A. I can hear you. I just can't see you. Q. We'll wait a minute until you can get your video back on.

Mr. Flynn: Julia, we think the Wi-Fi may have dropped **r c dd d**

Ms. Williams: Okay. Well, let's just give a minute and see.; (Please see Defendants'

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The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 22 lines 1 to 10 also found on 211 of 464 previously filed.)

B1.3) Q. Okay. I just uploaded Dulberg Mast Exhibit 4 and it says letter it's "Letter Re Settlement," and that should be still be Exhibit 4 that was emailed around to Counsel so that you would have it. And it is labeled POP192 and POP193. Do you recogni e those documents

A. Wait. I think the Internet, maybe because we were having problems, is the Internet went down, so now my exhibits aren't pulling up. Can you try again Do you have that, George

Mr. Flynn: Yeah, here's the **rd c dd d**

The Witness: I'll look at the **rd c dd d** , so what are you asking

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 26 lines 5 to 17 also found on 212 of 464 previously filed.)

B1.4) Q. Okay. Just uploaded Exhibit 5, and this is email dated October 30, 2013, and it's marked at the bottom 000195.

A. Okay.

Q. Okay, and here in this email it looks like you started this email chain to Paul on October 25, 2013. Do you see that

A. It looks like there s a couple emails here. There's several pages. You just mean the first page

Q. I think It should only be, I believe it's only one page and it looks like

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A. Oh, these aren't part of it Just one page

Q. The document that I have is just one page. Are we looking at the same thing

A. Okay.

Q. It's POP00195 on the bottom.

A. Yeah, he had a couple other pages on it, but okay.

Q. Okay. I just want to make sure that I didn't okay. And on the bottom there of the first sheet, if you have several, **l d r r d dd d ,** it states, "Friday, October 25, 2013," do you see that

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 28 lines 16 to 24 and page 29 lines 1-14 also found on 212 of 464 previously filed.)

B1.5) Q. Okay. So I'm going to upload another file here.

A. Yeah, our internet is down. That's why I can't bring these up.

Q. Okay.

Mr. Flynn: Julia, just so you know, I've got hard copies of the majority of the exhibits you sent with the exception of the larger files, like the insurance policy and the dep transcripts.

MS. Williams: Okay. Okay, great.

Mr. Flynn: I've got some of the deposition transcripts, but I didn't want to waste a lot of paper and ink at home.

MS. Williams: Okay. I think we'll be For the most part, I think we'll be fine and we'll deal with it if and when we get to that point.

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Q. Okay. So the document that I'm looking at now is another email on the it's now titled Exhibit 6. I don't think it was entitled Exhibit 6 in what I sent to George, but it's an email that the first date on the email is November 4, 2013, and the last date is November 5, 2013 email chain and it's at the bottom it's stamped Dulberg001531.

A. What exhibit is it

Q. I think it might have been **-A dd d** to George. It's now exhibit 6 for the purpose of this deposition. (Please note that there never was an exhibit marked 5-A)

A. Yeah, that wasn't part of the download then. Do you have

Mr. Flynn: Yeah, I don't think that was included. (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 31 lines 10 to 24 and page 32 lines 1 to 17 also found on 213 of 464 previously filed.)

B1.6) Q. Okay. Okay, I'm going to stop screen sharing. Okay. I'm going to upload another file. This is Deposition Exhibit 7. George, you probably had it as Exhibit 6, but for the purpose of this deposition right now it's going to be 7 and it's an email chain dated

A. I have these on the computer. You don't need to, unless you want to, but I'm just saying I have these on the computer.

Q. Okay, but Barb needs them, so that's why I keep uploading them, otherwise she doesn't have them. Okay. So Exhibit 7, and it's POP00181 and POP00182,and it's two pages of an email chain, it starts November 15th and

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ends November 19, is that accurate

A. Yes.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 35 lines 5 to 20 and also found on 214 of 464 previously filed.)

B2) From this point on the transcript indicated that the deponent could not view any exhibits uploaded so that Plaintiff's former attorney Julia C. Williams was asking questions based upon her attempted uploads but the deponent Defendant Hans Mast was looking at physical documents to respond based upon the following:

B2.1) Q. Okay. So I'm going to upload another document and then we can keep going here. And then this is Exhibit 8 and for it is a letter from Ronald Barch to you, Hans, and it's POP000667. Do you **dd d** that

A. What date is it

Q. I'm sorry, dated November 18, 2013,

A. Yeah, **I dd d** that.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 36 lines 6 to 13 and also found on 214 of 464 previously filed.)

B2.2) Q. Yep, it's POP000181.

A. What exhibit

Q. It's Exhibit 7.

A. 7, that's the letter.

Q. If may be 6 for you. It may be 6 for you.

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A. Let’s take a look. What page is the email

Q. The date at the top of the email chain is Tuesday, November 19, 2013.

A. Yeah, I **dd d** that.

(Please see Defendants’ The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast’s Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 38 lines 1 to 9 and also found on 215 of 464 previously filed.)

B2.3) Q. I’m going to add another exhibit here. Okay, for the purpose of this deposition it’s Deposition Exhibit 9. This is a memorandum. At the top it will say, “ memorandum,” and the date is November 20, 2013, and at the bottom it is identified as POP and then 3 there’s 000003, I believe. Do you **dd d**

A. What exhibit is it

Q. I think you’re probably going to have it as Exhibit 8, but for the purpose of this deposition it’s actually going to be Exhibit 9.

(Please see Defendants’ The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast’s Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages page 40 lines 12 to 22 and also found on 214 of 464 previously filed.)

B2.4) Q. Okay, I’m uploading Dulberg Mast Dep Exhibit 12. **T d L**

R rc A d rd c r ’ ’ S

B r , r c , l

N r d d ’ d d ’ , ’ r r , ,

D r , r r D r Ac , l’ rr , r ’

c B d c r rc r

l r c c c N r r

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D

A l c r

J c W c W c

A T r , ’ LAJATO dd d

(Please see Defendants’ The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast’s Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 49 lines 20 to 24, page 50 lines 1 to 11 and also found on 217-218 of 464 previously filed.)

C) The case of *Tilschner v. Spangler* No.2-10-0111, 949 N.E.2d 688, 350 Ill.Dec.896, 409 Ill.App.3d 98 (2011) which Plaintiff Paul Dulberg specifically instructed his former attorney Julia C. Williams to include as an exhibit to be the basis of questions to the deponent Defendant Hans Mast because: Mast had personally given a copy of the certified opinion to Dulberg on November 20, 2013; had personally appeared and argued the case along with Thomas J. Popovich, and Mark J. Vogg of Defendant the Law Offices of Thomas J. Popovich, P.C.; and had insisted that the decision in the case was the reason Plaintiff Paul Dulberg would not prevail in the underlying case against the Defendants Carolyn and William (Bill) McGuire. (This is based upon information and belief pending this Honorable Court’s ruling upon Plaintiff’s previously filed Motion To Compel concerning his former attorney Julia C. Williams’ claims of Attorney-Client Privilege and Work Product.) (Please see Plaintiff’s Exhibit 14 *Tilschner v. Spangler* No.2-10-0111 attached)

C1) *Tilschner v. Spangler* No.2-10-0111 was not included in exhibit 12 as constituted, when sent 19 days after the deposition had concluded, in response to the inquires of

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Noelle Kappes Scheduling and Client Solutions Manager U.S. Legal Support (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G found on pages 264 - 290 of 464 previously filed.)

C2) *Tilschner v. Spangler* No.2-10-0111 was inexplicitly replaced with an exact duplicate of the *Lejato v. AT&T, INC.,* No. 1-95-0447 669 N.E.2d 645 283 Ill. App. 3d 126 (1996) (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages 264-285 of 464 previously filed.)

D1) On November 4, 2022 Defendants' attorney was allowed to raise the issue of "waiver" alleging that both Defendant Hans Mast's attorney and Plaintiff Paul Dulberg waived any and all objections by stating " all objections to that manner were waived by both parties." (Please see Report of Proceeding November 4, 2022 page 14 line 14-15 which is contained in the Clerk of Court's electronic file for this matter.

D2) The Illinois General Assembly empowered the Illinois Supreme Court to make and enforce rules for the Circuit, Appellate and Supreme Court. (Please see above - *ILCS / ro Ch. , par.* and (735 ILCS 5 1-105) (from Ch. 110, par. 1-105).

D3) Illinois Supreme Court Rule 211 does not allow opposing attorneys to waive the rules and orders powers granted to the Illinois Supreme Court by the Illinois General Assembly.

D4) It should be noted that:1) there were multiple emails between the Plaintiff and

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Defendants' attorneys as close in time as less than 24 hours before and at most 30 minutes after the deposition and the subject of "waiver" was not discussed. (Please see Exhibits 9, 15 and 16 attached.); 2) On July 30, 2020 Julia C. Williams, in response to Plaintiff's question about the Deposition of Hans Mast did not respond with anything about "waiver" of issues and cavalierly stated "Your future counsel will need to bring that before the Judge at some point" Please see Plaintiff Exhibit 17 attached): 3) Julia C. Williams filed her Motion to Withdraw on behalf of herself and the Clinton Law Firm on August 18, 2020 (Please see the Clerk of McHenry County Circuit Court's electric file for this case.)

W r r , Plaintiff Paul Dulberg prays that Plaintiff's Motion to Exclude the discovery deposition of Defendant Hans Mast taken remotely on June 25, 2020 is granted, that Plaintiff request to take the deposition of Defendant Hans Mast is granted, but if Defendants' verbal request to file a sur-response is allowed then the Plaintiff be granted a reasonable time to file a sur-reply after considering what's left of Plaintiff's time to respond to Defendant's Motion for Summary Judgment and for any other additional relief this Honorable Court deems fair and equitable.

Respectfully submitted,

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/s/ Alphonse A. Talarico

Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

707 Skokie Boulevard Suite 600

Northbrook, Illinois 60022

(312) 808-1410

ARDC No. 6184530

contact@lawofficeofalphonsetalarico.com

alphonsetalarico@gmail.com

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RE: Dulberg v. Mast and Popovich

Linda Walters <lwalters@karballaw.com>
Thu 4/28/2022 4:00 PM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please use the below link to access Mast Dep Ex. 12.

https://www.dropbox.com/s/b2lmm0a6s3oex3d/Mast%20Dep%20Ex.%2012.PDF?dl=0

Thank you.

Linda Walters
Asst. to George Flynn

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@karballaw.com

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EXHIBIT 1

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Attachment available until Aug 13, 2020

Dear Noelle,

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

put this x in folder on desktop & renamed bad file 12-A - this is the new 12

Click to Download
Dulberg Mast Dep Exh 12 Legal Research .pdf
35.1 MB

still couldn't read 1-22 → "There was a problem reading this document"

On Jul 13, 2020, at 8:37 PM, Noelle Kappes <nkappes@uslegalsupport.com> wrote:

called Noelle - 10:30 - 7-14 - she will have William look at it or email williams

Hi there,

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you,
Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.
Witness: Hans Mast
Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.
Date: 06/25/2020
Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)
Location:

GROUP
EXHIBIT
2

Reporter and all Parties will appear via Video Conference.

Thank you for choosing U.S. Legal Support.
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<CFM923267.PDF>

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Hi Ms. Williams – This is Barb Smith, the court reporter from US Legal that was present at the dep of Hans Mast on 6-25-20. I am currently working on the transcript and while preparing the exhibits I noticed that Exhibit No. 12, which is the 27 pages of legal research, did not download completely. The Exhibit 12 that I have has blank pages 1-22 and only pages 23-27 have print on them. I just wanted to let you know and check if you wanted to resend or if that's how No. 12 is supposed to be.

Thank you.

Barb

7-2-20

Williams responded 7-2-20
but the ~~dept~~ space was
blank.
called 7-6-20 Left Message
7-7 submitted job and emailed
Noelle about it

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Job 923267

From: Smith Family (barbnwally@att.net)

To: nkappes@uslegalsupport.com

Date: Tuesday, July 7, 2020, 09:32 PM CDT

Hi Noelle -- Hope you're doing well. I just want to let you know I submitted this job, 923267, last night. Two things I wanted to let you know about. First, this job and 925187 were both submitted last night. These are the first two I used Box for the exhibits. I hope I did them correctly. If there's any problems, please let me know.

For 923267 I have another issue. One of the exhibits, #12, was downloaded during the Zoom session. It's 27 pages and when I first looked at it I noticed that pages 1-22 were blank. I emailed Julia Williams, our client, on 7-2 about this. She responded and the message section of her email was blank. I waited for another email but received none. On 7-6 I called and left her a message and have not received a response. I did note all of this information in the email that I sent the job with.

The main reason I'm telling you all of this is that I am going to be out of town Thursday and Friday. My daughter is getting married in Arkansas so I will not be bringing my computer with me and will be quite busy. Hopefully I hear from her on Wednesday.

Thanks,

Barb

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, PLAINTIFF,	)	
v.	)	No. 17 LA 377
THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST, DEFENDANTS.	)	

AMENDED NOTICE OF DEPOSITION

TO: **All Attorneys of Record (See Attached Service List)**

YOU ARE HEREBY NOTIFIED, that pursuant to the provisions of Section 2-1003 of the Illinois Code of Civil Procedure and Supreme Court Rule 206, the following deposition will be taken for the purpose of discovery before a Notary Public via remote electronic deposition at the time and place specified, upon oral interrogatories to be propounded to said witness.

Deponent	***Location***	***Date***	***Time***
Hans Mast	Compton Law Group 85 Market St. Elgin, IL 60123 (remote electronic deposition)	June 25, 2020	10:00a.m.

YOU ARE HEREBY FURTHER NOTIFIED that you are by this Notice required to have present at the date, time, and place stated, the said Deponent for oral examination for the purpose of discovery. YOU ARE FURTHER NOTIFIED that PAUL DULBERG, a party to this case, intends to be present at the above noticed deposition.

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed by 5:00 p.m. on June 4, 2020.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Julia C. Williams
Julia C. Williams

Received 11-23-2022 12:30 PM / Circuit Clerk Accepted on 11-23-2022 01:35 PM / Transaction #20425983 / Case #2017LA000377
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SERVICE LIST:

George Flynn
~~Karbal | Cohen~~ | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Julia C. Williams
Julia C. Williams

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U.S. Legal Support - Chicago
200 West Jackson
Suite 600
Chicago, IL 60606
Telephone: 312-236-8352
Fax: 312-236-3344

U.S. Legal Support

JOB WORKSHEET

#12 1-22 blank
23-27 only

Resource	**Barbara G. Smith**		
Job No.	**923267**	**Job Type**	**Deposition**
Job Date	**06/25/2020**	**Job Time**	**10:00 AM** (GMT-06:00) Central Time (US & Canada)
Due Date	07/10/2020	**Notation**	R/VC
Witness	Hans Mast		
Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	**17LA377**		
Location	***U.S. Legal Support, Inc. - Remote Video Conference** **Reporter and all Parties will appear via Video Conference.** **Phone:** **Room No.:** **Detail: To join the Video Conference, a website link will be provided by U.S. Legal Support the business day prior to the setting.**		
Remarks	Court Reporter & RemoteDepo *everyone appearing remotely except attorney George Flynn who will be with the deponent REPORTER MUST READ THE ATTACHED READ ON		

83 pgs warned

Client	Clinton Law Firm 111 West Washington Street Suite 1437 Chicago, IL 60602 Phone: 312-357-1515 Fax: 312-201-0737
Contact	Julia Williams
Ordered By	Julia Williams via email
Requested Service	Service Item: RemoteDepo w/InstantExhibit - Videoconferencing — Units: 1.00

rep plf 57 PHAO

julia williams@clintonlaw.net

Thank you for accepting this assignment. Please note that by accepting this assignment, you acknowledge U.S. Legal Support's requirement to have an up-to-date W-9, BAA, and CIA form submitted prior to our releasing payment.

Please provide the transcript to our production team by due date reflected above. Exhibits to be delivered to production within 3 days after deposition.

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13 interrog
14 interrogs
15 mtn

16
17
18
19
20

#1 retainer
2 complaint
3 memo
4 ~~settle~~ demand
5 email

6 email
7 email 11-15
8 email
9 memo
10 memo 12-18
11 settlement letter
12 case law

Nov 13

witness & atty flyer in McHenry Co.

start 10:08
end 12:20
#18

AP: Paul
~~Dulberg~~
Dulberg

Mr. Flynn - dept
copy reg + mini

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OMNI
Document Examinations

Robin D. Williams, MFS, MS, D-BFDE
Board Certified

Bonnie L. Schwid, B.S., D-BFDE
Board Certified

July 11, 2022

Attorney Alphonse A. Talarico
Law Office of Alphonse Talarico
707 Skokie Blvd.
Suite 600
Northbrook, Illinois 60062

REPORT OF FINDINGS

RE: Dulberg v Popovich et al LA 377

Dear Attorney Talarico,
Pursuant to your request, I examined the following documents:
Document containing a disputed Exhibit Label
(machine copy)

Q-1 The first page of a 27-page document containing machine copies of pages from a book or books. The first line on the yellow label reads "Exhibit 12".
The label is in the bottom center of a machine copy of 2 pages. The page number in the upper left corner is 502. The center heading reads: "218 Illinois Decisions".
Dated 6-25-2020.
Some of the pages in the 27-page document are duplications of previous pages.
The page sequencing in the 27-page document is as follows: 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 854, 855, 856, 857, 858.

Document(s) submitted as containing genuine Exhibit Labels
(machine copies):

K-1 The yellow label at the bottom right of the document reads "Exhibit 1".
K-2 The yellow label at the top center of the document reads "Exhibit 2".
K-3 The yellow label at the bottom right of the document reads "Exhibit 3".
K-4 The yellow label at the bottom right of the document reads "Exhibit 4".
K-5 The yellow label at the bottom right of the document reads "Exhibit 5".
K-6 The yellow label at the bottom right of the document reads "Exhibit 6".
K-7 The yellow label at the bottom right of the document reads "Exhibit 7".
K-8 The yellow label at the bottom right of the document reads "Exhibit 8".
K-9 The yellow label at the bottom right of the document reads "Exhibit 9".

EXHIBIT 3

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K-10 The yellow label at the bottom right of the document reads "Exhibit 10".
K-11 The yellow label at the bottom right of the document reads "Exhibit 11".
K-13 The yellow label at the bottom right of the document reads "Exhibit 13".
K-14 The yellow label at the top center of the document reads "Exhibit 14".
K-15 The yellow label at the bottom right of the document reads "Exhibit 15".

Assignment

The purpose of the examination was to determine whether the yellow label that is in question on Item Q-1, also identified as Exhibit Label #12 and the labels submitted as genuine on Items K-1 through K-11 and K-13 through K-15 all originated from the same group or batch of labels.

Procedure

The examination consisted of visual and microscopic study of the font styles, the discriminating variations of letter formations, letter designs, beginnings and endings of letters, t-crossings, spelling of words and exterior and interior shapes of the labels.

Opinion

It is the opinion of this examiner that the label in question identified as Q-1, Questioned Label #12, did not come from the same group or batch of labels identified as Items K-1 through K-11 and K-13 through K-15.

Discussion

Item Q-1, Exhibit Label #12 contained a different font in all of the words on the label (except in the word "Date") and in numerals 1 and 2 as illustrated in the attached charts.

It is important to note that the name of Hans *Mast* was misspelled on Item Q-1, Exhibit Label #12, as "Hans *Mist*".

It is noteworthy that in an enlargement of the label identified as Q-1, Exhibit Label #12, is the appearance of a squared outer edge in the upper left corner of the label that can be seen. This differs from the rounded outer edges of the known labels that were used for comparison.

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This examination was conducted from machine copies of the document in question and the exemplars used for comparison. I assume that they are accurate reproductions of the originals. If the original documents become available, I am requesting the opportunity to examine the original documents containing the original labels and revisit my opinion. However, I do not believe my opinion will change.

Please allow four weeks in the event that testimony will be required.

Respectfully submitted,
Omni Document Examinations

Robin D. Williams

Robin D. Williams, MFS, MS, D-BFDE
Diplomate-Board of Forensic Document Examiners

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Dulberg v. Popovich

George Flynn <gflynn@karballaw.com>
Mon 7/11/2022 10:25 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: Linda Walters <lwalters@karballaw.com>

1 attachments (26 MB)
EX 0012 Hans Mast 062520.pdf;

Mr. Talarico:

Below is a copy the transmittal email with exhibit 12 received by my office on July 14, 2020. A previous email from July 10, 2020 from US legal contained the other deposition exhibits. The link contained in the July 14 email produced the attached PDF of exhibit 12.

Regards,

From: "wtolliver@uslegalsupport.com" <wtolliver@uslegalsupport.com>
Date: July 14, 2020 at 11:13:35 AM CDT
To: George Flynn <gflynn@karballaw.com>
Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

U.S. Legal Support has switched to paperless production. Your litigation support package contains digital files of your transcript and exhibits. These files are also readily available 24/7 via our secure Client Online Portal. The certified original will be printed to facilitate lodging with the Court. Should you require a hard certified copy of the transcript or a CD of your files, please contact your local U.S. Legal Support office.

Thank you for choosing U.S. Legal Support.

We have uploaded the following file(s). To open or download, please click on the link(s) below.

File Information

Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Job No.	923267	Job Date	6/25/2020
Witness	H. Mast Exhibits		



If you are unable to see the links or are not redirected to the file(s), please copy and paste the URL below in your browser:
https://share.uslegalsupport.com/docs/download?tk=86791893-4ae0-47ae-884c-52dfe3f186c0

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Available File(s)

File Type	File Name	Description	Size(KB)
Exhibit	EX 0012 Hans Mast 062520.pdf		26741

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George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
Please note our new address below effective May 27, 2022
200 S. Wacker Drive
Suite 2550
Chicago, IL 60606

P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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IN THE
SUPREME COURT OF ILLINOIS

In re: Illinois Courts Response to COVID-19 Emergency/Impact On Discovery	)	M.R.30370

Corrected
Order

In the exercise of the general administrative and supervisory authority over the courts of Illinois conferred on this Court pursuant to Article VI, Section 16 of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VI, sec. 16); and in view of the actions that have been taken by the Governor of the State of Illinois in response to the outbreak of the novel coronavirus (COVID-19); and consistent with the order issued by this Court on March 17, 2020,

IT IS HEREBY ORDERED:

Effective immediately and until further order of the Court, paragraph (h) of Illinois Supreme Court Rule 206 is temporarily amended as follows:

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) Reserved. ~~The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.~~

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

(3) Reserved. ~~Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.~~

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

(5) Time spent at a remote electronic means deposition in addressing necessary

EXHIBIT 5

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technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments
(April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Order entered by the Court.

SEAL OF THE SUPREME COURT
STATE OF ILLINOIS
AUG. 26. 1818

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, this 29th day of April, 2020.

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois

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IN THE
SUPREME COURT OF ILLINOIS

In re: Illinois Courts Response to COVID-19 Emergency/Impact On Discovery	)	M.R. 30370

Effective immediately, the Court's corrected order of April 29, 2020 regarding Illinois Courts Response to COVID-19 Emergency/Impact On Discovery is amended to add a committee comment concerning the temporary amendment of paragraph (h)(3) of Illinois Supreme Court Rule 206 as follows:

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) Reserved. ~~The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.~~

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

(3) Reserved. ~~Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.~~

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

(5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

EXHIBIT 6

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Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments
(April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Committee Comments
(June 4, 2020)

Paragraph (h)(3)

Subparagraph (h)(3) has been deleted to avoid discovery disputes over physical presence by a party or a party's attorney at a remote deposition. Deletion of the subparagraph does not mean that personal presence by a party or a party's attorney is absolutely prohibited. During the pandemic not all depositions are required to proceed remotely, nor is a continuance automatically required if counsel cannot agree on a remote method. Absent agreement, the circumstances of a remote deposition are within the discretion of the trial court.

Order entered by the Court.

SEAL OF THE SUPREME COURT
STATE OF ILLINOIS
AUG. 26, 1818

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, this 4th day of June, 2020.

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois

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Good Morning, George,

I hope you are doing well. I would prefer to do an in-person deposition given that the client will likely want to be present and that may present some issues with a video deposition. That being said, I don't want to hold this up indefinitely.

Let's plan for the end of June. If the "stay at home" orders get extended again, we will reconsider the "in person" v "remote" deposition.

I hope you and your family are well.

I am working remotely. If you need to call—the best remote number is 312.508.3376.

Thanks,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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On Apr 30, 2020, at 11:12 AM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

I hope you and your family are staying safe, healthy, and busy during these uncharted times.

The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.

Otherwise, perhaps we can get a live deposition on the books for some time in June. If so, I would



suggest the 2nd half of June.

Let me know what you think

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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Hi Julia. I think June 17 will work. Just let me know the details. For the time being, I will plan on being at Hans' office for the deposition.

I am still not sure about June 5. I may attend live, but I should be able to make a decision by Tuesday.

How about touching base on Monday regarding the deposition logistics?

If you need to call, my cell is 773-341-8114.

So far so good here. I hope you and your family are doing well. Thanks

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Friday, May 29, 2020 4:37 PM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: Dulberg v. Popovich

Hi George,

How is the June 16,17, or 18? If not, we should also be open the week after on Wednesday or Thursday—June 24, 25.

I anticipate this will be a video deposition, despite things opening back up, I think it is the safest route for everyone and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option. Details to come on that. We can work that out and a time once we get the date nailed down.

I believe we have a June 5 status date. I believe we are encouraged to either use CourtCall or get an agreed order. I am happy to draft an agreed order setting out a date for close of oral fact discovery (f(1), f(2)) and setting the matter for further status, so we can submit it to the Judge prior to June 5 to avoid the date. Alternatively, I am also happy to appear via CourtCall if you intend to appear.

I hope you and your family are well.

EXHIBIT
8

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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On May 4, 2020, at 11:43 AM, George Flynn <gflynn@karballaw.com> wrote:

Thanks Julia. So far so good here.

Sounds like a plan. If you have a date in mind for late June, I have a feeling it will work for me. I can pass it along to Hans, so he can hold the date. Please also advise where you want to conduct the deposition.

Take care

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Monday, May 4, 2020 11:37 AM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: Dulberg v. Popovich

Received 11-23-2022 12:30 PM / Circuit Clerk Accepted on 11-23-2022 01:35 PM / Transaction #20425983 / Case #2017LA000377
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From: Julia Williams juliawilliams@clintonlaw.net
Subject: Re: Dulberg v Popovich Firm et al; Mast Deposition Exhibits
Date: June 24, 2020 at 10:49 AM
To: George Flynn gflynn@karballaw.com

Dear George,

Here is one more exhibit that I may use. We are still waiting on the instructions from US Legal which I expect by COB today.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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On Jun 24, 2020, at 9:31 AM, George Flynn <gflynn@karballaw.com> wrote:

Thanks Julia. I will see you virtually, tomorrow.

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

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EXHIBIT 9

From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Tuesday, June 23, 2020 4:26 PM
To: George Flynn <gflynn@karballaw.com>
Cc: Mary Winch <marywinch@clintonlaw.net>; Ed Clinton <ed@clintonlaw.net>
Subject: Dulberg v Popovich Firm et al; Mast Deposition Exhibits

Dear George,

Attachments available until Jul 23, 2020

I am attaching the deposition exhibits that I *may* use on Thursday. I don't believe there will be any additions between now and then, but if there are they will minor and I will do my best to send them ahead of time. Obviously, I may not use all of these.

I have not used US Legal or done any remote depositions so you will have to forgive any errors. My understanding is that in the video conferencing system I will be able to upload the document in Pdf or other format (I am only using PDFs), then you and the court reporter will be able to download it. The court reporter will label the exhibits and

include them in the transcript after the deposition is complete. You are not required to print any of the documents—unless of course you would like to do that.

I did my best to label the exhibits in the number order that I believe I will use them. That being said, things change in depositions and they may have to be renumbered. In an effort to not make it super confusing, I used descriptive names as well.

If you have questions/concerns, please let me know. Otherwise, I will see you remotely on Thursday and we'll hope that everything goes smoothly.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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From: **Noelle Kappes** nkappes@uslegalsupport.com
Subject: RE: U.S. Legal Support - Confirmation of Scheduling - Job No. 923267
Date: July 14, 2020 at 11:27 AM
To: Julia WIlliams juliawilliams@clintonlaw.net
Cc: Smith Family barbnwally@att.net, Mary Winch marywinch@clintonlaw.net, Ed Clinton ed@clintonlaw.net

NK

Received, thank you.

Noelle Kappes
Scheduling and Client Solutions Manager I U.S. Legal Support
200 West Jackson Boulevard, Suite 600
Chicago, IL 60606

Direct 312.854.1422 I Main 312.957.4546
nkappes@uslegalsupport.com
www.uslegalsupport.com



From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Tuesday, July 14, 2020 9:41 AM
To: Noelle Kappes <nkappes@uslegalsupport.com>
Cc: Smith Family <barbnwally@att.net>; Mary Winch <marywinch@clintonlaw.net>; Ed Clinton <ed@clintonlaw.net>
Subject: Re: U.S. Legal Support - Confirmation of Scheduling - Job No. 923267
Importance: High

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Dear Noelle,

Attachment available until Aug 13, 2020

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm

EXHIBIT
10

The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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On Jul 13, 2020, at 8:37 PM, Noelle Kappes <nkappes@uslegalsupport.com> wrote:

Hi there,

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you,
Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.
Witness: Hans Mast
Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.
Date: 06/25/2020
Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)
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Reporter and all Parties will appear via Video Conference.

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From: wtolliver@uslegalsupport.com
Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:13 AM
To: juliawilliams@clintonlaw.net

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

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Witness	H. Mast Exhibits		

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Subject: Fwd: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:17 AM
To: Paul Dulberg pdulberg@comcast.net
Cc: marywinch@clintonlaw.net, ed@clintonlaw.net

Dear Paul,

Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was blank.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Subject: Fwd: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: August 5, 2022 at 10:21 AM
To: Mary Winch marywinch@clintonlaw.net, ed@clintonlaw.net

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020
Date: July 14, 2020 at 11:13:26 AM CDT
To: <juliawilliams@clintonlaw.net>

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Job No.	923267	**Job Date**	6/25/2020
Witness	H. Mast Exhibits		

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EXHIBIT 13

NOTICE
The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 2—10—0111
Opinion filed May 6, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PATRICIA TILSCHNER,	)	Appeal from the Circuit Court
	)	of McHenry County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 08—LA—383
	)	
LOWELL SPANGLER and RALPH M. RUPPEL,	)	
	)	Honorable
	)	Maureen P. McIntyre,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court, with opinion.
Justice Hutchinson concurred in the judgment and opinion.
Justice Hudson specially concurred in the judgment, with opinion.

OPINION

Plaintiff, Patricia Tilschner, appeals from the trial court's orders dismissing count II of her third-amended complaint and denying her motion to reconsider. Patricia claims on appeal that the trial court erred in concluding that this State has not adopted section 318 of the Restatement (Second) of Torts (1965).[1] We affirm.

Patricia was injured during a party at the home of defendant Lowell Spangler when defendant Ralph Ruppel ignited fireworks. Patricia's third amended complaint contained three counts. Count

[1]Patricia raised a similar claim regarding an undifferentiated duty independent of section 318 but abandoned that argument during oral argument.

EXHIBIT 14

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I alleged common-law negligence against Spangler. Count II alleged negligence against Spangler pursuant to section 318 of the Restatement (Second) of Torts. Count III alleged common-law negligence against Ruppel. Spangler moved to dismiss count II, pursuant to section 2—615 of the Code of Civil Procedure (735 ILCS 5/2—615 (West 2008)). The trial court granted the motion to dismiss with prejudice and denied Patricia's subsequent motion to reconsider. Patricia filed an application for leave to appeal to this court pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010), which was denied. Patricia was also denied leave to file a fourth amended complaint. She then voluntarily dismissed count I of the third amended complaint, and the trial court found no just reason to delay enforcement or appeal, pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). This appeal followed.

Patricia now contends that the trial court erred in dismissing count II of her third amended complaint. When a defendant challenges the legal sufficiency of a complaint with a section 2—615 motion to dismiss, all well-pleaded facts alleged in the complaint are taken as true. *King v. Senior Services Associates, Inc.*, 341 Ill. App. 3d 264, 266 (2003). On review of a dismissal pursuant to section 2—615, this court must determine whether the allegations of the complaint, when interpreted in the light most favorable to the plaintiff, sufficiently set forth a cause of action on which relief may be granted. *King*, 341 Ill. App. 3d at 266. The motion should be granted only if the plaintiff can prove no set of facts to support her cause of action. *King*, 341 Ill. App. 3d at 266. As this process does not require the trial court to weigh findings of fact or determine credibility, this court is not required to defer to the trial court's judgment, and we will review the matter *de novo*. *King*, 341 Ill. App. 3d at 266.

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To state a cause of action in negligence, a plaintiff must allege facts that establish a duty, a breach of that duty, and proximate causation. *Ryan v. Yarbrough*, 355 Ill. App. 3d 342, 345 (2005). Patricia alleged that Spangler:

> "[o]wed a duty to the Plaintiff and his other invited guests to keep control and care over his property and to protect them against any unreasonable risks of harm known due to acts of a third person under his control, including the Defendant, RALPH RUPPEL, pursuant to the Restatement (Second) of Torts, §318."

Section 318 of the Restatement (Second) of Torts provides:

> "If the actor permits a third person to use land or chattels in his possession otherwise than as a servant, he is, if present, under a duty to exercise reasonable care so to control the conduct of the third person as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if the actor
>
> (a) knows or has reason to know that he has the ability to control the third person, and,
>
> (b) knows or should know of the necessity and opportunity for exercising such control." Restatement (Second) of Torts §318 (1965).

A restatement is not binding on Illinois courts unless it is adopted by our supreme court. *Eckburg v. Presbytery of Blackhawk of the Presbyterian Church (USA)*, 396 Ill. App. 3d 164, 169 (2009); *In re Estate of Lieberman*, 391 Ill. App. 3d 882, 890 (2009). Thus, we must determine whether our supreme court has adopted section 318 of the Restatement (Second) of Torts; if it has not, Spangler owed no duty to Patricia.

Citing a line of both supreme court and appellate court cases, Patricia argues that section 318 has "unquestionably" been adopted in Illinois. However, this is not the first time that this court has

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examined this question and concluded to the contrary. In *Zimring v. Wendrow*, 137 Ill. App. 3d 847, 850 (1985), this court specifically found that "[n]o Illinois case has adopted section 318 of the Restatement (Second) of Torts, upon which plaintiff relies." Ultimately, we concluded that we "need not consider" the sufficiency of the complaint in relation to section 318. *Zimring*, 137 Ill. App. 3d at 853. In *Elizondo v. Ramirez*, 324 Ill. App. 3d 67, 73 (2001), the plaintiff asserted that section 318 "has been adopted in Illinois and cite[d] two cases in support." After analyzing those cases—*Cravens v. Inman*, 223 Ill. App. 3d 1059 (1991), and *Teter v. Clemens*, 112 Ill. 2d 252 (1986)—we concluded that "it is unclear whether these cases represent the law in Illinois" (*Elizondo*, 324 Ill. App. 3d at 73-74), and we declined to "express an opinion on whether section 318 represents the law in Illinois" (*Elizondo*, 324 Ill. App. 3d at 74). We note with interest that Patricia cites to *Elizondo* but fails to mention, let alone address, this court's refusal to find that section 318 had, indeed, been adopted in this state. Patricia now argues, despite our analysis in *Elizondo*, that our supreme court adopted section 318 in *Teter*. We disagree, and we will not revisit our prior analysis and determination in *Elizondo* that there was no clear adoption of section 318 by our supreme court in *Teter*.

While Patricia does not cite to *Cravens*, its ultimate disposition is instructive. In *Cravens*, the First District of the Illinois Appellate Court found a duty and, thus, a claim for negligence, pursuant to section 318 and to *Teter*, in the factual scenario of adults providing alcohol to minor guests who subsequently left in an automobile and were involved in a fatal accident. However, our supreme court in *Charles v. Seigfried*, 165 Ill. 2d 482, 501-02 (1995), concluded that it did "not agree that the views set forth in *Cravens* should be adopted through judicial decision." This court noted the supreme court's refusal, in an admittedly different context, to impose liability pursuant to section 318. See *Elizondo*, 324 Ill. App. 3d at 74.

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Patricia argues that the supreme court "implicitly" adopted section 318 in *Estate of Johnson v. Condell Memorial Hospital*, 119 Ill. 2d 496, 503-04 (1988), in which the court stated:

> "In general, one has no duty to control the conduct of another to prevent him from causing harm to a third party (Restatement (Second) of Torts §315 (1965)), but there are exceptions to this, based on 'special relationships.' Sections 315 through 319 of the Restatement (Second) of Torts (1965) describe these relationships. The 'special relationship' that the plaintiff alleges existed here that would give rise to a duty to protect another from harm is found in section 319 ***."

The court ultimately concluded, "It cannot be reasonably said, based on the complaint's allegations against Condell, that the hospital assumed a duty of care to Holt under section 319 of the Restatement (Second) of Torts (1965)." *Estate of Johnson*, 119 Ill. 2d at 506-07. Patricia argues that the "clear import" of the decision "is that sections 315-319 have been adopted in Illinois." She then cites to a similar statement in *Kirk v. Michael Reese Hospital & Medical Center*, 117 Ill. 2d 507, 530 (1987) ("There are types of relationships that give rise to a duty to control a third party's conduct set out in sections 316 to 319 of the Restatement (Second) of Torts (1965) ***"), to support her conclusion that the supreme court "cited with approval all of the exceptions/duties established in sections 316 through 319." Patricia is not alone in this argument. The First District of the Illinois Appellate Court has boldly stated that the supreme court has adopted sections 315 through 319. See *Brewster v. Rush-Presbyterian-St. Luke's Medical Center*, 361 Ill. App. 3d 32, 36-37 (2005) (citing *Estate of Johnson*, 119 Ill. 2d at 503-04); *Iseberg v. Gross*, 366 Ill. App. 3d 857, 862 (2006) (citing only *Brewster*, which expressly mentions sections 315 through 319, but then mysteriously increasing the number of sections adopted, to include sections 314 through 320).

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However, we first note that neither *Estate of Johnson* nor *Kirk* (nor, for that matter, *Brewster* nor *Iseberg*) involved a claimed application of section 318. Both *Estate of Johnson* and *Kirk* involved claims arising from alleged improper medical treatment of third parties who subsequently injured the plaintiffs; these claims were analyzed under section 319, which speaks to a duty of those in charge of someone having dangerous propensities. See *Estate of Johnson*, 119 Ill. 2d at 503-04; *Kirk*, 117 Ill. 2d at 530-31. The "most relevant" section in *Brewster* was section 317, which addresses the duty of a master to control the conduct of his servants. *Brewster*, 361 Ill. App. 3d at 37; Restatement (Second) of Torts §317 (1965). In *Iseberg*, the plaintiff did not even allege that any of the Restatement sections applied and imposed a duty on the defendants. *Iseberg*, 366 Ill. App. 3d at 862.

Patricia has failed to cite, and our research has not revealed, a single case since *Teter* in which our supreme court has specifically addressed, or even quoted, section 318 of the Restatement (Second) of Torts. We cannot conclude that our supreme court has adopted—explicitly, implicitly, impliedly, or otherwise—a Restatement section that it has not been called upon to analyze, apply, or adopt. Even the cases upon which Patricia relies do little more than acknowledge the existence of section 318. *Estate of Johnson* says that sections 315 through 319 describe " 'special relationships' " that form the bases for exceptions to the general rule of section 315. *Estate of Johnson*, 119 Ill. 2d at 503. *Kirk* merely notes that certain types of relationships set out in sections 316 through 319 give rise to a duty to control a third party's conduct, although none of the types applied there. *Kirk*, 117 Ill. 2d at 530. The mere citation to a cluster of sections, or even the analysis some of the nearby sections, is insufficient to establish the adoption of a restatement section.

The supreme court has addressed more thoroughly and deeply other restatement sections and specifically did *not* adopt them. For example, in a case examining the difference between void and

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voidable judgments, the supreme court compared its conclusions with those that it would have reached if the criteria of section 12 of the Restatement (Second) of Judgments were applied to the facts of the case. *In re Marriage of Mitchell*, 181 Ill. 2d 169, 176 (1998). The court noted that the result in the case was "consistent with the trend of modern authority" as exemplified by the Restatement (Second) of Judgments. *Mitchell*, 181 Ill. 2d at 175. The court then quoted section 12 of the Restatement (Second) of Judgments and applied the criteria of that section to the facts of the case. *Mitchell*, 181 Ill. 2d at 176. After determining that adopting the view expressed in the Restatement would require a re-examination of existing case-law analysis, the court casually noted that "[t]he parties [did] not ask us to adopt the rule expressed in the Restatement, however, and therefore we need not decide in this case whether to take that step." *Mitchell*, 181 Ill. 2d at 177. In *Mitchell*, the court explicitly declined to adopt a restatement section that it specifically quoted, applied to the facts of the case, analyzed, and compared to existing case law, because the parties did not ask for it. Here, Patricia cannot cite to a case wherein the court even cited to section 318, let alone provided the type of analysis that it did in *dictum* in *Mitchell*. With such meager authority, we cannot find the adoption of a restatement section.

Patricia similarly attempts to find adoption of section 318 in this court's decision in *Duncan v. Rzonca*, 133 Ill. App. 3d 184 (1985). Patricia's specific claim is that the *Duncan* court adopted section 316 of the Restatement and that, since sections 316 through 319 are "uniformly discussed together," there is "simply no logical explanation for why section 316 but not section 318 would be adopted in Illinois." We first note that this court does not have the authority to adopt a restatement section; as we have already stated, a restatement is binding on Illinois courts *only if it is adopted by our supreme court*. See *Eckburg*, 396 Ill. App. 3d at 169; *Lieberman*, 391 Ill. App. 3d at 890. In the absence of Illinois law, we often deem secondary sources, such as the Restatement (Second) of

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Torts, to be persuasive. [2] *Eckburg*, 396 Ill. App. 3d at 169. A restatement is a policy statement; this court does not adopt policy, it applies present law to the facts of the case before it. Further, this argument relies on the same fallacy as her prior argument: the "adoption" of a section includes the adoption of other sections "uniformly discussed together." This argument is not only a *non sequitur*, it is irrational as well. *Duncan* does not support Patricia's cause.

The restatement that we adopt today is that our supreme court has not adopted section 318 of the Restatement (Second) of Torts. Therefore, count II of Patricia's third-amended complaint, interpreted in the light most favorable to her, fails to allege a duty recognized by our supreme court and fails to set forth a cause of action on which relief may be granted. The trial court did not err in granting Spangler's section 2—615 motion to dismiss with prejudice.

---

[2]"A secondary source is not the law. It's a commentary on the law. A secondary source can be used for three different purposes: it might educate you about the law, it might direct you to the primary law, or it might serve as persuasive authority. Few sources do all three jobs well. The important classes of legal secondary sources include: treatises, periodical articles, legal encyclopedias, ALR Annotations, *Restatements*, and Looseleaf services. ***

* * *

Restatements

The restatements were developed by legal scholars initially to restate the law, and currently to describe what the law should be. In either case, Restatements are very persuasive although they are not very good at describing the law. They can serve as adequate law finders." (Emphasis added.) *Secondary Sources*, Yale Law School, Lillian Goldman Law Library, http://m-library.law.yale.edu/content/secondary-sources.

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For these reasons, the judgment of the circuit court of McHenry County is affirmed.

Affirmed.

JUSTICE HUDSON, specially concurring:

I agree with much of the majority's analysis in this case as well as the result at which it arrives. However, I would prefer to refrain from making sweeping and unnecessary statements about the authority of this court. It is well established that a court should avoid constitutional questions when a case can be decided on other grounds. *In re Detention of Swope*, 213 Ill. 2d 210, 218 (2004); *Beahringer v. Page*, 204 Ill. 2d 363, 370 (2003). The scope of the authority of this court is a constitutional matter. See *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002).

In this case, the majority rejects plaintiff's contention that this court has adopted section 318 of the Restatement (Second) of Torts, finding plaintiff's argument "irrational." Slip op. at 8. This finding should resolve this question. The majority, nevertheless, goes on to hold that this court does not have the authority to adopt a section of a restatement. It is unnecessary to consider whether this court has such authority in light of the majority's holding that nothing this court previously did would constitute an adoption of section 318. As I believe it improper to address the issue of the authority of this court, I do not join this portion of the majority's opinion.

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United States of America

2-10-0111

PATRICIA TILSCHNER,

Plaintiff-Appellant,

State of Illinois, Appellate Court, Second District, } ss.

v.

LOWELL SPANGLER and RALPH M. RUPPEL,

Defendants-Appellees.

I, ROBERT J. MANGAN, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the decision of the said Appellate Court in the above entitled cause of record in my said office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this

6th *day of* May, *A.D. 20* 2011

Clerk Appellate Court, Second District

(RO-2131 — 5M — 3/02)

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From: George Flynn gflynn@karballaw.com
Subject: Re: Dulberg
Date: June 19, 2020 at 2:56 PM
To: Julia WIlliams juliawilliams@clintonlaw.net

Ok glad to hear. Thanks Julia.

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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> On Jun 19, 2020, at 2:54 PM, Julia WIlliams <juliawilliams@clintonlaw.net> wrote:
>
> Thanks George. We are still on. This will be the first remote deposition that I have taken so I am still working on figuring out the exhibits. I believe that I can upload them to the US Legal system and then share them during the deposition. But, if not, I will be sure to have them to you no later than Tuesday by 5pm.
>
> Best Regards,
>
> Julia Williams
> Of Counsel
> The Clinton Law Firm
> 111 W. Washington, Ste. 1437
> Chicago, IL 60602
> P:312.357.1515
> F: 312.201.0737
> juliawilliams@clintonlaw.net
>
> This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.
>
> > On Jun 19, 2020, at 2:54 PM, George Flynn <gflynn@karballaw.com> wrote:
> >
> > Julia: I just received your notice of attorney lien. Will you still be taking the dep next week?
> >
> > My experience with receiving liens at this stage of litigation(in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for Mast's dep.
> >
> > Thanks
> >
> > George Flynn
> >
> > Karbal | Cohen | Economou | Silk | Dunne | LLC
> > 150 S. Wacker Drive
> > Suite 1700
> > Chicago, IL 60606
> > <phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
> > <fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
> > <envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
> >
> > CONFIDENTIALITY NOTE:
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Dunne, LLC, which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

From: George Flynn gflynn@karballaw.com
Subject: RE: Dulberg
Date: June 26, 2020 at 1:13 PM
To: Julia WIlliams juliawilliams@clintonlaw.net

GF

Sure, feel free to give me a call.

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Friday, June 26, 2020 12:13 PM
To: George Flynn <gflynn@karballaw.com>
Subject: Re: Dulberg

Dear George,

Thank you for the follow up. I am working on the production today. Are you around on Monday—can we chat then?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Jun 25, 2020, at 12:31 PM, George Flynn <gflynn@karballaw.com> wrote:

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Julia:

Just wanted to write while it is fresh in my mind, but I'd like to close the dangling issues from your client's deposition, including the production of communications with Mr. Gooch in view of the "discovery rule" issues.

Please advise

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

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From: **Julia WIlliams** juliawilliams@clintonlaw.net
Subject: Re: Need clarification on outstanding issues before your departure
Date: July 30, 2020 at 10:05 AM
To: Paul Dulberg Paul_Dulberg@comcast.net
Cc: Ed Clinton ed@clintonlaw.net, Mary Winch marywinch@clintonlaw.net

Dear Paul,

Please see my responses below.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

[redacted]

> 3. Similar to the last question, Have the objections in the Mast deposition been worked out or ruled on by judge Meyer?

There has been no motion practice on the issue and thus, there is no ruling. Your future counsel will need to bring that before the Judge at some point.

[redacted]

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2017LA000377
Date: 11/29/2022 3:15 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO ENFORCE THE COURT'S NOVEMBER 9, 2022 ORDER AND COMPEL PLAINTIFF TO PRODUCE UNREDACTED COPIES OF SUBPOENAED RECORDS

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for their Motion to Enforce the Court's November 9, 2022 order and Compel Plaintiff to Produce Unredacted Copies of Subpoenaed Records, state as follows:

1) On November 9, 2022, this honorable court ruled on a most unusual motion. In summary, the court was asked by Plaintiff to order his prior counsel in this instant case, to produce documents (including communications between Dulberg and his prior counsel), which were subpoenaed by Dulberg through his current counsel.

2) Following a lengthy hearing in which Dulberg's prior attorneys Julia Williams and Edward Clinton Jr. appeared, the court entered its order, Exhibit 1. In paragraph 3 of the order, the court ruled that "Plaintiff Paul Dulberg hereby waives privilege on a limited basis with respect to attorney client communications and attorney work product to permit compliance with the subpoenas served upon Julia Williams and Edward X. Clinton Jr."

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3) At pages 7-8 of the transcript of hearing from November 4, 2022, Dulberg's counsel clearly waived the work product privilege and attorney client privilege. (Ex. 2). His counsel stated: "Again your Honor, Mr. Dulberg is specifically waiving the attorney/client privilege for documents that are in response to the subpoena served upon Mr. Clinton and Ms. Williams." (Ex. 2, page 7 lines 22 to p. 8 line 1).

4) Paragraph 4 of the order required Williams and Clinton to "produce documents bates stamped as Dulberg Clinton Subpoena Privileged Communication 1-33 and Dulberg Subpea [sic] Work Product Privilege 1-13 that were previously sent to Judge Meyer on or around October 28, 2022 and listed in Julia Williams' and Edward X. Clinton Jr.'s Motion to Vacate…to both Plaintiff's Counsel Alphonse Talarico and Defendant's counsel by close of business on November 4, 2022."

5) Williams' and Clinton's September 29, 2022 response to Dulberg's subpoena is attached as Exhibit 3, and their November 4, 2022 Amended Response to the Subpoena is attached as Exhibit 4. **The withheld and redacted documents are identified in Exhibit 4 as being responsive to the subpoena, and they were submitted to the court for in camera inspection**.

6) Notably, paragraphs 4-7 of the subpoena requests documents, email messages notes reports, research et al. regarding the Hans Mast deposition and exhibits.

7) Contrary to the court's ruling on the record and November 4, 2022 order, Williams and Clinton produced only a redacted set of documents to defendant's counsel Flynn, while producing a redacted and unredacted set of documents to Dulberg's counsel, Alphonse Talarico. Based on a review of the information that is not redacted, it appears that many of the pages or redactions may relate to the Hans Mast deposition.

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8) When Flynn wrote to Williams and Talarico, noting the impropriety in a third party serving a redacted subpoena response to one party but not the other, both Williams and Talarico refused to produce an unredacted copy of the documents (see emails, group exhibit 5).

9) Dulberg took the unusual tactic of subpoenaing his former counsel in this case, regarding transcripts and communications relative to a deposition that was conducted by his attorney and his retained court reporter in the instant case. Not only did he open the door to those documents being disclosed to defendant, he confirmed his waiver of attorney client privilege in connection with said disclosure. He and his current and former counsel agreed that the documents at issue, which had already been submitted to the court, would be emailed to both counsel (Exhibit 2 p. 8). Dulberg should be held accountable for these decisions.

10) It is not proper for a third party so serve one set of subpoenaed document on one party to litigation, and serve another altered set to another party. Moreover, since Dulberg received the unredacted documents through discovery in this case, he must now produce them.

11) Defendants have been and will continue to be prejudiced by Dulberg's conduct in refusing to produce unredacted privileged documents where he clearly waived the privilege. He has relied on at least one of those documents and attached a redacted version to his Second Amended Motion To Exclude (see exhibit 17 attached to Dulberg's November 21, 2022 Second Amended Motion to Exclude). Williams and Clinton first indicated that the withheld documents were responsive to the subpoena, and now they claim the documents are not responsive. Dulberg cannot have it both ways.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this court order Plaintiff to immediately produce unredacted copies of Williams and Clinton's subpoena response, marked Dulberg Clinton Subpoena Privileged

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Communication 1-33 and Dulberg Work Produce Privilege 1-13, and for any further relief this court deems fair and proper.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
200 So. Wacker Drive, Suite 2550
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Attorneys for Defendants
gflynn@karballaw.com

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IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
11/09/2022 8:20 AM
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG, Plaintiff, v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	CASE NO. 17 LA 377 JUDGE THOMAS A. MEYER

ORDER

This matter coming to be heard on Julia Williams' and Edward X. Clinton Jr.'s Motion to Vacate and Plaintiff's Petition for Rule to Show Cause, Julia Williams, Edward X. Clinton Jr., Defendants' Counsel George Flynn, Plaintiff's Counsel Alphonse Talarico, and Plaintiff Paul Dulberg present via zoom, IT IS HEREBY ORDERED:

1. This Court's October 17, 2022 order granting Plaintiff's Motion to Compel, also listed as a Petition for Rule to Show Cause, is vacated.

2. Plaintiff's Petition for Rule to Show Cause against Edward X. Clinton Jr. and Julia Williams filed on October 31, 2022 is denied.

3. Plaintiff Paul Dulberg hereby waives privilege on a limited basis with respect to attorney client communications and attorney work product to permit compliance with the subpoenas served upon Julia Williams and Edward X. Clinton Jr.

4. Julia Williams and Edward X. Clinton Jr. will produce documents bates stamped as Dulberg Clinton Subpoena Privileged Communication 1-33 and Dulberg Subpoea Work Product Privilege 1-13 that were previously sent to Judge Meyer on or around October 28, 2022 and listed in Julia Williams' and Edward X. Clinton, Jr.'s Motion to Vacate ¶28 E-F, to both Plaintiff's counsel Alphonse Talarico and Defendant's counsel George Flynn by close of business on November 4, 2022.

DATED: 11/9/2022

ENTERED:

Thomas A. Meyer

Judge Judge's No.

Thomas Meyer

Order Prepared By:
Edward X. Clinton, Jr., 6206773
ed@clintonlaw.net
Julia C. Williams, 6296386
juliawilliams@clintonlaw.net
The Clinton Law Firm, LLC
111 West Washington Street, Suite 1437
Chicago, IL 60602

EXHIBIT 1

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** FILED ** Env: 20352559
McHenry County, Illinois
2017LA000377
Date: 11/17/2022 3:00 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
vs.) No. 17 LA 377
)
THE LAW OFFICES OF THOMAS)
POPOVICH, et al.,)
)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 4th day of November, 2022, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by
MR. ALPHONSE A. TALARICO (via Zoom),

On behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN (via Zoom),

On behalf of the Defendants.

ALSO PRESENT:

MR. EDWARD CLINTON (via Zoom)
MS. JULIA C. WILLIAMS (via Zoom)

EXHIBIT 2

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THE COURT: All right. If everybody could identify themselves, starting with plaintiff's counsel, then defendant.

MR. TALARICO: Good morning, your Honor. Good morning, Counsel. I am Alphonse Talarico for the plaintiff, Paul Dulberg.

THE COURT: Okay. Defense.

MR. FLYNN: Good morning, your Honor. George Flynn on behalf of the defendants, the Popovich firm and Hans Mast.

THE COURT: Okay. Mr. Clinton.

MR. CLINTON: Good morning, your Honor. Ed Clinton, former counsel to Mr. Dulberg.

THE COURT: All right. And --

MS. WILLIAMS: Good morning, your Honor. Julia -- Julia Williams on behalf of -- former counsel to Mr. Dulberg.

THE COURT: Okay. And for the record, we have Mr. Dulberg on screen.

In any event, plaintiff's counsel, where do you want to start?

MR. TALARICO: Judge, I would guess that Mr. Clinton and Ms. Williams' motion to vacate would be the beginning. I filed a rule pursuant to

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your last -- the transcript -- your last order said if there's something else that comes up.

I did file a rule after I read their motion to vacate. Historically, or chronologically, I think maybe that's the starting point. (Indiscernible) you held them in contempt and --

THE COURT: I did?

MR. TALARICO: -- here we are. You did.

THE COURT: When did I hold them in contempt? I'm looking at --

MR. TALARICO: I think so. The last order.

THE COURT: Okay. I'm looking at October 17th. He must appear. Yeah, I don't see an explicit finding of contempt, at least in the October 17th order. Was --

MR. TALARICO: I thought -- with all due respect, Judge, if I can find the order, I think the first sentence says you grant my motion.

THE COURT: Plaintiff's motion to compel is granted as --

MR. TALARICO: Oh, I'm sorry. Compel. Forgive me.

THE COURT: All right.

MR. TALARICO: My mistake.

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THE COURT: In any event, I read the motion to vacate and I -- are you -- and this is directed at Mr. Clinton -- are you concerned about the order to produce, or something else?

MS. WILLIAMS: Would you like me to --

MR. CLINTON: Yeah, go ahead.

MS. WILLIAMS: Your Honor, we're not concerned about producing. We're -- Mr. Dulberg is entitled to these documents, even without a subpoena.

THE COURT: Yeah.

MS. WILLIAMS: So the production is not our concern. It's the portion of the order that insinuates that we weren't try -- not complying with the subpoena when we were rightfully doing so.

So we are (indiscernible) --

THE COURT: Thank you.

MS. WILLIAMS: So that's what we're concerned about.

THE COURT: All right. I'll vacate that because -- yeah, I don't see that as critical.

So to the extent that you're concerned, any suggestion in the order of October 17th suggesting or implying that you had failed to cooperate, I will vacate. I saw from your motion to vacate you were

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contesting that issue, and I'm not going to go down that path to find out who's right, ultimately, because it doesn't make any difference, at least to me.

So all I care about is the production of the documents. And am I correct that -- my reading of your response indicated that you've produced the documents. Is that -- was that accurate?

MS. WILLIAMS: Yes, your Honor. So we have produced nonconfidential documents to both -- at this point, we've now produced to both counsels of record in this case, plaintiff's counsel and defendant's counsel. The only thing that has not been produced to defendant's counsel is the communication between our firm and Mr. Dulberg, which was produced to plaintiff's counsel. And then there are, I want to say, about 13 pages of e-mails that were internal work product communications within our office that have not been produced to any -- anyone.

THE COURT: Um, why would you -- and here's, I guess, my confusion. Why would you withhold those from Mr. Dulberg? And I --

MS. WILLIAMS: The work product -- product

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privilege -- I mean, we can --

MR. CLINTON: We can give them.

MS. WILLIAMS: We can give that.

MR. CLINTON: We're not going to give you a hard time about that.

MS. WILLIAMS: We'll waive that and give those to Mr. Dulberg.

THE COURT: Because I'm --

MS. WILLIAMS: (Indiscernible.)

THE COURT: -- starting from the premise, at least based on the order, that Mr. Dulberg is, through counsel, waiving any attorney/client privilege. And, yeah, if we get into the issue -- my problem is if it's work product, arguably, Mr. Dulberg is entitled to those documents, and if he chooses to disclose them, that's up to him. But I'm not -- unless there's something else I'm missing, if Mr. Clinton or -- is it Ms. Williams?

MR. CLINTON: (Indiscernible.)

THE COURT: Is it Ms. Williams?

MS. WILLIAMS: Yes.

MR. CLINTON: And we'll turn them over today.

MS. WILLIAMS: We'll turn them over today.

THE COURT: Okay. Mr. Talarico.

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MR. TALARICO: Judge, your last order included a limited waiver. It's not waiver for all things. It's waiver -- waiver for the responses to the subpoena.

THE COURT: Yeah. Okay. But are you saying that that should or should not include work product? I don't have a problem either way, but, really, it's your call.

MR. TALARICO: Judge, I believe work product and -- and attorney/client privilege, yes. He's including all of that --

THE COURT: All right. So --

MR. TALARICO: -- in response to the subpoena.

THE COURT: -- you want -- and I'm not trying to box you in, but I just want to understand.

You want them to produce the entire file, including their work product, and you are waiving any claim of privilege related to work -- to attorney/client insofar as those records are concerned. Is that accurate, or did I miss something?

MR. TALARICO: Again, your Honor, Mr. Dulberg is specifically waiving the attorney/client -- client privilege for documents that are in response to the

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subpoena served upon Mr. Clinton and Ms. Williams.

THE COURT: Okay. And that includes work product?

MR. TALARICO: Yes, it does.

THE COURT: All right. Problem -- I think, problem solved.

Mr. Clinton or Ms. Williams, comment?

MR. CLINTON: We have no problem with that at all.

MS. WILLIAMS: I think we're (indiscernible).

THE COURT: Okay. So how quickly can you turn those over?

MS. WILLIAMS: We've already produced them to your Honor, so we have them. So I will -- I can e-mail them to both counsel --

THE COURT: Yeah, you did.

MS. WILLIAMS: -- today.

THE COURT: All right. I do have that.

MS. WILLIAMS: (Indiscernible).

THE COURT: But I didn't really make a point of looking through them too much, so -- because I'm not ruling on privilege, so it was not necessary for me to see the internal workings of the file.

That being said, Mr. Talarico, does that

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satisfy your concerns or interest?

MR. TALARICO: It does.

THE COURT: All right. And now -- so are you -- do you have any objection to my vacating any orders to compel or orders of compliance against Mr. Clinton and Ms. Williams?

MR. TALARICO: No, your Honor. That's the appropriate move.

THE COURT: I'm going to ask that Mr. Clinton and Ms. Williams send in the order memorializing the -- that. If you can send it in to this e-mail -- you can take --

MS. WILLIAMS: Yes.

MR. CLINTON: Thank you. We will do that.

MS. WILLIAMS: (Indiscernible.)

THE COURT: And be sure to copy Mr. Talarico and Mr. Flynn, if you have both of their e-mail addresses.

MR. CLINTON: Of course.

THE COURT: Do you have Mr. Flynn's?

MR. CLINTON: We do.

MS. WILLIAMS: We do.

THE COURT: All right. I see Mr. Flynn raising his pen. Yes.

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MR. FLYNN: (Indiscernible) next question, Judge.

THE COURT: Yeah. What is your question?

MR. FLYNN: Okay. My understanding, then, is that these documents that are being produced that were previously withheld are being produced to all parties in this case.

THE COURT: I'm going to shift that to Mr. Talarico. Is that your understanding?

MR. TALARICO: That is my understanding.

THE COURT: Okay. Does that satisfy your concerns, Mr. Clinton and Ms. Williams?

MR. CLINTON: Yes, your Honor.

MS. WILLIAMS: Yes, your Honor. If the client is waiving --

MR. TALARICO: We waived privilege.

MS. WILLIAMS: -- (indiscernible) to produce to -- we will produce in compliance with the subpoena, and we will submit those both to Mr. Talarico and Mr. Flynn at the same time.

THE COURT: All right. For purposes of clarity, what I am understanding just transpired is that plaintiff's current attorney, Mr. Talarico, has waived the attorney/client privilege and any claim

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of work product with respect to your file, and further, granted you permission to issue copies of that subpoena response to defense counsel, Mr. Flynn, at the same time.

Any -- if there's anything incorrect with what I said, tell me.

MR. TALARICO: If you're saying that I'm -- that Mr. Dulberg is waiving all attorney/client --

THE COURT: No.

MR. TALARICO: -- privilege -- just -- just in response to the subpoena, that's all.

THE COURT: Exactly.

MR. TALARICO: Yes.

THE COURT: Okay. Does that cover --

MR. FLYNN: Thank you, Judge.

THE COURT: All right. So send in your order and I -- I will vacate any order directed against you, because we're resolved, and as soon as I see it I will sign the order.

MS. WILLIAMS: Thank you very much, your Honor.

MR. CLINTON: Thank you, Judge.

THE COURT: Okay. And you know what? Are you in our e-mail system? Did they have to sign up --

MS. WILLIAMS: I believe we are, your Honor,

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because we were parties to the -- we were counsel in the case, so we should be.

THE COURT: Yeah. Forgive me. Okay. Then no problem. I'll sign it whenever it shows up.

MR. CLINTON: Thank you, Judge.

MS. WILLIAMS: Thank you very much.

(WHEREUPON, Mr. Clinton and Ms. Williams disconnect.)

THE COURT: All right. Moving on.

Mr. Flynn, we have your motion for summary judgment; am I correct?

MR. FLYNN: That's already been --

THE COURT: Yeah, I do see that.

MR. FLYNN: Yeah. The briefing schedules are set on that. There, actually, was another motion that relates to Ms. Williams and this Exhibit 12 from the Hans Mast deposition. I was kind of hoping that she might stay on the line there.

THE COURT: I apologize.

MR. FLYNN: That's okay.

THE COURT: I -- you know, Mr. Talarico, can you call them back? If you have their number.

MR. TALARICO: I don't.

THE COURT: Or, Mr. Flynn, if you've got their

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number, one of you. Because, yeah, I screwed up there.

MR. FLYNN: I'll see if I can. I think I've got a number here.

THE COURT: All right. Thank you.

MR. FLYNN: Judge, I was able to reach Mr. Clinton and Ms. Williams. I think they're going to log back on.

THE COURT: All right. As soon as I see them, I'll let them in.

MR. FLYNN: Thank you.

(WHEREUPON, Mr. Clinton and Ms. Williams reconnect.)

THE COURT: There he is. All right. I apologize. Mr. Flynn pointed out that I was dumb, and I let you go before we resolved one other question.

Mr. Flynn, I'll let you speak.

MR. FLYNN: And for the record, I did --

THE COURT: And for the record --

MR. FLYNN: -- not say that.

THE COURT: -- he implied.

So, Mr. Clinton -- Mr. Flynn, you had a question for Mr. Clinton.

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MR. FLYNN: Well, for Ms. Williams. It's not necessarily a question, but I think that this next motion -- there's a motion to exclude the Hans Mast deposition. Ms. Williams was involved in that, noticed the deposition, took the deposition, was involved in the communications with the court reporter.

So I thought that if she could and would be willing to explain what happened. And, you know, it's my position that there's nothing nefarious about this deposition. It was taken at the beginning of the pandemic when lawyers were still trying to figure out how to use the Zoom deposition method. All objections to that manner were waived by both parties. The deposition was, again, noticed by the plaintiff, Mr. Dulberg's agents. The court reporter was hired by the plaintiff, his agents.

THE COURT: But your question for Ms. Williams is?

MR. FLYNN: If she could explain what happened with Exhibit 12. I think I know what -- and, again, there's been a 213(f)(3) opinion that was just disclosed a day or two ago. I think it's improper because --

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THE COURT: In this case?

MR. FLYNN: (Indiscernible). In this case.

THE COURT: Oh, I don't (indiscernible).

MR. FLYNN: It was a document examiner who was identified by the plaintiff.

THE COURT: But that's a different issue, so I'm going to cut you off.

MR. FLYNN: No, it's not a different issue.

THE COURT: I want to cut -- I want to cut to what my one question is.

Ms. Williams, what can you tell us about Exhibit 12?

MS. WILLIAMS: So -- so my understanding -- as I recall, yes, it was the beginning of the pandemic. We had Mr. Mast's deposition, I believe, scheduled, I want to say, for March, and we canceled it because it was March 2020, right when everything was -- was starting, and it was canceled due to COVID concerns. And -- and so we -- we opted to utilize the -- the court's -- I think it was the Illinois Supreme Court that came out with the rules as to -- and I could be incorrect, it could be each county court, but that said you could do Zoom depositions.

So we noticed it up for a remote

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deposition, and we utilized a court reporter. I can't remember the court reporter's name. There are several e-mails about this with Mr. -- Mr. Flynn that -- that have been produced pursuant to the subpoena that we received. And my recollection is is that we took that deposition, and there were several difficulties with Mr. Mast's internet connection, and so we had come on and off, but we did get through the deposition.

Mr. Flynn had -- I had produced to Mr. Flynn, prior to the deposition, all of the exhibits that I believed we would use. And then I also, during the deposition, uploaded them into the court reporting system so that the court reporter would have them and mark them.

As to Exhibit 12, we had uploaded it into the system. I don't know that Mr. Mast could actually see those, so he may have used the paper copies that Mr. Flynn had.

And then after the deposition, the court reporter notified me that Exhibit 12, specifically, was -- they couldn't read it, and we needed to get them a copy. I believe there's e-mails to that effect, as well. If I'm recalling correctly, a

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number of the pages were blank. It was a larger exhibit. I want to say it was around 27 pages, I think, or 25 pages.

So sometime after the deposition, we -- we did provide the exhibit that was utilized in the deposition to the court reporter, and at that time they marked it and sent it back to everyone.

THE COURT: Okay. What was Exhibit 12 again?

MS. WILLIAMS: It was a series of cases. I don't know that -- I just can't recall what all was asked about it, but I know there were -- it was -- it was --

THE COURT: All right. These would have --

MS. WILLIAMS: -- copies of case law.

THE COURT: All right.

MR. FLYNN: They were photocopies of the old books, Judge, cases that were contained in Mast's file.

THE COURT: Okay.

MR. FLYNN: And he was -- you know, they have -- they're, obviously, not complete because they -- placed on a printer, appeared like we used to do in the old days.

THE COURT: Yes.

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MR. FLYNN: So the issue now, though, is that the plaintiff knew --

THE COURT: Hang on. Before -- before we get into argument, Mr. Talarico, is there anything -- any questions you have, since we have Ms. Williams here?

MR. TALARICO: Yes. Was the Tilsner case included in -- in the blank Exhibit 12 you sent to U.S. Legal, Barbara Schmidt? And was -- when you discussed with Mr. Flynn the failure of his -- or Mr. Mast's internet, didn't he say, I can't see these, I can only see their first one (indiscernible), which was the Lagano (phonetic) case? And wasn't there continued discussion by Mr. Flynn that he didn't -- he didn't produce all of the documents you sent on -- in hardcopy because he wanted to save paper?

MS. WILLIAMS: So that's -- I guess that's a lot of questions. So what --

MR. TALARICO: It is.

MS. WILLIAMS: What -- what -- I cannot recall what cases were included and weren't included at this point. There -- there was an e-mail to Mr. Flynn with the exhibit that is attached that I

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believe was produced in the subpoena.

So whatever that exhibit was is -- is what I would have used. So I know there was, like, a Laravo case or -- I remember the first case was like Laravo or Lavajo, L-A-V-A-J-O, or something like that.

But right now, off the top of my head, I don't remember what other cases were included.

MR. TALARICO: I'm talking about -- Judge, if I might, please? Excuse me. I'm sorry, Ms. Williams.

There was -- what the reporter had was blank. What Mr. Flynn's client said was, I see the Lagano (phonetic) one. So the Exhibit 12 that was sent, like, a week or two after the deposition had Lagano, Troy, and the same exact Lagano case, and it did not have the Tilsner case involved, and the Tilsner case was very important. So it was an exact duplication of one case and a second case.

But this is -- Judge, it's not just the Exhibit 12. The entire deposition --

THE COURT: Well, are you asking a question about Exhibit 12? Because if we're done asking questions, I'm gonna let her go.

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MR. TALARICO: Okay. Yep. I'm done.

THE COURT: Okay. Mr. Flynn, anything?

MR. FLYNN: Yes, Judge. So, again, this -- this 213(f)(3) report that was just produced --

THE COURT: Well, do we need the Clinton -- Mr. Clinton and Ms. Williams for this?

MR. FLYNN: Yes. I'm getting there.

THE COURT: Okay. Sorry.

MR. FLYNN: So if you can just indulge me for a moment.

So the expert document reviewer is of the opinion that the exhibit sticker on Exhibit 12 did not come from the same batch as the other exhibit stickers.

The defense's position is, so what? You know, these kind of things happen, I'm sure, with the court reporter, and if it was marked later because it was not sent in until later, that makes perfect sense.

But this is -- this is -- the argument that's being made is that -- and there's no other conclusion, it's just that it didn't come from the same batch. So, again, it's the so-what position on our part.

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But because it's being used to exclude the deposition, it's our position that the deposition was fine -- finally concluded to the satisfaction of plaintiff's counsel, that there was never any indication that they needed a follow-up deposition or a supplemental deposition or a Session 2.

So in our view, any objection to that deposition has been waived. And, again, there was nothing nefarious. Ms. Williams was nothing but professional and courteous during her tenure in this case.

This motion -- this conspiracy that's been presented and caused the defendant to be caught in the crossfire between the plaintiff and his former attorney is through no fault of theirs, and should not continue.

THE COURT: All right. Mr. Talarico, you can respond.

MR. TALARICO: Two points, Judge. First of all, what's very obvious -- the label on Exhibit 12 doesn't even have the deponent's name spelled right.

THE COURT: Okay. But what does -- what impact does that have?

MR. TALARICO: What impact is that it was not

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done at the same time by the same people. It was never produced in time.

Secondarily, about Mr. Flynn's allegation of some type of conspiracy, if he wants to push that, I think I have evidence that, if necessary, that -- that Mr. Flynn and Ms. Williams have consulted at times.

THE COURT: I'm sorry? Have what?

MR. TALARICO: Consulted.

THE COURT: Okay. Frankly, Counsel, if you're suggesting that either one of them has engaged in unethical behavior, I'm sure you're aware of the Himmel decision, and --

MR. TALARICO: I am.

THE COURT: -- it's not something you can threaten; you have to do.

MR. TALARICO: And I will.

THE COURT: Don't make that threat and not follow through with it if, in fact, there's anything to it. You don't -- you don't have an option. And you put a burden on me, as well, when you start going down this road.

So you've got to make a decision, and --

MR. TALARICO: (Indiscernible.)

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THE COURT: -- I'm not going to hear -- I'm not going to hear suggestions of unethical behavior.

I mean, you're either going to pursue it or we're not even going to entertain that, so please continue.

MR. TALARICO: Well, Judge, I will -- I will not pursue it if Mr. Flynn (indiscernible) --

THE COURT: It's not an issue. You don't get to choose.

MR. TALARICO: I'm aware.

THE COURT: I'm not -- I'm not telling you that you have to do one thing or the other. But the Himmel decision removes discretion from the equation. You have to act, if you are aware.

So I'm not telling you that -- that you've got to file. You know what you have. But what I'm saying is, if you're going to make an argument suggesting that other attorneys engaged in unethical behavior, I'm not going to listen to it unless you're also making a -- making a complaint with the ARDC.

So I'm not interested in attorneys casting aspersions on each other and then not following through, if that makes sense. Following through

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with the ARDC.

That being said, what -- what is your response on the -- do we have to keep Ms. Williams and Mr. Clinton here? Does anybody else need them?

MR. TALARICO: I have no need for them.

MR. FLYNN: I don't. Just in closing, with respect to Ms. Williams, again, I was just provided these documents by Ms. Williams and/or her court reporter and then passed them along. I had nothing to do with -- with anything other than I did print out certain of the exhibits for ease of use at the deposition when I went to Hans Mast's office. And because I was working from home at the time, I printed a few of them out, not all of them, due to a limited amount of printer paper. And that is my total involvement in Exhibit 12.

THE COURT: Okay. Ms. Williams and Mr. Clinton, do you want to stay? You can, until we resolve the issue, since we're addressing you guys. What do you want to do?

MS. WILLIAMS: Your Honor, if you wish for us to stay, we're happy to stay.

MR. CLINTON: I think we can stay.

THE COURT: All right. I was giving you the

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option to leave, if you wanted.

All right. So, Mr. Talarico, we're moving on to your motion to -- to bar; am I correct?

MR. TALARICO: Yes, your Honor. Within the motion, I asked to amend the motion after I get the responses from Clinton and Williams. They may be appropriate to put into the motion. I filed a motion. The motion can be -- actually, Mr. Flynn just responded to the motion without responding -- without responding.

I don't know how you want to look at it. If that was his response, I'll file a reply to what he said. But I still -- I have asked, from the beginning, to be allowed to amend that motion once I find out what Mr. Clinton and Ms. Flynn have -- I'm sorry, Ms. Williams. Forgive me.

THE COURT: All right. Can you -- are you asking me for leave to supplement your motion?

MR. TALARICO: Not -- Judge -- yes. If you want me to make a determination now, yes.

THE COURT: All right. And we haven't proceeded to hearing.

Mr. Flynn, have you filed a response to the motion? I'm not seeing it.

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MR. FLYNN: Judge, I have not. And my -- my point is that there hasn't even been a prima facie showing of any prejudice to the plaintiff with respect to his deposition. For my client to again have to file a written response to a brief of this nature --

THE COURT: You don't really have -- I don't know that -- I mean, it's up to you as to whether or not you want to file a written response. I've heard your argument. Plaintiff -- more importantly, plaintiff's counsel has heard your argument, so there's -- there's not going to be any prejudice if he simply files his reply or if I allow amendment and then we proceed to hearing. I don't think it's that complicated an issue.

MR. FLYNN: I don't either.

THE COURT: So I don't know that we need further briefing.

What do you want to do, Mr. Flynn, because the ball will be in your court once he files his amendment.

MR. FLYNN: I'd like to examine whatever the amendment is and then, if necessary, request, I guess, what will be called a surreply. However, I'm

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doubtful that I would need to file it.

THE COURT: Mr. Talarico, when can you file your -- your brief?

MR. TALARICO: Well, after I get and review the response from Ms. Williams and Mr. Clinton, two weeks.

THE COURT: Mr. Clinton, how quickly can you get him the documents? I know you said it earlier. You're on mute.

MR. CLINTON: My apology, again. We can get them to him today.

THE COURT: Okay. So I think two weeks from today, ultimately, is plenty of time. That would give plaintiff until --

MR. TALARICO: (Indiscernible.)

THE COURT: -- November 18th to file his amended response -- or amended motion. And then why don't we -- and then I'm out.

So I'll give plaintiff until the 21st and then we'll come back on November 28th, and then, Mr. Flynn, at that point, you can tell me what you want to do.

MR. FLYNN: Thank you, your Honor. And, again, I know -- I understand this is not on the table but

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it's a housekeeping issue with respect to this f(3) opinion. This (f)3 opinion, the document examiner was disclosed as a trial witness relative to this Exhibit 12. I don't think that's proper --

THE COURT: Yeah, I -- you know --

MR. FLYNN: And then he called it a mini trial but not trial.

THE COURT: The -- I -- I haven't seen the report, but if the expert is going to render opinions on case law, copies of case law that were allegedly tendered by former counsel to Mr. Dulberg, I don't see how that comes up in the trial of the matter.

MR. FLYNN: He's really only opining on the authenticity of the exhibit sticker and whether it came from the same batch as the other stickers in that deposition.

So it has nothing to do with the standard of care in this case or any --

THE COURT: I don't know. I'll let Mr. Talarico tell me otherwise. Not now, but I -- there's a couple of thresholds. I don't know. I haven't seen exactly what he says, and I -- I suspect we could even stipulate that the sticker is different without

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a whole lot of -- a whole lot of effort or prejudice to anybody. Because based on what you've told me, it likely is a different sticker because of the way the documents were transferred back and forth and the problem at the deposition.

That all being said, I'm -- I'm going to be -- frankly, Mr. Talarico, I'm going to be hard-pressed, but I need to see the report before I can say anything further, so I'll quit speculating.

Anything else that we've got to deal with today? No?

MR. TALARICO: No.

THE COURT: All right. Mr. Talarico or Mr. Flynn, can you send in the order memorializing what we're doing on your case? And then, of course, Mr. Clinton and Ms. Williams will send in the order that is vacating any -- any order compelling them to do anything.

MR. FLYNN: Judge, I actually have a meeting with a client in about ten minutes. If Mr. Talarico wouldn't mind preparing the order this time, I'd appreciate it.

MR. TALARICO: I will.

THE COURT: Okay. All right. Then we'll see

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you on the 28th.

THE CLERK: What time?

MR. FLYNN: Thank you Mr. Clinton and Ms. Williams for your time.

MR. TALARICO: Thank you, your Honor.

THE CLERK: What time on the --

THE COURT: You know what? Hang on. Hang on. Make it 9:15, not 8:45. At 9:15.

MR. FLYNN: I'm sorry. On what date again?

THE COURT: On November 28th at 9:15.

MR. TALARICO: Thank you, Judge.

MR. FLYNN: You know, Judge, we talked last time about my knee replacement. Is there any way we could bump that back one more week?

THE COURT: Wait. Yeah, I can do it the --

MR. FLYNN: Although, I hope for a speedy recovery. The surgery is on the 17th and --

THE COURT: Sure. Sure. If you want to come -- what's the next week? December 5th?

MR. FLYNN: I'm very hopeful that that will work.

THE COURT: All right. Good luck.

MR. FLYNN: Thank you.

THE COURT: All right. December 5th at 9:15.

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MR. TALARICO: Your Honor, what --
THE COURT: Yes?
MR. TALARICO: December 5th?
THE COURT: Yeah.
MR. TALARICO: Thank you, your Honor.
THE COURT: All right. Thank you.
Disconnecting.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, KATHLEEN STROMBACH, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Kathleen Strombach
Kathleen Strombach
Official Court Reporter
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IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	CASE NO. 17 LA 377 JUDGE THOMAS A. MEYER

RESPONSE TO SUBPOENA FOR DOCUMENTS
(THIS SUBPOENA IS FOR RECORDS ONLY.)

Edward X. Clinton, Jr., individually as manager of Clinton Law Firm, LLC, and Julia C. Williams, individually, as attorney at Clinton Law Firm, LLC and as manager of Williams Law, LLC, (hereinafter "Respondents") respond to the Subpoena for Documents as follows:

GENERAL OBJECTIONS

Respondents object to all requests that seek the disclosure of attorney-client communications between Respondents and their former client Paul Dulberg.

Respondents object to all requests that seek the disclosure of attorney work product.

RESPONSES

Respondent incorporate the general objections in to each response to requests 1-7, and further respond as follows:

1. The original transcript stamped "Original" of the discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes.

EXHIBIT 3

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The transcript of the deposition of Hans Mast is produced with this response in pdf format and titled "Hans Mast 062520 FULL.pdf" and "Hans Mast 062520 MINI.pdf." The exhibits to the deposition are produced with Bates Stamp Dulberg Clinton Subpoena 518-562, 616-642. No such "original" stamp or "copy" stamp is attached to the transcript as the transcript was produced in an electronic format.

2. An exact duplicate of the original transcript stamped "Copy" of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the copy demanded is a contemporaneous copy issued by U.S. Legal Support.

The transcript of the deposition of Hans Mast is produced with this response in pdf format and titled "Hans Mast 062520 FULL.pdf" and "Hans Mast 062520 MINI.pdf." The exhibits to the deposition are produced with Bates Stamp Dulberg Clinton Subpoena 518-562, 616-642. No such "original" stamp or "copy" stamp is attached to the transcript as the transcript was produced in an electronic format.

3. An exact duplicate of the original transcript stamped "Copy" in condensed format (mini) of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the condensed transcript demanded is a contemporaneous version issued by U.S. Legal Support.

The transcript of the deposition of Hans Mast is produced with this response in pdf format and titled "Hans Mast 062520 FULL.pdf" and "Hans Mast 062520 MINI.pdf." The exhibits to the deposition are produced with Bates Stamp Dulberg Clinton Subpoena 518-562, 616-642. No such "original" stamp or "copy" stamp is attached to the transcript as the transcript was produced in an electronic format.

4. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the discovery deposition of Hans Mast taken on June 25, 2020.

See documents Bates Stamped Dulberg Clinton Subpoena 1-671.

5. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibit 12 of the discovery deposition of Hans Mast taken on June 25, 2020.

See documents Bates Stamped Dulberg Clinton Subpoena 1-671.

6. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the exhibit titled " Legal Research" of discovery deposition of Hans Mast taken on June 25, 2020.

See documents Bates Stamped Dulberg Clinton Subpoena 1-671.

7. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibits 1-11 and 13-15 of the discovery deposition of Hans Mast taken on June 25, 2020.

See documents Bates Stamped Dulberg Clinton Subpoena 1-671.

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Affidavit of Compliance

The undersigned certifies under penalties of perjury as provided by law pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, that the statements checked below are true and correct.

Check one (1) from the following:

__x___ After making a diligent search of any and all the records in our possession or control, I certify that all records we have on the above are submitted herewith in response to this subpoena.

_____ After making a diligent search of any and all records, I certify there are no records to provide in response to this subpoena.

Check one (1) from the following:

__x___ I have personal knowledge of the record-keeping procedures of the Clinton Law Firm, LLC and Julia Christine Williams and Williams Law LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I am an employee of or manager of Edward X. Clinton and Clinton Law Firm LLC, and I have personal knowledge of the record-keeping procedures of Edward X. Clinton and Clinton Law Firm LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I have no personal knowledge of the record-keeping procedures of Edward X. Clinton and Clinton Law Firm LLC and the manner of creation for all records produced responsive to this subpoena.

Check **all** that apply from the following:

__x___ The records produced in response to this subpoena were kept in the course of the regularly conducted activity of Edward X. Clinton, Clinton Law Firm LLC, Julia C. Williams, and Williams Law LLC.

__x___ The records produced in response to this subpoena were made by the regularly conducted activity as a regular practice of Edward X. Clinton, Clinton Law Firm LLC, Julia C. Williams, and Williams Law LLC.

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_____ The records produced in response to this subpoena were made at or near the time of the occurrences set forth by, or from information transmitted by, a person with knowledge of the matters set forth within the records.

Date: September 29, 2022

Position: __Attorney_____

Name: ___Julia C. Williams_____

(Print)

Julia C. Williams

(Signature)

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C 1953 V2

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	CASE NO. 17 LA 377 JUDGE THOMAS A. MEYER

AMENDED RESPONSE TO SUBPOENA FOR DOCUMENTS
(THIS SUBPOENA IS FOR RECORDS ONLY.)

Julia C. Williams, individually, as attorney at Clinton Law Firm, LLC and as manager of Williams Law, LLC, (hereinafter "Respondents") respond to the Subpoena for Documents as follows:

GENERAL OBJECTIONS

Respondents object to all requests that seek the disclosure of attorney-client communications between Respondents and their former client Paul Dulberg.

Respondents object to all requests that seek the disclosure of attorney work product.

RESPONSES

Respondent incorporate the general objections in to each response to requests 1-7, and further respond as follows:

1. The original transcript stamped "Original" of the discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes.

EXHIBIT 4

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RESPONSE:

The transcript of the deposition of Hans Mast is produced with this response in pdf format and titled "Hans Mast 062520 FULL.pdf" and "Hans Mast 062520 MINI.pdf." The exhibits to the deposition are produced with Bates Stamp Dulberg Clinton Subpoena 518-562, 616-642. No such "original" stamp or "copy" stamp is attached to the transcript as the transcript was produced in an electronic format.

2. An exact duplicate of the original transcript stamped "Copy" of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the copy demanded is a contemporaneous copy issued by U.S. Legal Support.

RESPONSE:

The transcript of the deposition of Hans Mast is produced with this response in pdf format and titled "Hans Mast 062520 FULL.pdf" and "Hans Mast 062520 MINI.pdf." The exhibits to the deposition are produced with Bates Stamp Dulberg Clinton Subpoena 518-562, 616-642. No such "original" stamp or "copy" stamp is attached to the transcript as the transcript was produced in an electronic format.

3. An exact duplicate of the original transcript stamped "Copy" in condensed format (mini) of the discovery deposition of Hans Mast taken on June 25, 2020, to include but not limited to: all pages, all indexes, all exhibits and all stenographic/shorthand notes. Please note that the condensed transcript demanded is a contemporaneous version issued by U.S. Legal Support.

RESPONSE:

The transcript of the deposition of Hans Mast is produced with this response in pdf format and titled "Hans Mast 062520 FULL.pdf" and "Hans Mast 062520 MINI.pdf." The exhibits to the deposition are produced with Bates Stamp Dulberg Clinton Subpoena 518-562, 616-642. No such "original" stamp or "copy" stamp is attached to the transcript as the transcript was produced in an electronic format.

4. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the discovery deposition of Hans Mast taken on June 25, 2020.

RESPONSE:

See documents Bates Stamped Dulberg Clinton Subpoena 1-677.

See also documents produced solely to the Court for in camera inspection:

A. Dulberg Clinton Subpoena Privileged Communication 1-33
B. Dulberg Subpoena Work Product Privilege 1-13

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5. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibit 12 of the discovery deposition of Hans Mast taken on June 25, 2020.

RESPONSE:

See documents Bates Stamped Dulberg Clinton Subpoena 1-677.

See also documents produced solely to the Court for in camera inspection:

A. Dulberg Clinton Subpoena Privileged Communication 1-33
B. Dulberg Subpoena Work Product Privilege 1-13

6. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning the exhibit titled " Legal Research" of discovery deposition of Hans Mast taken on June 25, 2020.

RESPONSE:

See documents Bates Stamped Dulberg Clinton Subpoena 1-677.

See also documents produced solely to the Court for in camera inspection:

A. Dulberg Clinton Subpoena Privileged Communication 1-33
B. Dulberg Subpoena Work Product Privilege 1-13

7. All documents and ESI to include but not limited to: all text messages, emails, messages, notes, and reports taken, created, or received concerning Exhibits 1-11 and 13-15 of the discovery deposition of Hans Mast taken on June 25, 2020.

RESPONSE:

See documents Bates Stamped Dulberg Clinton Subpoena 1-677.

See also documents produced solely to the Court for in camera inspection:

A. Dulberg Clinton Subpoena Privileged Communication 1-33
B. Dulberg Subpoena Work Product Privilege 1-13

Affidavit of Compliance

The undersigned certifies under penalties of perjury as provided by law pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, that the statements checked below are true and correct.

Check one (1) from the following:

__x___ After making a diligent search of any and all the records in our possession or control, I certify that all records we have on the above are submitted herewith in response to this subpoena.

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C 1956 V2

_____ After making a diligent search of any and all records, I certify there are no records to provide in response to this subpoena.

Check one (1) from the following:

__x___ I have personal knowledge of the record-keeping procedures of the Clinton Law Firm, LLC and Julia Christine Williams and Williams Law LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I am an employee of or manager of Edward X. Clinton and Clinton Law Firm LLC, and I have personal knowledge of the record-keeping procedures of Edward X. Clinton and Clinton Law Firm LLC and the manner of creation for all records produced responsive to this subpoena.

_____ I have no personal knowledge of the record-keeping procedures of Edward X. Clinton and Clinton Law Firm LLC and the manner of creation for all records produced responsive to this subpoena.

Check **all** that apply from the following:

__x___ The records produced in response to this subpoena were kept in the course of the regularly conducted activity of Edward X. Clinton, Clinton Law Firm LLC, Julia C. Williams, and Williams Law LLC.

__x___ The records produced in response to this subpoena were made by the regularly conducted activity as a regular practice of Edward X. Clinton, Clinton Law Firm LLC, Julia C. Williams, and Williams Law LLC.

__x___ The records produced in response to this subpoena were made at or near the time of the occurrences set forth by, or from information transmitted by, a person with knowledge of the matters set forth within the records.

Date: October 28, 2022

Position: __Attorney_____

Name: ___Julia C. Williams_____

(Print)

Julia C. Williams

(Signature)

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C 1957 V2

George Flynn

From:	Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Sent:	Friday, November 18, 2022 10:44 AM
To:	George Flynn; Julia WIlliams; Ed Clinton
Subject:	Re: Dulberg v Popovich et al; Subpoena Response and ex-parte communications
Attachments:	Flynn to Williams I just received notice of your attorney lien June 19 2020 Dulberg -2.pdf; Flynn While this is fresh in my mind June 25 2020 Dulberg -3.pdf

Dear Mr. George K. Flynn,

First of all, I hope this reply finds you in good health and recuperating.

Second, as Ms. Williams correctly states she has forwarded to you all responsive documents to the records subpoena.

I have taken the time to review and contrast what she sent to you in a redacted state to what she sent to me without the "Black boxes"

I support her position that all redacted were not responsive to the subpoena as instructed regarding subject matter (the deposition of Hans Mast a/k/a Hans Mist taken on June 25, 2020), the time frame beginning March 2, 2020 and ending on April 29, 2022. She properly released to you all responsive documents pursuant to the limited waiver that Plaintiff Mr. Dulberg agreed to.

She clearly states that in her email to you and the unresponsive redacted documents were never intended for you to see.

If you have a problem with that you are free to subpoena her for records and/or a live deposition, but Mr. Dulberg has not waived the attorney-client privilege nor work product privilege outside the instructions contained within the records subpoenas served on Ms. Williams and Mr. Clinton.

However, in the spirit of cooperation between members of the bar I have attached two documents I found that would have been responsive had Ms. Williams had them, but as Judge Meyer is correct in saying, you can only produce what you have and I assume Ms. Williams responded honestly and completely.

Finally, I have been made aware of ex-parte communications from your Firms and Julia Williams that I was not included in.

Julia Williams wrote that she was contacted by someone named Juliet Wang from your law firm.

I hereby demand a complete log of any and all communications in any form (written, email, oral...) between anyone at your Firm and Julia Williams or Ed Clinton.

Your anticipated cooperation is greatly appreciated,

Alphonse A. Talarico
312.808.1410

GROUP EXHIBIT 5

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From: George Flynn <gflynn@karballaw.com>
Sent: Tuesday, November 15, 2022 8:34 PM
To: Julia WIlliams <juliawilliams@clintonlaw.net>
Cc: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>; Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
Subject: RE: Dulberg v Popovich et al; Subpoena Response

Ms. Williams:

Thank you. I understand your position. I will leave you off of any further communications. However, since there will be no production, I repeat my demand to Mr. Talarico that the records produced pursuant to subpoena be produced to the defendant, unredacted.

Regards,

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
200 S. Wacker Drive
Suite 2550
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com
CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Tuesday, November 15, 2022 4:28 PM
To: George Flynn <gflynn@karballaw.com>
Cc: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>; Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
Subject: Re: Dulberg v Popovich et al; Subpoena Response

Dear Mr. Flynn,

We respectfully decline to produce all of the documents in unredacted form as it is our understanding that the court was permitting Mr. Dulberg to make a limited waiver only as to documents that were specifically responsive to the subpoena, not all attorney-client communications. As some of the documents that were produced to Judge Meyer were not responsive to the subpoena, we redacted those non-responsive documents and produced a privilege log.

It is our duty to our former client to maintain privilege to the extent it was not waived.

We did produce all of the documents to Mr. Talarico in unredacted form and thus, I believe that this issue can properly be resolved between the two of you since Plaintiff is now in possession and control of the documents.

Best regards,

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Purchased from re:SearchIL

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Nov 15, 2022, at 12:35 PM, George Flynn <gflynn@karballaw.com> wrote:

Dear: Ms. Williams and Mr. Talarico:

I have had a chance to review the email below, the privilege log, and the documents produced in the attachments below. While I understand Ms. Williams' position, in essence a warning to her former client relative to waiver of the attorney/client privilege, there has indeed been an explicit waiver. Based on my recollection of the discussions on the record before Judge Meyer, I certainly was not expecting one set of documents to be produced to the Plaintiff, and a separate set produced to the defendants, with information redacted or withheld.

Dulberg made the decision to subpoena these records, and when questioned on the record, the waiver of attorney-client privilege was explicitly confirmed.

Demand is hereby made that all documents responsive to Dulberg's subpoena be produced by Williams and The Clinton Firm, completely and in unredacted form.

Mr. Talarico, if Ms. Williams and the Clinton firm do not produce the complete subpoena response within 2 business days, it is incumbent upon Mr. Dulberg and his current counsel to produce these unredacted documents now that they are in your possession, and constitute a response to a subpoena. Dulberg opened the door by serving the subpoena and then by doubling down on the record in court. Moreover, the attached court order reflects that the documents which were previously marked or withheld as being privileged, would be delivered to both Plaintiff's counsel and Defendant's counsel. Demand is made on Mr. Talarico to produce the un-redacted complete subpoena response by November 21, 2022.

Best regards.

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
200 S. Wacker Drive
Suite 2550
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

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CONFIDENTIALITY NOTE:
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

From: Julia WIlliams <juliawilliams@clintonlaw.net>
Sent: Friday, November 4, 2022 3:58 PM
To: George Flynn <gflynn@karballaw.com>; Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
Subject: Dulberg v Popovich et al; Subpoena Response

Attachments available until Dec 4, 2022
Dear Mr. Talarico and Mr. Flynn,

Please see attached documents and privilege log.

Edward X. Clinton and I both reviewed our emails and located further responsive documents, some of which may be duplicative. We are producing them here, in addition to any documents that were previously produced to you or to Judge Meyer.

Further, we reviewed the documents that were produced to Judge Meyer and found some of them to not be responsive to the Subponea and protected by the privilege, which Mr. Dulberg did not waive today. Rather, Mr. Talarico on Mr. Dulberg's behalf made it clear that Mr. Dulberg was not waiving privilege as to anything other than the document responsive to the subpoena. Those documents have been redacted and a privilege log is included.

An unreacted version of those documents will be produced to Mr. Talarico via separate email as indicated on the certificate of service.

Finally, I will be forwarding the email chain that is marked as "Dulberg Clinton Subponea Privileged Communication 269-274" as to produce it in its native format. It contains several attachments.

Kindly advise if you have any difficulties with any documents, if you believe any documents are missing, or if you require anything further from The Clinton Law Firm.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

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Dulberg Cert of Discovery 2022 Nov 4.pdf
98 KB

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Dulberg Clinton Subpoena 1-562.pdf
11.1 MB

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Dulberg Clinton Subpoena 616-642.pdf
27.9 MB

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Dulberg Clinton Subpoena 643-671.pdf
1.8 MB

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Dulberg Clinton Subpoena 672-677.pdf
598 KB

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Dulberg Clinton Subpoena Privileged Communication 1-33 redacted.pdf
5 MB

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Dulberg Clinton Subpoena Privileged Communication 34-295 redacted.pdf
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** FILED ** Env: 20471817
McHenry County, Illinois
2017LA000377
Date: 11/29/2022 3:15 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Paul Dulberg, Plaintiff, v. The Law Offices of Thomas J. Popovich, P.C., And Hans Mast, Defendants.	)	Case No. 17 LA 000377 Jury Demand (Court Room 201)

NOTICE OF MOTION

TO: ALL ATTORNEYS OF RECORD – See Attached Service List

PLEASE TAKE NOTICE that on the **5th day of December 2022 at 9:15 a.m.** or as soon thereafter as this motion may be heard, we shall appear before the Honorable Judge Thomas A. Meyer or any Judge sitting in his place or stead, in Room 201, at McHenry County Government Center, 2200 N. Seminary Avenue (Route 47), Woodstock, IL 60098, and shall then and there present DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO ENFORCE THE COURT'S NOVEMBER 9, 2022 ORDER AND COMPEL PLAINTIFF TO PRODUCE UNREDACTED COPIES OF SUBPOENAED RECORDS, a copy of which is attached hereto and herewith served upon you. Zoom Information:
Meeting ID: 272-959-8070;
Personal Link Name: mchenrycourtroom201
Password: no password required

Dated this 29th day of November 2022 in Chicago, Illinois.

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
200 So. Wacker Drive, Suite 2550
Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on November 29, 2022.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 11-29-2022 03:57 PM / Circuit Clerk Accepted on 11-29-2022 04:12 PM / Transaction #20471817 / Case #2017LA000377

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SERVICE LIST

Plaintiff's Attorney	
Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd 6th Floor Suite Northbrook, IL 60062-2841 contact@lawofficeofalphonsetalarico.com (312) 808-1410	

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** FILED ** Env: 20490429
McHenry County, Illinois
2017LA000377
Date: 11/30/2022 2:51 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: All Attorneys of Record (See Attached Service List)

PLEASE TAKE NOTICE that on the 30th day of November 2022, we filed with the Clerk of the 22ND Judicial Circuit Court of McHenry County, Illinois, DEFENDANTS' RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 30th day of November 2022.

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
200 So. Wacker Drive, Suite 2550
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on November 30, 2022.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 11-30-2022 03:43 PM / Circuit Clerk Accepted on 11-30-2022 03:46 PM / Transaction #20490429 / Case #2017LA000377

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SERVICE LIST

Plaintiff's Attorney	
Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd 6th Floor Suite Northbrook, IL 60062-2841 contact@lawofficeofalphonsetalarico.com (312) 808-1410	

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McHenry County, Illinois
2017LA000377
Date: 11/30/2022 2:51 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2nd AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for their Response to Plaintiff's 2nd Amended Motion to Exclude the deposition of Hans Mast, state as follows:

1) Plaintiff Paul Dulberg ("Dulberg") is improperly requesting a drastic remedy that amounts to the equivalent of a severe discovery sanction against defendants due to Dulberg's perceived irregularity regarding an exhibit sticker in connection with a party deposition he caused to be taken, and by a court reporter he retained. Defendants had nothing to do with the "irregularity" and should not be further prejudiced by issues. Simply put, he seeks relief for his own alleged violation of the rules.

2) The court heard argument on this matter on November 4, 2022. Defendants had not filed any written response at that time, and Dulberg late file his 2nd Amended Motion to Exclude Mast's deposition. Defendants hereby adopt their arguments contained in the transcript

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from the 11-4-22 hearing (Exhibit A) and submit this additional response in opposition to Plaintiff's motion.

3) The instant motion is the latest costly litigated matter made necessary by Dulberg's multiple substitutions of counsel. His current (now third) attorney entered his appearance on October 23, 2020. The deposition at issue was taken by Dulberg's second attorney on June 25, 2020. Dulberg's original Motion to Exclude the Hans Mast deposition was filed by his third attorney on October 12, 2022, just 11 (eleven) days shy of the second anniversary of his appearance in the case.

4) Dulberg improperly seeks to exclude a discovery deposition apparently because he does not like the result—he apparently does not like the testimony that was elicited or the performance of his counsel. In this and related proceedings, he has caused communications between himself and his prior counsel to be produced. These documents include deposition questions he proposed to his then counsel in advance of the Mast deposition. Dulberg is now asking for a "do-over" because Mast's testimony was apparently not satisfactory to him. Whatever disputes Dulberg may have with his prior counsel in this instant case, he should not be allowed a second bite at the apple as a result of those disputes. He attempts to mischaracterize a minor discrepancy with one exhibit to the deposition, and difficulties with defendant's wi-fi connection during the zoom deposition (which were overcome), as warranting the exclusion of the deposition. This is absurd.

5) As an initial matter, Dulberg asserts that Mast's deposition was taken in violation of Illinois Supreme Court Rule 206 h (2), and other orders entered in response to the COVID-19 pandemic. But he should be required to take a position as to who committed the alleged violation(s). In his 2nd Amended Motion, he vaguely asserts "violations."

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6) Paul Dulberg personally observed the discovery deposition of Hans Mast taken remotely (by Zoom) on June 25, 2020. If he had an objections to alleged irregularities with the deposition, he had ample time to bring such issues to the attention of his counsel, Julia Williams, and to his current counsel who appeared on his behalf on October 23, 2020.

7) Illinois Supreme Court Rule 211 governs this issue. Rule 211 (c) (2) reads as follows: "Objections to the form of a question or answer, errors and irregularities occurring at the oral examination in the manner or taking of the deposition, in the oath or affirmation, or in the conduct of any person, and errors and irregularities of any kind which might be corrected if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition."

8) Rule 211 (D) provides: "Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after the defect is, or with due diligence might have been, ascertained.

9) Dulberg did not object or raise his objections with reasonable promptness, under any analysis. He was present for Mast's deposition 2.5 years ago, and his counsel had years to bring a motion. Instead, he seeks to prejudice defendants by waiting until fact discovery is closed and he faces summary disposition. Defendant's submit that even if the court found his objections to be timely, that the court find that any irregularities ("violations") were 1) caused solely by Dulberg or his agents, 2) that any irregularities were harmless, 3) that any alleged irregularity simply be given its weight by the finder of fact (if as to any fact issue), 4) that no

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remedy be ordered in Dulberg's favor, and 5) the court weigh any remedy in favor of defendants it sees fit to order under Rule 201 (c)(1)(2) and (3).

10) In response to Dulberg's argument at paragraph A3.3 of his 2nd Amended Motion to Exclude relating to his exhibit 16 (Email from defendant's counsel George K. Flynn) Dulberg takes the position that there was no discussion of any errors or irregularities in the "just concluded deposition." That is exactly right. Dulberg's counsel did not raise any issues or objections in response to the email. She was apparently satisfied with the outcome, despite some minor technical difficulties during the deposition. She never voiced any suggestion that an additional session of Hans Mast's deposition was necessary or requested. Flynn didn't make any mention of it because any technical difficulties seemed inconsequential.

11) Dulberg's motion at page 11 begins to purportedly outline violations of the rules, but again without explicitly identifying who violated any such rule. Nor is there any analysis or conclusion reached--only a litany of facts, chronology, and innuendos. No basis for any remedy is discussed or analyzed.

12) Of concern is a statement on page 19 of Dulberg's motion in which he argues that Mast had insisted that the decision in the *Tilschner v. Spangler* case was the reason Dulberg would not prevail in the underlying case against the McGuire's. The statement is inexplicably made "on information and belief." This is unacceptable. Dulberg has made no such disclosure in fact discovery (now closed) about this very specific discussion between Mast and himself regarding the Tilschner case. If Dulberg believes he has disclosed it, he should be required to identify where in his answers and amended answers to discovery or his deposition he has identified such discussion with this amount of specificity. Defendants submit that no such disclosure exists.

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WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court enter an Order denying Plaintiff's 2nd Amended Motion to Exclude Mast's deposition, and for any further relief this court deems fair and proper.

Respectfully submitted,

/s/ *George K. Flynn*

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS POPOVICH, et al., Defendants.	No. 17 LA 377

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 4th day of November, 2022, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by
MR. ALPHONSE A. TALARICO (via Zoom),

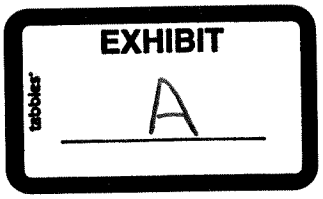
On behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN (via Zoom),

On behalf of the Defendants.

ALSO PRESENT:

MR. EDWARD CLINTON (via Zoom)
MS. JULIA C. WILLIAMS (via Zoom)



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THE COURT: All right. If everybody could identify themselves, starting with plaintiff's counsel, then defendant.

MR. TALARICO: Good morning, your Honor. Good morning, Counsel. I am Alphonse Talarico for the plaintiff, Paul Dulberg.

THE COURT: Okay. Defense.

MR. FLYNN: Good morning, your Honor. George Flynn on behalf of the defendants, the Popovich firm and Hans Mast.

THE COURT: Okay. Mr. Clinton.

MR. CLINTON: Good morning, your Honor. Ed Clinton, former counsel to Mr. Dulberg.

THE COURT: All right. And --

MS. WILLIAMS: Good morning, your Honor. Julia -- Julia Williams on behalf of -- former counsel to Mr. Dulberg.

THE COURT: Okay. And for the record, we have Mr. Dulberg on screen.

In any event, plaintiff's counsel, where do you want to start?

MR. TALARICO: Judge, I would guess that Mr. Clinton and Ms. Williams' motion to vacate would be the beginning. I filed a rule pursuant to

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your last -- the transcript -- your last order said if there's something else that comes up.

I did file a rule after I read their motion to vacate. Historically, or chronologically, I think maybe that's the starting point. (Indiscernible) you held them in contempt and --

THE COURT: I did?

MR. TALARICO: -- here we are. You did.

THE COURT: When did I hold them in contempt? I'm looking at --

MR. TALARICO: I think so. The last order.

THE COURT: Okay. I'm looking at October 17th. He must appear. Yeah, I don't see an explicit finding of contempt, at least in the October 17th order. Was --

MR. TALARICO: I thought -- with all due respect, Judge, if I can find the order, I think the first sentence says you grant my motion.

THE COURT: Plaintiff's motion to compel is granted as --

MR. TALARICO: Oh, I'm sorry. Compel. Forgive me.

THE COURT: All right.

MR. TALARICO: My mistake.

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THE COURT: In any event, I read the motion to vacate and I -- are you -- and this is directed at Mr. Clinton -- are you concerned about the order to produce, or something else?

MS. WILLIAMS: Would you like me to --

MR. CLINTON: Yeah, go ahead.

MS. WILLIAMS: Your Honor, we're not concerned about producing. We're -- Mr. Dulberg is entitled to these documents, even without a subpoena.

THE COURT: Yeah.

MS. WILLIAMS: So the production is not our concern. It's the portion of the order that insinuates that we weren't try -- not complying with the subpoena when we were rightfully doing so.

So we are (indiscernible) --

THE COURT: Thank you.

MS. WILLIAMS: So that's what we're concerned about.

THE COURT: All right. I'll vacate that because -- yeah, I don't see that as critical.

So to the extent that you're concerned, any suggestion in the order of October 17th suggesting or implying that you had failed to cooperate, I will vacate. I saw from your motion to vacate you were

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contesting that issue, and I'm not going to go down that path to find out who's right, ultimately, because it doesn't make any difference, at least to me.

So all I care about is the production of the documents. And am I correct that -- my reading of your response indicated that you've produced the documents. Is that -- was that accurate?

MS. WILLIAMS: Yes, your Honor. So we have produced nonconfidential documents to both -- at this point, we've now produced to both counsels of record in this case, plaintiff's counsel and defendant's counsel. The only thing that has not been produced to defendant's counsel is the communication between our firm and Mr. Dulberg, which was produced to plaintiff's counsel. And then there are, I want to say, about 13 pages of e-mails that were internal work product communications within our office that have not been produced to any -- anyone.

THE COURT: Um, why would you -- and here's, I guess, my confusion. Why would you withhold those from Mr. Dulberg? And I --

MS. WILLIAMS: The work product -- product

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privilege -- I mean, we can --

MR. CLINTON: We can give them.

MS. WILLIAMS: We can give that.

MR. CLINTON: We're not going to give you a hard time about that.

MS. WILLIAMS: We'll waive that and give those to Mr. Dulberg.

THE COURT: Because I'm --

MS. WILLIAMS: (Indiscernible.)

THE COURT: -- starting from the premise, at least based on the order, that Mr. Dulberg is, through counsel, waiving any attorney/client privilege. And, yeah, if we get into the issue -- my problem is if it's work product, arguably, Mr. Dulberg is entitled to those documents, and if he chooses to disclose them, that's up to him. But I'm not -- unless there's something else I'm missing, if Mr. Clinton or -- is it Ms. Williams?

MR. CLINTON: (Indiscernible.)

THE COURT: Is it Ms. Williams?

MS. WILLIAMS: Yes.

MR. CLINTON: And we'll turn them over today.

MS. WILLIAMS: We'll turn them over today.

THE COURT: Okay. Mr. Talarico.

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MR. TALARICO: Judge, your last order included a limited waiver. It's not waiver for all things. It's waiver -- waiver for the responses to the subpoena.

THE COURT: Yeah. Okay. But are you saying that that should or should not include work product? I don't have a problem either way, but, really, it's your call.

MR. TALARICO: Judge, I believe work product and -- and attorney/client privilege, yes. He's including all of that --

THE COURT: All right. So --

MR. TALARICO: -- in response to the subpoena.

THE COURT: -- you want -- and I'm not trying to box you in, but I just want to understand.

You want them to produce the entire file, including their work product, and you are waiving any claim of privilege related to work -- to attorney/client insofar as those records are concerned. Is that accurate, or did I miss something?

MR. TALARICO: Again, your Honor, Mr. Dulberg is specifically waiving the attorney/client -- client privilege for documents that are in response to the

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subpoena served upon Mr. Clinton and Ms. Williams.

THE COURT: Okay. And that includes work product?

MR. TALARICO: Yes, it does.

THE COURT: All right. Problem -- I think, problem solved.

Mr. Clinton or Ms. Williams, comment?

MR. CLINTON: We have no problem with that at all.

MS. WILLIAMS: I think we're (indiscernible).

THE COURT: Okay. So how quickly can you turn those over?

MS. WILLIAMS: We've already produced them to your Honor, so we have them. So I will -- I can e-mail them to both counsel --

THE COURT: Yeah, you did.

MS. WILLIAMS: -- today.

THE COURT: All right. I do have that.

MS. WILLIAMS: (Indiscernible).

THE COURT: But I didn't really make a point of looking through them too much, so -- because I'm not ruling on privilege, so it was not necessary for me to see the internal workings of the file.

That being said, Mr. Talarico, does that

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satisfy your concerns or interest?

MR. TALARICO: It does.

THE COURT: All right. And now -- so are you -- do you have any objection to my vacating any orders to compel or orders of compliance against Mr. Clinton and Ms. Williams?

MR. TALARICO: No, your Honor. That's the appropriate move.

THE COURT: I'm going to ask that Mr. Clinton and Ms. Williams send in the order memorializing the -- that. If you can send it in to this e-mail -- you can take --

MS. WILLIAMS: Yes.

MR. CLINTON: Thank you. We will do that.

MS. WILLIAMS: (Indiscernible.)

THE COURT: And be sure to copy Mr. Talarico and Mr. Flynn, if you have both of their e-mail addresses.

MR. CLINTON: Of course.

THE COURT: Do you have Mr. Flynn's?

MR. CLINTON: We do.

MS. WILLIAMS: We do.

THE COURT: All right. I see Mr. Flynn raising his pen. Yes.

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MR. FLYNN: (Indiscernible) next question, Judge.

THE COURT: Yeah. What is your question?

MR. FLYNN: Okay. My understanding, then, is that these documents that are being produced that were previously withheld are being produced to all parties in this case.

THE COURT: I'm going to shift that to Mr. Talarico. Is that your understanding?

MR. TALARICO: That is my understanding.

THE COURT: Okay. Does that satisfy your concerns, Mr. Clinton and Ms. Williams?

MR. CLINTON: Yes, your Honor.

MS. WILLIAMS: Yes, your Honor. If the client is waiving --

MR. TALARICO: We waived privilege.

MS. WILLIAMS: -- (indiscernible) to produce to -- we will produce in compliance with the subpoena, and we will submit those both to Mr. Talarico and Mr. Flynn at the same time.

THE COURT: All right. For purposes of clarity, what I am understanding just transpired is that plaintiff's current attorney, Mr. Talarico, has waived the attorney/client privilege and any claim

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of work product with respect to your file, and further, granted you permission to issue copies of that subpoena response to defense counsel, Mr. Flynn, at the same time.

Any -- if there's anything incorrect with what I said, tell me.

MR. TALARICO: If you're saying that I'm -- that Mr. Dulberg is waiving all attorney/client --

THE COURT: No.

MR. TALARICO: -- privilege -- just -- just in response to the subpoena, that's all.

THE COURT: Exactly.

MR. TALARICO: Yes.

THE COURT: Okay. Does that cover --

MR. FLYNN: Thank you, Judge.

THE COURT: All right. So send in your order and I -- I will vacate any order directed against you, because we're resolved, and as soon as I see it I will sign the order.

MS. WILLIAMS: Thank you very much, your Honor.

MR. CLINTON: Thank you, Judge.

THE COURT: Okay. And you know what? Are you in our e-mail system? Did they have to sign up --

MS. WILLIAMS: I believe we are, your Honor,

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because we were parties to the -- we were counsel in the case, so we should be.

THE COURT: Yeah. Forgive me. Okay. Then no problem. I'll sign it whenever it shows up.

MR. CLINTON: Thank you, Judge.

MS. WILLIAMS: Thank you very much.

(WHEREUPON, Mr. Clinton and Ms. Williams disconnect.)

THE COURT: All right. Moving on.

Mr. Flynn, we have your motion for summary judgment; am I correct?

MR. FLYNN: That's already been --

THE COURT: Yeah, I do see that.

MR. FLYNN: Yeah. The briefing schedules are set on that. There, actually, was another motion that relates to Ms. Williams and this Exhibit 12 from the Hans Mast deposition. I was kind of hoping that she might stay on the line there.

THE COURT: I apologize.

MR. FLYNN: That's okay.

THE COURT: I -- you know, Mr. Talarico, can you call them back? If you have their number.

MR. TALARICO: I don't.

THE COURT: Or, Mr. Flynn, if you've got their

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number, one of you. Because, yeah, I screwed up there.

MR. FLYNN: I'll see if I can. I think I've got a number here.

THE COURT: All right. Thank you.

MR. FLYNN: Judge, I was able to reach Mr. Clinton and Ms. Williams. I think they're going to log back on.

THE COURT: All right. As soon as I see them, I'll let them in.

MR. FLYNN: Thank you.

(WHEREUPON, Mr. Clinton and Ms. Williams reconnect.)

THE COURT: There he is. All right. I apologize. Mr. Flynn pointed out that I was dumb, and I let you go before we resolved one other question.

Mr. Flynn, I'll let you speak.

MR. FLYNN: And for the record, I did --

THE COURT: And for the record --

MR. FLYNN: -- not say that.

THE COURT: -- he implied.

So, Mr. Clinton -- Mr. Flynn, you had a question for Mr. Clinton.

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MR. FLYNN: Well, for Ms. Williams. It's not necessarily a question, but I think that this next motion -- there's a motion to exclude the Hans Mast deposition. Ms. Williams was involved in that, noticed the deposition, took the deposition, was involved in the communications with the court reporter.

So I thought that if she could and would be willing to explain what happened. And, you know, it's my position that there's nothing nefarious about this deposition. It was taken at the beginning of the pandemic when lawyers were still trying to figure out how to use the Zoom deposition method. All objections to that manner were waived by both parties. The deposition was, again, noticed by the plaintiff, Mr. Dulberg's agents. The court reporter was hired by the plaintiff, his agents.

THE COURT: But your question for Ms. Williams is?

MR. FLYNN: If she could explain what happened with Exhibit 12. I think I know what -- and, again, there's been a 213(f)(3) opinion that was just disclosed a day or two ago. I think it's improper because --

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THE COURT: In this case?

MR. FLYNN: (Indiscernible). In this case.

THE COURT: Oh, I don't (indiscernible).

MR. FLYNN: It was a document examiner who was identified by the plaintiff.

THE COURT: But that's a different issue, so I'm going to cut you off.

MR. FLYNN: No, it's not a different issue.

THE COURT: I want to cut -- I want to cut to what my one question is.

Ms. Williams, what can you tell us about Exhibit 12?

MS. WILLIAMS: So -- so my understanding -- as I recall, yes, it was the beginning of the pandemic. We had Mr. Mast's deposition, I believe, scheduled, I want to say, for March, and we canceled it because it was March 2020, right when everything was -- was starting, and it was canceled due to COVID concerns. And -- and so we -- we opted to utilize the -- the court's -- I think it was the Illinois Supreme Court that came out with the rules as to -- and I could be incorrect, it could be each county court, but that said you could do Zoom depositions.

So we noticed it up for a remote

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deposition, and we utilized a court reporter. I can't remember the court reporter's name. There are several e-mails about this with Mr. -- Mr. Flynn that -- that have been produced pursuant to the subpoena that we received. And my recollection is is that we took that deposition, and there were several difficulties with Mr. Mast's internet connection, and so we had come on and off, but we did get through the deposition.

Mr. Flynn had -- I had produced to Mr. Flynn, prior to the deposition, all of the exhibits that I believed we would use. And then I also, during the deposition, uploaded them into the court reporting system so that the court reporter would have them and mark them.

As to Exhibit 12, we had uploaded it into the system. I don't know that Mr. Mast could actually see those, so he may have used the paper copies that Mr. Flynn had.

And then after the deposition, the court reporter notified me that Exhibit 12, specifically, was -- they couldn't read it, and we needed to get them a copy. I believe there's e-mails to that effect, as well. If I'm recalling correctly, a

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number of the pages were blank. It was a larger exhibit. I want to say it was around 27 pages, I think, or 25 pages.

So sometime after the deposition, we -- we did provide the exhibit that was utilized in the deposition to the court reporter, and at that time they marked it and sent it back to everyone.

THE COURT: Okay. What was Exhibit 12 again?

MS. WILLIAMS: It was a series of cases. I don't know that -- I just can't recall what all was asked about it, but I know there were -- it was -- it was --

THE COURT: All right. These would have --

MS. WILLIAMS: -- copies of case law.

THE COURT: All right.

MR. FLYNN: They were photocopies of the old books, Judge, cases that were contained in Mast's file.

THE COURT: Okay.

MR. FLYNN: And he was -- you know, they have -- they're, obviously, not complete because they -- placed on a printer, appeared like we used to do in the old days.

THE COURT: Yes.

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MR. FLYNN: So the issue now, though, is that the plaintiff knew --

THE COURT: Hang on. Before -- before we get into argument, Mr. Talarico, is there anything -- any questions you have, since we have Ms. Williams here?

MR. TALARICO: Yes. Was the Tilsner case included in -- in the blank Exhibit 12 you sent to U.S. Legal, Barbara Schmidt? And was -- when you discussed with Mr. Flynn the failure of his -- or Mr. Mast's internet, didn't he say, I can't see these, I can only see their first one (indiscernible), which was the Lagano (phonetic) case? And wasn't there continued discussion by Mr. Flynn that he didn't -- he didn't produce all of the documents you sent on -- in hardcopy because he wanted to save paper?

MS. WILLIAMS: So that's -- I guess that's a lot of questions. So what --

MR. TALARICO: It is.

MS. WILLIAMS: What -- what -- I cannot recall what cases were included and weren't included at this point. There -- there was an e-mail to Mr. Flynn with the exhibit that is attached that I

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believe was produced in the subpoena.

So whatever that exhibit was is -- is what I would have used. So I know there was, like, a Laravo case or -- I remember the first case was like Laravo or Lavajo, L-A-V-A-J-O, or something like that.

But right now, off the top of my head, I don't remember what other cases were included.

MR. TALARICO: I'm talking about -- Judge, if I might, please? Excuse me. I'm sorry, Ms. Williams.

There was -- what the reporter had was blank. What Mr. Flynn's client said was, I see the Lagano (phonetic) one. So the Exhibit 12 that was sent, like, a week or two after the deposition had Lagano, Troy, and the same exact Lagano case, and it did not have the Tilsner case involved, and the Tilsner case was very important. So it was an exact duplication of one case and a second case.

But this is -- Judge, it's not just the Exhibit 12. The entire deposition --

THE COURT: Well, are you asking a question about Exhibit 12? Because if we're done asking questions, I'm gonna let her go.

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MR. TALARICO: Okay. Yep. I'm done.

THE COURT: Okay. Mr. Flynn, anything?

MR. FLYNN: Yes, Judge. So, again, this -- this 213(f)(3) report that was just produced --

THE COURT: Well, do we need the Clinton -- Mr. Clinton and Ms. Williams for this?

MR. FLYNN: Yes. I'm getting there.

THE COURT: Okay. Sorry.

MR. FLYNN: So if you can just indulge me for a moment.

So the expert document reviewer is of the opinion that the exhibit sticker on Exhibit 12 did not come from the same batch as the other exhibit stickers.

The defense's position is, so what? You know, these kind of things happen, I'm sure, with the court reporter, and if it was marked later because it was not sent in until later, that makes perfect sense.

But this is -- this is -- the argument that's being made is that -- and there's no other conclusion, it's just that it didn't come from the same batch. So, again, it's the so-what position on our part.

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But because it's being used to exclude the deposition, it's our position that the deposition was fine -- finally concluded to the satisfaction of plaintiff's counsel, that there was never any indication that they needed a follow-up deposition or a supplemental deposition or a Session 2.

So in our view, any objection to that deposition has been waived. And, again, there was nothing nefarious. Ms. Williams was nothing but professional and courteous during her tenure in this case.

This motion -- this conspiracy that's been presented and caused the defendant to be caught in the crossfire between the plaintiff and his former attorney is through no fault of theirs, and should not continue.

THE COURT: All right. Mr. Talarico, you can respond.

MR. TALARICO: Two points, Judge. First of all, what's very obvious -- the label on Exhibit 12 doesn't even have the deponent's name spelled right.

THE COURT: Okay. But what does -- what impact does that have?

MR. TALARICO: What impact is that it was not

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done at the same time by the same people. It was never produced in time.

Secondarily, about Mr. Flynn's allegation of some type of conspiracy, if he wants to push that, I think I have evidence that, if necessary, that -- that Mr. Flynn and Ms. Williams have consulted at times.

THE COURT: I'm sorry? Have what?

MR. TALARICO: Consulted.

THE COURT: Okay. Frankly, Counsel, if you're suggesting that either one of them has engaged in unethical behavior, I'm sure you're aware of the Himmel decision, and --

MR. TALARICO: I am.

THE COURT: -- it's not something you can threaten; you have to do.

MR. TALARICO: And I will.

THE COURT: Don't make that threat and not follow through with it if, in fact, there's anything to it. You don't -- you don't have an option. And you put a burden on me, as well, when you start going down this road.

So you've got to make a decision, and --

MR. TALARICO: (Indiscernible.)

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THE COURT: -- I'm not going to hear -- I'm not going to hear suggestions of unethical behavior.

I mean, you're either going to pursue it or we're not even going to entertain that, so please continue.

MR. TALARICO: Well, Judge, I will -- I will not pursue it if Mr. Flynn (indiscernible) --

THE COURT: It's not an issue. You don't get to choose.

MR. TALARICO: I'm aware.

THE COURT: I'm not -- I'm not telling you that you have to do one thing or the other. But the Himmel decision removes discretion from the equation. You have to act, if you are aware.

So I'm not telling you that -- that you've got to file. You know what you have. But what I'm saying is, if you're going to make an argument suggesting that other attorneys engaged in unethical behavior, I'm not going to listen to it unless you're also making a -- making a complaint with the ARDC.

So I'm not interested in attorneys casting aspersions on each other and then not following through, if that makes sense. Following through

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with the ARDC.

That being said, what -- what is your response on the -- do we have to keep Ms. Williams and Mr. Clinton here? Does anybody else need them?

MR. TALARICO: I have no need for them.

MR. FLYNN: I don't. Just in closing, with respect to Ms. Williams, again, I was just provided these documents by Ms. Williams and/or her court reporter and then passed them along. I had nothing to do with -- with anything other than I did print out certain of the exhibits for ease of use at the deposition when I went to Hans Mast's office. And because I was working from home at the time, I printed a few of them out, not all of them, due to a limited amount of printer paper. And that is my total involvement in Exhibit 12.

THE COURT: Okay. Ms. Williams and Mr. Clinton, do you want to stay? You can, until we resolve the issue, since we're addressing you guys. What do you want to do?

MS. WILLIAMS: Your Honor, if you wish for us to stay, we're happy to stay.

MR. CLINTON: I think we can stay.

THE COURT: All right. I was giving you the

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option to leave, if you wanted.

All right. So, Mr. Talarico, we're moving on to your motion to -- to bar; am I correct?

MR. TALARICO: Yes, your Honor. Within the motion, I asked to amend the motion after I get the responses from Clinton and Williams. They may be appropriate to put into the motion. I filed a motion. The motion can be -- actually, Mr. Flynn just responded to the motion without responding -- without responding.

I don't know how you want to look at it. If that was his response, I'll file a reply to what he said. But I still -- I have asked, from the beginning, to be allowed to amend that motion once I find out what Mr. Clinton and Ms. Flynn have -- I'm sorry, Ms. Williams. Forgive me.

THE COURT: All right. Can you -- are you asking me for leave to supplement your motion?

MR. TALARICO: Not -- Judge -- yes. If you want me to make a determination now, yes.

THE COURT: All right. And we haven't proceeded to hearing.

Mr. Flynn, have you filed a response to the motion? I'm not seeing it.

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MR. FLYNN: Judge, I have not. And my -- my point is that there hasn't even been a prima facie showing of any prejudice to the plaintiff with respect to his deposition. For my client to again have to file a written response to a brief of this nature --

THE COURT: You don't really have -- I don't know that -- I mean, it's up to you as to whether or not you want to file a written response. I've heard your argument. Plaintiff -- more importantly, plaintiff's counsel has heard your argument, so there's -- there's not going to be any prejudice if he simply files his reply or if I allow amendment and then we proceed to hearing. I don't think it's that complicated an issue.

MR. FLYNN: I don't either.

THE COURT: So I don't know that we need further briefing.

What do you want to do, Mr. Flynn, because the ball will be in your court once he files his amendment.

MR. FLYNN: I'd like to examine whatever the amendment is and then, if necessary, request, I guess, what will be called a surreply. However, I'm

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doubtful that I would need to file it.

THE COURT: Mr. Talarico, when can you file your -- your brief?

MR. TALARICO: Well, after I get and review the response from Ms. Williams and Mr. Clinton, two weeks.

THE COURT: Mr. Clinton, how quickly can you get him the documents? I know you said it earlier. You're on mute.

MR. CLINTON: My apology, again. We can get them to him today.

THE COURT: Okay. So I think two weeks from today, ultimately, is plenty of time. That would give plaintiff until --

MR. TALARICO: (Indiscernible.)

THE COURT: -- November 18th to file his amended response -- or amended motion. And then why don't we -- and then I'm out.

So I'll give plaintiff until the 21st and then we'll come back on November 28th, and then, Mr. Flynn, at that point, you can tell me what you want to do.

MR. FLYNN: Thank you, your Honor. And, again, I know -- I understand this is not on the table but

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it's a housekeeping issue with respect to this f(3) opinion. This (f)3 opinion, the document examiner was disclosed as a trial witness relative to this Exhibit 12. I don't think that's proper --

THE COURT: Yeah, I -- you know --

MR. FLYNN: And then he called it a mini trial but not trial.

THE COURT: The -- I -- I haven't seen the report, but if the expert is going to render opinions on case law, copies of case law that were allegedly tendered by former counsel to Mr. Dulberg, I don't see how that comes up in the trial of the matter.

MR. FLYNN: He's really only opining on the authenticity of the exhibit sticker and whether it came from the same batch as the other stickers in that deposition.

So it has nothing to do with the standard of care in this case or any --

THE COURT: I don't know. I'll let Mr. Talarico tell me otherwise. Not now, but I -- there's a couple of thresholds. I don't know. I haven't seen exactly what he says, and I -- I suspect we could even stipulate that the sticker is different without

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a whole lot of -- a whole lot of effort or prejudice to anybody. Because based on what you've told me, it likely is a different sticker because of the way the documents were transferred back and forth and the problem at the deposition.

That all being said, I'm -- I'm going to be -- frankly, Mr. Talarico, I'm going to be hard-pressed, but I need to see the report before I can say anything further, so I'll quit speculating.

Anything else that we've got to deal with today? No?

MR. TALARICO: No.

THE COURT: All right. Mr. Talarico or Mr. Flynn, can you send in the order memorializing what we're doing on your case? And then, of course, Mr. Clinton and Ms. Williams will send in the order that is vacating any -- any order compelling them to do anything.

MR. FLYNN: Judge, I actually have a meeting with a client in about ten minutes. If Mr. Talarico wouldn't mind preparing the order this time, I'd appreciate it.

MR. TALARICO: I will.

THE COURT: Okay. All right. Then we'll see

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you on the 28th.

THE CLERK: What time?

MR. FLYNN: Thank you Mr. Clinton and Ms. Williams for your time.

MR. TALARICO: Thank you, your Honor.

THE CLERK: What time on the --

THE COURT: You know what? Hang on. Hang on. Make it 9:15, not 8:45. At 9:15.

MR. FLYNN: I'm sorry. On what date again?

THE COURT: On November 28th at 9:15.

MR. TALARICO: Thank you, Judge.

MR. FLYNN: You know, Judge, we talked last time about my knee replacement. Is there any way we could bump that back one more week?

THE COURT: Wait. Yeah, I can do it the --

MR. FLYNN: Although, I hope for a speedy recovery. The surgery is on the 17th and --

THE COURT: Sure. Sure. If you want to come -- what's the next week? December 5th?

MR. FLYNN: I'm very hopeful that that will work.

THE COURT: All right. Good luck.

MR. FLYNN: Thank you.

THE COURT: All right. December 5th at 9:15.

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MR. TALARICO: Your Honor, what --
THE COURT: Yes?
MR. TALARICO: December 5th?
THE COURT: Yeah.
MR. TALARICO: Thank you, your Honor.
THE COURT: All right. Thank you.
Disconnecting.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, KATHLEEN STROMBACH, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Kathleen Strombach
Kathleen Strombach
Official Court Reporter
License No. 084-003755

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ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
12/06/2022 8:45 AM
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.		

ORDER

This matter coming to be heard for Status on Plaintiff's Motion to Exclude the Deposition of Hans Mast, and presentation of Defendants' Motion to Enforce The Court's November 11, 2022 order, it is hereby ordered:

1) Defendant's Motion to Enforce is granted. Plaintiff is ordered to tender unredacted copies of all documents tendered to the court by Edward Clinton Jr. and Julia Williams pursuant to Plaintiff's subpoena, and which unredacted copies were served on Plaintiff but not on defendant (further described in the 11-9-22 order and Clinton and Williams' response and amended response to the Dulberg Subpoena).
2) Plaintiff is ordered to serve the unredacted copies it received from Edward Clinton Jr. and Julia C. Williams to defendant by December 12, 2022.
3) Status on compliance is set for December 21, 2022 at 10:00 a.m.
4) Plaintiff filed a Second Amended Motion to Exclude the deposition of Hans Mast. Defendant filed a written response on November 30, 2022.
5) Plaintiff is granted leave to file a reply in support of Motion to Exclude by December 19, 2022.
6) Hearing on Second Amended Motion to Exclude is set for December 21, 2022 at 10:00 a.m.

Zoom information for Room 201:
Link: https://zoom.us/my/mchenrycourtroom201;
Meeting ID: 272-959-8070
Personal Link Name: mchenrycourtroom201;
Password: no password required

Prepared by:
Atty. No. George K. Flynn/ARDC No. 6239349
Name: Karbal, Cohen, Economou, Silk & Dunne, LLC
Attorney for: Defendants
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City: Chicago, IL 60606
Telephone: (312) 431-3700
E-Mail: gfynn@karballaw.com

12/6/2022
……., 2022
ENTER:

Thomas A. Meyer
……
Judge Judge's No.
Thomas Meyer

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

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McHenry County, Illinois
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Date: 12/19/2022 3:04 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)
	)
Plaintiff,	)
	)
	)
v.	) Case No. 17 LA 377
	)
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)
	)
Defendants.	)

NOTICE OF FILING

TO: All Attorneys **of Record (Please see the attached Service List)**

PLEASE TAKE NOTICE that on the 19 day of December 2022, I filed with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, **PLAINTIFF'S REPLY TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST TO PLAINTIFF'S MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TAKEN IN VIOLATION OF SUPREME COURT RULE 206 h(2) REMOTE ELECTRONIC MEANS DEPOSITIONS and ORDERS OF THE ILLINOIS SUPREME COURT In re: ILLINOIS COURTS RESPONSE to COVID-19 EMERGENCY/IMPACT ON DISCOVERY M.R.30370 CORRECTED ORDER APRIL 29, 2020 and M.R.30370 AMENDED ORDER JUNE 4, 2020 and to GRANT LEAVE TO TAKE THE DISCOVERY**

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DEPOSITION OF DEFENDANT HANS MAST a copy of which is attached and hereby served upon you.

December 19, 2022

ALPHONSE A. TALARICO
Law Office of Alphonse A. Talarico
ARDC No. 6184530
707 Skokie Boulevard, Suite 600
Northbrook, Illinois 60062
(312) 808-1410
Attorney for Plaintiff Paul Dulberg
contact@lawofficeofalphonsetalarico.com

AFFIDAVIT OF SERVICE

I, the undersigned attorney, certify that this Notice was served to all parties listed on the attached **Service List** by E-filing with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, **PLAINTIFF'S REPLY TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST TO PLAINTIFF'S MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TAKEN IN VIOLATION OF SUPREME COURT RULE 206 h(2) REMOTE ELECTRONIC MEANS DEPOSITIONS and ORDERS OF THE ILLINOIS SUPREME COURT In re: ILLINOIS COURTS RESPONSE to COVID-19 EMERGENCY/IMPACT ON DISCOVERY M.R.30370 CORRECTED ORDER APRIL 29, 2020 and M.R.30370 AMENDED ORDER JUNE 4, 2020 and to GRANT LEAVE TO TAKE THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST**

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and by email on December 19, 2022.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Alphonse A. Talarico
Alphonse A. Talarico

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SERVICE LIST

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S REPLY TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST TO PLAINTIFF'S MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TAKEN IN VIOLATION OF SUPREME COURT RULE 206 h(2) REMOTE ELECTRONIC MEANS DEPOSITIONS and ORDERS OF THE ILLINOIS SUPREME COURT In re: ILLINOIS COURTS RESPONSE to COVID-19 EMERGENCY/IMPACT ON DISCOVERY M.R.30370 CORRECTED ORDER APRIL 29, 2020 and M.R.30370 AMENDED ORDER JUNE 4, 2020 and to GRANT LEAVE TO TAKE THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his REPLY to Defendants' RESPONSE to Plaintiff's Motion To Exclude the Discovery Deposition of Defendant Hans Mast taken in violation of Supreme Court Rule 206 h(2) and Supreme Court Orders states as follows:

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1) Defendants misstate, mischaracterize, misread, or do not understand Plaintiff's Motion to Exclude the Deposition of Hans Mast taken in violation of Supreme Court Rules and Supreme Court Orders.

1a) Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition **without any exhibits [emphasis added]** from Defendants' Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)

1b) Plaintiff's current Attorney objected to the use of the discovery deposition of Defendant Hans Mast during the hearing because there's exhibit(s) missing. (Please see Report of Proceedings April 27, 2022 page 31 line 21-24 which is part of the Clerk's online file)

1c) Plaintiff's current Attorney more completely explained to the Court that the discovery deposition of Hans Mast in all its variations was missing exhibit 12. (Please see Report of Proceedings April 27, 2022 page 36 line 19-24 to page 37 line 1-3 which is part of the Clerk's online file)

1d) This Honorable Court ordered Defendants' Attorney to produce exhibit 12 if he has it. (Please see Report of Proceedings April 27, 2022 page 39 line 16-21 which is part of the Clerk's online file)

1e)) On April 28, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney's office with a link at https://www.dropbox.com to access Mast Dep Ex.12. (Please see Plaintiff's Exhibit #1 attached to Plaintiff's 2nd Amended Motion To Exclude)

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1f) Plaintiff's current Attorney noticed that the label purporting to be authentic on Hans Mast's discovery deposition exhibit 12 did not to match the other 14 exhibit label as to fonts, shape, color, and DEPONENT's NAME (Hans **Mist** not Hans Mast).

1g) On May 18, 2022 Plaintiff's current Attorney caused to be served upon Certified Shorthand Reporter Barbara G. Smith a Subpoena For Records in which she was requested to produce "The original discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes."

1h) Certified Shorthand Reporter Barbara G. Smith's complete response submitted on a flash drive was received on June 16, 2022.

1i) Contained on the flash drive is a file titled HPSCANS and therein were a series of communications and handwritten notes between the Certified Shorthand Reporter Barbara G. Smith and Noelle Kappes of US Legal Support and Plaintiff's former attorney Julia C. Williams clearly indicating that Hans Mast discovery deposition taken June 25, 2020 did not have exhibit 12 sent before the deposition nor uploaded during the deposition and said exhibit was never in the Certified Shorthand Reporter Barbara G. Smith's possession before, during or after the deposition was taken, transcribed or submitted for transmission. (Please see Plaintiff's Group Exhibit #2 Barbara G. Smith job papers0001.pdf and job papers0002.pdf attached to Plaintiff's 2nd Amended Motion To Exclude)

1j) On July 11, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney stating that the Hans Mist exhibit 12 alleged to be part of Defendant Hans Mast's discovery deposition was received apart from U.S. Legal Support by both his

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office and Plaintiff's former Attorney Julia Williams on July 14, 2020 while the Deposition and Exhibits 1-11 and 13-15 were received from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 10, 2020. (Please see Plaintiff's Exhibit #4 attached to Plaintiff's 2nd Amended Motion To Exclude)

Therefore the first violation was of Illinois Supreme Court Rule 206(h)(2) because Exhibit 12 that was to be presented to the deponent by any party at the deposition was not provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, nor were the deposition participants able to view the exhibits in real time during the deposition.

1k) Contrary to Defendants inaccurate allegation they contributed mightily to the problems experienced in this remote deposition because in no way was the failure of Defendants' electric equipment (internet ?) **during the deposition** or Defendants' attorney's **failure to print the few exhibits he had received before the deposition** (to save paper ?) Plaintiff's fault. (emphasis added)

1l) The Deposition of Hans Mast was done remotely at the suggestion of Defendants' Attorney because on April 30, 2020 Defendants' Counsel sent an email to Plaintiff's former Counsel Julia C. Williams indicating an awareness of the current Supreme Court rules regarding depositions when he wrote "The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.." (Please see Plaintiff's Exhibit #7 attached to

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Plaintiff's 2nd Amended Motion To Exclude)

1m) On June 23, 2020 Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 23 exhibits that she **may** [emphasis added] use in the discovery Deposition of Defendant Hans Mast on June 25, 2020. Additionally she indicated that there **could be additions** [emphasis added] and there **may be subtractions** [emphasis added]. Additionally she wrote "…and I will do my best to send them ahead of time." (Please see Plaintiff's Exhibit #9 attached to Plaintiff's 2nd Amended Motion To Exclude)

1n) At the time the Deposition of Hans Mast was taken Illinois Supreme Court Rule 206(h)(2) was amended by **SUPREME COURT ORDER M.R.30370** titled In re: Illinois Courts Response to Covid-19 Emergency/Impact On Discovery as follows:

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

(Please note that the underline emphasis was so written by the Illinois Supreme Court)

(Please see Plaintiff's Exhibit #5 and exhibit #6 attached to Plaintiff's 2nd Amended Motion To Exclude)

1o) The Committee Comments to Illinois Supreme Court Rule Paragraph (h) (Revised October 22, 1999) state "The parties may agree pursuant to Rule 201(i) to amend or waive any conditions of paragraph (h)."

1p) Defendants have not provided any proof, whether written or oral, of any waiver or amendment.

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Therefore the second violation was of Illinois Supreme Court Rule 206(h)(2) and Illinois Supreme Court **Order** was because the 15 Exhibits that were to be presented to the deponent by any party at the deposition were not provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, nor were the deposition participants able to view many of the exhibits in real time during the deposition.

2. Plaintiff's "late filing" of his 2nd Amended Motion to Exclude is a typical diversion of Defendants' and best described by quoting the play " Macbeth' Act 5, scene 5, lines 26-28 by Shakespeare "…It is a tale told…, full of sound and fury, signifying nothing." because the facts are as follows:

2a) Plaintiff, by Court Order of November 4, 2022 was granted up to and including November 21, 2022 to file and serve his Amended Motion to Exclude the Discovery Deposition of Defendant Hans Mast.

2b) Plaintiff filed and served his Amended Motion to Exclude the Discovery Deposition of Defendant Hans Mast on Defendants' Counsel on November 21, 2022 with all 17 Exhibits individually sent and titled Exhibits 1 through Exhibit 17. The same Amended Motion to exclude the Deposition of Defendant Hans Mast was filed, served, and accepted by the Circuit Clerk of McHenry County also on November 21, 2021. Therefore Plaintiff had complied with the November 4, 2022 order.

2c) Upon review of the Circuit Clerks filing Plaintiff's Attorney noticed that the last page of the filing (Exhibit 17) did not reflect the Exhibit Stamp and number(although the email sent to Defendants' Counsel was titled Exhibit 17) .

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2d) Rather than waste this Courts' valuable time in motion practice Plaintiff refiled the motion with the only difference being the Exhibit 17 label was visible. Plaintiff titled it Plaintiff 2nd Amended Motion to Exclude the Deposition of Defendant Hans Mast. The Circuit Court Clerk accepted said filing on November 23, 2022.

2e) Defendants' counsel was made aware of the missing Exhibit 17 label on the last page of the initial timey filing but was out of his office at the time on personal business.

2d) In Defendants' Response to Plaintiff's 2nd Amended Motion to Exclude the Deposition of Defendant Hans Mast page 1 last sentence through page 2 first paragraph Defendants' Counsel states "Defendants hereby adopt their (oral) arguments contained in the transcript from the 11-4-22 hearing (Exhibit A) and submit this **additional** [emphasis added] response in opposition to Plaintiff's motion"

Therefore both Plaintiff and Defendants had "two bites of the apple", the Plaintiff's was a technical correction while Defendants was substantive.

3) Defendants complain that Plaintiff filed the Motion on October 23, 2022 but Defendants fail to state that what triggered this motion was an appropriate investigation into the facts based upon multiple subpoenas served upon persons involved after Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition **without any exhibits [emphasis added]** from Defendants' Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)

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3a) Plaintiffs rely not only upon his investigation triggered by Defendants attempting to use the Deposition without the 15 exhibits in April 2022 but also based upon Statute, Rules of Evidence, and case law.

3b) Plaintiff, pursuant to Illinois Rules of Evidence, Rule 201. **JUDICIAL NOTICE OF ADJUDICATIVE FACTS:**

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

Plaintiff requests that this Honorable Court take JUDICIAL NOTICE of the adjudicative fact that Discovery Depositions when attached to a motion for summary judgment are evidence.

3c) Plaintiff advances two Appellate Court Cases, one civil and one criminal to show that depositions attached to motions, and in fact attached to a motion for summary judgement are evidence.

> "Initially, we note trial courts may entertain motions by defendants for summary judgment where the only evidence considered is plaintiff's own deposition testimony. (See e.g. Ralston v. Casanova (1984), 129 Ill.App.3d 1050, 85 Ill.Dec. 76, 473 N.E.2d 444.)"
>
> Page 935

Austin v. St. Joseph Hosp., 187 Ill.App.3d 891, 543 N.E.2d 932, 135 Ill. Dec. 364 (Ill. App.

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1989)

> Page 649
> [143 Ill.Dec. 714] The record contains only one item of testimonial evidence, a deposition of defendant Donald Gaydosh submitted to the court by the plaintiff in connection with its motion to reconsider the granting of the motion to dismiss.

Townsend v. Gaydosh, 554 N.E.2d 648, 197 Ill.App.3d 339, 143 Ill.Dec. 713

(Ill. App. 1990)

3d) Plaintiff relies upon Illinois Supreme Court Rule 211(c)(1) to timely challenge the admissibility of the testimonial evidence of the Discovery Deposition of Defendant Hans Mast as Defendants are now trying to get this evidence admitted as an exhibit offered in evidence as an exhibit attached to their Motion for Summary Judgment.

3e) Dulberg properly seeks to exclude the discovery Deposition of Defendant Hans Mast based upon the Illinois Constitution, Illinois Statutes, Illinois Supreme Court Rules, and the Orders of the Illinois Supreme Court which the Defendants have decided do not apply to them based upon absurd theories.

4) What is truly “absurd” is Defendants attempt to characterize the combined violations of Illinois Supreme Court Rules and Orders of all parties as nothing more than a series of inconsequential de minimis actions.

5) Defendants’ fail to realize that they are not the Judge herein nor do they cite any rules, orders, cases etc. when they state “ But he should be required to take a position as to who committed the alleged violation(s).

(Please see Defendants’ THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., AND HANS MAST’S RESPONSE TO PLAINTIFF’S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST page 2 number 5)

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5a) Further replying, Plaintiff has continuously stated, and herein states again that the violations of Illinois Supreme Court Rules and Orders were committed by all parties involved.

6) Defendants' again fail to realize that they are not the Judge herein nor do they cite any rules, orders, cases etc. when they state " Paul Dulberg personally observed the discovery deposition of Hans Mast taken remotely (by Zoom) on June 25, 2020. If he had an objections to alleged irregularities with the deposition, **he had ample time to** [emphasis added] bring such issues to the attention of his counsel, Julia Williams, and to his current counsel who appeared on his behalf on October 23, 2020.

(Please see Defendants' THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST page 3 number 6)

6a) First, Defendants fail to acknowledge that what triggered this motion was an appropriate investigation into the facts based upon multiple subpoenas served upon persons involved after Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition of Hans Mast **without any exhibits** [emphasis added] from Defendants' Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)

6b) Next, Plaintiff Motion to Exclude rests upon the laws of the State of Illinois as follows:

(735 ILCS 5/1-104) (from Ch. 110, par. 1-104)

Sec. 1-104. Power of courts to make rules. (a) The Supreme Court of this State has

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power to make rules of pleading, practice and procedure for the circuit, Appellate and Supreme Courts supplementary to, but not inconsistent with the provisions of this Act, and to amend the same, for the purpose of making this Act effective for the convenient administration of justice, and otherwise simplifying judicial procedure, and power to make rules governing pleading, practice and procedure in small claims actions, including service of process in connection therewith. Unless otherwise indicated by the text, references in this Act to rules are to rules of the Supreme Court.

(735 ILCS 5/2-1003) (from Ch. 110, par. 2-1003)

Sec. 2-1003. Discovery and depositions.

(a) Discovery, such as admissions of fact and of genuineness of documents, physical and mental examinations of parties and other persons**, the taking of any depositions,** and interrogatories, **shall be in accordance with rules.** [emphasis added]

6c) Additionally, in relation to when an objection to (testimonial) evidence can be made Plaintiff relies on Illinois Supreme Court Rule 211(c)(1) which states:

(c) As to Competency of Deponent; Admissibility of Testimony; Questions and Answers; Misconduct; Irregularities.

(1) Grounds of objection to the competency of the deponent or admissibility of testimony which might have been corrected if presented during the taking of the deposition are waived by failure to make them at that time; otherwise objections to the competency of

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the deponent **or admissibility of testimony may be made when the testimony is offered in evidence.** [emphasis added]

6d) Defendants are currently attempting to have the discovery deposition of Hans Mast admitted into evidence as an exhibit to Defendants' Motion for Summary Judgement and therefore the time for objecting is now.

7) Defendants again fail to realize that they are not the Judge herein when they state " Illinois Supreme Court Rule 211 governs this issue"

(Please see Defendants' THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST page 3 number 7)

7a) Plaintiff does not deny that Illinois Supreme Court Rule 211 applies generally but Plaintiff states that the Illinois Constitution, other Illinois Statutes and Illinois Supreme Court Rules and their committee comments, Illinois Rules of Evidence Illinois case law and Illinois Supreme Court Orders apply specifically. Since Defendants have no relevant response to all the other, they want this Honorable Court to see only what they believe best supports their position while ignoring the other. Defendants' position can best be expressed as "Pay no attention to that man behind the curtain!" From: The Wizard of Oz.

8) Plaintiff does not deny that Illinois Supreme Court Rule 211(c)(2) applies generally requiring affirmative action or waiver without said affirmative action but it is "trumped" by Illinois Supreme Court Rule 206(h) Remote Electronic Means Depositions and specifically by Illinois Supreme Court Rule 206(h)(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time

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prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

8a) The Committee Comments make it clear that waiver of those violations may be done by affirmative action. “Paragraph (h) … The Parties may agree pursuant to rule 201(i) to amend or waive any conditions of paragraph (h).”

The following is Illinois Supreme Court Rule 201 **(i) Stipulations.** If the parties so stipulate, discovery may take place before any person, for any purpose, at any time or place, and in any manner.

8b) Defendants have not provided evidence of any affirmative action (stipulation) although they have had ample time to do so.

8c) Additionally, if this Honorable Court decides that Illinois Supreme Court Rules generally can be waived by inaction or positive action Plaintiff advances that Illinois Supreme Court Order M.R.30370 and Illinois Supreme Court Corrected Order M.R.30370 are both the “mirror image” of Illinois Supreme Court Rule 206(h)(2). (Please see Plaintiff’s Exhibit 5 and Exhibit 6 attached to Plaintiff’s Motion To Exclude)

8d) Although there are occasions where Illinois Supreme Court Rules may be waived, Defendants have not produced evidence that parties can waive ILLINOIS SUPREME COURT ORDERS.

9) Defendant again raises the issue of timeliness to which Plaintiff has already replied herein in great detail.

9a) Defendant then somewhat withdraws from the issue of timeliness, which the Plaintiff herein previously replied to, in order to again advance the position that Defendants did nothing wrong and all violations were caused “solely by Dulberg or his agents” to which Plaintiff has already replied to herein that Defendants’ attorney was an integral part of the problems as it was his suggestion to do a remote deposition and Defendants equipment

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and internet failures and Defendants' counsel's "saving paper" that caused the "lion's share" of the problems.

9b) Defendants thereafter launch into an axiomatic litany that is common when there are no true valid defenses, and without any proof, that "2) …any irregularities were harmless, 3)…any alleged irregularities simply be given its weight by the finder of fact (if as to any fact issue), 4)…no remedy be ordered in Dulberg's favor, and 5) the court weigh any remedy in favor of defendants it sees fit to order under Rule 201 © (1)(2) and (3). (Please see DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST page 3 last sentence to page 4 first paragraph.

9c) Defendants confuse what is "a prayer for relief " with what is required to be "Responses" to Plaintiff's Motion To Exclude and as such Defendants' axiomatic litany should be stricken as nonresponsive.

10) In Defendants' Response #10 Defendants admit the violation of Illinois Supreme Court Rule(s), Order(s) and defendants to follow Committee Comments as stated in Plaintiff's Reply 8), 8a), 8b, 8c and 8d) herein above.

10a) Defendants Response is as follows: 10) In response to Dulberg's argument at paragraph A3.3 of his 2nd Amended Motion to Exclude relating to his exhibit 16 (Email from defendant's counsel George K. Flynn) Dulberg takes the position that there was no discussion of any errors or irregularities in the "just concluded deposition." **That is exactly right.** [emphasis added] Dulberg's counsel did not raise any issues or objections in response to the email. She was apparently satisfied with the outcome, despite some minor technical difficulties during the deposition. She never voiced any

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suggestion that an additional session of Hans Mast's deposition was necessary or requested. Flynn didn't make any mention of it because any technical difficulties seemed inconsequential.

11) Defendants misstate the facts as Plaintiff has in hearings and status calls before this Honorable Court, in written Motions to Exclude and in this REPLY stated that the problems he complains of were caused by all parties.

11a) Contrary to Defendants allegation Plaintiff, from the time he was made aware of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition **without any exhibits [emphasis added]** from Defendants' Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file) the many problems in the Deposition of Hans Mast has stated the relief he seeks in the exclusion of Hans Mast discovery Deposition and the granting of his request to take the discovery deposition within a reasonable time.

12) The Tilschner vs Spangler Appellate Court certified slip ruling Dulberg provided as an exhibit in the Motion to Exclude the deposition of Hans Mast is a case that the Popovich Firm and Hans Mast personally appeared in, argued, and received a copy of from the Appellate Court.

12a) The Tilschner vs Spangler Appellate court certified slip ruling is file stamped May 6, 2011 and was finalized/re-certified in November 2011, 6 months after the certified slip ruling was made and became superseded by the finalized/re-certified ruling within the Appellate clerks file.

12b) The Tilschner vs Spangler Appellate Court slip ruling is a document that existed in

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the public realm on file at the Clerk of the Appellate Court and does not need to be disclosed during discovery in any cause of action.

12c) The Tilschner vs Spangler certified slip ruling was superseded by the finalized/re-certified ruling before Dulberg hired Mast on 12/1/2011.

12d) On November 20, 2013 at 7:26 AM Plaintiff emails Defendant Hans Mast the following message which has been given to Defendants in response to discovery requests " Ok we can meet. I will call Sheila today and set up a time. Please send me a link to the current Illinois Statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor. I need to read it myself and any links to recent case law in this area would be helpful as well…" (Please see Plaintiff's exhibit A attached)

12e) On November 20, 2013 Defendant Hans Mast admits to the above referenced meeting by (internal) Memorandum that was given to Plaintiff in response to discovery requests. (Please see Plaintiff's Exhibit B attached)

12f) On November 20, 2013, Plaintiff, and his friend (brother) Tom Kost met with Defendant Hans Mast to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case.

12g) Tom Kost kept a rough set of handwritten notes of the November 20, 2013 meeting with Defendant Hans Mast. The handwritten notes were given to Defendants in response to discovery requests. (Please see Plaintiff's exhibit C attached)

12h) Tom Kost's handwritten notes are as follows:

statement of torts sect 318 not applicable in Illinois

agent vs. contractor

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12i) Plaintiff requests that pursuant to Illinois Rules of Evidence, Rule 201. **JUDICIAL NOTICE OF ADJUDICATIVE FACTS:**

That any reference made by Plaintiff Paul Dulberg, by Tom Kost or Defendant Hans Mast to Restatement (Second) of Torts Section 318 impliedly references Tilschner v. Spangler because up to and including the day of filing this Reply the major search engines available for the legal profession searching within Illinois outcomes reflect Tilschner v. Spangler as the number one result.

12j) Plaintiff requests that this Honorable Court take JUDICIAL NOTICE of the adjudicative fact that the references to Restatement (Second) of Torts Section 318 impliedly references Tilschner v. Spangler .

12k) Plaintiff could not obtain the Tilschner v. Spangler slip opinion dated May 6, 2011 on November 20, 2013 without the aid of Defendant Hans Mast who appeared in the matter.

12l) Plaintiff was questioned in his deposition about the "friend" at the November 20, 2013 meeting with Mast. Plaintiff Identified the "Friend" as his brother Tom Kost.

12m) Dulberg did turn over the handwritten notes taken during the November 20, 2013 meeting with Tom Kost and Defendant Hans Mast. (Please see Plaintiff's exhibit C attached)

12n) Dulberg did not answer discovery questions about Tilschner vs Spangler because Dulberg was not asked about Tilschner vs Spangler.

12o) It was Mast's equipment problems and Defendants' Counsel saving of paper and ink that was the cause of the breakdown during the discovery deposition of Hans Mast and why Mast only had the "Lajato" case when questioned regarding exhibit 12.

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Wherefore, Plaintiff Paul Dulberg prays that this Honorable Court finds for Plaintiff and orders that Plaintiff's Motion to Exclude the discovery deposition of Defendant Hans Mast taken remotely on June 25, 2020 is granted, that Plaintiff's request to take the deposition of Defendant Hans Mast is granted and for any other additional relief this Honorable Court deems fair and equitable.

Respectfully submitted,

/s/ Alphonse A. Talarico

Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

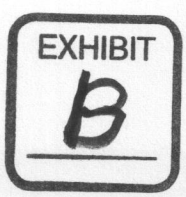
SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the $5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans



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"Foreseeable" duty

negligent

statement of torts
Sect. 318
Not applicable in
Illinois

agent vs. contractor

level of control

Kajawa

EXHIBIT
C



Dulberg 001217

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McHenry County, Illinois
2017LA000377
Date: 12/19/2022 3:04 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S REPLY TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST TO PLAINTIFF'S MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TAKEN IN VIOLATION OF SUPREME COURT RULE 206 h(2) REMOTE ELECTRONIC MEANS DEPOSITIONS and ORDERS OF THE ILLINOIS SUPREME COURT In re: ILLINOIS COURTS RESPONSE to COVID-19 EMERGENCY/IMPACT ON DISCOVERY M.R.30370 CORRECTED ORDER APRIL 29, 2020 and M.R.30370 AMENDED ORDER JUNE 4, 2020 and to GRANT LEAVE TO TAKE THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his REPLY to Defendants' RESPONSE to Plaintiff's Motion To Exclude the Discovery Deposition of Defendant Hans Mast taken in violation of Supreme Court Rule 206 h(2) and Supreme Court Orders states as follows:

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1) Defendants misstate, mischaracterize, misread, or do not understand Plaintiff's Motion to Exclude the Deposition of Hans Mast taken in violation of Supreme Court Rules and Supreme Court Orders.

1a) Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition **without any exhibits [emphasis added]** from Defendants' Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)

1b) Plaintiff's current Attorney objected to the use of the discovery deposition of Defendant Hans Mast during the hearing because there's exhibit(s) missing. (Please see Report of Proceedings April 27, 2022 page 31 line 21-24 which is part of the Clerk's online file)

1c) Plaintiff's current Attorney more completely explained to the Court that the discovery deposition of Hans Mast in all its variations was missing exhibit 12. (Please see Report of Proceedings April 27, 2022 page 36 line 19-24 to page 37 line 1-3 which is part of the Clerk's online file)

1d) This Honorable Court ordered Defendants' Attorney to produce exhibit 12 if he has it. (Please see Report of Proceedings April 27, 2022 page 39 line 16-21 which is part of the Clerk's online file)

1e)) On April 28, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney's office with a link at https://www.dropbox.com to access Mast Dep Ex.12. (Please see Plaintiff's Exhibit #1 attached to Plaintiff's 2nd Amended Motion To Exclude)

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1f) Plaintiff's current Attorney noticed that the label purporting to be authentic on Hans Mast's discovery deposition exhibit 12 did not to match the other 14 exhibit label as to fonts, shape, color, and DEPONENT's NAME (Hans **Mist** not Hans Mast).

1g) On May 18, 2022 Plaintiff's current Attorney caused to be served upon Certified Shorthand Reporter Barbara G. Smith a Subpoena For Records in which she was requested to produce "The original discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes."

1h) Certified Shorthand Reporter Barbara G. Smith's complete response submitted on a flash drive was received on June 16, 2022.

1i) Contained on the flash drive is a file titled HPSCANS and therein were a series of communications and handwritten notes between the Certified Shorthand Reporter Barbara G. Smith and Noelle Kappes of US Legal Support and Plaintiff's former attorney Julia C. Williams clearly indicating that Hans Mast discovery deposition taken June 25, 2020 did not have exhibit 12 sent before the deposition nor uploaded during the deposition and said exhibit was never in the Certified Shorthand Reporter Barbara G. Smith's possession before, during or after the deposition was taken, transcribed or submitted for transmission. (Please see Plaintiff's Group Exhibit #2 Barbara G. Smith job papers0001.pdf and job papers0002.pdf attached to Plaintiff's 2nd Amended Motion To Exclude)

1j) On July 11, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney stating that the Hans Mist exhibit 12 alleged to be part of Defendant Hans Mast's discovery deposition was received apart from U.S. Legal Support by both his

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office and Plaintiff's former Attorney Julia Williams on July 14, 2020 while the Deposition and Exhibits 1-11 and 13-15 were received from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 10, 2020. (Please see Plaintiff's Exhibit #4 attached to Plaintiff's 2nd Amended Motion To Exclude)

Therefore the first violation was of Illinois Supreme Court Rule 206(h)(2) because Exhibit 12 that was to be presented to the deponent by any party at the deposition was not provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, nor were the deposition participants able to view the exhibits in real time during the deposition.

1k) Contrary to Defendants inaccurate allegation they contributed mightily to the problems experienced in this remote deposition because in no way was the failure of Defendants' electric equipment (internet ?) **during the deposition** or Defendants' attorney's **failure to print the few exhibits he had received before the deposition** (to save paper ?) Plaintiff's fault. (emphasis added)

1l) The Deposition of Hans Mast was done remotely at the suggestion of Defendants' Attorney because on April 30, 2020 Defendants' Counsel sent an email to Plaintiff's former Counsel Julia C. Williams indicating an awareness of the current Supreme Court rules regarding depositions when he wrote "The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.." (Please see Plaintiff's Exhibit #7 attached to

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Plaintiff's 2nd Amended Motion To Exclude)

1m) On June 23, 2020 Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 23 exhibits that she **may** [emphasis added] use in the discovery Deposition of Defendant Hans Mast on June 25, 2020. Additionally she indicated that there **could be additions** [emphasis added] and there **may be subtractions** [emphasis added]. Additionally she wrote "…and I will do my best to send them ahead of time." (Please see Plaintiff's Exhibit #9 attached to Plaintiff's 2nd Amended Motion To Exclude)

1n) At the time the Deposition of Hans Mast was taken Illinois Supreme Court Rule 206(h)(2) was amended by **SUPREME COURT ORDER M.R.30370** titled In re: Illinois Courts Response to Covid-19 Emergency/Impact On Discovery as follows:

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

(Please note that the underline emphasis was so written by the Illinois Supreme Court)

(Please see Plaintiff's Exhibit #5 and exhibit #6 attached to Plaintiff's 2nd Amended Motion To Exclude)

1o) The Committee Comments to Illinois Supreme Court Rule Paragraph (h) (Revised October 22, 1999) state "The parties may agree pursuant to Rule 201(i) to amend or waive any conditions of paragraph (h)."

1p) Defendants have not provided any proof, whether written or oral, of any waiver or amendment.

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Therefore the second violation was of Illinois Supreme Court Rule 206(h)(2) and Illinois Supreme Court **Order** was because the 15 Exhibits that were to be presented to the deponent by any party at the deposition were not provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, nor were the deposition participants able to view many of the exhibits in real time during the deposition.

2. Plaintiff's "late filing" of his 2nd Amended Motion to Exclude is a typical diversion of Defendants' and best described by quoting the play " Macbeth' Act 5, scene 5, lines 26-28 by Shakespeare "…It is a tale told…, full of sound and fury, signifying nothing." because the facts are as follows:

2a) Plaintiff, by Court Order of November 4, 2022 was granted up to and including November 21, 2022 to file and serve his Amended Motion to Exclude the Discovery Deposition of Defendant Hans Mast.

2b) Plaintiff filed and served his Amended Motion to Exclude the Discovery Deposition of Defendant Hans Mast on Defendants' Counsel on November 21, 2022 with all 17 Exhibits individually sent and titled Exhibits 1 through Exhibit 17. The same Amended Motion to exclude the Deposition of Defendant Hans Mast was filed, served, and accepted by the Circuit Clerk of McHenry County also on November 21, 2021. Therefore Plaintiff had complied with the November 4, 2022 order.

2c) Upon review of the Circuit Clerks filing Plaintiff's Attorney noticed that the last page of the filing (Exhibit 17) did not reflect the Exhibit Stamp and number(although the email sent to Defendants' Counsel was titled Exhibit 17) .

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2d) Rather than waste this Courts' valuable time in motion practice Plaintiff refiled the motion with the only difference being the Exhibit 17 label was visible. Plaintiff titled it Plaintiff 2nd Amended Motion to Exclude the Deposition of Defendant Hans Mast. The Circuit Court Clerk accepted said filing on November 23, 2022.

2e) Defendants' counsel was made aware of the missing Exhibit 17 label on the last page of the initial timey filing but was out of his office at the time on personal business.

2d) In Defendants' Response to Plaintiff's 2nd Amended Motion to Exclude the Deposition of Defendant Hans Mast page 1 last sentence through page 2 first paragraph Defendants' Counsel states "Defendants hereby adopt their (oral) arguments contained in the transcript from the 11-4-22 hearing (Exhibit A) and submit this **additional** [emphasis added] response in opposition to Plaintiff's motion"

Therefore both Plaintiff and Defendants had "two bites of the apple", the Plaintiff's was a technical correction while Defendants was substantive.

3) Defendants complain that Plaintiff filed the Motion on October 23, 2022 but Defendants fail to state that what triggered this motion was an appropriate investigation into the facts based upon multiple subpoenas served upon persons involved after Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition **without any exhibits [emphasis added]** from Defendants' Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)

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3a) Plaintiffs rely not only upon his investigation triggered by Defendants attempting to use the Deposition without the 15 exhibits in April 2022 but also based upon Statute, Rules of Evidence, and case law.

3b) Plaintiff, pursuant to Illinois Rules of Evidence, Rule 201. **JUDICIAL NOTICE OF ADJUDICATIVE FACTS:**

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

Plaintiff requests that this Honorable Court take JUDICIAL NOTICE of the adjudicative fact that Discovery Depositions when attached to a motion for summary judgment are evidence.

3c) Plaintiff advances two Appellate Court Cases, one civil and one criminal to show that depositions attached to motions, and in fact attached to a motion for summary judgement are evidence.

> "Initially, we note trial courts may entertain motions by defendants for summary judgment where the only evidence considered is plaintiff's own deposition testimony. (See e.g. Ralston v. Casanova (1984), 129 Ill.App.3d 1050, 85 Ill.Dec. 76, 473 N.E.2d 444.)"
>
> Page 935

Austin v. St. Joseph Hosp., 187 Ill.App.3d 891, 543 N.E.2d 932, 135 Ill. Dec. 364 (Ill. App.

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1989)

> Page 649
> [143 Ill.Dec. 714] The record contains only one item of testimonial evidence, a deposition of defendant Donald Gaydosh submitted to the court by the plaintiff in connection with its motion to reconsider the granting of the motion to dismiss.

Townsend v. Gaydosh, 554 N.E.2d 648, 197 Ill.App.3d 339, 143 Ill.Dec. 713

(Ill. App. 1990)

3d) Plaintiff relies upon Illinois Supreme Court Rule 211(c)(1) to timely challenge the admissibility of the testimonial evidence of the Discovery Deposition of Defendant Hans Mast as Defendants are now trying to get this evidence admitted as an exhibit offered in evidence as an exhibit attached to their Motion for Summary Judgment.

3e) Dulberg properly seeks to exclude the discovery Deposition of Defendant Hans Mast based upon the Illinois Constitution, Illinois Statutes, Illinois Supreme Court Rules, and the Orders of the Illinois Supreme Court which the Defendants have decided do not apply to them based upon absurd theories.

4) What is truly “absurd” is Defendants attempt to characterize the combined violations of Illinois Supreme Court Rules and Orders of all parties as nothing more than a series of inconsequential de minimis actions.

5) Defendants’ fail to realize that they are not the Judge herein nor do they cite any rules, orders, cases etc. when they state “ But he should be required to take a position as to who committed the alleged violation(s).

(Please see Defendants’ THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., AND HANS MAST’S RESPONSE TO PLAINTIFF’S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST page 2 number 5)

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5a) Further replying, Plaintiff has continuously stated, and herein states again that the violations of Illinois Supreme Court Rules and Orders were committed by all parties involved.

6) Defendants' again fail to realize that they are not the Judge herein nor do they cite any rules, orders, cases etc. when they state " Paul Dulberg personally observed the discovery deposition of Hans Mast taken remotely (by Zoom) on June 25, 2020. If he had an objections to alleged irregularities with the deposition, **he had ample time to** [emphasis added] bring such issues to the attention of his counsel, Julia Williams, and to his current counsel who appeared on his behalf on October 23, 2020.

(Please see Defendants' THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST page 3 number 6)

6a) First, Defendants fail to acknowledge that what triggered this motion was an appropriate investigation into the facts based upon multiple subpoenas served upon persons involved after Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition of Hans Mast **without any exhibits** [emphasis added] from Defendants' Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)

6b) Next, Plaintiff Motion to Exclude rests upon the laws of the State of Illinois as follows:

(735 ILCS 5/1-104) (from Ch. 110, par. 1-104)

Sec. 1-104. Power of courts to make rules. (a) The Supreme Court of this State has

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power to make rules of pleading, practice and procedure for the circuit, Appellate and Supreme Courts supplementary to, but not inconsistent with the provisions of this Act, and to amend the same, for the purpose of making this Act effective for the convenient administration of justice, and otherwise simplifying judicial procedure, and power to make rules governing pleading, practice and procedure in small claims actions, including service of process in connection therewith. Unless otherwise indicated by the text, references in this Act to rules are to rules of the Supreme Court.

(735 ILCS 5/2-1003) (from Ch. 110, par. 2-1003)

Sec. 2-1003. Discovery and depositions.

(a) Discovery, such as admissions of fact and of genuineness of documents, physical and mental examinations of parties and other persons**, the taking of any depositions,** and interrogatories, **shall be in accordance with rules.** [emphasis added]

6c) Additionally, in relation to when an objection to (testimonial) evidence can be made Plaintiff relies on Illinois Supreme Court Rule 211(c)(1) which states:

(c) As to Competency of Deponent; Admissibility of Testimony; Questions and Answers; Misconduct; Irregularities.

(1) Grounds of objection to the competency of the deponent or admissibility of testimony which might have been corrected if presented during the taking of the deposition are waived by failure to make them at that time; otherwise objections to the competency of

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the deponent **or admissibility of testimony may be made when the testimony is offered in evidence.** [emphasis added]

6d) Defendants are currently attempting to have the discovery deposition of Hans Mast admitted into evidence as an exhibit to Defendants' Motion for Summary Judgement and therefore the time for objecting is now.

7) Defendants again fail to realize that they are not the Judge herein when they state " Illinois Supreme Court Rule 211 governs this issue"

(Please see Defendants' THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST page 3 number 7)

7a) Plaintiff does not deny that Illinois Supreme Court Rule 211 applies generally but Plaintiff states that the Illinois Constitution, other Illinois Statutes and Illinois Supreme Court Rules and their committee comments, Illinois Rules of Evidence Illinois case law and Illinois Supreme Court Orders apply specifically. Since Defendants have no relevant response to all the other, they want this Honorable Court to see only what they believe best supports their position while ignoring the other. Defendants' position can best be expressed as "Pay no attention to that man behind the curtain!" From: The Wizard of Oz.

8) Plaintiff does not deny that Illinois Supreme Court Rule 211(c)(2) applies generally requiring affirmative action or waiver without said affirmative action but it is "trumped" by Illinois Supreme Court Rule 206(h) Remote Electronic Means Depositions and specifically by Illinois Supreme Court Rule 206(h)(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time

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prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

8a) The Committee Comments make it clear that waiver of those violations may be done by affirmative action. “Paragraph (h) … The Parties may agree pursuant to rule 201(i) to amend or waive any conditions of paragraph (h).”

The following is Illinois Supreme Court Rule 201 **(i) Stipulations.** If the parties so stipulate, discovery may take place before any person, for any purpose, at any time or place, and in any manner.

8b) Defendants have not provided evidence of any affirmative action (stipulation) although they have had ample time to do so.

8c) Additionally, if this Honorable Court decides that Illinois Supreme Court Rules generally can be waived by inaction or positive action Plaintiff advances that Illinois Supreme Court Order M.R.30370 and Illinois Supreme Court Corrected Order M.R.30370 are both the “mirror image” of Illinois Supreme Court Rule 206(h)(2). (Please see Plaintiff’s Exhibit 5 and Exhibit 6 attached to Plaintiff’s Motion To Exclude)

8d) Although there are occasions where Illinois Supreme Court Rules may be waived, Defendants have not produced evidence that parties can waive ILLINOIS SUPREME COURT ORDERS.

9) Defendant again raises the issue of timeliness to which Plaintiff has already replied herein in great detail.

9a) Defendant then somewhat withdraws from the issue of timeliness, which the Plaintiff herein previously replied to, in order to again advance the position that Defendants did nothing wrong and all violations were caused “solely by Dulberg or his agents” to which Plaintiff has already replied to herein that Defendants’ attorney was an integral part of the problems as it was his suggestion to do a remote deposition and Defendants equipment

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and internet failures and Defendants' counsel's "saving paper" that caused the "lion's share" of the problems.

9b) Defendants thereafter launch into an axiomatic litany that is common when there are no true valid defenses, and without any proof, that "2) …any irregularities were harmless, 3)…any alleged irregularities simply be given its weight by the finder of fact (if as to any fact issue), 4)…no remedy be ordered in Dulberg's favor, and 5) the court weigh any remedy in favor of defendants it sees fit to order under Rule 201 © (1)(2) and (3). (Please see DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST page 3 last sentence to page 4 first paragraph.

9c) Defendants confuse what is "a prayer for relief " with what is required to be "Responses" to Plaintiff's Motion To Exclude and as such Defendants' axiomatic litany should be stricken as nonresponsive.

10) In Defendants' Response #10 Defendants admit the violation of Illinois Supreme Court Rule(s), Order(s) and defendants to follow Committee Comments as stated in Plaintiff's Reply 8), 8a), 8b, 8c and 8d) herein above.

10a) Defendants Response is as follows: 10) In response to Dulberg's argument at paragraph A3.3 of his 2nd Amended Motion to Exclude relating to his exhibit 16 (Email from defendant's counsel George K. Flynn) Dulberg takes the position that there was no discussion of any errors or irregularities in the "just concluded deposition." **That is exactly right.** [emphasis added] Dulberg's counsel did not raise any issues or objections in response to the email. She was apparently satisfied with the outcome, despite some minor technical difficulties during the deposition. She never voiced any

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suggestion that an additional session of Hans Mast's deposition was necessary or requested. Flynn didn't make any mention of it because any technical difficulties seemed inconsequential.

11) Defendants misstate the facts as Plaintiff has in hearings and status calls before this Honorable Court, in written Motions to Exclude and in this REPLY stated that the problems he complains of were caused by all parties.

11a) Contrary to Defendants allegation Plaintiff, from the time he was made aware of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition **without any exhibits [emphasis added]** from Defendants' Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file) the many problems in the Deposition of Hans Mast has stated the relief he seeks in the exclusion of Hans Mast discovery Deposition and the granting of his request to take the discovery deposition within a reasonable time.

12) The Tilschner vs Spangler Appellate Court certified slip ruling Dulberg provided as an exhibit in the Motion to Exclude the deposition of Hans Mast is a case that the Popovich Firm and Hans Mast personally appeared in, argued, and received a copy of from the Appellate Court.

12a) The Tilschner vs Spangler Appellate court certified slip ruling is file stamped May 6, 2011 and was finalized/re-certified in November 2011, 6 months after the certified slip ruling was made and became superseded by the finalized/re-certified ruling within the Appellate clerks file.

12b) The Tilschner vs Spangler Appellate Court slip ruling is a document that existed in

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the public realm on file at the Clerk of the Appellate Court and does not need to be disclosed during discovery in any cause of action.

12c) The Tilschner vs Spangler certified slip ruling was superseded by the finalized/re-certified ruling before Dulberg hired Mast on 12/1/2011.

12d) On November 20, 2013 at 7:26 AM Plaintiff emails Defendant Hans Mast the following message which has been given to Defendants in response to discovery requests " Ok we can meet. I will call Sheila today and set up a time. Please send me a link to the current Illinois Statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor. I need to read it myself and any links to recent case law in this area would be helpful as well…" (Please see Plaintiff's exhibit A attached)

12e) On November 20, 2013 Defendant Hans Mast admits to the above referenced meeting by (internal) Memorandum that was given to Plaintiff in response to discovery requests. (Please see Plaintiff's Exhibit B attached)

12f) On November 20, 2013, Plaintiff, and his friend (brother) Tom Kost met with Defendant Hans Mast to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case.

12g) Tom Kost kept a rough set of handwritten notes of the November 20, 2013 meeting with Defendant Hans Mast. The handwritten notes were given to Defendants in response to discovery requests. (Please see Plaintiff's exhibit C attached)

12h) Tom Kost's handwritten notes are as follows:

statement of torts sect 318 not applicable in Illinois

agent vs. contractor

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12i) Plaintiff requests that pursuant to Illinois Rules of Evidence, Rule 201. **JUDICIAL NOTICE OF ADJUDICATIVE FACTS:**

That any reference made by Plaintiff Paul Dulberg, by Tom Kost or Defendant Hans Mast to Restatement (Second) of Torts Section 318 impliedly references Tilschner v. Spangler because up to and including the day of filing this Reply the major search engines available for the legal profession searching within Illinois outcomes reflect Tilschner v. Spangler as the number one result.

12j) Plaintiff requests that this Honorable Court take JUDICIAL NOTICE of the adjudicative fact that the references to Restatement (Second) of Torts Section 318 impliedly references Tilschner v. Spangler .

12k) Plaintiff could not obtain the Tilschner v. Spangler slip opinion dated May 6, 2011 on November 20, 2013 without the aid of Defendant Hans Mast who appeared in the matter.

12l) Plaintiff was questioned in his deposition about the "friend" at the November 20, 2013 meeting with Mast. Plaintiff Identified the "Friend" as his brother Tom Kost.

12m) Dulberg did turn over the handwritten notes taken during the November 20, 2013 meeting with Tom Kost and Defendant Hans Mast. (Please see Plaintiff's exhibit C attached)

12n) Dulberg did not answer discovery questions about Tilschner vs Spangler because Dulberg was not asked about Tilschner vs Spangler.

12o) It was Mast's equipment problems and Defendants' Counsel saving of paper and ink that was the cause of the breakdown during the discovery deposition of Hans Mast and why Mast only had the "Lajato" case when questioned regarding exhibit 12.

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Wherefore, Plaintiff Paul Dulberg prays that this Honorable Court finds for Plaintiff and orders that Plaintiff's Motion to Exclude the discovery deposition of Defendant Hans Mast taken remotely on June 25, 2020 is granted, that Plaintiff's request to take the deposition of Defendant Hans Mast is granted and for any other additional relief this Honorable Court deems fair and equitable.

Respectfully submitted,

/s/ Alphonse A. Talarico

Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

707 Skokie Boulevard Suite 600

Northbrook, Illinois 60022

(312) 808-1410

ARDC No. 6184530

contact@lawofficeofalphonsetalarico.com

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alphonsetalarico@gmail.com

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From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

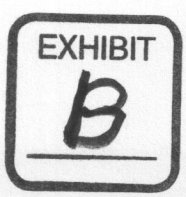
SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the $5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans



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"Foreseeable" duty

negligent

Statement of torts
Sect. 318
Not applicable in
Illinois

agent vs. contractor

Level of control

Kajawa

EXHIBIT
C



Dulberg 001217

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
12/21/2022 1:26 PM
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.		

ORDER

This matter coming to be heard on Plaintiff's Second Amended Motion to Exclude the Deposition of Hans Mast and For Leave to Take the Discovery Deposition of Hans Mast, the court having read the Second Amended Motion, Defendants' Response and Plaintiff's Reply and having heard oral argument, it is hereby ordered:

1) Plaintiff's motion to exclude and to take the deposition of Hans Mast is denied in its entirety, including all relief sought in the Second Amended Motion and Reply, and Plaintiff's oral motion made during hearing to supplement the record with an audio recording of the Hans Mast deposition.

2) The October 17, 2022 briefing order on Defendants' Motion for Summary Judgment stands with hearing set for February 1, 2023 at 10:00 a.m.

Zoom information for Room 201:
Link: https://zoom.us/my/mchenrycourtroom201;
Meeting ID: 272-959-8070
Personal Link Name: mchenrycourtroom201;
Password: no password required

Prepared by:
Atty. No. George K. Flynn/ARDC No. 6239349
Name: Karbal, Cohen, Economou, Silk & Dunne, LLC
Attorney for: Defendants
Address: 200 S. Wacker Drive, Suite 2550
City: Chicago, IL 60606
Telephone: (312) 431-3700
E-Mail: gfynn@karballaw.com

12/21/2022

…….., 2022

ENTER:

Thomas A. Meyer

……
Judge Judge's No.

Thomas Meyer

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

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McHenry County, Illinois
2017LA000377
Date: 12/28/2022 3:23 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO A Attorneys **R c rd P c d S r c L**

PLEASE TA E NOTICE that on the 28 day of December 2022, I filed with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois,

PLAINTIFF'S RESPONSE TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT FILED IN VIOLATION OF 735 ILCS 5 2-619.1, 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. AND CONTRARY TO ILLINOIS SUPREME COURT PRECEDENT AND 735 ILCS 5 13-214.3(b) a copy of which is attached and hereby served upon you.

December 28, 2022

ALPHONSE A. TALARICO
Law Office of Alphonse A. Talarico
ARDC No. 6184530
707 Skokie Boulevard, Suite 600
Northbrook, Illinois 60062
(312) 808-1410

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Attorney for Plaintiff Paul Dulberg
contact@lawofficeofalphonsetalarico.com

AFFIDAVIT OF SERVICE

I, the undersigned attorney, certify that this Notice was served to all parties listed on the attached **S r c L** by E-filing with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois

PLAINTIFF'S RESPONSE TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT FILED IN VIOLATION OF 735 ILCS 5 2-619.1, 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. AND CONTRARY TO ILLINOIS SUPREME COURT PRECEDENT AND 735 ILCS 5 13-214.3(b) and by email on December 28, 2022.

Under penalties as provided by law pursuant to 735 ILCS 5 1-109, I certify that the statements set forth herein are true and correct.

s Alphonse A. Talarico
Alphonse A. Talarico

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SERVICE LIST

GEORGE FLYNN
arbal Cohen Economou Sil Dunne, LLC
South ac er Drive, Suite
Chicago, Illinois
( )
Attorneys for Defendants
gflynn arballa com

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANTS THE LAW OFFICES OF THOMAS J POPOVICH, P C AND HANS MAST'S MOTION MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT FILED IN VIOLATION OF ILCS - , ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE A AND CONTRARY TO ILLINOIS SUPREME COURT PRECEDENT AND ILCS -

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his RESPONSE TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT FILED IN VIOLATION OF 735 ILCS 5 2-619.1, 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 AND CONTRARY TO ILLINOIS SUPREME COURT PRECEDENT AND 735 ILCS 5 13-214.3(b) states as follows:

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PREAMBLE Plaintiff's Response herein cannot follow the 22nd Judicial Circuit McHenry County, Illinois Local Rule 2.04 B.3.a because Defendant violated ignored Local Rule 2.04 A.3.

ADDITIONALLY, DEFENDANTS' IMPROPERLY RELYING UPON 735 ILCS 5 13-214.3(b) as existed prior to the Illinois Supreme Court case *S r an Real s a e Ser s. Inc. . Carlson. IL . . d Ill.Dec. Ill.* and ignoring Plaintiff's Complaint and the undisputed facts, state that Plaintiff suffered that statute's precipitating pecuniary injury on January 29, 2014 the day he accepted a settlement based upon the representations of Defendant Hans Mast that Defendants Carolyn and William McGuire will be dismissed from the underlying case on a Motion for Summary Judgment and Plaintiff will receive nothing, further relying upon *Tilschner . Span ler Ill.App. d . . d Ill.Dec. Ill.App. o. .* (A case in which Defendants herein appeared and lost) in the underlying case against Defendants Carolyn and William McGuire for 5,000.00, therefore misstating the law and the undisputed facts when they:

a) ignore the fact that Plaintiff has always relied on the binding arbitration award of 660,000.00 reduced by 15 because of Plaintiff's comparative fault as determined by Mediation Judge James P. Etchingham, (Ret.) on December 12, 2016 that was further reduced by the Binding Mediation Award being capped in a High-Low agreement not signed by Plaintiff in the amount of 300,000.00 as

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the day he suffered a pecuniary loss because of the settlement agreement he was convinced to sign by Defendant Hans Mast. (Please see Plaintiff's Exhibit SJR #1 attached);

b) ignore the fact that Defendants' citations prior to the entering of the Judgement with Opinion (with analysis) in *S r an Real s a e Ser s. Inc. . Carlson. IL* distinguished and construed 735 ILCS 5 13-214.3(b) as to when the required pecuniary loss happens;

c) ignore the fact that as Chief Justice Thomas stated in *Por er . Deca r Me orial Hospi al e al. . . d . Ill. d Ill.Dec. Ill.* on [882 N.E.2d 590] <u>When this court construes a statute, that construction is considered a part of the statute itself unless and until the legislature amends it contrary to this court's interpretation.</u> *Miller . Loc e Ill. d Ill.Dec. . . d*

d) ignore the fact that Plaintiff filed his original Complaint for Legal Malpractice on November 28, 2017 which was within (1) one year of suffering his pecuniary loss on December 12, 2016. (Please see Plaintiff's Exhibit SJR #2 attached).

<u>VIOLATION OF ILCS -</u>

In Defendants' **V <u>ARGUMENT</u>** they improperly raise within their Motion for Summary Judgement a Motion To Dismiss based upon 735 ILCS 5 2-619(a)(5) That the action was not commenced within the time limited by law. Defendants fail to comply

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the requirements of 735 ILCS 5 2-619.1 which reads as follows:

(735 ILCS 5 2-619.1) (from Ch. 110, par. 2-619.1)
Sec. 2-619.1. Combined motions. Motions with respect to pleadings under Section 2-615,motions for involuntary dismissal or other relief under Section 2-619, and motions for summary judgment under Section 2-1005 may be filed together as a single motion in any combination. A combined motion, however, shall be in parts. Each part shall be limited to and shall specify that it is made under one of Sections 2-615, 2-619, or 2-1005. Each part shall also clearly show the points or grounds relied upon under the Section upon which it is based.
(Source: P.A. 86-1156.)

Further responding, Plaintiff states that this a Motion To Dismiss based upon 735 ILCS 5 2-619(a)(5) and 735 ILCS 5 2-614.3 was brought by these Defendants and denied on May 10, 2018. (Please see Plaintiff's Exhibit SJR #3 attached).

VIOLATION OF 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A

Defendants fail to comply the requirements of VIOLATION OF 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. which reads as follows:

MOTIONS FOR SUMMARY JUDGEMENT
A. **M P r** . With each motion for summary judgment filed pursuant to 735 ILCS 5 2-1005, the moving party shall serve and file or cause to be received by the Circuit Court Clerk:
1. Any affidavits and other materials referred to in Supreme Court Rule 191,
2. A supporting memorandum of law not exceeding 15 pages,
3. A statement of material facts as to which the moving party contends there is no genuine issue that entitles the moving party to a judgment as a matter of law, and that also include: a description of the parties, and

The statement referred to in three (3) shall consist of short numbered paragraphs, including within each paragraph specific references to affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in that paragraph. Failure to submit such a statement constitutes grounds for denial or striking of the motion.

DISPUTED MATERIAL FACTS

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A) Plaintiff restates VIOLATION OF 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. above as if fully stated here as to why Plaintiff cannot contest Defendant's point by point statement of uncontested **M r** [emphasis added] facts but pursuant to 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 B.3.b. states that any alleged uncontested **M r** [emphasis added] facts found within Defendants' non-compliant Motion For Summary judgment are denied as contested.

B) Pursuant to 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 B.3.b. Plaintiff now makes " A statement consisting of short numbered paragraphs of any additional facts that require the denial of summary judgment…" as follows:

B1) The material fact that Mast and Popovich entered into an attorney client relationship with Dulberg is contested based upon Defendants answer and affirmative defenses.

ANSWER: Defendants admit only that Popovich entered into an attorney client relationship with Dulberg. Defendants deny the remainder of the allegations contained in Paragraph 33. (Please see Plaintiff's Exhibit SJR #4 pg.6 33 attached).

B2) The material fact that based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care is contested as established by Defendants' answer and affirmative defenses.

ANSWER: Paragraph 34 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in

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Paragraph 34. (Please see Plaintiff's Exhibit SJR #4 pg.6 34 attached).

B3) The material fact that based upon the fact that Mast urged Dulberg to settle the claims against the McGuire's for 5,000 is contested as established by Defendants' answer and affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 38. (Please see Plaintiff's Exhibit SJR #4 pg.7 38 attached).

B4) The material fact that on November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the 5,000.00, "the McGuire's atty has offered us (you) 5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the 5,000 now. You probably won'tsee [sic] any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." "So if we do not accept their 5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as Group Exhibit C.) is contested as established by Defendants 'answer and affirmative defenses.

ANSWER: Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 39. (Please see Plaintiff's Exhibit SJR #4 pg.7 39 attached).

B5) The material fact that on November 20, 2013, Mast emailed Dulberg urging him to

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accept the 5,000.00 otherwise “the McGuires will get out for FREE on a motion.” (See Emails attached as Group Exhibit C.) is contested as established by Defendants’ answer and affirmative defenses.

ANSWER: Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 40. (Please see Plaintiff’s Exhibit SJR #4 pg.7 40 attached).

B6) The material fact that on or around December 2013 or January 2014, Mast met with Dulberg and again advised them [sic] there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of 5,000.00 and if he did not, he would get nothing is contested as established by Defendants’ answer and affirmative defenses.

ANSWER: Defendants admit that on or around December 2013 or January 2014 Mast met with Dulberg, but deny that Mast told Dulberg he had no choice but to execute a release in favor of the McGuires for the sum of 5,000.00 and if he did not, he would get nothing. (Please see Plaintiff’s Exhibit SJR #4 pg.7 and pg.8 41 attached).

B7) The Material fact that Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recogni e the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires is contested based upon Defendants’ Answer and Affirmative defenses.

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ANSWER: Defendants deny the allegations contained in Paragraph 42.

(Please see Plaintiff's Exhibit SJR #4 pg.8 42 attached).

B8) The Material fact that Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 43.

(Please see Plaintiff's Exhibit SJR #4 pg.8 43 attached).

B9) The Material fact that Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for 5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. Exhibit D (Settlement) is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 44.

(Please see Plaintiff's Exhibit SJR #4 pg.8 44 attached).

B10) The Material fact that Mast reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 47.

(Please see Plaintiff's Exhibit SJR #4 pg.9 47 attached).

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B11) The Material fact that only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 55.

(Please see Plaintiff's Exhibit SJR #4 pg.10 55 attached).

B12) The Material facts that Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

(a) failed to fully and properly investigate the claims and or basis for liability against the McGuires;

(b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and or ability to pay a judgement and or settlement against them;

(c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only 100,000" and no insurance company would pay close to that;

(d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and or were principals of Gagnon, and who sought the

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assistance Dulberg by for example failing to obtain an expert;

(e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and or necessity of prosecuting the [sic] all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

(f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for 5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion." is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 58 and subparagraphs (a) through (f) inclusive.

(Please see Plaintiff's Exhibit SJR #4 pgs.10-11 58(a)-(f) attached).

B13) The Material fact that as a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over 300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C. is contested because of Defendants' Answer and Affirmative defenses.

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ANSWER: Defendants deny the allegations contained in Paragraph 59.

(Please see Plaintiff's Exhibit SJR #4 pg.11 59 attached).

B14) The Material facts contained in Defendants SECOND AFFIRMATIVE DEFENSE STATUTE OF LIMITATIONS

1. In Plaintiff's Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Pa l D l er Plain i . Da id a non e al. De endan s*, Case No. 12 LA 178, McHenry County, Illinois (the Underlying Action").

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than 100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S.Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreedto a

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"high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

4. Accordingly, this matter is time-barred.

is contested pursuant to Plaintiff's Answers To Defendants' Affirmative Defenses.

(Please see Plaintiff's Exhibit SJR #5 pg.2 attached). (Please also see above)

W r r , Plaintiff Paul Dulberg prays that this Honorable Court finds that Plaintiff's non-compliance was caused by Defendants' non-compliance with 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. Plaintiff further prays that this Honorable Court denies Defendants' Motion for Summary Judgment based upon the undisputed facts regarding when Plaintiff's pecuniary loss occurred and when Plaintiff filed this action, the many disputed facts that a jury should hear, the current status of 735 ILCS 5 13-214.3(b) as to when the required pecuniary loss happens as construed by the Illinois Supreme Court in *S r an Real s a e Ser s. Inc. . Carlson. IL* Defendants' non-compliance with Illinois Statute requirements of 735 ILCS 5 2-619.1, Defendants' non-compliance with 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. and for any other relief, in law or equity, that this Honorable Court deems right and just.

Respectfully submitted,

/s/ Alphonse A. Talarico

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Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

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ARDC No. 6184530

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ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P+S	75,000.
L N L	75,000.

The Honorable James P. Etchingham, (Ret.)

EXHIBIT SJR # 1

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT SJR #2

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Ln. 6
ORD

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury

FILED
McHenry County, Illinois
MAY 10 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court

Dulberg vs. Mast, et al

EXHIBIT
SJR #
3

Date: 5-10-18 Plaintiff's Attorney S. Walczyk Defendant's Attorney G Flynn

ORDER

This matter before the Court on hearing on Defendants' combined Motion to Dismiss, both parties present by counsel, the Court fully advised in the premises

It IS ORDERED:

1. Defendants' 2-615 motion to Dismiss is granted, and the 2-619 Motion is denied
2. Plaintiff granted 28 days (6/7/18) to file a First Amended Complaint
3. Defendants granted 28 days (7/5/18) thereafter to Answer or otherwise plead
4. Matter is set for status of pleadings on July 20, 2018 at 9:00 am in 201.

Prepared by: S. Walczyk / Gooch Firm
Attorney for: Dulberg
Attorney Registration No.: 6315819 Judge:

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** FILED ** Env: 4230960
McHenry County, Illinois
17LA000377
Date: 3/11/2019 12:12 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	)	
vs.	)	No. 17 LA 377
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT AT LAW

Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and KARBAL, COHEN, ECONOMOU, SILK, & DUNNE, LLC, for their Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law, state as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

ANSWER: Defendants admit the allegations contained in Paragraph 1.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

ANSWER: Defendants admit the allegations contained in Paragraph 2.

EXHIBIT
SJR
#4

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3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

ANSWER: Defendants admit only that Mast was an associate of The Law Offices of Thomas Popovich, P.C., and admit that he is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

ANSWER: Defendants deny the allegations contained in Paragraph 4.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

ANSWER: Defendants admit the allegations contained in Paragraph 5.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") [sic] (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

ANSWER: Defendants deny the allegations contained in Paragraph 6.

7. Dulberg lives in the next neighborhood over from the McGuire family.

ANSWER: Defendants admit the allegations contained in Paragraph 7.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

ANSWER: Defendants admit the allegations contained in Paragraph 8.

9. David Gagon [sic] is Caroline's son and William's stepson.

ANSWER: Defendants admit the allegations contained in Paragraph 9.

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10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

ANSWER: Defendants deny the allegations contained in Paragraph 13.

14. Caroline supervised Gagnon's and William's actions.

ANSWER: Defendants deny the allegations contained in Paragraph 14.

15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

ANSWER: Defendants deny the allegations contained in Paragraph 15.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

ANSWER: Defendants deny the allegations contained in Paragraph 16.

17. Caroline, William, and Gagnon all knew or show [sic] have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17.

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18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

ANSWER: Paragraph 19 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 19.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

ANSWER: Paragraph 20 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 20.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

ANSWER: Paragraph 22 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 22.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23.

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24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a [sic] trained in operating the chainsaw.

ANSWER: Defendants deny the allegations contained in Paragraph 24.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26.

27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

ANSWER: Defendants deny the allegations contained in Paragraph 29.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

ANSWER: Defendants deny the allegations contained in Paragraph 30.

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31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.

ANSWER: **Defendants admit only that in May 2012, Dulberg hired Popovich to represent him in prosecuting his claims against Gagnon and the McGuires.**

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B**.

ANSWER: **Defendants admit only that Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. Defendants deny the remainder of the allegations contained in Paragraph 32.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

ANSWER: **Defendants admit only that Popovich entered into an attorney client relationship with Dulberg. Defendants deny the remainder of the allegations contained in Paragraph 33.**

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

ANSWER: **Paragraph 34 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 34.**

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

ANSWER: **Defendants admit the allegations contained in Paragraph 35.**

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

ANSWER: **Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36.**

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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ANSWER: **Defendants admit only that the allegations made in the complaint stand for themselves. Defendants deny the remainder of the allegations contained in Paragraph 37.**

38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

ANSWER: **Defendants deny the allegations contained in Paragraph 38.**

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

ANSWER: **Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 39.**

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

ANSWER: **Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 40.**

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them [sic] there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

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ANSWER: **Defendants admit that on or around December 2013 or January 2014 Mast met with Dulberg, but deny that Mast told Dulberg he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.**

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

ANSWER: **Defendants deny the allegations contained in Paragraph 42.**

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

ANSWER: **Defendants deny the allegations contained in Paragraph 43.**

44. Based upon Mast's erroneously [sic] advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

ANSWER: **Defendants deny the allegations contained in Paragraph 44.**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

ANSWER: **Defendants admit only that if information regarding Gagnon's insurance policy being limited to $100,000 was provided, it was gleaned from communications with defense counsel.**

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

ANSWER: **Defendants admit the allegations contained in Paragraph 46.**

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47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

ANSWER: Defendants deny the allegations contained in Paragraph 47.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

ANSWER: Defendants admit only that Dulberg authored emails contained in Group Exhibit E. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 48.

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

ANSWER: Defendants admit only that Popovich continued to represent Dulberg into 2015, and that Mast was the primary handling attorney. Defendants deny the remainder of the allegations contained in Paragraph 49.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

ANSWER: Defendants deny the allegations contained in Paragraph 51.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52.

53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

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ANSWER: **Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53.**

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

ANSWER: **Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54.**

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

ANSWER: **Defendants deny the allegations contained in Paragraph 55.**

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

ANSWER: **Defendants deny the allegations contained in Paragraph 56.**

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

ANSWER: **Defendants deny the allegations contained in Paragraph 57.**

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

(a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

(b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

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(c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance company would pay close to that;

(d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

(e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability [sic] pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the [sic] all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

(f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

ANSWER: Defendants deny the allegations contained in Paragraph 58 and subparagraphs (a) through (f) inclusive.

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

ANSWER: Defendants deny the allegations contained in Paragraph 59.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, respectfully request that this Court grant judgment in their favor, and against Plaintiff, and for any further relief that this Court deems fair and proper.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE: CONTRIBUTORY NEGLIGENCE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that any damages awarded to Plaintiff, be reduced by Plaintiff's proximate share of liability or, if such share is more than 50%, be barred in its entirety.

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SECOND AFFIRMATIVE DEFENSE – STATUTE OF LIMITATIONS

1. In Plaintiff's Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiff v. David Gagnon, et al., Defendants*, Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

4. Accordingly, this matter is time-barred.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that Plaintiff be completely barred from recovery under the statute of limitations.

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AFFIRMATIVE DEFENSES

THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause of Dulberg's damages.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that judgment be entered on their behalf and against Plaintiff, Dulberg.

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
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AFFIDAVIT OF INSUFFICIENT KNOWLEDGE

Hans Mast, after being duly sworn, deposes and says that he has read the foregoing **Defendant's Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law**; and has reviewed the Answer; and that the answers and allegations of insufficient knowledge contained within the Answer filed on behalf of Defendants, are true and correct to the best of his knowledge and belief.

Hans Mast

Subscribed and sworn to before me
this 1st day of March 2019.

Notary Public

JOANN MORRISON PAXTON
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
October 04, 2022

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AFFIDAVIT OF INSUFFICIENT KNOWLEDGE

Thomas J. Popovich, after being duly sworn, deposes and says that he has read the foregoing **Defendant's Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law**; and has reviewed the Answer; and that the answers and allegations of insufficient knowledge contained within the Answer filed on behalf of Defendants, are true and correct to the best of his knowledge and belief.

The Law Offices of Thomas J. Popovich, P.C.

By: _____
Thomas J. Popovich

Subscribed and sworn to before me
this _____ day of January, 2019.

_____
Notary Public

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served electronically via the Clerk's Office e-filing system and by emailing a copy to counsel of record on the 11th day of March 2019 before the hour of 5:00 p.m. as follows:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
ed@clintonlaw.net
juliawilliams@clintonlaw.net

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

/s/ Linda Walters

Linda Walters

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Date: 4/8/2019 3:52 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
	)	
Defendants.	)	

PAUL DULBERG'S ANSWERS TO DEFENDANTS' AFFIRMATIIVE DEFENSES

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, answers Paul Dulberg's Affirmative Defenses as follows:

AFFIRMATIVE DEFENSES
FIRST AFFIRMATIVE DEFENSE: CONTRIBUTION NEGLIGENCE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiffs own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

EXHIBIT
SJR
#5

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3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

SECOND AFFIRMATIVE DEFENSE
STATUTE OF LIMITATIONS

1. In Plaintiffs Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiffv. David Gagnon, et al., Defendants,* Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2, subparts a-d.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

4. Accordingly, this matter is time-barred.

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ANSWER: Plaintiff denies the allegations of this Paragraph #4.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

AFFIRMATIVE DEFENSES
THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause ofDulberg's damages.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

Respectfully submitted,

By: /s/ Julia C. Williams

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Date: 12/28/2022 3:23 PM
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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, v. THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST Defendants.	)))))) Case No. 17 LA 377)))))

PLAINTIFF'S RESPONSE TO DEFENDANTS THE LAW OFFICES OF THOMAS J POPOVICH, P C AND HANS MAST'S MOTION MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT FILED IN VIOLATION OF ILCS - , ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE A AND CONTRARY TO ILLINOIS SUPREME COURT PRECEDENT AND ILCS -

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his RESPONSE TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT FILED IN VIOLATION OF 735 ILCS 5 2-619.1, 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 AND CONTRARY TO ILLINOIS SUPREME COURT PRECEDENT AND 735 ILCS 5 13-214.3(b) states as follows:

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PREAMBLE Plaintiff's Response herein cannot follow the 22nd Judicial Circuit McHenry County, Illinois Local Rule 2.04 B.3.a because Defendant violated ignored Local Rule 2.04 A.3.

ADDITIONALLY, DEFENDANTS' IMPROPERLY RELYING UPON 735 ILCS 5 13-214.3(b) as existed prior to the Illinois Supreme Court case *S r an Real s a e Ser s. Inc. . Carlson. IL . . d Ill.Dec. Ill.* and ignoring Plaintiff's Complaint and the undisputed facts, state that Plaintiff suffered that statute's precipitating pecuniary injury on January 29, 2014 the day he accepted a settlement based upon the representations of Defendant Hans Mast that Defendants Carolyn and William McGuire will be dismissed from the underlying case on a Motion for Summary Judgment and Plaintiff will receive nothing, further relying upon *Tilschner . Span ler Ill.App. d . . d Ill.Dec. Ill.App. o. .* (A case in which Defendants herein appeared and lost) in the underlying case against Defendants Carolyn and William McGuire for 5,000.00, therefore misstating the law and the undisputed facts when they:

a) ignore the fact that Plaintiff has always relied on the binding arbitration award of 660,000.00 reduced by 15 because of Plaintiff's comparative fault as determined by Mediation Judge James P. Etchingham, (Ret.) on December 12, 2016 that was further reduced by the Binding Mediation Award being capped in a High-Low agreement not signed by Plaintiff in the amount of 300,000.00 as

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the day he suffered a pecuniary loss because of the settlement agreement he was convinced to sign by Defendant Hans Mast. (Please see Plaintiff's Exhibit SJR #1 attached);

b) ignore the fact that Defendants' citations prior to the entering of the Judgement with Opinion (with analysis) in *S r an Real s a e Ser s. Inc. . Carlson. IL* distinguished and construed 735 ILCS 5 13-214.3(b) as to when the required pecuniary loss happens;

c) ignore the fact that as Chief Justice Thomas stated in *Por er . Deca r Me orial Hospi al e al. . . d . Ill. d Ill.Dec. Ill.* on [882 N.E.2d 590] <u>When this court construes a statute, that construction is considered a part of the statute itself unless and until the legislature amends it contrary to this court's interpretation.</u> *Miller . Loc e Ill. d Ill.Dec. . . d*

d) ignore the fact that Plaintiff filed his original Complaint for Legal Malpractice on November 28, 2017 which was within (1) one year of suffering his pecuniary loss on December 12, 2016. (Please see Plaintiff's Exhibit SJR #2 attached).

<u>VIOLATION OF ILCS -</u>

In Defendants' **V <u>ARGUMENT</u>** they improperly raise within their Motion for Summary Judgement a Motion To Dismiss based upon 735 ILCS 5 2-619(a)(5) That the action was not commenced within the time limited by law. Defendants fail to comply

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the requirements of 735 ILCS 5 2-619.1 which reads as follows:

(735 ILCS 5 2-619.1) (from Ch. 110, par. 2-619.1)
Sec. 2-619.1. Combined motions. Motions with respect to pleadings under Section 2-615,motions for involuntary dismissal or other relief under Section 2-619, and motions for summary judgment under Section 2-1005 may be filed together as a single motion in any combination. A combined motion, however, shall be in parts. Each part shall be limited to and shall specify that it is made under one of Sections 2-615, 2-619, or 2-1005. Each part shall also clearly show the points or grounds relied upon under the Section upon which it is based.
(Source: P.A. 86-1156.)

Further responding, Plaintiff states that this a Motion To Dismiss based upon 735 ILCS 5 2-619(a)(5) and 735 ILCS 5 2-614.3 was brought by these Defendants and denied on May 10, 2018. (Please see Plaintiff's Exhibit SJR #3 attached).

VIOLATION OF 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A

Defendants fail to comply the requirements of VIOLATION OF 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. which reads as follows:

MOTIONS FOR SUMMARY JUDGEMENT
A. **M P r** . With each motion for summary judgment filed pursuant to 735 ILCS 5 2-1005, the moving party shall serve and file or cause to be received by the Circuit Court Clerk:
1. Any affidavits and other materials referred to in Supreme Court Rule 191,
2. A supporting memorandum of law not exceeding 15 pages,
3. A statement of material facts as to which the moving party contends there is no genuine issue that entitles the moving party to a judgment as a matter of law, and that also include: a description of the parties, and

The statement referred to in three (3) shall consist of short numbered paragraphs, including within each paragraph specific references to affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in that paragraph. Failure to submit such a statement constitutes grounds for denial or striking of the motion.

DISPUTED MATERIAL FACTS

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A) Plaintiff restates VIOLATION OF 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. above as if fully stated here as to why Plaintiff cannot contest Defendant's point by point statement of uncontested **M r** [emphasis added] facts but pursuant to 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 B.3.b. states that any alleged uncontested **M r** [emphasis added] facts found within Defendants' non-compliant Motion For Summary judgment are denied as contested.

B) Pursuant to 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 B.3.b. Plaintiff now makes " A statement consisting of short numbered paragraphs of any additional facts that require the denial of summary judgment…" as follows:

B1) The material fact that Mast and Popovich entered into an attorney client relationship with Dulberg is contested based upon Defendants answer and affirmative defenses.

ANSWER: Defendants admit only that Popovich entered into an attorney client relationship with Dulberg. Defendants deny the remainder of the allegations contained in Paragraph 33. (Please see Plaintiff's Exhibit SJR #4 pg.6 33 attached).

B2) The material fact that based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care is contested as established by Defendants' answer and affirmative defenses.

ANSWER: Paragraph 34 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in

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Paragraph 34. (Please see Plaintiff's Exhibit SJR #4 pg.6 34 attached).

B3) The material fact that based upon the fact that Mast urged Dulberg to settle the claims against the McGuire's for 5,000 is contested as established by Defendants' answer and affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 38. (Please see Plaintiff's Exhibit SJR #4 pg.7 38 attached).

B4) The material fact that on November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the 5,000.00, "the McGuire's atty has offered us (you) 5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the 5,000 now. You probably won'tsee [sic] any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." "So if we do not accept their 5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as Group Exhibit C.) is contested as established by Defendants 'answer and affirmative defenses.

ANSWER: Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 39. (Please see Plaintiff's Exhibit SJR #4 pg.7 39 attached).

B5) The material fact that on November 20, 2013, Mast emailed Dulberg urging him to

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accept the 5,000.00 otherwise “the McGuires will get out for FREE on a motion.” (See Emails attached as Group Exhibit C.) is contested as established by Defendants’ answer and affirmative defenses.

ANSWER: Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 40. (Please see Plaintiff’s Exhibit SJR #4 pg.7 40 attached).

B6) The material fact that on or around December 2013 or January 2014, Mast met with Dulberg and again advised them [sic] there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of 5,000.00 and if he did not, he would get nothing is contested as established by Defendants’ answer and affirmative defenses.

ANSWER: Defendants admit that on or around December 2013 or January 2014 Mast met with Dulberg, but deny that Mast told Dulberg he had no choice but to execute a release in favor of the McGuires for the sum of 5,000.00 and if he did not, he would get nothing. (Please see Plaintiff’s Exhibit SJR #4 pg.7 and pg.8 41 attached).

B7) The Material fact that Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recogni e the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires is contested based upon Defendants’ Answer and Affirmative defenses.

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ANSWER: Defendants deny the allegations contained in Paragraph 42.

(Please see Plaintiff's Exhibit SJR #4 pg.8 42 attached).

B8) The Material fact that Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 43.

(Please see Plaintiff's Exhibit SJR #4 pg.8 43 attached).

B9) The Material fact that Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for 5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. Exhibit D (Settlement) is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 44.

(Please see Plaintiff's Exhibit SJR #4 pg.8 44 attached).

B10) The Material fact that Mast reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 47.

(Please see Plaintiff's Exhibit SJR #4 pg.9 47 attached).

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B11) The Material fact that only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 55.

(Please see Plaintiff's Exhibit SJR #4 pg.10 55 attached).

B12) The Material facts that Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

(a) failed to fully and properly investigate the claims and or basis for liability against the McGuires;

(b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and or ability to pay a judgement and or settlement against them;

(c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only 100,000" and no insurance company would pay close to that;

(d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and or were principals of Gagnon, and who sought the

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assistance Dulberg by for example failing to obtain an expert;

(e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and or necessity of prosecuting the [sic] all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

(f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for 5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion." is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 58 and subparagraphs (a) through (f) inclusive.

(Please see Plaintiff's Exhibit SJR #4 pgs.10-11 58(a)-(f) attached).

B13) The Material fact that as a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over 300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C. is contested because of Defendants' Answer and Affirmative defenses.

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ANSWER: Defendants deny the allegations contained in Paragraph 59.

(Please see Plaintiff's Exhibit SJR #4 pg.11 59 attached).

B14) The Material facts contained in Defendants SECOND AFFIRMATIVE DEFENSE STATUTE OF LIMITATIONS

1. In Plaintiff's Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Pa l D l er Plain i . Da id a non e al. De endan s*, Case No. 12 LA 178, McHenry County, Illinois (the Underlying Action").

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than 100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S.Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreedto a

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"high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

4. Accordingly, this matter is time-barred.

is contested pursuant to Plaintiff's Answers To Defendants' Affirmative Defenses.

(Please see Plaintiff's Exhibit SJR #5 pg.2 attached). (Please also see above)

W r r , Plaintiff Paul Dulberg prays that this Honorable Court finds that Plaintiff's non-compliance was caused by Defendants' non-compliance with 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. Plaintiff further prays that this Honorable Court denies Defendants' Motion for Summary Judgment based upon the undisputed facts regarding when Plaintiff's pecuniary loss occurred and when Plaintiff filed this action, the many disputed facts that a jury should hear, the current status of 735 ILCS 5 13-214.3(b) as to when the required pecuniary loss happens as construed by the Illinois Supreme Court in *S r an Real s a e Ser s. Inc. . Carlson. IL* Defendants' non-compliance with Illinois Statute requirements of 735 ILCS 5 2-619.1, Defendants' non-compliance with 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. and for any other relief, in law or equity, that this Honorable Court deems right and just.

Respectfully submitted,

/s/ Alphonse A. Talarico

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Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

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(312) 808-1410

ARDC No. 6184530

contact@lawofficeofalphonsetalarico.com

alphonsetalarico@gmail.com

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ADR systems

Binding Mediation Award

Paul Dulberg)
)
)
)
v.) ADR Systems File # 33391BMAG
)
)
David Gagnon)

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

medical	$ 60,000.
future medical	$ 200,000.
Lost wage	$ 250,000.
P+S	75,000.
L N L	75,000.

The Honorable James P. Etchingham, (Ret.)

EXHIBIT SJR # 1

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
****

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT SJR #2

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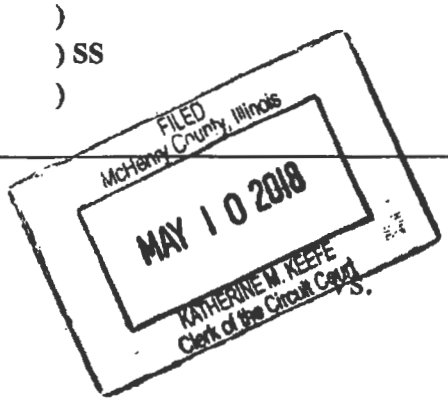
Ln. 6
ORD

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury



Dulberg vs. Mast, et al



Date: 5-10-18 Plaintiff's Attorney S. Walczyk Defendant's Attorney G Flynn

ORDER

This matter before the Court on hearing on Defendants' combined Motion to Dismiss, both parties present by counsel, the Court fully advised in the premises

It IS ORDERED:

1. Defendants' 2-615 motion to Dismiss is granted, and the 2-619 Motion is denied
2. Plaintiff granted 28 days (6/7/18) to file a First Amended Complaint
3. Defendants granted 28 days (7/5/18) thereafter to Answer or otherwise plead
4. Matter is set for status of pleadings on July 20, 2018 at 9:00 am in 201.

Prepared by: S. Walczyk / Gooch Firm
Attorney for: Dulberg
Attorney Registration No.: 6315819 Judge:

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McHenry County, Illinois
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Date: 3/11/2019 12:12 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	)	
vs.	)	No. 17 LA 377
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)	

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT AT LAW

Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and KARBAL, COHEN, ECONOMOU, SILK, & DUNNE, LLC, for their Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law, state as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

ANSWER: Defendants admit the allegations contained in Paragraph 1.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

ANSWER: Defendants admit the allegations contained in Paragraph 2.

EXHIBIT
SJR
#4

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3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

ANSWER: Defendants admit only that Mast was an associate of The Law Offices of Thomas Popovich, P.C., and admit that he is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

ANSWER: Defendants deny the allegations contained in Paragraph 4.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

ANSWER: Defendants admit the allegations contained in Paragraph 5.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") [sic] (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

ANSWER: Defendants deny the allegations contained in Paragraph 6.

7. Dulberg lives in the next neighborhood over from the McGuire family.

ANSWER: Defendants admit the allegations contained in Paragraph 7.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

ANSWER: Defendants admit the allegations contained in Paragraph 8.

9. David Gagon [sic] is Caroline's son and William's stepson.

ANSWER: Defendants admit the allegations contained in Paragraph 9.

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10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

ANSWER: Defendants deny the allegations contained in Paragraph 13.

14. Caroline supervised Gagnon's and William's actions.

ANSWER: Defendants deny the allegations contained in Paragraph 14.

15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

ANSWER: Defendants deny the allegations contained in Paragraph 15.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

ANSWER: Defendants deny the allegations contained in Paragraph 16.

17. Caroline, William, and Gagnon all knew or show [sic] have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17.

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18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

ANSWER: Paragraph 19 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 19.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

ANSWER: Paragraph 20 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 20.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

ANSWER: Paragraph 22 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 22.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23.

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24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a [sic] trained in operating the chainsaw.

ANSWER: Defendants deny the allegations contained in Paragraph 24.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26.

27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

ANSWER: Defendants deny the allegations contained in Paragraph 29.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

ANSWER: Defendants deny the allegations contained in Paragraph 30.

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31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.

ANSWER: **Defendants admit only that in May 2012, Dulberg hired Popovich to represent him in prosecuting his claims against Gagnon and the McGuires.**

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B**.

ANSWER: **Defendants admit only that Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. Defendants deny the remainder of the allegations contained in Paragraph 32.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

ANSWER: **Defendants admit only that Popovich entered into an attorney client relationship with Dulberg. Defendants deny the remainder of the allegations contained in Paragraph 33.**

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

ANSWER: **Paragraph 34 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 34.**

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

ANSWER: **Defendants admit the allegations contained in Paragraph 35.**

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

ANSWER: **Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36.**

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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ANSWER: **Defendants admit only that the allegations made in the complaint stand for themselves. Defendants deny the remainder of the allegations contained in Paragraph 37.**

38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

ANSWER: **Defendants deny the allegations contained in Paragraph 38.**

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

ANSWER: **Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 39.**

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

ANSWER: **Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 40.**

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them [sic] there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

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ANSWER: **Defendants admit that on or around December 2013 or January 2014 Mast met with Dulberg, but deny that Mast told Dulberg he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.**

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

ANSWER: **Defendants deny the allegations contained in Paragraph 42.**

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

ANSWER: **Defendants deny the allegations contained in Paragraph 43.**

44. Based upon Mast's erroneously [sic] advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

ANSWER: **Defendants deny the allegations contained in Paragraph 44.**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

ANSWER: **Defendants admit only that if information regarding Gagnon's insurance policy being limited to $100,000 was provided, it was gleaned from communications with defense counsel.**

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

ANSWER: **Defendants admit the allegations contained in Paragraph 46.**

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47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

ANSWER: Defendants deny the allegations contained in Paragraph 47.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

ANSWER: Defendants admit only that Dulberg authored emails contained in Group Exhibit E. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 48.

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

ANSWER: Defendants admit only that Popovich continued to represent Dulberg into 2015, and that Mast was the primary handling attorney. Defendants deny the remainder of the allegations contained in Paragraph 49.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

ANSWER: Defendants deny the allegations contained in Paragraph 51.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52.

53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

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ANSWER: **Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53.**

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

ANSWER: **Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54.**

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

ANSWER: **Defendants deny the allegations contained in Paragraph 55.**

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

ANSWER: **Defendants deny the allegations contained in Paragraph 56.**

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

ANSWER: **Defendants deny the allegations contained in Paragraph 57.**

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

(a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

(b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

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(c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance company would pay close to that;

(d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

(e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability [sic] pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the [sic] all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

(f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

ANSWER: Defendants deny the allegations contained in Paragraph 58 and subparagraphs (a) through (f) inclusive.

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

ANSWER: Defendants deny the allegations contained in Paragraph 59.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, respectfully request that this Court grant judgment in their favor, and against Plaintiff, and for any further relief that this Court deems fair and proper.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE: CONTRIBUTORY NEGLIGENCE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that any damages awarded to Plaintiff, be reduced by Plaintiff's proximate share of liability or, if such share is more than 50%, be barred in its entirety.

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SECOND AFFIRMATIVE DEFENSE – STATUTE OF LIMITATIONS

1. In Plaintiff's Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiff v. David Gagnon, et al., Defendants*, Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

4. Accordingly, this matter is time-barred.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that Plaintiff be completely barred from recovery under the statute of limitations.

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AFFIRMATIVE DEFENSES

THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause of Dulberg's damages.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that judgment be entered on their behalf and against Plaintiff, Dulberg.

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
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AFFIDAVIT OF INSUFFICIENT KNOWLEDGE

Hans Mast, after being duly sworn, deposes and says that he has read the foregoing **Defendant's Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law**; and has reviewed the Answer; and that the answers and allegations of insufficient knowledge contained within the Answer filed on behalf of Defendants, are true and correct to the best of his knowledge and belief.

Hans Mast

Subscribed and sworn to before me
this 1st day of March 2019.

Notary Public

JOANN MORRISON PAXTON
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
October 04, 2022

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AFFIDAVIT OF INSUFFICIENT KNOWLEDGE

Thomas J. Popovich, after being duly sworn, deposes and says that he has read the foregoing **Defendant's Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law**; and has reviewed the Answer; and that the answers and allegations of insufficient knowledge contained within the Answer filed on behalf of Defendants, are true and correct to the best of his knowledge and belief.

The Law Offices of Thomas J. Popovich, P.C.

By: _____
Thomas J. Popovich

Subscribed and sworn to before me
this _____ day of January, 2019.

_____
Notary Public

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served electronically via the Clerk's Office e-filing system and by emailing a copy to counsel of record on the 11th day of March 2019 before the hour of 5:00 p.m. as follows:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
ed@clintonlaw.net
juliawilliams@clintonlaw.net

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

/s/ Linda Walters

Linda Walters

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McHenry County, Illinois
17LA000377
Date: 4/8/2019 3:52 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST,	)	
	)	
	)	
Defendants.	)	

PAUL DULBERG'S ANSWERS TO DEFENDANTS' AFFIRMATIIVE DEFENSES

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, answers Paul Dulberg's Affirmative Defenses as follows:

AFFIRMATIVE DEFENSES
FIRST AFFIRMATIVE DEFENSE: CONTRIBUTION NEGLIGENCE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiffs own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

EXHIBIT
SJR
#5

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3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

SECOND AFFIRMATIVE DEFENSE
STATUTE OF LIMITATIONS

1. In Plaintiffs Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiffv. David Gagnon, et al., Defendants,* Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2, subparts a-d.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

4. Accordingly, this matter is time-barred.

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ANSWER: Plaintiff denies the allegations of this Paragraph #4.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

AFFIRMATIVE DEFENSES
THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause ofDulberg's damages.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

Respectfully submitted,

By: /s/ Julia C. Williams

Edward X. Clinton, Jr.
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McHenry County, Illinois
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Date: 1/19/2023 3:38 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: All Attorneys of Record (See Attached Service List)

PLEASE TAKE NOTICE that on the 19th day of January 2023, we filed with the Clerk of the 22ND Judicial Circuit Court of McHenry County, Illinois, DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REPLY IN SUPPORT OF THEIR MOTION/MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 19th day of January 2023.

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
200 So. Wacker Drive, Suite 2550
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on January 19, 2023.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

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SERVICE LIST

Plaintiff's Attorney	
Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd 6th Floor Suite Northbrook, IL 60062-2841 contact@lawofficeofalphonsetalarico.com (312) 808-1410	

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Date: 1/19/2023 3:38 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REPLY IN SUPPORT OF THEIR MOTION/MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST, by and through their attorneys, Karbal Cohen Economou Silk & Dunne, LLC, for their REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT, state as follows:

I. INTRODUCTION

Plaintiff's Response confuses allegations made at the pleading stage of litigation, and facts established in the record (here mainly by virtue of sworn deposition testimony). On its face, Dulberg's legal malpractice complaint is untimely filed. The record demonstrates that Dulberg can never meet his burden of proving an exception to the applicable two-year statute of limitations. Defendants' motion for summary judgment under 735 ILCS 5/2-1005 establishes that Dulberg can never prove a late "discovery" of his allegedly wrongfully caused injury.[1] As will be discussed below, the only legal analysis contained in Dulberg's response, relies on an inapplicable "transactional" malpractice case, *Suburban Real Estate Servs. Inc. v. Carlson*, 2022 IL

[1] Defendants' Motion is brought under 735 ILCS 5/2-1005, and not under 735 ILCS 5/2-619.1 as suggested by Plaintiff.

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126935. Dulberg's case arises out of litigation – not transactional work. Plaintiff's alleged injury was incurred at the time of settlement and dismissal of the McGuire litigation.

II. UNDISPUTED MATERIAL FACTS

The undisputed material facts of the case are properly cited in Defendants' Motion at pages 5-9, with specific citations to exhibits and page numbers. Additional citations to pleadings are recited in the "Statement of Claim" section at pages 2-4 of Defendants' motion. Plaintiff disputes the citations by making a general denial at Response page 5, ¶A. Defendants submit that their factual citations are evident and stand for themselves.

In section B of Dulberg's Response, he attempts to argue that some disputed material fact prevents the entry of summary judgment. In support, he recites certain allegations contained in the pleadings, as opposed to the facts adduced in depositions or affidavits. He fails to provide any analysis or explanation as to how any of these alleged facts constitute a genuine issue of material fact that has any relevance to the alleged late discovery of his claims, and which would prevent the court from entering summary judgment for the defendants.

III. ARGUMENT

Dulberg does virtually nothing to discuss any of the testimony cited by Defendants, apply the facts, or analyze the law cited by Defendants. Instead, Dulberg references the case of *Suburban Real Estate Services, Inc. v. Carlson,*, 2022 IL 126935 and references a "a pecuniary loss" as an issue in that case. However, there is no analysis or application to the facts here. In any event, *Suburban Real Estate* involves alleged transactional legal malpractice, and is not on point with this case. However, the Illinois Supreme Court in *Suburban Real Estate Services, Inc.* analyzed the "injury" component in a legal malpractice claim, in view of the two year statute of limitations. The court distinguished between transactional malpractice, and malpractice arising out of

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litigation. The court engaged in an extensive analysis of the "injury" component of the two year statute of limitations. "Thus, to discern when a claim accrues, we identify the injury and then determine when the injury was discovered or should have been discovered." *Suburban Real Estate Services* at [*P16] The court discussed legal malpractice actions arising out of litigation, or the "case within a case." "As this court has explained, no injury exists, and therefore no actionable claim arises, unless and until the attorney's negligence results in the loss of the underlying cause of action." *Suburban Real Estate Services* at *P19, citing *Tri-G, Inc. v. Burke Bosselman and Weaver*, 222 Ill. 2d 218 (2006). Importantly, the Illinois Supreme Court then wrote, "Thus, the injury does not accrue, and the statute of limitations does not begin to run until a judgment or settlement or dismissal of the underlying action." (emphasis added) *Suburban Real Estate Services* at *P19.

Here, a portion of the underlying case was settled and dismissed – the very portion of the case complained of here by Dulberg. The dismissal order attached as Exhibit H to Defendant's Motion for Summary Judgment is dispositive of Dulberg's claims. The order included a good faith finding of settlement, and was final and appealable. The injury sustained is the loss of the ability to further recover anything from the McGuire's over the $5,000 settlement Dulberg approved. The injury was incurred when the settlement was finalized and the McGuire's were dismissed.

Dulberg fails to analyze any of the cases cited in Defendants' motion that stand for the proposition that he was on reasonable notice to inquire further as to the existence of a cause of action. Nor does he squarely address the facts cited, or really any arguments made in defendants' motion. The evidence cited by Defendants in their motion demonstrates that Dulberg deliberated over a settlement offer from the McGuires from at least November 2013, until he executed the settlement release on January 29, 2014. He admitted that Mast did not force him to accept the

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settlement. Exhibit E, p. 73. After the McGuires were dismissed, Dulberg and Mast continued to prosecute the case against Gagnon. However, Dulberg became disillusioned with Mast and Popovich, and even threatened legal malpractice as early as February 22, 2015. Dulberg then sought substitute counsel when Mast and Popovich withdrew. He always had the ability and opportunity to seek a second opinion about the McGuire settlement (before and after he agreed to it). All of these facts establish that Dulberg knew or should have known, or should have inquired as to whether Mast and Popovich breached the standard of care, and whether said breach caused him any injury.

Dulberg bears the burden of proving some alternative date of discovery of his injury and claims. His futile attempts at amending his complaint, and the well-documented evasive discovery responses clearly establish that Dulberg has not met and cannot meet his burden demonstrating a "late" discovery of his claims. Summary judgment must be entered in favor of Mast and Popovich.

III. CONCLUSION

WHEREFORE, for the reasons stated herein and in THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION FOR SUMMARY JUDGMENT, pray that this Honorable Court grant their Motion for Summary Judgment, with prejudice, and for any further relief this court deems fair and proper.

Dated: January 19, 2023

Respectfully submitted,

KARBAL, COHEN, ECONOMOU SILK & DUNNE, LLC

By: */s/ George K. Flynn*
George K. Flynn (ARDC #6239349)

200 So. Wacker Drive
Suite 2550
Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

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#12

CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT

FILED
McHenry County, Illinois
FEB 1 - 2023
KATHERINE M. KEEFE
Clerk of the Circuit Court

STATE OF ILLINOIS
COUNTY OF MCHENRY } **SS**

GEN. NO. 17LA377

☑ Jury ☐ Non-Jury

Paul Dulberg

vs.

Popovich and Mast

Date 2-1-23 **Plaintiff's Attorney** Alphonse Talarico **Defendant's Attorney** George K. Flynn

ORDER

This matter coming to be heard on Popovich and Mast's Motion for Summary Judgment, it is hereby ordered:

1) Defendants' Motion for Summary Judgment is granted, for the reasons stated on the record. The 2 year statute of limitations lapsed before the filing of Plaintiff's complaint. Judgment for defendants entered and the case is dismissed with prejudice.

Prepared by: George K. Flynn

Attorney for: Defendants

Attorney Registration No.: 6239349 **Judge**

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** FILED ** Env: 21713475
McHenry County, Illinois
2017LA000377
Date: 3/3/2023 10:55 AM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

Instructions

Check the box to the right if your case involves parental responsibility or parenting time (custody/visitation rights) or relocation of a child.

Just below "Appeal to the Appellate Court of Illinois," enter the number of the appellate district that will hear the appeal and the county of the trial court.

If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that name. Below that, enter the names of the parties in the trial court, and check the correct boxes to show which party is filing the appeal ("appellant") and which party is responding to the appeal ("appellee").

To the far right, enter the trial court case number, the trial judge's name, and the Supreme Court Rule that allows the appellate court to hear the appeal.

☐ **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

APPEAL TO THE APPELLATE COURT OF ILLINOIS

SECOND **District**

from the Circuit Court of

McHenry **County**

In re

Paul R. Dulberg

Plaintiffs/Petitioners *(First, middle, last names)*

☑ **Appellants** ☐ **Appellees**

v.

Hans Mast and The Law Offices of Thomas J. Popovich, P.C.

Defendants/Respondents *(First, middle, last names)*

☐ **Appellants** ☑ **Appellees**

Trial Court Case No.:

17LA000377

Honorable

Joel D. Berg for S.J. only

Judge, Presiding

Supreme Court Rule:

303

NOTICE OF APPEAL (CIVIL)

In **1**, check the type of appeal.

For more information on choosing a type of appeal, see *How to File a Notice of Appeal.*

1. Type of Appeal:

☑ Appeal
☐ Interlocutory Appeal
☐ Joining Prior Appeal
☐ Separate Appeal
☐ Cross Appeal

In **2**, list the name of each person filing the appeal and check the proper box for each person.

2. Name of Each Person Appealing:

Name: Paul (*First*) R. (*Middle*) Dulberg (*Last*)

☑ Plaintiff-Appellant ☐ Petitioner-Appellant

☐ Defendant-Appellant ☐ Respondent-Appellant

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Page 1 of 6
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Name: _____
First *Middle* *Last*

☐ Plaintiff-Appellant ☐ Petitioner-Appellant

OR

☐ Defendant-Appellant ☐ Respondent-Appellant

In **3**, identify every order or judgment you want to appeal by listing the date the trial court entered it.

3. List the date of every order or judgment you want to appeal:

05/10/2018
Date

11/13/2018
Date

02/25/2019
Date

05/30/2019
Date

09/05/2019
Date

11/04/2019
Date

02/03/2020
Date

11/24/2020
Date

01/06/2021
Date

02/11//2021
Date

03/16/2021
Date

04/06/2021
Date

06/14/2021
Date

09/07/2021
Date

01/04/2022
Date

05/02/2022
Date

06/10/2022
Date

07/11/2022
Date

11/09/2022 (08:20 AM)
Date

11/09/2022 (08:27 AM)
Date

12/06/2022
Date

12/21/2022
Date

02/01/2023
Date

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Page 2 of 6
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4. State your relief:

In **4**, state what you want the appellate court to do. You may check as many boxes as apply.

☑ reverse the trial court's judgment *(change the judgment in favor of the other party into a judgment in your favor and* ☑ send the case back to the trial court for any hearings that are still required;

☐ vacate the trial court's judgment *(erase the judgment in favor of the other party)* and ☐ send the case back to the trial court for a new hearing and a new judgment;

☑ change the trial court's judgment to say: Defendants' Motion for Summary Judgment is Denied

☑ Order the trial court to: transfer this case to the first district (Cook County Law Division) for reassignment; order Defendants to answer the Discovery filed and served by Plaintiff's attorney Thomas W. Gooch;

☑ other: Judge Thomas Meyer should have self-recused because he knows the parties, was the Judge in the underlying matter 12 LA 178 and is friends with one of the Defendants. Therefore all orders should be reviewed; have Case Management Conferences and Case Management Orders; reopen F(1) discovery; Plaintiff's privileged discussions with his attorney Thomas W. Gooch after retention regarding when he knew that Defendants actions were malpractice should be removed from the record; find that Plaintiff's objections of "undue burden" to Defendants" Supplemental Requests should be ruled/treated the same as Defendants' discovery objections of undue burden; determine whether a hearing on Plaintiff's objections made at Plaintiff's deposition were valid; have all Court orders redesignated to match the enter date to the file date and to the hearing date; strike all motions instigated by the Court; all stipulations must be signed by the party making the stipulation; proposed order not agreed to by the Plaintiff should not have been sent to this Honorable Court and should not have been entered; Plaintiff, a Party with a Pro Se appearance previously filed, should have been allowed to hear and speak at the Zoom proceedings when his attorney was hospitalized; oral motions not filed or noticed should not be allowed; the Judge should not be allowed to make an oral motion and grant his own oral motion; depositions that violate (multiple) Supreme Court rules should be stricken; Zoom depositions with missing exhibits should be stricken, Zoom depositions where the officer authorized to administer oaths was never given all exhibits used should be stricken; Defendants' ex parte communication on November 9, 2022 between non-attorney Ms. Wang and Plaintiff's former attorney Julie C. Williams (formerly Julia C. Floyd) and any other ex parte communication between: this Honorable Court; Plaintiff's former attorneys and Defendants' former offices should be revealed; the Order entered on December 6, 2022 should be stricken and a corrected Order should replace it because: there was no order entered on November 11, 2022 (VETERANS DAY); allow the contemporaneous audio recording of Defendant Hans Mast deposition made by the officer authorized to administered oaths be entered in to the record as evidence for the purpose of proof that the Deposition Of Defendant Hans Mast contained numerous major violation of Supreme Court Rules ;strike the Zoom Deposition of Defendant Hans Mast completed in violation of numerous Supreme Court Rules without the waiver of said violation by the Parties; grant Plaintiff's motion to Depose Defendant Hans Mast; deny Defendants' Motion for Summary Judgment based upon the Zoom deposition of Defendant Hans Mast and disregarding the Law of the State of Illinois regarding the Statute of Limitation for Legal Malpractice and the requirement of pecuniary loss as determined by the Illinois Supreme Court in 2022 IL 126935 SUBURBAN REAL ESTATE SERVICES, INC., et al., Appellees, v. WILLIAM ROGER CARLSON JR. et al., Appellants; upon remand to consider Plaintiff's additional vicarious pecuniary losses stemming from Defendants erroneous settlement advice in the underlying case to release the homeowners for $5,000.00 (the McGuires in the underlying

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case

and grant any other relief that the court finds appropriate.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name. Fill in your address, telephone number, and email address, if you have one.	/s/ Paul R Dulberg *Your Signature*	4606 Hayden Ct. *Street Address*	
	Paul R Dulberg *Your Name*	McHenry, Illinois, 60051 *City, State, ZIP*	
	pdulberg@icloud.com *Email*	(847) 497-4250 *Telephone*	*Attorney # (if any)*
All appellants must sign this form. Have each additional appellant sign the form here and enter their complete name, address, telephone number, and email address, if they have one.	**Additional Appellant Signature** /s/ *Signature*	*Street Address*	
	Name	*City, State, ZIP*	
	Email	*Telephone*	*Attorney # (if any)*

GETTING COURT DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

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Page 4 of 6
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PROOF OF SERVICE ***(You must serve the other party and complete this section)***

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

In **1b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

1. I sent this document:

   a. To:

   Name: George K. Flynn
   First Middle Last

   Address: 200 S. Wacker Drive #2550, Chicago, Illinois, 60606
   Street, Apt # City State ZIP

   Email address: gflynn@karballaw.com

   b. By:

   ☑ An approved electronic filing service provider (EFSP)

   ☐ Email *(not through an EFSP)*

   Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

   ☐ Personal hand delivery to:

   - ☐ The party
   - ☐ The party's family member who is 13 or older, at the party's residence
   - ☐ The party's lawyer
   - ☐ The party's lawyer's office

   ☐ Mail or third-party carrier

In **c**, fill in the date and time that you sent the document.

   c. On: March 3, 2023
   Date

   At: _____ ☐ a.m. ☐ p.m.
   Time

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

2. I sent this document:

   a. To:

   Name: _____
   First Middle Last

   Address: _____
   Street, Apt # City State ZIP

   Email address: _____

   b. By:

   ☐ An approved electronic filing service provider (EFSP)

   ☐ Email *(not through an EFSP)*

   Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

   ☐ Personal hand delivery to:

   - ☐ The party
   - ☐ The party's family member who is 13 or older, at the party's residence
   - ☐ The party's lawyer
   - ☐ The party's lawyer's office

   ☐ Mail or third-party carrier

   c. On: _____
   Date

   At: _____ ☐ a.m. ☐ p.m.
   Time

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In **3**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

3. I sent this document:

a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:

☐ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.

☐ Personal hand delivery to:

- ☐ The party
- ☐ The party's family member who is 13 or older, at the party's residence
- ☐ The party's lawyer
- ☐ The party's lawyer's office

☐ Mail or third-party carrier

c. On: _____
Date

At: _____ ☐ a.n ☐ p.m.
Time

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the Proof of Service is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

6184530
Attorney # (if any)

Print Form Save Form Reset Form

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McHenry County, Illinois
2017LA000377
Date: 3/6/2023 7:04 PM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts

STATE OF ILLINOIS, CIRCUIT COURT McHenry COUNTY	PROOF OF DELIVERY	For Court Use Only

Instructions	
Directly above, enter the name of the county where the case was filed.	
Enter the name of the person or company that filed this case as Plaintiff/Petitioner.	PAUL R. DULBERG **Plaintiff / Petitioner** *(First, middle, last name or Company)*
	v.
Enter the name of the Defendants/ Respondents.	
Enter the Case Number given by the Circuit Clerk.	Hans Mast and The Law Offices of Thomas J. Popovich **Defendants / Respondents** *(First, middle, last name, or business name)* 2017LA000377 **Case Number**

In **1**, enter the name of each court document you are sending.

1. I am sending the following court document: NOTICE OF APPEAL (CIVIL)

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **ust** enter the lawyer's information.

a. To:

Name: GEORGE (*First*) K. (*Middle*) FLYNN (*Last*)

Address: 200 S. WACKER DRIVE, #2550, CHICAGO, ILLINOIS, 60606 (*Street, Apt #*, *City*, *State*, *ZIP*)

Email address: gflynn@karballaw.com

In **1b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **ust** use one of the first two options. Otherwise, you may use one of the other options.

b. By:

- ☐ An approved electronic filing service provider (EFSP)
- ☑ Email *(not through an EFSP)*

Only use one of the methods belo if you do not have an email address, or the person you are sending the document to does not have an email address

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

In **c**, fill in the date and time that you are sending the document.

c. On: 03/06/2023 (*Date*) at: 4:58 (*Time*) ☐ a.m. ☑ p.m.

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Page 1 of 2
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Enter the Case Number given by the Circuit Clerk: 2017LA000377

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **ust** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

CAUTION: If you and the person you are sending the document to have an email address, you **ust** use one of the first two options. Otherwise, you may use one of the

In **c**, fill in the date and time that you are sending the document.

If you are sending your document to more than 2 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

2. I am sending this document:

a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:

☐ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

Only use one of the methods belo if you do not have an email address, or the person you are sending the document to does not have an email address

☐ Personal hand delivery to:

- ☐ The party
- ☐ The party's family member who is 13 or older, at the party's residence
- ☐ The party's lawyer
- ☐ The party's lawyer's office

☐ Mail or third-party carrier

c. On: _____ at: _____ ☐ a.m. ☐ p.m.
Date *Time*

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

I certify that everything in the *roo o De i er* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ JEFF LANCASTER
Your Signature

Jeff Lancaster - JPL Process Service, LLC
Print Your Name

(866) 754-0520
Telephone

_____
Attorney # (if any)

14482 BEACH BLVD, STE X
Street Address

WESTMINSTER, CA 92683
City, State, ZIP

info@jplps.com
Email

TTIN COU T OCUM NT MAI : ou should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

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KATHERINE M. KEEFE
Clerk of the Circuit Court
22nd JUDICIAL CIRCUIT McHENRY COUNTY
2200 N. Seminary Avenue
Woodstock, IL 60098
www.mchenrycircuitclerk.org

Civil Division
815.334.4310
Criminal/Traffic Division
815.334.4190
Felony/Juvenile Division
815.334.4313
Fax
815.338.8583

** FILED ** Env: 21759412
McHenry County, Illinois
2017LA000377
Date: 3/7/2023 1:53 PM
Katherine M. Keefe
Clerk of the Circuit Court

March 7, 2023

ALPHONSE A TALARICO
707 SKOKIE BLVD, STE 600
NORTHBROOK, IL 60062

Title: DULBERG, PAUL VS MAST, HANS, ET AL
Case Number: 2017LA000377
Appellate Court Case Number: 2-23-0072

Please be advised that the electronic record is due at the Appellate Court on or before **May 5, 2023**.

- The Clerk's Statutory fee for this record is **$707.75** and shall be paid before the record can be electronically transmitted to the Appellate Court. ***If mailing payment, please contact the Appeals Division at (815) 334-4058 by April 21, 2023, to confirm that your payment has been received or pay on-line www.mchenrycircuitclerk.org click make payment then the 3rd green box.***

- The Clerk's Statutory fee for this record has been paid or waived by court order. The record was electronically transmitted to the Appellate Court on.

- This record contains Trial Court Exhibits:
  - You are responsible for picking up the exhibits and delivering them to the Appellate Court.
  - The exhibits will be mailed to the State Appellate Defender's Office.
  - The exhibits will be filed electronically with the Appellate Court.

To view or request a copy of the Record on Appeal, please contact the Appellate Court at (847) 695-3750.

Sincerely,

Katherine M. Keefe

Clerk of the Circuit Court McHenry County

Received 03-07-2023 01:55 PM / Circuit Clerk Accepted on 03-07-2023 01:56 PM / Transaction #21759412 / Case #2017LA000377

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This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

**** FILED ** Env: 21844901
McHenry County, Illinois
2017LA000377
Date: 3/13/2023 4:05 PM
Katherine M. Keefe
Clerk of the Circuit Court**

Instructions

Check the box to the right if your case involves parental responsibility or parenting time (custody/visitation rights) or relocation of a child.

Enter the appellate court case number if you have it.

In the space below "Appeal to the Appellate Court of Illinois," enter the number of the appellate district where you are filing the appeal and the county of the trial court.

If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that phrase. If the case name did not begin with "In re," enter the names of the parties as they appeared in the trial court documents. Below each party name, check either **Appellant** if the party filed the appeal or **Appellee** if the party is responding to the appeal.

To the far right, enter the trial court case number and trial judge's name.

☐ **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

Appellate Case No.: 2-23-0072

APPEAL TO THE APPELLATE COURT OF ILLINOIS,

Second **District**

FROM THE CIRCUIT COURT OF

McHenry **County**

In re

Plaintiffs/Petitioners *(First, middle, last names):*

☑ **Appellant** ☐ **Appellee**

Paul R. Dulberg

v.

Defendants/Respondents *(First, middle, last names):*

☐ **Appellant** ☑ **Appellee**

Hans Mast

The Law Offices of Thomas J. Popovich, p.C.

Trial Court Case No.: 17LA000377

Honorable

Joel D. Berg for S.J. only

Judge, Presiding

In **1**, enter your name.

If trial exhibits are important to your appeal, you need to make sure the trial court clerk has them before the record is prepared. **Be sure to read *How to Order the Record on Appeal.***

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name.

Enter your complete current address, telephone number, and email, if you have one.

REQUEST FOR PREPARATION OF RECORD ON APPEAL

1. Notice is hereby given to the trial court clerk that:

Paul (*First*) R. (*Middle*) Dulberg (*Last*)

requests the preparation of the Record on Appeal in the above case.

2. I request that the trial court clerk prepare the Record on Appeal in accordance with Illinois Supreme Court Rule 321. I request that the Record on Appeal include all documents filed, all judgments and orders entered, all documentary exhibits entered at trial, and all Reports of proceedings prepared in accordance with Illinois Supreme Court Rule 323.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

contact@lawofficeofalphonsetalarico.com
Email

6184530
Attorney # (if any)

707 Skokie Boulevard Suite 600
Street Address

Northbrook, Illinois 60062
City, State, ZIP

(312) 808-1410
Telephone

Received 03-14-2023 09:27 AM / Circuit Clerk Accepted on 03-14-2023 11:44 AM / Transaction #21844901 / Case #2017LA000377
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APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

DULBERG, PAUL
Plaintiff/Petitioner

v.

MAST, HANS ET AL
Defendant/Respondent

Reviewing Court No: 2-23-0072
Circuit Court/Agency No: 2017LA000377
Trial Judge/Hearing Officer: JOEL D BERG

2
E-FILED
Transaction ID: 2-23-0072
File Date: 4/24/2023 10:03 AM
Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

REPORT OF PROCEEDINGS - TABLE OF CONTENTS

Date of Proceeding	Title/Description	Page No.
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McHenry County, Illinois
17LA000377
Date: 1/25/2021 11:03 AM
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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 10th day of May, 2018, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE GOOCH FIRM, by
MS. SABINA WALCZYK,
On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.

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THE COURT: Let's go to work on Dulberg.

MS. WALCZYK: Good morning, Your Honor.

THE COURT: Good morning.

MS. WALCZYK: Sabina Walczyk on behalf of Dulberg.

MR. FLYNN: Good morning. George Flynn on behalf of the Popovich firm and Hans Mast.

THE COURT: It is -- it is rare when I know both the plaintiff and the defendant ahead of time. Only through the courtroom, but still unusual.

I looked at -- I'm going to tell you what I'm thinking. And then if you choose to argue, you can to -- if you wish to convince me that I'm wrong; or we can go forward. Either is fine.

I felt that the 2-615 motion was appropriate because I felt that -- and I -- for a specific reason, not -- not perhaps all the reasons that were cited by the defendant. I felt that the complaint, when it talked about how -- I'm looking for the words, misled -- when it said that the attorneys misled -- lied and misled Mr. Dulberg, I felt that there was some specificity that was going to be required. Because they -- ultimately, these things are going to factor into the statute of

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limitations issue. And if you're going to say that it was a breach of his duty in lying or misleading, I think we need more particularity in the allegations. You can't just make a conclusory statement to that effect.

That's my perspective. What would you like -- I'll give you an opportunity -- opportunity to replead; but if you want to argue against my thinking, I'll listen.

MS. WALCZYK: Well, Your Honor, I -- I won't argue with the Court. If Your Honor would like some more specificity as to those certain terms, we can certainly replead and plead those a little bit more specifically to --

THE COURT: And with respect to the discovery rule issue --

MS. WALCZYK: Uh-huh.

THE COURT: -- since it's going to come up one way or another, although I think it's a question of fact, I would like to see it touched upon, because I'm not following the -- the fact that he got more from the arbitrator than had been initially suggested by his attorneys, isn't really telling me anything. So I need maybe a little bit more

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information to understand the relationship of the two things.

With respect to the issue of -- on the 2-619, I felt that in light of how I was going with the 2-615, I really couldn't rule on the -- the application of the discovery rule. And, ultimately, I saw that in the long run, it was going to be a question of fact, and I would probably need -- and I could only address that with some more facts than what's just contained in the complaint.

With respect to estoppel, I didn't agree -- and you can tell me why you think I'm wrong, but I didn't agree with the argument that you were making because it -- it, carried to its logical conclusion, I could mislead and lie to my client about the -- about the implications and why he should settle, and then once he agrees to it, then I'm -- I'm released from my breach of my duty.

So I don't think that it -- that that was the type of scenario involved when the courts were discussing the estoppel issue.

Do you have anything -- do you want to contest that?

MR. FLYNN: Not at this time, Your Honor. I --

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I've always learned that it's better to quit while you're ahead. And with -- without giving a roadmap to the plaintiff, I do think that having their best complaint on file benefits us all.

THE COURT: Yes.

MR. FLYNN: So going back to the 2-615 issues, again, a legal malpractice case, they've got to plead and prove, not only the legal malpractice, but the elements of the underlying case. And it seemed to me, and as we pointed out, that -- that all of the allegations were very conclusory. That they would have gotten more, they wouldn't have done this, that the -- that Hans Mast and the Popovich firm should have undertaken additional actions in the underlying case, but they don't say what those are. And I think that they -- they're required to if they believe that there was a breach of a duty that led to damages.

The high-low agreement, which is very confusing to me and to my client, frankly, because he's never seen it, and as I understand it, that's outside of the four corners --

THE COURT: It is outside, but it did lead to an area where I was also a little bit confused. And

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I -- and I think you touched on -- I'll ask you: Is the complaint having to do with the settlement with the McGuires, or does it somehow relate to the suit that continued with respect to Gagnon and the high-low agreement?

MS. WALCZYK: Well, I think it's a little bit of both, because it started with the suit against McGuires, which settled. And then it looks like there was a high-low agreement signed.

THE COURT: Okay.

MS. WALCZYK: And --

THE COURT: Was it signed by Mr. Mast?

MS. WALCZYK: Oh, I believe it was signed by Mr. Dulberg. I haven't seen it.

THE COURT: Okay.

MS. WALCZYK: However, we can attach it if -- if you want --

THE COURT: If -- if you are going to allege malpractice as a result of entering into the high-low agreement, yes, I would require you, then, to attach it and to make that a little more explicit.

MS. WALCZYK: Yes.

THE COURT: Because I -- I came away thinking

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that was not part of your complaint, but I wasn't a 100 percent sure.

Also, let's see -- yeah, I need to know with some specificity what facts were concealed and how he was misled. I had problems with, particularly, I had -- paragraphs 20 and 21 and felt that you should have included more in that. And I won't probably say more than that.

MS. WALCZYK: Uh-huh.

THE COURT: And I -- on the estoppel argument, as I've said, I don't think that it is clear that the signing of the release was something that could be assumed to be knowing and voluntary when the plaintiff is alleging that he was misled as to the ramifications of that. Excuse me. Let's see. Okay.

Any -- so I'm granting on the 2-615. I will grant you leave to refile or replead.

MS. WALCZYK: Okay.

THE COURT: And what else? Is there anything else that we need?

MR. FLYNN: Just as a housekeeping, again, depending on what theory you're going under, if it's related to the Gagnon settlement, and we may have

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more people coming to the party; but if not, then that's it.

THE COURT: Yeah. I mean, if you're going to draw that in, then I need it a little more explicit.

MS. WALCZYK: Okay.

THE COURT: And I got -- in fact -- I'm reading from my notes. I need facts on what was false, misleading and what -- what you mean by coercion.

MR. FLYNN: So the 615 is granted with leave to replead.

THE COURT: Yes.

MR. FLYNN: I wasn't clear, I guess, on whether there's an actual ruling on the 619 or --

THE COURT: 619, I'm denying because --

MR. FLYNN: Okay.

THE COURT: -- there's a question of fact --

MR. FLYNN: Okay.

THE COURT: -- at this stage.

And I think that even if they include additional facts in their complaint, I would still come back to it being a question of fact, because I -- there's going to be a lot more about their relationship than I think can be reflected in merely the complaint. I would -- so I mean, if you were to

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bring another 2-619, feel free.

MR. FLYNN: Sure.

THE COURT: But I would still think it's going to be a question of fact as to what is clear -- Dulberg's claims are with respect to how he was misled or facts were concealed.

MR. FLYNN: Okay.

THE COURT: Because it's going to depend on their interaction.

MR. FLYNN: And it is the -- the language of statute is "knew or reasonably should have been known." And, again, this -- he does have counsel that came in right after my clients got out. So, again, the Blue Water Partners case says you -- potentially, you can't bury your head in the sand.

THE COURT: No, you can't. But because I -- of the absence of information --

MR. FLYNN: Fair enough.

THE COURT: -- I was reluctant to go further. The statute of limitations, you might get a little bit farther, but I still might run into a fact question.

MR. FLYNN: Understood.

THE COURT: So how long do you need?

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MS. WALCZYK: If I could have 28 days, Your Honor.

THE COURT: Sure.

MS. WALCZYK: We have a trial coming up.

THE COURT: And to answer or otherwise plead?

MR. FLYNN: 28, please.

THE COURT: All right. That would -- excuse me. Why don't we come back in -- 60 days is July 9th. How about July 11th, a Wednesday? Or do you have -- it's all the same to me, so long as I am here.

MR. FLYNN: Let's see. I believe I'm going to be out of state that week.

THE COURT: Okay. When is it convenient for you to come here? She's here all the time, so I don't --

MR. FLYNN: The following week would be --

THE COURT: What day works for either of you the following week?

MS. WALCZYK: We may actually have a trial that week. That may or may not go; I'm not sure at this point. At least the first two days, if we could do towards the end of week, that would be great for us.

THE COURT: 20th?

MR. FLYNN: 20th works.

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MS. WALCZYK: That's perfect.

THE COURT: All right. We'll see you on July 20th.

MR. FLYNN: Thank you, Your Honor.

MS. WALCZYK: Thank you very much.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 20th day of July, 2018, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE GOOCH FIRM, by
MS. SABINA WALCZYK,
On behalf of the Plaintiff;
KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.

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THE COURT: Okay. Next is Dulberg versus Mast.
MS. WALCZYK: Good morning, your Honor.
THE COURT: Good morning. We're missing --
MS. WALCZYK: Yes, he's coming.
Sabina Walczyk on behalf of Dulberg, who is present.
THE COURT: Okay. Good morning.
MR. FLYNN: George Flynn on behalf of the Popovich firm and Hans Mast.
THE COURT: All right.
MS. WALCZYK: Your Honor, we filed a first amended complaint and --
THE COURT: In response to the motion to dismiss?
MS. WALCZYK: No, no, no. A first amended complaint, and they filed a motion to dismiss.
THE COURT: Okay. So you want to brief it?
MS. WALCZYK: Yes, please. We're looking for 28 and 14.
THE COURT: Okay. That ends the briefing schedule on August 31st. All right. We can do the hearing September 12th, a Wednesday.
MS. WALCZYK: The 12th?
THE COURT: Does that work?

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MS. WALCZYK: Yes.

THE COURT: Okay. That will be 10:00 o'clock. I'm assuming this is not a exhibit (indiscernible), so I don't need courtesy copies. I'll just rely on what's in the court file.

MR. FLYNN: Okay. If we can already have courtesy copies of our motion and the first amended complaint attached, I --

THE COURT: To be honest, I might have put that away simply because I have no way to store motions for that long. That's why I'm relying on the electronic file.

MR. FLYNN: Thank you.

MS. WALCZYK: Thank you very much.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
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STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	No. 17 LA 377

ELECTRONICALLY RECORDED Report of Proceedings had in the above-entitled cause before The Honorable Thomas A. Meyer, Judge of the Circuit Court of McHenry County, Illinois, on the 12th day of September, 2018, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

CLAUSEN MILLER, PC, by:
MR. GEORGE K. FLYNN,

on behalf of the Defendants.

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THE COURT: Counsel, which one you on?

MR. FLYNN: Dulberg.

THE COURT: Is opposing counsel here?

MR. FLYNN: She's not. I received an email. She said she was going to be late. She's in Waukegan.

THE COURT: I'm sorry, how late?

MR. FLYNN: I'm not sure how late, Judge. She said she's in Waukegan. Mr. Gooch was apparently ill today, so she's going to be covering today's hearing.

THE COURT: And she's in Waukegan now?

MR. FLYNN: She's in Waukegan. Originally thought she might be able to be here by 10:30, but she said the judge stepped up 15 minutes late on her other matter, so --

THE COURT: I mean, that's about an hour drive.

MR. FLYNN: The email I received was -- I was in the car as well, so 10 or 15 minutes ago.

THE COURT: Okay. See if you can email her and find out if we can get an ETA.

MR. FLYNN: Okay.

THE COURT: And we'll work from there.

MR. FLYNN: Okay. Thanks, Judge.

THE COURT: Thank you.

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(Whereupon, the above-entitled cause was passed and subsequently recalled.)

THE COURT: Okay. Counsel, if you can approach. So Dulberg versus Mast.

MR. FLYNN: Good morning, Your Honor. George Flynn on behalf of the defendants. I did -- I received communication from counsel. She was walking to her car at the Waukegan courthouse at 11 -- I'm sorry, at 10:10, and she indicated that her GPS estimated she would arrive here at one hour and six minutes.

THE COURT: 11:30-ish. Fair?

MR. FLYNN: Fair.

THE COURT: All right. Well, rather than delay this, I'm going to rule from the bench based upon my review of the amended complaint and consideration of the briefs in support of and opposition to.

I'm going to strike the complaint. The basis of my decision is I think the complaint states a cause of action, but there are so many things in there that are unsupported by factual allegations that I think it best just to deal with them now rather than at a later date. I reviewed -- and I'm looking for the specific allegations of negligence within the amended complaint. I felt that in paragraph 31, subparagraph (a) included

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enough of a fact that I -- I'm going to tell you the ones I think can stand. Then I'm going to strike the rest of them and try to explain it. I think paragraph (a) gave me enough of a fact that I would allow it to stand. I felt that (b) was a conclusion; (c) was redundant of (a); (d) I was going to allow to stand, it alleges something; (e) I was going to allow to stand; (f) is a conclusion, it's not a fact -- Where are we? -- (g) I'm just going to strike, it's a conclusion; (h), it's a conclusion, strike it; (i) it's a conclusion, strike it; (j) I'm going to allow to stand; (k) I'm -- I'm going to strike. It says there were necessary facts, but doesn't tell me what those necessary facts were. I think an allegation of coercion can stand, but I'm not quite sure what it is we're alleging.

MR. FLYNN: So just to clarify, Judge, you're ruling that there can be an allegation of coercion, but it's not supported by facts here --

THE COURT: Yeah.

MR. GLYNN: -- under the 615 standard?

THE COURT: Yeah.

MR. GLYNN: Okay.

THE COURT: (l) there might be some facts in there,

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but I'm not sure what they are, so I'm going to strike it. I mean, there might be a factual basis to support what they're getting at, but I don't know what it is. I don't think it's supported, so I think it's a conclusion. I'll strike -- (m) is a conclusion, I'll strike it; (n) is I think duplicative of (a) and (c); and (o) is just a conclusion.

I will allow them to replead because I think the ones I've -- and I hate to make you the note-taker, but it saves you a return trip, and I was going to ask questions, but these -- this is what I felt about the allegations in the complaint. I think there is -- this -- for going -- as far as going forward is concerned, if there were more paragraphs that weren't conclusions, I might have allowed the complaint to stand and just strike -- strike them on their face rather than go through the trouble of re-pleading. Unfortunately, most of the paragraphs were conclusions that I felt had to be stricken, and I'm dealing with that now. As a result, I'm striking the complaint.

Plaintiff gets to re-plead and the -- and if they just -- and if they limit it to the ones I've allowed to stand that I've advised you about that I think are adequate, then I'm going to -- I would deny

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future 615 based on the same concepts.

Does that make sense?

MR. FLYNN: I -- without having gone through each of the subparagraphs, yes, I understand the Court's ruling. I think that the general theme of our motion was that the plaintiff hasn't set forth what a breach of any duty would have been as far as the McGuires and what legal standard they would have been held to and how they breached that.

THE COURT: I think --

MR. GLYNN: Just because they're a land owners and an accident happened on their property doesn't mean they're liable on this.

THE COURT: And I -- actually, I take that back. I agree, but I think that there was enough implicit in the allegations that I still felt that there was going to be an adequate cause of action, and to clarify what I said earlier, I would agree that they've got to explain that better, but it's -- I probably -- since I'm striking the complaint, I'm going to direct them to do that. I felt that I could read enough in here to understand what they were getting at, that I wouldn't have struck the complaint solely on that basis.

Does that answer your question?

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MR. FLYNN: I think so.

THE COURT: Okay. There's a lot to unpack here, but I think that there are enough allegations and enough of an understanding of where they're going that I think they're going to be able to state a cause of action, at least insofar as 2-615 is concerned.

We'll see what they say in their new complaint. Do you want to give them 28 days --

MR. FLYNN: Sure.

THE COURT: -- to file?

What would you like to do? Twenty-eight after or --

MR. GLYNN: Yes.

THE COURT: Okay. So let's put the case out 60 days. That will each give you plenty of time, and that will take us to November 13th. That is a Tuesday. Does that day work for you?

MR. FLYNN: Yes.

THE COURT: Okay. And for purposes of the record, we were advised that -- about 10:15 that plaintiff's counsel was about an hour drive away having been detained in Waukegan. As a result, I just decided to -- rather than continuing the hearing and going through the process I just did, I would provide my ruling and save

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everybody some effort.

Questions?

MR. FLYNN: 9:00 o'clock status on November 13th?

THE COURT: Yes.

Mr. Dulberg, any questions? I don't really want you to get substantively involved because you're represented, but do you want any clarification of anything I just said?

MR. DULBERG: Clarification, no. But I will say that I don't think that we should have to try the case in the pleading.

THE COURT: And you don't have to. And that's not what I've said. That's not what he said. But there are certain allegations that I didn't feel were adequate and that's the basis of my dismissal.

MR. DULBERG: (Inaudible).

THE COURT: I don't want you to argue too much because, again, you've got an attorney and I don't want to involve you. I just -- Do you have any questions?

MR. DULBERG: No.

THE COURT: Okay. All right. Counsel, if you could draft the order.

MR. FLYNN: I will, Judge, based on my -- the note-taking that I did, and can I reference the

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transcript. This is recorded, I believe, --

THE COURT: Yeah.

MR. FLYNN: -- correct?

THE COURT: Yeah, that's fine.

MR. FLYNN: Okay.

THE COURT: Yeah, I think they're going to need the transcript probably to get through all that.

MR. FLYNN: Fair enough.

THE COURT: Okay? Thank you.

MR. FLYNN: Thank you, Judge.

(Which was and is all of the evidence offered at the hearing of said cause this date.)

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Page 10 of 10

STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

I, Stacey A. Collins, an Official Court Reporter for the Circuit Court of McHenry County, State of Illinois, do hereby certify that I reported in shorthand the proceedings had in the above entitled cause and that the foregoing is a true and correct transcript of all the proceedings heard.

Stacey A. Collins, CSR
Official Court Reporter
License No. 084-002377

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** FILED ** Env: 17227615
McHenry County, Illinois
17LA000377
Date: 3/24/2022 2:39 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	
vs.	No. 17 LA 377
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 15th day of October, 2018, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE GOOCH FIRM
BY: MS. SABINA WALCZYK

On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC
BY: MR. GEORGE K. FLYNN

On behalf of the Defendants.

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THE COURT: Dulberg vs. Mast.
MR. FLYNN: Morning, your Honor.
THE COURT: Morning.
MR. FLYNN: George Flynn for the defendants. Plaintiff's counsel, I believe, is in Judge Costello's courtroom.
THE COURT: Okay. We'll pass. Have a seat and we'll call it back.
(WHEREUPON, the afore-captioned cause was recalled.)
THE COURT: Dulberg?
MS. WALCZYK: Yes.
THE COURT: Okay.
MS. WALCZYK: Good morning, your Honor. Sabina Walczyk on behalf of Dulberg who is present.
MR. FLYNN: George Flynn on behalf of the defendants.
THE COURT: Okay. Do you have a motion?
MS. WALCZYK: Yes, this is our motion to withdraw as well as our motion for extension of time to file a second amended complaint.
THE COURT: Any objections?
MR. FLYNN: No, Judge.
THE COURT: Okay. I will grant as to both of

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those. I'm going to enter and continue -- I'm going to grant the motion to extend time and enter and continue it until we see who is going to come in, if anybody. So why don't I put the case out 28 days. That takes us to November 13th.

Does that work for you?

MR. FLYNN: It does. In fact, I think we already have a status set for that day.

THE COURT: Do we? Yes, we do. Wow, I'm brilliant. All right. So we will see you on that day, and I will grant you 21 days.

Have you previously filed an appearance in this case?

MR. DULBERG: This would be -- well, I was here last time.

THE COURT: No, but did you --

MS. WALCZYK: I don't believe so. I don't believe there is an appearance on file.

THE COURT: Okay. All right. Then either way, if you don't get an attorney, you have to file an appearance. Make sure you send a copy to him. We don't do that. If you don't do anything, the case will be dismissed. If you get an attorney, then he or she will know what to do.

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All right. So we will see you November 13th. Anything else?

MS. WALCZYK: No.

THE COURT: Okay.

MS. WALCZYK: Thank you.

MR. FLYNN: Have a good day.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) ss:
COUNTY OF McHENRY)

I, KRISTINE L. FERRU, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

_____Kristine Ferru_____

Certified Shorthand Reporter

License No. 084-003898

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** FILED ** Env: 15602122
McHenry County, Illinois
17LA000377
Date: 11/15/2021 1:47 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
vs.) No. 17 LA 377
)
THE LAW OFFICES OF THOMAS)
J. POPOVICH, P.C. and)
HANS MAST,)
)
Defendants.)

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 13th day of November, 2018, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

MS. JULIA WILLIAMS
ATTORNEY AT LAW

On behalf of the Plaintiff;

MR. GEORGE K. FLYNN
ATTORNEY AT LAW

On behalf of the Defendants.

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MS. WILLIAMS: Good morning, your Honor. This is line 7, Dulberg versus Pop- --

THE COURT: Yes.

MS. WILLIAMS: Law Offices of Thomas Popovich. Julie Williams, new counsel on behalf of the plaintiff. We did file an appearance, myself and Ed Clinton, last week. And we also filed a motion for extension of time to file an amended pleading. Opposing counsel has indicated that he's had no objection to that and we'd just like to December 6th and then get a -- and time to answer or respond.

MR. FLYNN: Right, the --

MS. WILLIAMS: I apologize. I didn't let you introduce yourself.

MR. FLYNN: George Flynn for the defendants. That takes us to January 3. Due to -- because of the holiday, if I can have until January 10 --

THE COURT: Sure.

MR. FLYNN: -- to file a response of pleading --

THE COURT: And have you started discovery?

MR. FLYNN: We have not. This is -- there's no complaint on file right now.

THE COURT: Okay.

MR. FLYNN: Actually, I take that back.

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Mr. Gooch served some discovery shortly before he withdrew. My position would be I'd rather not answer that until we're at issue, but --

THE COURT: Let's go towards late February. How is the week of February 25th for status and F-1?

MS. WILLIAMS: That should be fine.

THE COURT: What days -- what day works for you guys?

MS. WILLIAMS: I'm actually really open that week --

MR. FLYNN: Same here.

MS. WILLIAMS: -- since it's far enough out, so --

THE COURT: 25th, Monday?

MS. WILLIAMS: 25th works great.

THE COURT: All right. I'll see you then.

MS. WILLIAMS: At 9:00 a.m. your Honor?

THE COURT: 9:00 a.m.

MS. WILLIAMS: Thank you.

THE COURT: All right. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, CRISTIN M. KELLY, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Cristin M. Kelly
Certified Shorthand Reporter
License No. 084-004529
Date: November 15, 2021

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** FILED ** Env: 15626003
McHenry County, Illinois
17LA000377
Date: 11/16/2021 3:49 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 25th day of February, 2019, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE CLINTON LAW FIRM, by
MS. JULIA C. WILLIAMS
On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.

Received 11-16-2021 04:16 PM / Circuit Clerk Accepted on 11-16-2021 04:20 PM / Transaction #15626003 / Case #17LA000377
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THE COURT: Any other agreed or uncontested? Good morning.

MR. FLYNN: George Floyd. I believe this is No. 8.

MS. WILLIAMS: Yes. Good morning, Your Honor. Julia Williams on behalf of Paul Dulberg. This is No. 8 on the call.

THE COURT: Okay.

MS. WILLIAMS: So --

MR. FLYNN: I have a substitution first.

THE COURT: Okay.

MR. FLYNN: I switched firms. So I've got the order.

THE COURT: All right. Any objections?

MS. WILLIAMS: No. And then, Your Honor, we filed a motion for default judgment. I talked to counsel. I don't think it makes sense to move forward with it, because they fully intend to answer the complaint.

So we agreed to enter and continue that motion to grant them 14 days to file their answer. And then go ahead and give everyone 21 days to issue written discovery.

THE COURT: Okay.

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MS. WILLIAMS: And then just move forward with discovery. Maybe come back in 60 days?

THE COURT: I'll give you longer since you're just starting.

MS. WILLIAMS: That would be great.

THE COURT: The 28th, Tuesday. That's 90 days. Anytime around there is fine. That's the day after Memorial Day.

MS. WILLIAMS: I would prefer to skip the day after Memorial Day.

THE COURT: Okay.

MS. WILLIAMS: But anytime that week is...

THE COURT: How about the 31st, which is a Friday.

MS. WILLIAMS: Could we do the 30th?

THE COURT: Yeah.

MS. WILLIAMS: Is that okay with you?

THE COURT: Of course.

MR. FLYNN: Sure. I was just -- I was just thinking about booking a tee time after court, but that's okay.

THE COURT: May 30th then, 9:00 a.m., status at 1:00.

MS. WILLIAMS: Thank you, Your Honor.

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THE COURT: Okay. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, MAUREEN S. URBANSKI, an Official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Maureen S. Urbanski

Certified Shorthand Reporter
License No. 084-003308

Received 11-16-2021 04:16 PM / Circuit Clerk Accepted on 11-16-2021 04:20 PM / Transaction #15626003 / Case #17LA000377
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** FILED ** Env: 15630692
McHenry County, Illinois
17LA000377
Date: 11/17/2021 8:54 AM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 25th day of February, 2019, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE CLINTON LAW FIRM, by
MS. JULIA C. WILLIAMS
On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.

Received 11-17-2021 02:02 PM / Circuit Clerk Accepted on 11-17-2021 03:01 PM / Transaction #15630692 / Case #17LA000377
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THE COURT: Any other agreed or uncontested? Good morning.

MR. FLYNN: George Flynn. I believe this is No. 8.

MS. WILLIAMS: Yes. Good morning, Your Honor. Julia Williams on behalf of Paul Dulberg. This is No. 8 on the call.

THE COURT: Okay.

MS. WILLIAMS: So --

MR. FLYNN: I have a substitution first.

THE COURT: Okay.

MR. FLYNN: I switched firms. So I've got the order.

THE COURT: All right. Any objections?

MS. WILLIAMS: No. And then, Your Honor, we filed a motion for default judgment. I talked to counsel. I don't think it makes sense to move forward with it, because they fully intend to answer the complaint.

So we agreed to enter and continue that motion to grant them 14 days to file their answer. And then go ahead and give everyone 21 days to issue written discovery.

THE COURT: Okay.

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MS. WILLIAMS: And then just move forward with discovery. Maybe come back in 60 days?

THE COURT: I'll give you longer since you're just starting.

MS. WILLIAMS: That would be great.

THE COURT: The 28th, Tuesday. That's 90 days. Anytime around there is fine. That's the day after Memorial Day.

MS. WILLIAMS: I would prefer to skip the day after Memorial Day.

THE COURT: Okay.

MS. WILLIAMS: But anytime that week is...

THE COURT: How about the 31st, which is a Friday.

MS. WILLIAMS: Could we do the 30th?

THE COURT: Yeah.

MS. WILLIAMS: Is that okay with you?

THE COURT: Of course.

MR. FLYNN: Sure. I was just -- I was just thinking about booking a tee time after court, but that's okay.

THE COURT: May 30th then, 9:00 a.m., status at 1:00.

MS. WILLIAMS: Thank you, Your Honor.

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THE COURT: Okay. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, MAUREEN S. URBANSKI, an Official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

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Certified Shorthand Reporter
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** FILED ** Env: 15681175
McHenry County, Illinois
17LA000377
Date: 11/19/2021 4:07 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
vs.) No. 17 LA 377
)
THE LAW OFFICES OF THOMAS)
J. POPOVICH, P.C. and)
HANS MAST,)
)
Defendant.)

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 30th day of May, 2019, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

MS. JULIA WILLIAMS
ATTORNEY AT LAW

On behalf of the Plaintiff;

MR. GEORGE K. FLYNN
ATTORNEY AT LAW

On behalf of the Defendants.

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THE COURT: Yes?

MS. WILLIAMS: Good morning, your Honor. This is Dulberg versus Popovich. It's line 2 on your call. I'm Julia Williams. I represent the plaintiff.

MR. FLYNN: Good morning, your Honor. George Flynn for the defendants.

MS. WILLIAMS: So defendants have answered. We filed a motion for default. We'll withdraw that motion. It was entered --

THE COURT: Okay.

MS. WILLIAMS: -- and continued to today. Written discovery's been issued and defendants have answered, as the plaintiff. We tendered documents today. We have not tendered our written answers yet. We expect to do that within 7 days.

THE COURT: All right. Go ahead.

MS. WILLIAMS: This case -- this is a legal malpractice case, so it's a case within a case. We've tendered, I believe, over 2,000 pieces of paper, essentially. It's all electronic, but --

THE COURT: Yeah.

MS. WILLIAMS: -- but over 2,000 pages, and counsel's indicated that he tendered about 1500

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pages. So we anticipate the review of that taking some time. There were several depositions taken in the underlying case and those all need to be reviewed by both counsel to make sure that we have everything from the underlying case that was done in the underlying case. And then we need to decide are there any fact issues from the underlying case that we need to hash out in this case. And then I think we can start taking party deps. So I think we need a bit of time to get through the 3,000-some pieces of paper --

THE COURT: All right. So I was going to give you 90 days.

MS. WILLIAMS: I think that sounds good.

THE COURT: That's --

MR. FLYNN: That is to get started on --

THE COURT: Yeah, just put it out for status on F1 and I'll let you progress at your own speed. When in late August works for you?

MS. WILLIAMS: I am out that last -- that entire -- family vacation that entire last week of August.

THE COURT: Okay.

MS. WILLIAMS: If we could do sometime during

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the week of the 19th --

MR. FLYNN: Sure.

MS. WILLIAMS: -- or we can go into September 1st, but whatever defendant --

THE COURT: What's your preference?

MR. FLYNN: Doesn't matter to me. Why don't we go into September just to be safe? As long as it's not the week of the (indiscernible).

MS. WILLIAMS: So any time the 3rd, 4th, 5th, or 6th?

THE COURT: All are fine. So what's your preference?

MS. WILLIAMS: How's (indiscernible)?

MR. FLYNN: That's fine.

THE COURT: Sorry. What date?

MS. WILLIAMS: September 5th.

THE COURT: Okay. We'll see you then.

MS. WILLIAMS: At 9:00 a.m.?

THE COURT: Yeah.

MS. WILLIAMS: Thanks, your Honor.

MR. FLYNN: Thanks, Judge.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, CRISTIN M. KELLY, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Cristin M. Kelly
Certified Shorthand Reporter
License No. 084-004529
Date: November 17, 2021

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** FILED ** Env: 17299524
McHenry County, Illinois
17LA000377
Date: 3/30/2022 12:34 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,		
	Plaintiff,	
vs.		No. 17 LA 377
THE LAW OFFICES OF THOMAS J. POPVICH, P.C. and HANS MAST,		
	Defendants.	

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 5th day of September, 2019, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

MS. JULIA WILLIAMS
ATTORNEY AT LAW

On behalf of the Plaintiff;

MR. GEORGE K. FLYNN
ATTORNEY AT LAW

On behalf of the Defendants.

Received 03-30-2022 02:46 PM / Circuit Clerk Accepted on 03-30-2022 03:15 PM / Transaction #17299524 / Case #17LA000377
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THE COURT: Okay. Agreed or uncontested? Failing that, I'll start with my call. Dulberg versus Mast.

MS. WILLIAMS: Good morning, your Honor. Julia Williams on behalf of the plaintiff. I'm waiting for defendant. He said he'd be about five minutes late.

THE COURT: All right. We'll pass.

(Whereupon the afore-captioned cause was recalled.)

THE COURT: Anybody else ready?

MS. WILLIAMS: Good morning, your Honor.

THE COURT: Okay.

MS. WILLIAMS: On Dulberg, the first -- first line on your call. Julia Williams on behalf of Paul Dulberg.

THE COURT: Morning.

MR. FLYNN: Good morning, your Honor. George Flynn on behalf of defendants.

MS. WILLIAMS: So we're here on status of discovery. We've done written discovery. We've got some -- kind of 201(k) issues. It's not adversarial 201(k), but we need to do some 201(k) --

THE COURT: Okay.

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MS. WILLIAMS: -- conferences. We were actually going to meet after this today and take some time. We have -- we have asserted some privilege, some attorney-client privilege to some of the documents. We are likely going to waive that privilege, so we need to produce some additional documents from subsequent counsel. It's a legal malpractice case. Counsel subsequent to Popovich's firm.

THE COURT: All right.

MS. WILLIAMS: So why don't we take some time to do that. If it's okay with the Court, maybe 60 days to resolve all these issues, get the new supplemental, and then move into (f)(1)s.

THE COURT: Okay. What date did you have in mind? That puts us into November.

MS. WILLIAMS: Early, mid -- early to mid-November, I guess, would be --

THE COURT: What day?

MS. WILLIAMS: I would like to avoid the last week.

MR. FLYNN: Any date in November is fine with me, your Honor. I would like to have a resolution of the privilege issue, though. It sounds like the decision hasn't been made, so --

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Purchased from re:SearchIL

MS. WILLIAMS: I think we're waiving privilege. I'll say it on the record, we're going to waive privilege.

MR. FLYNN: Okay.

THE COURT: Okay.

MR. FLYNN: The only other issue that was raised -- I just reviewed the written discovery yesterday and you had (indiscernible) 201(k) that there was a bankruptcy that was mentioned kind of vaguely in one of the answers. It sounds or appears that either the bankruptcy judge or the trustee had enforced or required a mediation and a high-low agreement. To the extent that those documents are responsive to any of the requests -- and I'll have to go through them to see if they are. Otherwise I'll just issue a supplemental, but I think the bankruptcy file and communications with the trustee are probably responsive to our discovery, so I would just request that those be included in our --

MS. WILLIAMS: I think we produced a number of the bankruptcy issues, but we can talk about it today and definitely try to work out -- there's definitely -- there was a bankruptcy. We're not trying to hide that bankruptcy, so. And the trustee

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did resolve -- there was an arbitration based on the trustee's recommendation in the bankruptcy for the individual.

THE COURT: How's November 4th, Monday?

MS. WILLIAMS: That works for me, your Honor.

THE COURT: Okay. Then we will see you then, status (f)(1).

MR. FLYNN: Thank you, your Honor.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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) SS:
COUNTY OF McHENRY)

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendant.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 4th day of November, 2019, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE CLINTON LAW FIRM, by
MS. JULIA C. WILLIAMS, (Via CourtCall)
On behalf of the Plaintiff,
KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.

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THE COURT: All right. Let's go Dulberg versus Mast. Good morning. This is Judge Meyer. I'm a little early. I've got two cases on CourtCall. Is anyone on the phone for Dulberg versus Mast?

MS. WILLIAMS: Yes, your Honor. Good morning. This is Julia Williams on behalf of Paul Dulberg.

THE COURT: All right. Here we have in court here Mr. Dulberg, am I correct?

MR. DULBERG: Correct.

THE COURT: And counsel?

MR. FLYNN: George Flynn on behalf of Popovich.

THE COURT: Okay. I'll ask counsel here in court, what's going on?

MR. FLYNN: Judge, we are here for a status and my motion. I've got a motion to file an amended affirmative defense which I understand is -- has no objection.

THE COURT: Is that correct, counsel, no objection?

MS. WILLIAMS: No. Given the pleading standard, there is no objection.

THE COURT: Okay. All right. What have we done in (f)(1)?

MR. FLYNN: We haven't taken any depositions.

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We have exchanged written discovery. There is some outstanding supplemental answers owed by the plaintiff. My understanding they are out for signature.

You may recall last time we were here, your Honor, there was an indication on the record that the plaintiff is waiving a previously raised attorney-client privilege.

THE COURT: Okay.

MR. FLYNN: So I think they are amending the discovery answers and possibly producing more documents. I'm not sure.

THE COURT: Is that correct, counsel, not putting you on the spot, but is that an accurate representation?

MS. WILLIAMS: Right. So I think we have produced pretty much everything we have, but I can talk to counsel about the documents. But we are amending -- supplementing some of the discovery responses, and I'm working with my client on that now. And then I think there might be a couple other outstanding discovery issues that's something that counsel and I have been working on, and I think will be resolved --

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THE COURT: Okay.
MS. WILLIAMS: -- fairly quickly.
THE COURT: With that all being said, since you're still doing written, how about I put it on 90 days? That takes us to early February. February 3 is a Monday. Does that day work, or did you have something else in mind?
MR. FLYNN: Let's see.
MS. WILLIAMS: That's fine with me if that's fine with counsel.
MR. FLYNN: That's fine with me. It's the day after the Supper Bowl, but I'm really too old these days to have much fun for it. So --
THE COURT: All right. So it will be February 3 status (f)(1).
MS. WILLIAMS: Thank you, your Honor.
THE COURT: All right. I'll grant you to file the amended.
MR. FLYNN: Thank you, your Honor.
THE COURT: All right. Thank you.
(Which were all the proceedings had in the above-entitled cause this date.)

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Judy A. Carlson

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 3rd day of February, 2020, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE CLINTON LAW FIRM
BY: MS. JULIA C. WILLIAMS
On behalf of Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC
BY: MR. GEORGE K. FLYNN
On behalf of Defendants.

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THE COURT: Any other agreed, uncontested or sides?

MS. WILLIAMS: Good morning, Your Honor.

THE COURT: Good morning.

MS. WILLIAMS: Julia Williams. We're here on Dulberg vs. --

THE COURT: Okay. The Dulberg vs. Mast.

MS. WILLIAMS: Yes, that's correct. And I'm --

MR. FLYNN: Good morning, Your Honor.

MS. WILLIAMS: -- for plaintiff.

MR. FLYNN: George Flynn for defendants.

THE COURT: Okay. What are we doing?

MS. WILLIAMS: We're just going to set it out again for status on discovery. We are pretty well finished with written discovery, at least between the parties.

THE COURT: Really old for F1 written --

MS. WILLIAMS: Right. Here's our -- we're actually -- we should be done today. We had some 201(k) issues.

THE COURT: Okay.

MS. WILLIAMS: We are going to the law firm to look through their -- through their documents today. I believe everything has been produced, but we just

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want to verify -- there were some blank pages, and we just want to verify --

THE COURT: Okay.

MS. WILLIAMS: -- what those are.

So I think we're actually going to be fully completed with that today and looking to do -- getting ready to do deps, I think, is our next step --

THE COURT: How many are --

MS. WILLIAMS: -- for depositions.

THE COURT: How many F1 deps do you anticipate?

MS. WILLIAMS: Well, we'll have probably two. One from the firm and one -- defendant counsel and then defendant firm.

THE COURT: Okay.

MS. WILLIAMS: And then, obviously, the plaintiff. Now, whether we need more witness deps -- this is a legal malpractice case. Witness deps were taken in the underlying case. I don't know if we're going to need to take those a second time to --

THE COURT: I think I pre-tried the underlying case. I have a recollection of this, so -- but I'm not a hundred percent sure, so just throwing that

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out there...

MS. WILLIAMS: Okay.

MR. FLYNN: I think I did see Your Honor's name in connection with maybe one order in the case; but I don't see it as an issue.

THE COURT: Okay. I'll periodically throw it out there. But in any event, so if we come back in 60 days, do you think that gives you enough time to complete?

MR. FLYNN: I think it gives us enough time to complete the main F1 witnesses.

MS. WILLIAMS: At least the three parties.

MR. FLYNN: There were -- there were four -- four or five doctors deposed in the underlying case. And four other five other --

THE COURT: All right.

MR. FLYNN: -- (indiscernible). I don't know if we'll need to redo everybody, but I think we'll have a better idea after we take the party deps.

THE COURT: All right. Let's put it out 60 days. Can you make April 3rd, a Friday?

MS. WILLIAMS: Yes. Let me just double-check.

THE COURT: Okay.

MS. WILLIAMS: But I believe that's just fine.

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And that will be status completion of F1. That's -- yes.

THE COURT: That's just to tell me what we're supposed to be doing.

MS. WILLIAMS: Sure. So status completion of F1s on April 3rd, and we'll come back.

THE COURT: Okay.

MS. WILLIAMS: Thank you very much.

MR. FLYNN: Thanks, Judge.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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COUNTY OF McHENRY)

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 5th day of June, 2020, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE CLINTON LAW FIRM, by
MS. JULIA C. WILLIAMS (via Zoom),
On behalf of the Plaintiff;
KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.

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THE COURT: All right. The next one is Dulberg versus Mast.

MS. WILLIAMS: Good morning, your Honor. Julia Williams for Plaintiff, Paul Dulberg, on the phone.

THE COURT: Okay. And Mr. Dulberg is here. Do you expect the Defendant to show?

MS. WILLIAMS: Yes. Mr. George Flynn will be there this morning, so if you want to pass it if he's not there.

THE COURT: He just walked in.

If you could, introduce yourself.

MR. FLYNN: Good morning. George Flynn for Defendant.

THE COURT: All right. I'll ask counsel here, what is going on?

MR. FLYNN: Judge, we took Mr. Dulberg's deposition a few months ago. My client, Hans Mast, who is the primary handling attorney, was scheduled for his deposition, postponed that, and now it is scheduled for, I believe, June 25th.

THE COURT: Okay.

MR. FLYNN: After his deposition is taken by the Plaintiff, I'll be able to determine what, if any,

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other (f)1 witnesses I might --

THE COURT: Okay. Counsel on the phone, did you get all that?

MS. WILLIAMS: Yes. Yes. And we have spoken, so we're in agreement.

THE COURT: All right. So what is your agreement?

MS. WILLIAMS: We're in agreement that after Mr. Mast's deposition, we'll reassess as to whether there's any further (f)1 or (f)2s that need to be taken.

THE COURT: Do you want to come back in August or September?

MR. FLYNN: Either one would be fine with me.

MS. WILLIAMS: I would say early September, just in case there are any other (f)1s and then -- so we can finish those up over the summer.

THE COURT: All right. How about September 10th, Thursday, at 9:00 a.m.?

MS. WILLIAMS: That works for me.

Thank you, your Honor.

THE COURT: All right. That will be status (f)1. We'll see you then.

MR. FLYNN: Thank you, your Honor.

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MS. WILLIAMS: Thank you, your Honor.

(Which were all the proceedings had in the above-entitled cause this date.)

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Kathleen Strombach

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 10th day of September, 2020, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE CLINTON LAW FIRM, by
MS. JULIA C. WILLIAMS (via Zoom),
On behalf of the Plaintiff;
KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.

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THE COURT: Good morning.
MS. WILLIAMS: Good morning, your Honor.
THE COURT: We've got Julia Williams. Ms. Williams, are you on Dulberg?
MS. WILLIAMS: Yes, that's correct, your Honor.
THE COURT: And forgive my ignorance, are you with the Plaintiff?
MS. WILLIAMS: I am, your Honor. I represent the Plaintiff.
THE COURT: Okay.
MS. WILLIAMS: And counsel for Defendant should either be present in court or on the phone.
THE COURT: Not on the phone. Ms. Wong, can you hear me? Are you on Dulberg?
MS. WONG: No, I'm here for Hill.
THE COURT: Okay. Then I'm going to pass. Mr. Dulberg is here in court. I'm going to wait, then, you know, because we're up for status anyway. So I'll wait a few minutes see if defense counsel shows.
MS. WILLIAMS: Your Honor, defense counsel will not be on the call. I did speak with him, though, yesterday.
THE COURT: Okay. Okay. All right. Then let

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me deal with Hill. Pass.

(Whereupon the afore-captioned cause was recalled.)

THE COURT: Okay. You're going to have to come closer because the mic is on my computer.

Counsel, for the record, your name is?

MR. FLYNN: George Flynn, F-L-Y-N-N.

THE COURT: Counsel, can you hear him?

MS. WILLIAMS: Yes, I can, your Honor.

THE COURT: Okay. And your name, for the record?

MR. DULBERG: Paul Dulberg.

THE COURT: Did you hear that?

MS. WILLIAMS: Yes, your Honor.

THE COURT: Okay. Counsel, on Zoom, it's your motion.

MS. WILLIAMS: Julia Williams for Paul Dulberg. This is my motion to withdraw as counsel for Mr. Dulberg.

Mr. Dulberg is present in court and has been served with the motion, so we would just like the right to -- the opportunity to withdraw today, if it pleases the Court.

THE COURT: Okay. Any comment, Mr. Dulberg? I

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don't want to get into the nature of your relationship, but do you have anything to say, an objection to the motion?

MR. DULBERG: No, Judge.

THE COURT: Okay. Counsel, do you have anything to add?

MR. FLYNN: I have some comments. I don't have a specific objection, but I would like to make a little bit of a record, if I may.

THE COURT: Okay.

MR. FLYNN: Judge, this is a legal malpractice case. This is Mr. Dulberg's second set of attorneys that have withdrawn from the case. The first one was Tom Gooch.

The legal malpractice case was filed more than two years after my client --

THE COURT: If you're going to ask me to do something substantive --

MR. FLYNN: I'm not. But maybe housekeeping.

THE COURT: Okay.

MR. FLYNN: So the case was filed more than two years after the withdrawal. There's a statute of limitations issue it was raised on the motion to dismiss. It's alive in the case. I propose

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Mr. Dulberg -- the discovery rule that he is relying on, the information that he's relying on, actually came from Mr. Gooch.

So communications that gave rise to his knowledge of the malpractice case and the damages came from his communications with Mr. Gooch.

THE COURT: Okay. So what are you asking me to do? I don't need background but just --

MR. FLYNN: Sure. Well, I served supplemental discovery after the deposition. Ms. Williams asked me for an extension a month ago, and I agreed to it, but then I got the motion to withdraw.

So my concern is is that I'm not going to get this discovery.

THE COURT: Not within 21 days.

MR. FLYNN: Okay. I just wanted to lay the record because I probably will have to file a motion to compel, and I want the record -- the documents to be preserved but then the answers obviously to be preserved as well.

THE COURT: Okay. Did you hear that, Ms. Williams?

MS. WILLIAMS: Right. I just wanted to clarify one thing. There was a motion to dismiss filed

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early in the case. I did not brief that. I was not involved in that motion. It was denied. But then there's, I think, an affirmative defense for statute of limitations. So that's how it's alive in the case. The motion to dismiss has been ruled on. I don't think that was entirely clear, so just to clarify.

THE COURT: Okay. Well, I will wait for the motion to compel. I'm not going to do anything. That's why I cut you off because -- I'm speaking to Mr. Dulberg -- we're not going to address it further today.

So I will grant your motion to withdraw. I will give Mr. Dulberg 21 days in which to retain new counsel.

Who is going to do the order?

MR. FLYNN: I've got the draft.

THE COURT: Okay. Defense counsel has agreed to draft the order.

So, Mr. Dulberg, you will have until October 1st to retain new counsel. That's 21 days from today. And let's come back October 8th. Does that work?

MR. DULBERG: I would ask one thing.

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THE COURT: I'm sorry?

MR. DULBERG: I would ask one thing. In today's COVID, it's hard to get in-person appointments with attorneys to hire them right now. Some of them are not doing it. 21 days is -- is really --

THE COURT: 21 days is what the rule says. I'm going to follow the rule. If it turns out that there is a problem -- all this requires is that somebody files an appearance. So you are going to have to file an appearance if you don't have an attorney. I don't know if you have already filed one on your own, but if you -- have you filed an appearance already?

MR. DULBERG: I don't believe so.

THE COURT: I'm sorry?

MR. DULBERG: I don't believe so.

THE COURT: Okay. It's not going to cost you anything because it's already been paid for, but all you have to do is file an appearance within 21 days, and that doesn't mean are you prevented from retaining counsel later on.

So file it in 21 days, if you don't have an attorney. If you have an attorney, great. He'll file it or she'll file it, and then we'll see you on

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October 8th.

MR. FLYNN: I do have a conflict that day.

THE COURT: Okay.

MR. FLYNN: I can do the 9th. I don't know if that works.

THE COURT: For some reason I thought that was bad. Yeah, I'm potentially not here. I can go the 15th or the 7th. What is your preference?

MR. FLYNN: On the 15th I have a deposition that morning. The 7th will work.

THE COURT: Okay. We'll see you on the 7th.

Counsel will draft the order and send you a copy as well, Ms. Williams.

Is there anything else?

MR. FLYNN: I think we're all secure on status on (f)1 depositions. I guess I can just report that Mr. Dulberg's been deposed. No other (f)1s have gone.

THE COURT: Okay. We'll resume monitoring discovery status when we come back.

MR. FLYNN: Fair enough. Thanks, Judge.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
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COUNTY OF McHENRY)

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STATE OF ILLINOIS)
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COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 7th day of October, 2020, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

KARBAL COHEN ECONOMOU SILK DUNNE, LLC
BY: MR. GEORGE K. FLYNN
On behalf of Defendants;

ALSO PRESENT: Mr. Paul Dulberg

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THE COURT: Dulberg. Okay. For the record?
MR. FLYNN: George Flynn on behalf of the Popovich firm and Hans Mast.
MR. DULBERG: Paul Dulberg.
THE COURT: Okay. Mr. Dulberg's filed a motion seeking leave to -- for additional time to retain counsel.
Mr. Dulberg, did you file an appearance?
MR. DULBERG: Yes, I did.
THE COURT: Okay. And it recovered. You filed a motion to compel?
MR. FLYNN: We did.
THE COURT: All right. Mr. Dulberg, what are you asking for?
MR. DULBERG: 21 days additional.
THE COURT: Okay. Excuse me, I'm looking for the file. Yeah, I've got an appearance.
Have you gotten the appearance?
MR. FLYNN: I have, Your Honor.
THE COURT: All right. Any objection to my continuing this for 21 days -- excuse me, for status on your motion to compel?
MR. FLYNN: Your Honor, the last time we were here, I think the Court admonished Mr. Dulberg --

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THE COURT: I'm sorry. I'm not --
MR. FLYNN: I'm sorry. The last time we appeared before Your Honor, the Court explained to Mr. Dulberg the statute and court rule --
THE COURT: Well, he's --
MR. FLYNN: -- provides for 21 days --
THE COURT: He's filed an appearance.
MR. FLYNN: He's filed an appearance --
THE COURT: He's covered.
MR. FLYNN: -- so the motion is really unnecessary. As far as responding to the motion to compel, which was filed after his motion for an extension, this discovery is -- is -- he's been evading this discovery for --
THE COURT: Well --
MR. FLYNN: -- over a year.
THE COURT: -- over objection, I'm going to enter and continue your motion 21 days. That takes us to October 27th. That's a Tuesday. Can you both make it on that day at 8:45?
MR. DULBERG: Yes, Your Honor.
THE COURT: Anytime around there is fine.
MR. FLYNN: 10-27?
THE COURT: Yeah.

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MR. FLYNN: That would work.
THE COURT: Okay. That works.
MR. FLYNN: Thank you.
THE COURT: Counsel, if you can draft the order.
MR. FLYNN: All right.
THE COURT: And then we'll see you back on October 27.
MR. FLYNN: 8:45.
THE COURT: Thank you.
(Which were all the proceedings had in the above-entitled cause this date.)

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COUNTY OF McHENRY)

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY.)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 27th day of October, 2020, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE LAW OFFICE OF ALPHONSE A. TALARICO, by
MR. ALPHONSE A. TALARICO,
On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.

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THE COURT: Good morning, this is Judge Meyer. First case up is Dulberg versus Mast. Is it Alphonse Talarico?

MR. TALARICO: Yes. Good morning, Judge.

THE COURT: Good morning. Here in court we have -- and don't forget, please keep your voice up because the mic is over here, not there.

MR. FLYNN: George Flynn for the Defendants.

THE COURT: Did you hear him?

MR. TALARICO: No, I didn't.

MR. FLYNN: George Flynn for Defendants.

THE COURT: George Flynn for the Defendants. And?

MR. DULBERG: Paul Dulberg.

THE COURT: And Mr. Dulberg. I'll ask defense counsel -- I know plaintiff's counsel just filed an appearance, so defense counsel, what is going on?

MR. FLYNN: Judge, we have a pending motion to compel. I do have a question about the appearance that was filed. It was termed as an additional appearance, but there are no other attorneys of record right now. So I'm not sure why it was filed as an additional. I assume that this counsel will be lead counsel.

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THE COURT: Can you hear, Mr. Talarico?
MR. TALARICO: Yes, I can.
THE COURT: Okay. Your response?
MR. TALARICO: Yes. The reason I filed as an additional is because my client had filed a pro se appearance, so he is of record.
THE COURT: Okay. That resolves it for me.
Any other questions?
MR. FLYNN: Sure enough. So we have a pending motion to compel.
THE COURT: All right. Mr. Talarico, have you seen the motion to compel?
MR. TALARICO: Very quickly, yes, Judge, I have.
THE COURT: I'm going to ask defense counsel, because I did not read it for today, what are you asking for?
MR. FLYNN: Communications between Mr. Dulberg and his prior counsel, Tom Gooch, which forms the basis for the discovery rule argument in response to a statute of limitations defense.
THE COURT: Did you hear all that?
MR. TALARICO: I did.
THE COURT: All right. What do you want to do?

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I'll give you time if you are asking for time.

MR. TALARICO: Yes, Judge. Since I've only been on the case a few days, I would ask to have additional time to respond.

THE COURT: All right. How about we continue the case 28 days-ish. I'll enter it to continue the motion, and we'll come back for status of compliance 28 days is November 24th. That's the week of Thanksgiving, and the Tuesday, that works for me. If it doesn't work for you, let me know.

MR. FLYNN: What date?

THE COURT: November 24th.

MR. FLYNN: That works for me. So no response will be required until that time?

THE COURT: I'm expecting that you're going to have a response, but I am going to give counsel an opportunity to examine the file before I compel him to respond or direct him to file an answer to that just yet. I don't know if there is objections so I'm going to give him an opportunity to explore that.

So counsel on the phone, does November 24th work?

MR. TALARICO: Judge, yes, it does, but can I

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have a clarification? Is November 24th the date by which I must respond, or is that just a continuance to give me time to dive into the waters of a prolonged pending case?

THE COURT: Here is how I -- here is what I plan. You are going to come back on November 24th, and you are going to tell me either you've complied, the issue is resolved, or you can explain to me why you haven't complied and how much more time you need.

MR. TALARICO: I understand, Judge.

THE COURT: So I'm going to put it for status of compliance to November 24th at 8:45 a.m., and counsel here in court will draft the order.

Is there anything else we need to do?

MR. FLYNN: No.

THE COURT: Okay. Then we will see you next month.

MR. FLYNN: Thank you, your Honor.

MR. TALARICO: Thank you, Judge.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 24th day of November, 2020, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO
BY: MR. ALPHONSE A. TALARICO
On behalf of Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC
BY: MR. GEORGE K. FLYNN
On behalf of Defendants.

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THE COURT: Dulberg vs. Mast.

MR. FLYNN: Good morning, Your Honor. George Flynn for defendants.

MR. TALARICO: Good morning, Your Honor. Alphonse Talarico for the plaintiff, Dulberg.

THE COURT: Okay. Mr. Dulberg's here in court. Plaintiff's counsel -- actually, I have a defendant's motion to compel.

Defendant's counsel, what's going on?

MR. FLYNN: Judge, I contacted Mr. Talarico yesterday asking him his intentions. Sorry. I'm hearing on echo. I'm going to turn my speaker down a little bit. Hopefully that's better.

He indicated there was some confusion about the exhibits. I think that's been clarified. I don't know what else I can do. But I would just like either compliance or a briefing schedule.

THE COURT: Okay. Briefing schedule on whether or not compliance --

MR. FLYNN: On the motion to compel.

THE COURT: -- is necessary?

All right. Mr. Talarico, your response?

MR. TALARICO: Judge, I'm still -- I think, I will (indiscernible) -- but I think that the motion

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should be made more clear. There are two issues that I asked about. One is the attached group Exhibit F, which I don't see a reference in the body of the motion to the attached exhibit.

The other being of -- the other is an exhibit attached, which is the deposition of Mr. Dulberg. But within that deposition, the printout speaks of 13 exhibits, which are not attached to the motion. So there's the deposition without the exhibits, and the motion with Group Exhibit F not referenced to the -- in the text of the motion. So I'm looking for -- just clarification.

THE COURT: Defense counsel?

MR. FLYNN: Judge, I -- I don't know what Group Exhibit F is, if that has anything to do with this case or it's just accidently attached; but it -- it can be disregarded.

With respect to the deposition, it's -- it's an extensive deposition. The exhibits that are applicable are already attached separately to this motion. So in my view, there's really no need to attach 13 exhibits that aren't necessarily relevant to this motion. I was trying to avoid a waste of

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paper and data space, but...

THE COURT: Uh-huh.

MR. FLYNN: Again, I reread the motion last night, and I think it's clear (indiscernible) they are looking for.

THE COURT: I'm scanning the motion right now. All right.

Mr. Talarico, do you want to file a written response?

MR. TALARICO: Yes, Your Honor.

THE COURT: All right. How long do you need?

MR. TALARICO: With the holiday, the longest the Court permits.

THE COURT: Okay. If I give you 28 days, that takes us to December 22nd, 14 days after that is January 5th. I could do the hearing January 14th. That is a Thursday. Does that day work for both of you?

MR. FLYNN: January 14 works for me.

THE COURT: All right. That will be at 10:00 o'clock.

Mr. Talarico?

MR. TALARICO: And for me, sir.

THE COURT: All right. Since it's a briefing

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schedule, Mr. Talarico, it's at your request, you get to send in the order. You can take a pic- -- here's the email address. Mr. -- you can take a picture of that, send that in today, and I will sign it. The hearing is January 14th at 10:00 a.m.

MR. TALARICO: Thank you, Your Honor.

THE COURT: All right.

MR. FLYNN: Thank you, Your Honor.

THE COURT: Okay. We'll see you then. Thank you.

MR. TALARICO: Thank you, Your Honor. Thank you, Mr. Flynn.

MR. DULBERG: Thank you, Your Honor.

MR. FLYNN: Thank you, Mr. Talarico.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
vs.)
) No. 17 LA 377
THE LAW OFFICES OF THOMAS)
J. POPOVICH, P.C., and)
HANS MAST,)
)
Defendants.)

ELECTRONICALLY RECORDED Report of Proceedings had in the above-entitled cause before The Honorable Thomas A. Meyer, Judge of the Circuit Court of McHenry County, Illinois, on the 10th day of February, 2021, in the Michel J. Sullivan Judicial Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by:
MR. ALPHONSE A. TALARICO,
Appearing via videoconference,

on behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by:
MR. GEORGE K. FLYNN,
Appearing via videoconference,

on behalf of the Defendants.

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THE COURT: Do we have everybody on Dulberg?

A VOICE: (Inaudible), Your Honor.

MR. FLYNN: I think we do, Your Honor. George Flynn for the defendants, moving.

THE COURT: Okay. And for the plaintiff?

MR. TALARICO: Alphonse Talarico, Your Honor. Good morning. Good morning, Mr. Flynn.

MR. FLYNN: Good morning, counsel.

THE COURT: And here in court we've got --

MR. DULBERG: Mr. Dulberg.

THE COURT: Mr. Dulberg's here.

And we're here on defendants' motion; am I correct?

MR. FLYNN: That's correct, Your Honor.

THE COURT: All right. In a nutshell, defense counsel, can you explain your position.

MR. FLYNN: Sure. Thank you, Your Honor.

Mr. Dulberg has placed his communications with his prior lawyer, Thomas Gooch, at issue in this case. Plaintiff has admitted that it filed its complaint -- I'm sorry, plaintiff has filed its complaint more than two years after my clients, his former lawyers, the Popovich firm, withdrew or were terminated from his representation. That's not at issue.

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He has placed the discovery rule at issue in his complaint and his amended complaints. However, he has failed to answer initial discovery, he has failed to respond -- or answer properly questions at his deposition regarding discovery of his malpractice and his understanding of damages related to the Popovich's alleged malpractice. We served supplemental discovery, which is somewhat duplicative of what was previously served, and that was on July 2nd after his deposition. He hasn't even answered it.

The response does nothing to address those issues or object to the discovery that's been propounded, so I would request that he be forced at a minimum to answer this discovery, that any objection be overruled, and essentially that the communications between Dulberg and Mr. Gooch be produced in whatever form. And to the extent that a subpoena to The Gooch Firm would be necessary at a later date, I would rather take it one step at a time and analyze whatever it is that Mr. Dulberg produce. So, in a nutshell, that's the motion.

I didn't know that we'd have to have a hearing. I thought that these would be responded to or at least objected to, but here we are.

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THE COURT: Okay. Plaintiff's counsel?

MR. TALARICO: Let's see, Your Honor, (indiscernible) to start with, I think this is a two-step analysis. I hope the court sees it the same way. I think it should be looked upon as a 2-619 motion and at the same time a -- the question of whether there was a waiver of the attorney-client privilege under Rule of Evidence 502.

I believe that if the 2-619 is decided -- I'm sorry. Yeah, the 2-619 motion is dismissed and decided against the defendants, then the matter -- the second step would be the waiver of attorney-client privilege which I think my client did not do under either 502(a) or 502(b).

THE COURT: When you -- are you saying that their statute of limitations motion, if I deny that, only in that instance do we get to the issue of the -- of the letter?

MR. TALARICO: No. I think what we're -- what I'm saying is that that clarifies part of the 502(a) section of the argument, what I perceive as 502(a).

THE COURT: Okay. Defense counsel?

MR. TALARICO: If I might --

THE COURT: Go ahead, plaintiff.

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MR. TALARICO: -- expound a little bit. I wasn't aware that a 2-619 motion had been up. It was denied by this court, but denied with the ability to get -- to bring it again. All I've seen when I came into the case was a decision saying, you know, denied, so at that point in time I did not, let's say, approach the issues of the statute of limitations or the statute of repose. I think those two issues help clarify the 502 argument.

The 502 argument is what -- what information can be gathered, and I think my responses to that would simply be 502(b) and 502(a) have been complied with.

THE COURT: Defense counsel?

MR. FLYNN: I'm a little confused, Judge. There is no pending 619 motion. That was ruled upon years ago. This is simply a motion to compel and, you know, again, looking back, I didn't attach every discovery answer that Mr. Dulberg provided because there were many and there were issues with signature pages throughout written discovery. But here, the overarching supplemental request, Exhibit E, I believe it is, that was served on July 2 has not been answered. It's not been objected to. It's untimely at this point, and, again, it's clear that the discovery of the malpractice and damages has been placed at issue. So we're entitled

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to explore that discovery.

The testimony of Mr. Dulberg at his deposition makes it clear that the only basis to toll any statute of limitations was the December 2016 communications with Tom Gooch and if he's not going to produce those, he has no other basis to toll the statute and, as such, the case should be dismissed. We'll bring the appropriate motion. But you can't have it both ways using the privilege as a sword and a shield.

THE COURT: Plaintiff's counsel, with respect to the latter, your comment?

MR. TALARICO: I guess I'm not clear on what counsel was saying. I respectfully say that we have complied with the -- the 502(b) was inadvertent within the deposition and the attorney at the time, who was -- I think her name was Williams, Julia Williams, objected and objected on a continuing basis for any of the questions regarding that information. Counsel has not brought a motion to have this court decide whether or not that was appropriate, but he had answered under the continuing objection by Miss Williams that this was a protected attorney-client discussion.

As to the 502(a), the intentional disclosure, that was, in my estimation -- and I hope the court

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agrees -- that was done in the pleadings, in the complaint, but it was done in the -- I wouldn't say in the alternative. I would say it's additional information.

THE COURT: What specifically are you referring to when you say it's additional information? What was additional information?

MR. TALARICO: The continued comments about when -- when he was aware of -- and when the statute would begin to run, the two-year statute of limitations, as to the filing of a complaint for malpractice. Within that section, I have each one numbered, but at first the comments -- the situation was when the arbitration, the binding arbitration, matter was decided, and it was decided in such a way that my client lost close to over $200,000 because the only other person that was in the lawsuit had a maximum insurance policy of $300,000. At that point in time -- And he alleged that in the complaint, in the first amended complaint, and the second amended complaint, all of which I wasn't party to, but the words are in there, the allegations are in there. I believe that's when the statute of limitations begins to run. Further --

THE COURT: He references -- he references in his

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complaint -- I assume we're talking about the allegations in the complaint.

MR. TALARICO: Yes.

THE COURT: And he references in the complaint learning information from the expert, if I've read this correctly. Is that a fair statement?

MR. TALARICO: That is one of the allegations, yes.

THE COURT: So why can't -- why isn't that report or communication going to be turned over?

MR. DULBERG: It is. It already is.

MR. TALARICO: Judge, it's my position that that is not relevant to the question. The question is, when did -- when did he become aware, when does the statute start running. And the answer I believe under Illinois law is it begins running when he knows of his injury, and the injury took place with the binding arbitration award; not before, not after. So I'm saying --

THE COURT: And I guess I -- you're losing me because I -- I don't understand how a binding arbitration award is going to disclose to anybody whether or not malpractice had been -- had taken place.

The -- your client -- I don't know if you can see him. He keeps raising his hand. I'm ignoring him because he has an attorney. I'm going to -- I'm going

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to focus on you.

But whether or not there was an award for X dollars or no dollars, that doesn't tell me anything about whether -- whether he knew or should have known at that point. That just told him what those people --

MR. DULBERG: May I clarify on the record.

THE COURT: Mr. Dulberg, you have an attorney. You've elected to have your attorney speak for you.

MR. DULBERG: He's not not lead attorney (indiscernible).

THE COURT: I'm going to limit it to it. I recommend that you limit your conversation or comments to him out of fear that you may say something that could be harmful to your case.

MR. DULBERG: I understand.

THE COURT: In any event, the complaint identified something the expert said as establishing knowledge on behalf of Mr. Dulberg for the first time of the alleged malpractice. So the complaint by its very language tells me that that communication is relevant to the issue of the discovery rule. I don't have a problem with doing an in camera inspection of that particular communication, but I don't see how we avoid it being relevant.

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MR. TALARICO: Judge, I think in all three -- the original complaint, the first amended complaint and the second amended complaint, all three plead the injury happening with the -- I can't think of the word -- but with the binding arbitration statement.

It thereafter talks about other matters and each time the drafter of that complaint, the first -- I'm sorry, the original, the first and the second, adds in different aspects which I believe are really irrelevant. I think the focus is on when the injury occurred. The injury I believe occurred when the binding arbitration award was granted and I think that's when the statute of limitations should run.

THE COURT: But he's entitled to discovery on that. If you're claiming a particular communication established knowledge for the first time, he gets to -- defense gets to see that, because you've linked it to a unique event and he gets to challenge whether that's plausible, so you don't get -- you don't get to make that decision for him.

MR. DULBERG: If I may, I'm going -- I'm going to clarify here.

THE COURT: Mr. Dulberg, you have an attorney.

MR. DULBERG: Yes, I do. And I'm going to clarify.

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THE COURT: I'm not asking you to clarify.

MR. DULBERG: The event -- the event, okay, was a series of events --

THE COURT: Counsel, --

MR. FLYNN: Judge, I'm going to object to this as well.

MR. DULBERG: -- (continuing) prior to meeting Mr. Gooch.

THE COURT: I'm ignoring what's being said.

Mr. Talarico, do you have a comment?

MR. TALARICO: Yes, we -- Mr. Dulberg, I believe, and our position is, the statute of limitations begins to run on the date of the arbitration -- the binding arbitration, award.

THE COURT: And you could be right, but the discovery rule involves facts and the issue becomes whether you knew or should have known. You, by the complaint you've inherited, established that knowledge came as a result of a particular event and I think it -- by virtue of that allegation, you've made the facts surrounding that event relevant to the investigation of your claim of the discovery rule, its application, that I can't separate that out. If you say that communication gave you knowledge for the first time,

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then the defendant gets to explore that.

MR. DULBERG: That's not what it said.

THE COURT: Your subjective interpretations aren't going to be controlling.

MR. TALARICO: Judge, I'm not relying on that. All I'm saying is that, with all due respect, that is when he had the knowledge, that is when the statute of limitations begins to run, and that information has been part of the court file long before it became part of this matter.

THE COURT: My reading of the complaint referenced something regarding an expert report and perhaps a letter from former counsel.

MR. FLYNN: Judge, may I clarify that.

THE COURT: Go ahead. Yeah.

MR. FLYNN: Thank you.

You know, the plaintiff has attempted I think to use both, a report that he received from a chainsaw -- so-called chainsaw expert, so a liability expert, relative to the underlying case. There's been some confusion with respect to his pleading and reliance on that report. However, what I clarified at his deposition is that he relied on a legal opinion to toll the statute of limitations in this case. It's that

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legal opinion in December of 2016 which informed him of the malpractice.

Again, he wasn't very specific. I tried to question him about each and every violation of the standard of care, breach of the standard of care, and when he found out about it; and you can read the whole deposition, but his answers are evasive. They've been evasive in his original interrogatory answers. We've covered the waterfront with every possible question and interrogatory and production request we could, but it's clear that he is relying on a legal opinion.

Now, he's not very specific about what that legal opinion is, and maybe there isn't anything in Gooch's records or in the emails and whatnot to and from Gooch and Dulberg, but, in any event, that's what he testified to, and so it's our position we should be entitled to those legal opinions, whatever they are.

THE COURT: I thought -- and obviously I didn't read the entire deposition. I thought there was one letter that really covered it, based on what I read. Is that a fair statement?

MR. FLYNN: I'm not sure if that's accurate, Judge. I think that -- I think he's pinpointed the time period to December of 2016, but I think he also testified that

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there was regular email communication between Dulberg and Gooch, you know, --

THE COURT: In any event, I am going to direct production of all those communications on which the plaintiff is basing his claim of the applicability of the discovery rule; and that's a little broader than I first intended, but given the nature of this discussion, it sounds like it's more than just a couple of documents. It might be several of them.

I will also have those items produced to me for an in camera inspection so that I can determine to what extent that they are disclosing information relevant to our investigation into the discovery rule, because while I agree the defendant should be allowed to investigate that issue, that doesn't mean he gets the benefit of prior counsel's work product outside of the discovery rule issue.

Does that make sense?

MR. FLYNN: So I do understand your ruling. I would just ask that it be specified also, though, to the communications with Mr. Gooch because in anticipation of how this may be produced to Your Honor, if all they produce is this chainsaw expert report, then we haven't made any progress.

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THE COURT: There is definitely something from Mr. Gooch, and if I'm not given something from Mr. Gooch, that will be a red flag.

MR. TALARICO: Judge, if I might.

THE COURT: I'm sorry?

MR. TALARICO: If I might speak.

THE COURT: Yeah.

MR. TALARICO: Judge, my position is that the binding arbitration award document which has been part of the court file, we believe long before I was in this case, is the day that my client knew that he had an action and, before that, it was premature by Illinois law. At the time when the award was given, and the --

THE COURT: I'm not buying that. The arbitrator's award gave you insight as to the value. Where you lose me is -- Well, let me rephrase that. It gave you their insight as to what they perceived the value of the case to be. It did not tell you whether or not you could have known that there was a viable cause of action against another defendant --

MR. DULBERG: (Indiscernible) that.

THE COURT: -- because, again, it's you knew or should have known whether --

MR. TALARICO: Of the injury, --

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THE COURT: -- there was another cause of action against that --

MR. TALARICO: -- a financial injury.

THE COURT: And I fail to understand how an arbitrator's award would explain that because I can't imagine -- I certainly don't -- I'm not an arbitrator, I don't know what they put in their decisions, but I would be surprised if they spend a lot of time telling you about people you could have sued but for malpractice, so the issue for me is knew or should have known, and I am going to direct production of those documents.

MR. TALARICO: Judge, my one comment?

THE COURT: Yeah.

MR. TALARICO: So it's Illinois law on that matter and a very recent case talked about specifically when the statute begins to run, but I will -- It's called Suburban Real Estate Services, Inc., versus Barus -- I'm sorry, and Barus versus William Carlson. The cite --

THE COURT: But that's a different argument. That's a rule -- that's an argument related to the applicability of -- or, in my analysis, of how the rule applies to the circumstances that we have. It doesn't address the issue of whether you should have known of

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the existence of the cause of action, and the information I have is that you did not and could not have known about the cause of action until the disclosure from the expert or from Mr. Gooch, and if we're going to explore that issue, you've got to produce that. You've put those items into evidence or at issue, so defense has a right to see them.

MR. DULBERG: May I.

THE COURT: Anything else?

MR. DULBERG: Yeah, yeah. I'd like to comment. You're not going to let me comment?

THE COURT: Mr. Dulberg is attempting to speak. I'm not -- I'm neither listening nor inviting him to speak.

MR. DULBERG: I will speak on the record.

THE COURT: So I will --

MR. DULBERG: It's not about when we knew or should have known of the cause of action.

THE COURT: Sir, --

MR. DULBERG: We certainly knew or should have known --

THE COURT: Sir, --

MR. DULBERG: -- of the injury.

THE COURT: Mr. Dulberg, do not presume to tell me what the law is. All right? You understand your place.

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MR. DULBERG: Yes.

THE COURT: Do not tell me what the law is. I will make that decision. I've instructed you numerous times not to talk, and yet you feel the need to express yourself. You have an attorney. Your attorney has ably represented you, but I get to make a decision regardless of what your personal thoughts are. So we will go back to my discussion. Forgive the outburst, but I have invited him not to speak and that wasn't acceptable to him.

So, in any event, how long, Mr. Talarico, do you need to produce this information?

MR. TALARICO: Judge, I'm not absolutely sure. Whatever the court says I produce I'll produce within 28 days.

THE COURT: Okay. Twenty-eight days is fine with me.

Mr. Flynn?

MR. FLYNN: Twenty-eight days is fine, Your Honor. I would also request that, in addition to the documents being produced, that the actual discovery request be responded to and any interrogatories be amended --

THE COURT: You need a privilege log certainly as to the documents, and so I'm going to direct that you be

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given a privilege log because they are claiming privilege as to these items. I assume there hasn't previously been one. Is that true?

MR. FLYNN: That is true.

THE COURT: All right. So you're entitled to the privilege log.

As far as the other interrogatories are concerned, Mr. Talarico -- How many interrogatories do we have outstanding?

MR. FLYNN: The -- I think what we have is some interrogatories that weren't completely answered in the first place. It's probably a handful, Judge, but then there are seven or eight requests for production that simply weren't responded to. Those are the subject of this motion.

THE COURT: And are they covered by the privilege log, do you think?

MR. FLYNN: Well, I think that first we need to know whether there are responsive documents. They haven't even answered that, and then if they are withholding any and submitting them to the court, then the privilege log comes next, I guess, would be my request.

THE COURT: Okay. Mr. Talarico, can you provide a response in 28 days?

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MR. TALARICO: Yes, Your Honor. I will respond.

THE COURT: All right. And if you don't have documents, you don't have documents. Just tell him. If you're claiming a privilege, identify -- provide some sort of an identification of the document and the privilege you're claiming.

With respect to the interrogatories, which ones?

MR. FLYNN: These were the interrogatories propounded by Hans Mast, my other client, and that was Exhibit D, I believe, to the motion. I did not attach his answers, but Hans Mast's interrogatories which were propounded back on March 22 of 2019 -- one, two, three -- just four interrogatories.

I do believe that we have a response, but it's incomplete. It doesn't -- it doesn't identify these communications with Mr. Gooch or the legal opinion that has been alleged in the complaint and placed at issue.

THE COURT: Yeah, and I -- my concern is -- and the answer, direct answer, to those is going to require my review of the documents, so I'm going to enter and continue that part of the motion until I make a decision with respect to the documents.

Is there anything else?

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MR. FLYNN: I think that covers it, Your Honor.

THE COURT: Okay. All right. So, Mr. Flynn, I'm going to direct you to send me an order -- Do you have our email address? You can take a picture if you like.

MR. FLYNN: I believe so. Okay.

THE COURT: Okay? And the order -- we'll pick a new date in a moment. The order will provide that the plaintiff will provide you with a privilege log for those -- provide you answers to the production request as well as a privilege log with respect to any documents that are withheld, and I'm entering and continuing your motion with respect to the interrogatories.

Plaintiff will provide me with the documents withheld and identified in the privilege log within 28 days and then we'll come back perhaps two weeks after that. Twenty-eight days is March 10th; two weeks after that would be around March 24th, and I can provide you with my ruling then. So how's March 24th at 1:30?

MR. FLYNN: Judge, I actually have a deposition at 1:00 o'clock that day.

THE COURT: How about the 25th? Thursday.

MR. FLYNN: 25th works. 25th at 1:00 o'clock?

THE COURT: Yeah.

Mr. Talarico?

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MR. TALARICO: One second, Your Honor.

THE COURT: Okay.

MR. TALARICO: Fine.

THE COURT: Do we have agreement on the date or are we waiting?

MR. TALARICO: I said it was fine, Your Honor.

THE COURT: Oh, okay. I'm sorry, I missed that. So 1:30. Is there anything else we need covered in the order?

MR. FLYNN: Just may I be clear that the motion is granted in part as stated on the record.

THE COURT: Yes.

MR. FLYNN: And I would like to just include Mr. Gooch's name in the written order, that those be included in the production if they exist.

THE COURT: Yeah, I don't -- I don't want -- What I want to -- I guess -- And thank you for bringing that up.

My impression from reading the motion was it boiled down to -- I got the idea that it was a single document or a single communication that conveyed the information at issue. And you're indicating that it was more, it was a number of emails. Are you able to put a timeframe on it?

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MR. FLYNN: Well, I think, again, the allegations in the various complaints, complaint and amended complaints, and the testimony, (indiscernible) to December of 2016, so --

THE COURT: Yeah. Say the communications of December of 2016, because I don't want it read as requiring that all communications from Mr. Gooch be produced.

MR. FLYNN: Okay.

THE COURT: Mr. Talarico, any questions or comments about that?

MR. TALARICO: No, Your Honor. I'll follow the court's order.

THE COURT: All right. Anything else then?

MR. FLYNN: No, Your Honor. I will send a draft of that order to Mr. Talarico for his review and then we will send it to your email address, Your Honor.

THE COURT: Okay. I'll wait to see that. I'll sign it as soon as it's in. Thank you.

MR. FLYNN: Thank you.

THE COURT: See you in March.
MR. FLYNN: Thank you, counsel.
THE COURT: All right. Bye.
MR. TALARICO: Thank you, Judge. Thank you, counsel.

(Which was and is all of the evidence offered at the hearing of said cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

I, Stacey A. Collins, an Official Court Reporter of the 22nd Judicial Circuit of Illinois, do hereby certify the foregoing to be a true and accurate transcription to the best of my ability and based on the quality of the recording of all the proceedings heard on the electronic recording system in the above-entitled cause.

Stacey A. Collins, CSR
Official Court Reporter

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	
vs.	No. 17 LA 377
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 15th day of March, 2021, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO
BY: MR. ALPHONSE A. TALARICO (Via Zoom)

On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK & DUNNE, LLC
BY: MR. GEORGE K. FLYNN (Via Zoom)

On behalf of the Defendants.

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THE COURT: Okay. Morning. Waiting for Mr. Flynn. Okay. Do I have both sides on Dulberg?

MR. FLYNN: George Flynn for --

MR. TALARICO: (Indiscernible) plaintiff, your Honor.

THE COURT: Okay. Mr. Flynn, you've got defendant?

MR. FLYNN: I do.

THE COURT: And Mr. Talarico?

MR. TALARICO: I have the plaintiff, Judge. It's my motion for extension of time, which at this moment, Judge, I'd like to withdraw.

THE COURT: How come?

MR. TALARICO: Because I was able to comply within the time the court order originally instructed me.

THE COURT: Well, I -- do you know about this? I'll try and get that so you can see it.

MR. TALARICO: Yes, I know that the -- that the -- that the plaintiff himself delivered the privilege log to your Honor.

THE COURT: Well, I haven't looked at it. And because it did not come from you, I felt it would be inappropriate for me to look at it. I

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just looked at the cover page and saw what he was transmitting.

Defense counsel, I'll show you. That's as much as I've seen.

MR. FLYNN: Thank you, your Honor.

THE COURT: And I did not delve further because as I expressed last time to Mr. Dulberg, he has an attorney and he shouldn't be communicating with me directly. And I was uncomfortable because I was unsure -- Mr. Flynn, did you get a copy of this?

MR. FLYNN: Not a copy of Mr. Dulberg's transmission, no.

THE COURT: Yeah, and that -- that -- so, Mr. Talarico, I can either throw it out or return it to you, but I'm not going to turn it over to the defense because I haven't looked at anything other than that cover page. And I don't think it should have been sent to me.

What would you prefer?

MR. TALARICO: Well, Judge, I need a clarification with all due respect. Mr. Flynn was given a copy by me of the privilege log which is what you've been served with without the

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attachment, without the document that's claimed to be privileged.

THE COURT: Okay. Well, how do you know what he gave me because I don't know what he gave me, so, I mean --

MR. TALARICO: Because, your Honor, it was -- he was instructed -- he volunteered to take it personally. He was instructed to what documents should be in there, and he was also instructed, sadly, to put it in an envelope with my name, not his name, so that's -- that's -- that was a miscommunication between myself and my client.

THE COURT: Okay. Mr. Flynn?

MR. FLYNN: Judge, we were not copied on any transmission to the Court. I received the privilege log directly from counsel, but I was not copied on any courtesy letter to the Court or any other transmission to the Court.

THE COURT: Okay. All right. So, Mr. Flynn, what are you asking?

MR. FLYNN: Well, I understand the motion for the extension has been withdrawn. I had filed a written objection after it was -- after the motion was filed.

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THE COURT: Okay. You know what, I'm going to -- I'm going to change gears.

MR. FLYNN: Sure.

(WHEREUPON, the afore-captioned cause was recalled.)

THE COURT: All right. Okay. Mr. Flynn, I'm -- I mean, Mr. Talarico is telling me I was sent exactly the same thing you got. I don't see a problem with my disclosing it.

MR. FLYNN: No, I don't have an objection to that. I would just inform the Court that I haven't received a copy of Mr. Dulberg's transmittal letter.

THE COURT: Do I even need a copy of this?

MR. FLYNN: I don't know.

THE COURT: I mean, shouldn't it be filed?

MR. TALARICO: Excuse me, Judge?

THE COURT: Shouldn't it just be filed in the court file?

MR. TALARICO: The privilege log?

THE COURT: Yeah. I mean, if they're objecting, but, I mean -- I'm now looking at it. It does have some attachments. Okay. All right. So what do you want me to do with the documents?

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MR. TALARICO: Judge, from the plaintiff's point of view, we withdrew our motion. We don't need the additional time. We've complied with the order. We -- both Mr. Flynn and your Honor have received a copy of the privilege log.

THE COURT: All right.

MR. TALARICO: And you have received the one document we claim is privileged, Judge.

THE COURT: Okay.

MR. TALARICO: Mr. Flynn has not.

THE COURT: I can do this right now.

Okay. Mr. Flynn, you were going to say?

MR. FLYNN: Yeah, Judge, so at this point we are scheduled to come back for a hearing I believe at 1:00 or 1:30 on March 25th for further ruling and status on compliance.

THE COURT: All right.

MR. FLYNN: I understand that the motion for the extension has been withdrawn. I did receive plaintiff's response to Popovich's supplemental request for production, and, in my opinion, there are improper objections and it's not answered properly. And in fact there are no additional

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documents that have been produced other than I think two or three pages.

So there is a reference -- in response to many of the requests, there is simply a reference to 8,708 pages that have already been produced in this case. I think the Court's ruling on February 10 was very specific about what is to be produced. So if there isn't anything, then they should say so.

THE COURT: Yes.

MR. FLYNN: If there is anything being withheld, apparently that's identified in this privilege log, which was a little confusing to me because it's from 2017. My suggestion would be that if we hold the hearing on March 25th, that the withheld documents, the privilege log, the plaintiff's response to the supplemental production request all be (audio distortion) to the Court in preparation for that hearing.

THE COURT: I don't need the 8,000 pages.

MR. FLYNN: Understood.

THE COURT: All right. Mr. Talarico, you were going to say?

MR. TALARICO: Yes, I was going to say the

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response to the request -- or supplemental request to produce, No. 3, there was eight documents submitted in compliance with the court order. It was the only email between The Gooch Firm and Mr. Dulberg in December of 2016 pursuant to the court order that was not privileged. And also in that answer, in the answer to No. 3, we do designate the one document that we've turned over to the Court. So both documents, the one that can be produced has been produced and the one that we claim privileged has been noted in the response.

THE COURT: Okay. Mr. Flynn, could you add to this?

MR. FLYNN: Yeah, Judge, I'm not exactly sure what's been tendered to the Court because, again, I wasn't copied on the transmittal. I --

THE COURT: I was copied on -- I mean, I'm sent, separate from the cover pages, a total of three pages here.

MR. FLYNN: And that's -- and I assume that includes the privilege log and then Pages 8744 through 8746?

THE COURT: I'm sorry. I took it apart. Six pages total, including the cover letter. So the

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privilege log I could show you; there it is.

MR. FLYNN: Okay. I have that.

THE COURT: And I'm assuming you've got it, yes, signed by Mr. Dulberg. And then three pages which seems to represent the back and forth in emails.

MR. FLYNN: Okay. And those, I assume based on the privilege log, would be Bates labels 8744 through 8746?

THE COURT: Yes.

MR. FLYNN: Okay. So I don't have those three pages obviously.

THE COURT: All right.

MR. FLYNN: But I do think that it would be important for the Court to receive a copy of the plaintiff's supplemental production response.

THE COURT: That's fine.

MR. FLYNN: Or I should say response to the supplemental production request.

THE COURT: What -- so tell me, in a nutshell, what your objection is on the -- that you want me to look at.

MR. FLYNN: Well, the --

THE COURT: What is the problem? That's a

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better way of phrasing it. What's the problem?

MR. FLYNN: The problem, again, is we had a lengthy hearing on this, and there is a specific ruling in the February 10 order relative to Dulberg's understanding that he had a legal malpractice case. Now it's been pinpointed to December 16th of 20 -- yeah, December 16, 2016. There have been no documents produced relative to that date. They're simply doing a document dump or referring to 8,000 pages that were previously produced, so it doesn't advance the case here.

THE COURT: Let me respond in a general sense. If you asked for a particular document to be produced and they say it's in the 8,000 pages previously produced, that's nonresponsive. I don't know if --

MR. FLYNN: It is.

THE COURT: -- that answers your question, but that seems to be the direction you're going. Am I accurate?

MR. FLYNN: That is accurate. That was one of the issues that we had, yes.

THE COURT: Okay. Mr. Talarico, do you have something to say?

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MR. TALARICO: Yes, please, Judge, excuse me, but the two documents -- there are two documents that are responsive the way I understand and reviewed our court order. The --

THE COURT: Excuse me. Just have a seat. We'll talk to you in a minute. You can sit here. Sorry. We have people here in court, pro se.

MR. TALARICO: The one has been turned over to the Court, the only email in December of 2016. The other one has been -- and I'm sorry -- turned over to Mr. Flynn.

The other document that is responsive is the email of November of 2016 in relationship to the discovery of his -- his claim against Popovich --

THE COURT: Yeah.

MR. TALARICO: -- and Mast. So those two documents, I believe, respond to the court order. One, he has the only email between Gooch and Dulberg in 2016, and the other one is the November 1, which refers -- which is we are claiming privilege, which refers to his discovery of his case, his claim. That's the one that the

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Court has, which is designated in our privilege log and waiting upon the judge's decision whether it should be turned over or not.

THE COURT: Okay. Hang on.

MR. FLYNN: There's -- Judge, in their response there is no mention of this other November date.

THE COURT: No.

MR. FLYNN: It's just, again, a reference to these 8700 pages.

MR. TALARICO: Well, actually that's not true, Counsel. With all due respect, if you look at the answer to No. 3, it says, Objection, privilege, Bates stamped email stream 8744 to 8746.

MR. FLYNN: Okay. I see.

MR. TALARICO: That's the one that was responding to his discovery of his case.

THE COURT: All right. I've got --

MR. TALARICO: Judge, those are the only documents I've reviewed. The latest 700 pages that were sent to me, that's the only thing. And that's all -- all the emails between Dulberg and -- and Gooch, and that's all we have.

THE COURT: All right. Here's -- and maybe

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you can explain this. My recollection is that he referenced -- Mr. Dulberg referenced a December email. Is that fair? Is that accurate, Mr. Flynn?

MR. FLYNN: Mr. Dulberg's testimony is that he learned in December of 2016 from a lawyer -- and I asked him this question many different ways, of how he learned of his malpractice case. He said, Gooch told me I had a malpractice case. When I pressed him further on it for specifics, he couldn't give me any. This is in his testimony.

THE COURT: How do we know there was an email? And forgive me. I know we addressed this.

MR. FLYNN: And, I'm sorry. I thought that there was a written communication as well.

THE COURT: Okay.

MR. FLYNN: But they haven't responded that there are no written communications. They just simply reference these 8700 pages of documents expecting me to go through them apparently.

THE COURT: No. That --

MR. TALARICO: With all due respect, Mr. Flynn, the answer to No. 3 says that you've received the Bates stamped --

THE COURT: You are going in a different

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direction, and I'm going to have to see your responses.

MR. FLYNN: And that's contrary to the testimony.

THE COURT: I'll have to see the responses if you want me to rule on it, but my -- I thought -- and perhaps it would be easier just for me to go to the -- I thought it was the complaint that alleged discovery in December of whatever year.

Am I correct that it was a December -- an allegation of a December discovery?

MR. TALARICO: Yes, Judge.

MR. FLYNN: That's true.

THE COURT: Okay. Well, the problem I'm having is these documents don't -- aren't December. They're -- frankly, they're November 2017. So my initial thought is are they responsive, because they seemed to be referencing a different communication.

MR. FLYNN: I think they would still be responsive to the broad requests -- well, my request for broad answers (indiscernible), but --

THE COURT: The basis of my ruling was -- and, again, I'm operating on memory -- that I

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directed Mr. Dulberg to produce whatever documents he was referring to when he said he discovered or became aware of the malpractice in -- was it 2016?

MR. FLYNN: That's correct, and that's in Line 3 of your February 10 order.

THE COURT: Okay. Yeah, and I --

MR. FLYNN: I'm sorry. February 11 order I guess it was.

THE COURT: All right. These are November 2017, the documents I have here. So they are not covered by the explicit language of my order unless the plaintiff then says he was mistaken as to the dates, but -- let me just go back to my order.

MR. TALARICO: Judge, my understanding was the December 16 communications between Dulberg and Gooch, which I submitted, the only one, and any and all records between Dulberg and Gooch that refer to his discovery. That's why the 2017 one is included because in that communication Dulberg speaks of his discovery of his case.

THE COURT: Okay.

MR. TALARICO: So in effect, Judge, with all due respect, I have reviewed every email between

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Dul- -- Gooch and Dulberg, and there has been one responsive email, the one that your Honor has. And as to the December communications, I only have one in addition, which I have submitted because it wasn't privileged, so I didn't allege privilege.

THE COURT: Okay. Mr. Flynn, do you have a 2016 email?

MR. FLYNN: I have a -- I do have -- and this was just produced with the response last week -- it's a December 29, 2016 email chain. These are Bates labeled 8709 and 8710, and it looks like it's a communication between Dulberg and Gooch's paralegal, Ms. Buckley. This doesn't seem to explain anything about a malpractice case. It looks like they are attaching a binding mediation agreement. I don't see legal advice being provided in these documents.

MR. TALARICO: That's not what I was responding to, Mr. Flynn, with all due respect. What I was responding to was any and all communication, email or written communication between Dulberg and Gooch in 2016. That's the only one.

Okay. As to the discovery of his

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injury or his case, the only one that I -- I have looked at every email. I have every Bates numbered document with no gaps, and the only one that's responsive is the one I turned over to the Court, to this Honorable Court, which is a 2017 email. Those two are the only responsive. I mean, your Honor, with all due respect, we could turn over every email, but I tried to and I think I succeeded in responding to the issues here.

MR. FLYNN: Judge, if I may.

THE COURT: Yeah.

MR. FLYNN: The response does not reflect that there is an absence of emails. It simply says see Bates -- see Bates stamped 181 through 8708. So the answer, if there are no documents or no additional documents, it should say that.

THE COURT: Yes, I agree. Even if you answered it elsewhere, each question deserves a direct response, and it seems to me that there is at -- what production request is this, Mr. Flynn?

MR. FLYNN: This is Popovich's supplemental production request, which was served I believe on July 2 of 2020.

THE COURT: Okay. What -- tell me the

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language of it. Tell me the request.

MR. FLYNN: Well, there are --

THE COURT: Numerous subparts?

MR. FLYNN: There are eight -- seven of them. For example, Any and all documents relating to your discovery of any alleged breach of the standard of care or legal malpractice by Popovich or Mast and which caused you damages or injury. The response is, Objection, undue burden, previously submitted, please see plaintiff's Bates stamped 1 through 8708.

THE COURT: Generally, that is nonresponsive, but that's as far as I can go on that without looking at the questions and the answers. I'm hoping by saying that that gives you both some guidance as to what I expect when we do sit down and go through each one of these. But you can't just say it's in the stuff I've already given. You've got to give them an answer.

That being said, I'm -- I'm still wrestling with the problem of in the complaint it alleges a December 2016, I believe, discovery. It was not until the -- Paragraph 57 -- 56, Dulberg realized for the first time in December 2016, et

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cetera, thought he was given false information. And I'm -- and it was my understanding that from our previous conversation, there was correspondence that disclosed this in December 2016, and that's why I directed it disclosed or produced.

MR. FLYNN: You did.

THE COURT: And what I've been given is not December 2016. It's November 2017. And while this may fall under the general requirement to produce some -- some documents, it's not responsive. It doesn't address December 2016, which is the operative date.

So, Mr. Talarico, what's your point? What's your -- what's your take on this?

MR. TALARICO: I'm sorry, Judge. The only reason you haven't received that is because we didn't claim a privilege. We turned it over.

THE COURT: But Mr. Flynn has said there is nothing about discovery in there, and I'm wrestling with that.

MR. TALARICO: But that's the -- Judge, it's the only email in December 2016.

THE COURT: Okay.

MR. TALARICO: That's the only answer we

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could submit. I had -- I had one document and I gave it to Mr. Flynn.

THE COURT: All right. Mr. Flynn?

MR. FLYNN: Judge, you're right, it's not responsive to I think what the Court ordered. What it is --

THE COURT: Well --

MR. FLYNN: -- responsive to I think is the various discovery requests that have been made in this case.

THE COURT: He's telling me that the answer to your request for anything from December 2016 is none.

MR. FLYNN: Okay. It doesn't say that in his document.

THE COURT: Okay. Or just that one -- to the extent that you are requesting documents memorializing discovery of the malpractice claim, the answer is none, from December 2016 at least.

MR. FLYNN: Okay. And whether this sheds light on the actual discovery and what is discoverable, I would request that it be disclosed.

THE COURT: Mine or --

MR. FLYNN: Whatever this November of 2017

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communication is because it may be relevant and discoverable.

THE COURT: Okay.

MR. FLYNN: And responsive to the other discovery requests.

THE COURT: I think --

MR. FLYNN: And whether it --

THE COURT: I think we need to discuss that.

MR. FLYNN: Whether it contradicts the other testimony and discovery answers, that's another inquiry I suppose, but --

MR. TALARICO: Judge, with all due respect, I believe the 2017 email string or three-part answer that's been submitted to the Court is responsive and whatever -- however the judge decides, the Court decides, that's the only answer I have to submit is what you have.

THE COURT: Well, the issue I'm wrestling with is it is not in the time frame that I previously determined was relevant. If he discovered in -- the claim is discovery of the existence of the claim in 2016, not November of 2017.

MR. TALARICO: Yes, that's correct. That's

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correct, Judge, but --

THE COURT: Go ahead.

MR. TALARICO: In his -- in Dulberg's response, he speaks to the past of the things that led him -- without giving up too much information, that's the only responsive document that I have seen. I've seen them all. It goes -- that's the one that says in the past, these things led me to believe I have a case.

THE COURT: All right. Okay. Well, in the end if it is going to be your position that the reference to the discovery of his claim is memorialized in this email chain of November 2017, then I think I have to disclose it because that's a claim made by Mr. Dulberg; he made it relevant.

MR. TALARICO: I understand, Judge.

THE COURT: The problem that I have been wrestling with is it's -- it's not from December 2016, so it's different. And I'm not going to make a decision on this today. I want to -- I want to explore it a little bit further when we come back. But as it stands right now, my inclination is to have it produced because it is -- it is the document that memorializes his discovery

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of the existence of a claim.

MR. TALARICO: I understand completely what the Court says, and as the Court rules, that's what I will do.

THE COURT: Okay. Mr. Flynn, any comment?

MR. FLYNN: No, your Honor. I think I understand where the Court is going with this. You know, if it were produced, I would alternatively ask that he be barred and that he not be allowed to, you know, amend the complaint and try to change his theory on when he discovered this, but --

THE COURT: That's interesting.

MR. FLYNN: I guess my suggestion, if the Court would entertain my suggestion, is that we do tender the plaintiff's response to the supplemental production request. I would urge the Court, again, to read the motion to compel and Dulberg's testimony that's identified or cited in the motion --

THE COURT: Yeah.

MR. FLYNN: -- but also attached --

THE COURT: All right.

MR. FLYNN: -- for context.

THE COURT: No. I will take care of that.

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What I'm -- Mr. Talarico, what I'm -- and it seems that you're declining the offer. I wanted you to address the difference in the time frame, but it seems to me that you're acknowledging that even though the time frame isn't correct that this is the document we were -- we were after.

MR. TALARICO: Yes, your Honor.

THE COURT: And if that's the case, then I'm going to order it produced. I mean, then there is no reason to further pursue this.

MR. TALARICO: Okay. I will do that, Judge.

THE COURT: Okay. If you want -- if you want time to address the issue on the different time frame, I'll give it to you, but if your position is, no, this is it, then I'm going to order it produced.

What do you want to do?

MR. TALARICO: Judge, again, with all due respect to the Court and to Mr. Flynn, I've looked at every email from -- from Gooch to Dulberg; that's the only one I can produce because that's the only one that talks about his discovery of his case, and I will produce it.

THE COURT: All right. I'm going to continue

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to think about this because the -- the information exchanged in this email doesn't indicate to me a discovery of -- it discusses the malpractice, but there is nothing in there that's telling me it was discovered in the course of this conversation. So I'll -- I'll think about this further, and we'll talk about it in person.

MR. TALARICO: I'm sorry to interrupt, but the language in that email, as I recall it, was, I started to learn about, I started to get the idea, this document led me to this, back then I read this document that told me that I had -- that I may have a case. The next thing is, you know, the different things saying back in the past he started learning about, and I think that's responsive to knew or should have known.

THE COURT: All right. So are you conceding it's relevant based on my statements?

MR. TALARICO: Yes, Judge.

THE COURT: Okay. I'll order it produced. How quickly can you get that to Mr. Flynn?

MR. TALARICO: I can email a copy today, your Honor.

THE COURT: Okay. And that will be the three

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pages Bates stamped --

MR. TALARICO: Right.

THE COURT: -- 44 through 46. All right. And then we'll address the production response -- supplemental production response when we return on the 25th.

Can I throw my copy out?

MR. TALARICO: I'm sorry, Judge, I --

THE COURT: Can I throw this out? Can I throw out Mr. Dulberg's letter and the attachment?

MR. FLYNN: I have no objection to that.

THE COURT: Okay. All gone.

MR. FLYNN: So, Judge --

MR. TALARICO: Just so I understand, my motion to -- motion for extension of time is withdrawn and I am ordered to email immediately to Mr. Flynn the one document that was claimed as privileged that was part of the privilege log?

THE COURT: Yeah, Bates stamped 44 through 46, leaving off the first three numbers.

MR. TALARICO: Yes, your Honor, we'll do.

THE COURT: All right. Anything else we need to do today?

MR. FLYNN: Just to clarify, Judge, for the

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25th when we come back, shall I send a courtesy copy of the plaintiff's supplemental -- I'm sorry -- response? I'll send the actual discovery request itself.

THE COURT: Yeah. Yeah.

MR. FLYNN: And then I believe we also have a continued ruling on another discovery issue that my other client Mast had served. I think that was entered and continued. I'll just include that in the packet.

THE COURT: Okay. It will take some time, although this did too, but we'll just walk through the questions and responses.

MR. FLYNN: Understood.

THE COURT: Okay. Mr. Flynn, can you send me the order for today?

MR. FLYNN: I can. My secretary is with her daughter.

THE COURT: Okay.

MR. FLYNN: She was admitted to the hospital last week --

THE COURT: Oh, I'm sorry.

MR. FLYNN: -- and I think they have a follow-up all day today, so I probably can't get it

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until tomorrow.

THE COURT: Mr. Talarico, is it -- or can you wait until tomorrow?

MR. TALARICO: I'm fine for tomorrow, Judge.

THE COURT: All right. Tomorrow is fine.

MR. FLYNN: Okay.

THE COURT: And then we'll see you again on the 25th.

MR. FLYNN: Okay. Thank you, your Honor.

THE COURT: All right. Thank you.

MR. TALARICO: Thank you, Judge.

MR. FLYNN: Thanks, Counsel.

THE COURT: Thank you.

MR. TALARICO: Thank you, Mr. Flynn.

MR. FLYNN: Thank you, Counsel.

THE COURT: Disconnecting

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

I, KRISTINE L. FERRU, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	
vs.	No. 17 LA 377
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 25th day of March, 2021, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO
BY: MR. ALPHONSE A. TALARICO (Via Zoom)

On behalf of the Plaintiff.

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THE COURT: Good afternoon, Mr. Talarico. Can you hear me?

MR. TALARICO: Yes, your Honor.

THE COURT: I don't have any defendants. Did you guys have an agreement or --

MR. TALARICO: No, Judge. We communicated today, but maybe I misunderstood. We were talking about a 201(k) conference tomorrow. But I just got back to the office, so I'm just not sure. I didn't respond to the -- I initiated the conversation about a 201(k) conference --

THE COURT: Okay.

MR. TALARICO: -- and Mr. Flynn responded asking if I was available tomorrow, but at that point I don't know if he -- if he thought that would be sufficient for today's hearing.

THE COURT: Okay. Can you shoot them an email to find out if they are coming?

MR. TALARICO: I will, Judge.

THE COURT: Thank you.

(Short recess.)

THE COURT: Well, we don't have anybody showing up yet. I'm beginning to think they are not coming.

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MR. TALARICO: I have multiple emails, Judge. I apologize. I'm trying to find which one I received.

THE COURT: Oh, okay.

(Short recess.)

THE COURT: Well, Mr. Talarico, since they are not here yet, I'm assuming they are not coming. There is obviously a mistake on their part.

Do you want to reset this or do you want to continue to wait?

MR. TALARICO: Judge, I guess reset it, please.

THE COURT: All right. Do we have a future date?

THE CLERK: Not on this one.

THE COURT: All right. Tell me, you guys were going to talk tomorrow; am I correct?

MR. TALARICO: That is the proposal from Mr. Flynn. I haven't responded yet.

THE COURT: Do you want to put this over until Monday, and then you guys can come in via Zoom and we can talk about rescheduling this hearing?

MR. TALARICO: Sure, Judge, absolutely.

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THE COURT: All right. Well, pick a day that works for you next week. I'll accommodate your schedule.

MR. TALARICO: If I'm in the right week, your Honor, is April 1st next week?

THE COURT: I could do it -- yeah, I could do it at 8:45 just for a status. Does that work for you?

MR. TALARICO: Yes, Judge.

THE COURT: All right. I'm calling it status on defendant motion, and you want it April 1st. And there's the order, if you can read it, and it says status on defendant motion.

Yeah, it's now 1:37 and you haven't heard anything and nobody is trying to get in, so I don't know what they are doing, but I'm figuring they are not coming.

MR. TALARICO: Okay, Judge.

THE COURT: All right. So we'll see you next week. If you guys don't like that date, just show up together on Zoom at 8:45 any other day and we can reschedule the hearing at that time.

MR. TALARICO: Okay. Judge, there is -- (indiscernible) for me. I don't have to present a

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proposal order, correct?

THE COURT: Yeah, I've got it, so you are all set.

MR. TALARICO: Thank you, Judge.

THE COURT: All right. Have a good day. Thank you for coming.

MR. TALARICO: Thank you.

THE COURT: Okay. Bye.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) ss:
COUNTY OF McHENRY)

I, KRISTINE L. FERRU, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

_____Kristine Ferru_____

Certified Shorthand Reporter

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STATE OF ILLINOIS)
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COUNTY OF MCHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	No. 17 LA 377

ELECTRONICALLY RECORDED Report of Proceedings had in the above-entitled cause before The Honorable Thomas A. Meyer, Judge of the Circuit Court of McHenry County, Illinois, on the 1st day of April, 2021, in the Michel J. Sullivan Judicial Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by:
MR. ALPHONSE A. TALARICO,
Appearing via videoconference,
on behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by:
MR. GEORGE K. FLYNN,
Appearing via videoconference,
on behalf of the Defendants.

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THE COURT: All right. For the record, this is Dulberg versus Mast. And, plaintiff's counsel, if you could identify yourself.

MR. TALARICO: Your Honor, good morning. Mr. Flynn. My name is Alphonse Talarico. I represent the plaintiff, Paul Dulberg.

THE COURT: Okay. And for the defense?

MR. FLYNN: Attorney George Flynn, F-l-y-n-n. And, Judge, and, counsel, I would like to extend my apologies for the calendaring issue last week.

THE COURT: It happens. But let's -- where are we? Because I -- yeah, bring me up to date with where you are.

MR. FLYNN: Generally, Judge, the -- Okay. So the court ordered the plaintiff to produce certain documents that were withheld. That has been done. We have I think a continued issue with respect to interrogatory answers from the -- Hans Mast interrogatories served in July of 2019, and then the improper and vague answer, responses, to the production request where the plaintiff has just simply identified Bate's documents 1 through 8,708 relative to the discovery of the alleged malpractice.

THE COURT: Yeah, I looked at the answers, those

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answers, and I believe those are nonresponsive. Merely identifying all the records is not a direct response to your request, so I'm going to direct plaintiff to provide a supplemental response to those requests.

Mr. Talarico, you have something to say?

MR. TALARICO: Yes, Judge, actually, I do. Those 8,707 prior documents that had been submitted, according to the information I have, between Mr. Flynn and the Clinton Law Firm, the previous law firm, were under the initial request to produce. The answers that I have from the Clinton Law Firm indicate the wording that the documents will be produced and then there is no objection between Flynn -- Mr. Flynn and the Clinton Law Firm. There's no -- and I have no way of researching how the relationship between the first set of answers that covered document 1 through 8707 have been done. I -- that's why I said that that will be unreasonable and an expense and I have to go back to each document and see how it responded.

Mr. Flynn, as far as I've seen, had not objected to those answers, so to do that would force me to review close to 9,000 documents to see which were responsive -- 9,000 -- 8,707 that have already been turned over and, in addition to that, on February 10th,

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Judge, the last hearing date on this matter, you focused and ordered us to focus our response to the time Mr. Dulberg knew or should have known, and the only documents that at that time hadn't been turned over to Mr. Flynn would be six hundred something odd documents, communications between the second -- the Gooch law firm and Mr. Dulberg. Those I reviewed and submitted the one that responded to what -- to what the court indicated the communications in December of --

THE COURT: Before we get into that -- because I think that issue's resolved. Before we get into that, why are you -- I guess I'm not following. You're saying that it's -- giving him specific responses to his discovery requests is overly burdensome on you at this point?

MR. TALARICO: Right, to go back and review 8,700 documents that had been turned over in the past --

THE COURT: Well, who should?

MR. TALARICO: Excuse me?

THE COURT: Well, who's burden is that to provide the accurate answer?

MR. TALARICO: Judge, those were responded to. They were supplied to Mr. Flynn in the past in response to requests to produce.

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THE COURT: He may have -- I accept he has every single relevant document, but you can't just say in response to a discovery request find it yourself, it's in these thousands of pages of documents. You got to tell him where it is. So --

MR. TALARICO: I understand -- I'm sorry, Judge.

THE COURT: The bottom line, your answer has to be one that you can be pinned down on for purposes of impeachment, and your answers are -- don't permit that. So if you're going to respond, you've got to give him a direct response to a direct question, and you didn't do that. You've given him -- you said here's everything we have, find it yourself. And that is nonresponsive.

MR. TALARICO: Judge, with all due respect, again, the -- this was -- what I'm reflecting on is these are the documents that were submitted to Mr. Flynn by the Clinton Law Firm with no objection.

THE COURT: But I have a motion to compel that -- I mean -- so I think --

MR. FLYNN: And that's not accurate, Judge. There have been multiple 201(k) conferences and it was a long, unusual production in response to the interrogatories in the case as it was.

THE COURT: Regardless, I am ordering compliance and

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you must give specific responses to each of the requests, and you can't just say it's somewhere in these 8,000 plus pages. How long is it going to take you to do that?

MR. TALARICO: Judge, if I could have 60 days to cover 9,000 -- close to 9,000 documents.

THE COURT: Sure, I'll give you 60 days, because, yeah, that is a lot of -- those are a lot of documents, so I'll put this out 60 days.

Mr. Flynn, is there anything else we need to address at this time?

MR. FLYNN: Well, the supplemental production response, again, is a nonresponsive production response. The question is, is there a document in that 8,000 pages. We don't think there is, but Dulberg testified both ways essentially, whether there was a December 16, 2016, written communication with Tom Gooch that provided him with the basis for the tolling of the statute of limitations. If there is none, then the response should say there is none, not see 8,000 documents and maybe it's in them.

THE COURT: I agree.

Mr. Talarico, --

MR. FLYNN: And with respect to the --

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THE COURT: Well, hang on.

Mr. Talarico, I'm not going to tell you how to respond, but if there is no such document, -- I did take note of the fact that I saw none in the documents I reviewed -- if there is no such document, then just say there is no such document.

MR. TALARICO: With all due respect, I think I did answer that question. There was one document and I turned it over to Mr. Flynn. The only document between Gooch and the plaintiff in December of 2016, one document turned over, without objection, without a privilege log.

THE COURT: Mr. Flynn? You're being told that all documents responsive to that request have been turned over. And I agree that at least in the documents I was asked to review, there was nothing that corresponded with the December 2016 date that we initially were discussing, but --

MR. FLYNN: It should be a pretty simple process then and it should be in writing. Then I can attach it to my summary judgment motion, which I know is not a surprise to anyone. The same goes with respect to the interrogatory answers. Dulberg admitted in his deposition that he didn't respond completely to

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interrogatory number one, in particular, from Hans Mast. So that is also part of this motion to compel.

Again, that one is a little different. It says identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach and when and how you became aware of the breach. He didn't answer it.

THE COURT: Okay. Mr. Talarico? And I'm going to move on to everybody else and then come back to you -- in fact, I'll come back to you guys. I'll let -- let me get rid of everyone else and we'll resume this in a moment.

(Whereupon, the above-entitled cause was passed and subsequently recalled.)

THE COURT: That brings us back to Dulberg. What I'm doing right now is looking up -- I want to go to the interrogatory. Mr. Flynn, while I'm looking for -- it's interrogatory number one; am I correct?

MR. FLYNN: Correct.

THE COURT: All right. I'm looking in your motion to compel and since nothing is marked, I've got to page through these one at a time, so while I'm doing that, rather than just staring at me, why don't you tell me what the interrogatory says.

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MR. FLYNN: Sure. It says identify and describe each and every way that Popovich or Mast breached a duty of care to you, the date of the breach, and when and how you became aware of the breach.

THE COURT: Okay. And what was the response?

MR. FLYNN: Between October of 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires.

THE COURT: Okay.

MR. FLYNN: Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment. Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon. So that says nothing specifically about a breach, the date of the breach or when and how he became aware of it.

THE COURT: Well, it doesn't -- no, it doesn't tell you the date.

Mr. Talarico, do you have a response on that?

MR. TALARICO: No, Your Honor, it doesn't say specifically the date of the breach.

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THE COURT: All right. And --

MR. FLYNN: And we were forwarded the discovery. Again, this goes back to the Gooch -- whether it be a verbal or written communication on December 16, 2016.

MR. TALARICO: Mr. Flynn, verbal -- I don't know where I could get verbal responses. I've gone over everything and I -- Judge, I have in total 90 emails between the two, between Mr. Gooch and Mister -- and the plaintiff, and I would be willing to turn over every one of them. That's the written -- that's what I have.

MR. FLYNN: I just want to know what the basis is for the discovery of the malpractice, and if there isn't anything other than a verbal discussion with Tom Gooch in his office, that's fine; but it just needs to specify that. And I think that's been the ruling with this.

THE COURT: And I think --

MR. FLYNN: And that's what the testimony seems to reflect.

THE COURT: I -- I think the answer -- and I certainly don't know, but based upon what I understand already, I think the answer points to that December 2016 date addressed in the production response, but I don't know and I -- my concern is making sure it is clear from the answer to interrogatory that is in fact what we're

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talking about. If there's another date, fine, but it has to be disclosed.

I don't know about -- I'm not sure how he responds to the date of the breaches because I -- I do think that that's an incredibly broad question because it --

MR. FLYNN: I understand that.

THE COURT: -- in essence, it's every day after the resolution of the initial claim, and you do have a date for that, at least by way of a settlement or order.

So, Mr. Talarico, can you supplement that answer with the date of discovery?

MR. TALARICO: I will do my best, Judge. I will.

THE COURT: Okay. Mr. Flynn, the next one?

MR. FLYNN: You know, generally I think that's it, Judge. It's the supplemental production response and then these interrogatories, so what I would ask that the order reflect, that the specific answers need to be made and that the objections in the supplemental production response be overruled. I think the objection is undue burden on each of them --

THE COURT: Yeah, and to the extent that there are objections to the burdensome nature, those are overruled. I recognize that it is a burden, but you got

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to -- somebody's got to do it, and it is your claim, it is your burden. But I will give you 60 days in which to complete that.

Mr. Talarico, anything you want to add?

MR. TALARICO: No, Judge.

THE COURT: So why don't we -- 60 days is June 1st. Let's assume -- and I'm going to -- I won't assume compliance prior to June 1st, but if we come back on June 14th, that's a Monday, Mr. Flynn, do you think you would be able to give me your comments on compliance by then?

MR. FLYNN: If I have a response and, say, amended interrogatory answers and amended supplemental responses by June 1?

THE COURT: Yeah.

MR. FLYNN: Yes, sure.

THE COURT: Okay. So I will direct a supplemental answer to interrogatory number one. I'll direct amended answers to the production request, and all due by June 1st.

Is there anything else we need to address?

MR. TALARICO: No, Judge, that's my birthday --

THE COURT: Happy birthday.

MR. TALARICO: (Indiscernible).

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MR. FLYNN: I guess the only thing going forward, we've got the objections in the deposition transcript. Does the court typically just rule on those when ruling on a summary judgment motion?

THE COURT: No, I -- let me -- I have not had to deal with ruling on objections in a discovery deposition related to a motion for summary judgment.

MR. FLYNN: Okay.

THE COURT: So I haven't done that before, but I do think that we have to address that and the only way to address it is to just walk through them, so perhaps if we set -- and I know this is putting it out, but I'm wondering -- and you know better -- whether any of the objections are going to become moot once you have responses to the written discovery. Is that going to fix anything?

MR. FLYNN: I think that a lot of them are already moot. I think that some of the rulings over the last month or so on these objections have probably covered those that are contained in the dep transcripts; however, I just want to make the summary judgment process as clean as possible.

Maybe I can talk to Mr. Talarico and we can come up with an agreement on whether some of these

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objections in the dep are withdrawn, but, again, I just -- I don't want the summary judgment motion to bog down on objections in a dep transcript, so --

THE COURT: Okay. And I don't know.

MR. FLYNN: So -- Okay. I wanted to raise that issue in advance so the court's aware that that might be an issue.

THE COURT: Why don't we put the hearing at 1:30 on Monday, June 14th, and if you are unable to work out the issues on the discovery deposition, then we'll walk through the transcript. You'll need to give me a copy. And -- unless there is one in the court file already. You'll need -- and we'll walk through each one and I'll take argument at that time and --

MR. FLYNN: Okay.

THE COURT: -- I'll rule then. And that may get you where you want to go, and if there are none, great. Then we don't have to deal with it.

Does that --

MR. FLYNN: Okay.

THE COURT: Does that resolve your concern for today at least?

MR. FLYNN: I think so.

THE COURT: All right. So, Mr. Flynn, if you could

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draft the order.

Mr. Talarico, is there anything you want to add?

MR. TALARICO: Well, I've read -- I wasn't present at the deposition, so I'm just trying to get my brain wrapped around it. The objections were attorney-client privilege, sir, was that --

MR. FLYNN: Many of them, yes.

MR. TALARICO: Okay. That's all.

MR. FLYNN: And, again, it goes to the discovery of the malpractice. I think that it's been placed at issue by virtue of the pleadings, so -- and, again, I think that there's been a ruling, at least in part, on some of these issues, but, --

THE COURT: In the alternative --

MR. FLYNN: -- you know, why don't we --

THE COURT: -- if you agree that some of the questions could have been answered, can you do this by way of interrogatory rather than a supplemental deposition?

MR. FLYNN: I think that for the most part Mr. Dulberg answered over the objections.

THE COURT: Okay.

MR. FLYNN: And so the record was set there. The

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objections were made on the record. I think that it could probably be dealt with fairly swiftly.

THE COURT: All right. Great. Then I'll wait for your order. As soon as I see it, I'll sign it. And, otherwise, I'll see you June 14th.

MR. FLYNN: Okay. Thanks, Judge. Do you have a time that you needed the order by? I would like to send a draft to Mr. Talarico after my secretary prepares it.

THE COURT: The clerks will harass you, --

MR. FLYNN: Okay.

THE COURT: -- but if you get it in by Monday, that's fine.

MR. FLYNN: Oh, okay. I was thinking sometime today.

THE COURT: Today's perfect. So anytime this afternoon is fine, but Monday is kind of the to-die date. I got to have it by then.

MR. FLYNN: Fair enough.

THE COURT: All right.

MR. FLYNN: Thank you very much, Your Honor.

THE COURT: Thank you.

MR. TALARICO: Thank you, Judge. Thank you, Mr. Flynn.

MR. FLYNN: Thanks, Counsel.

(Which was and is all of the evidence offered at the hearing of said cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

I, Stacey A. Collins, an Official Court Reporter of the 22nd Judicial Circuit of Illinois, do hereby certify the foregoing to be a true and accurate transcription to the best of my ability and based on the quality of the recording of all the proceedings heard on the electronic recording system in the above-entitled cause.

Stacey A. Collins, CSR
Official Court Reporter

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Date: 3/25/2022 8:38 AM
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Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendant.

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 14th day of June, 2021, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE LAW OFFICE OF ALPHONSE TALARICO, by
MR. ALPHONSE TALARICO, (Via Zoom)
On behalf of the Plaintiff.

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THE COURT: Good afternoon. Mr. Talarico, you are still on mute.

MR. TALARICO: Let's see. I don't do --

THE COURT: Okay. You are -- for the record, counsel, if you could identify yourself?

MR. TALARICO: Your Honor, my name is Albert Talarico. I'm the attorney for the plaintiff in this case, Paul Dulberg.

THE COURT: Okay. Defendant is not here nor is he on Zoom. Have you had any contact with him?

MR. TALARICO: No, your Honor, I have not.

THE COURT: Okay. Who is defense counsel?

MR. TALARICO: Mr. Flynn, George Flynn, I believe is his name, George K. Flynn.

THE COURT: Okay. There doesn't seem to be anybody in the building or at least on our floor waiting to come in. What's going on with the case? What -- we are here for discovery compliance.

MR. TALARICO: Yes, your Honor. Well, I believe we have complied to your order completely.

THE COURT: Okay.

MR. TALARICO: We have filed and served all the proper documents, searched all -- whatever, close to 9,500 documents and responded appropriately.

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THE COURT: All right. Well, I'll -- assuming Mr. Flynn doesn't show up, what state of the case are you in? What's going on? You're still in F(1) discovery.

MR. TALARICO: That's true, your Honor. There is a couple of things on the agenda depending on what happens today or what doesn't happen today. There -- Mr. Flynn last time on April 1 had mentioned to the Court that he would like to address the issuance of the attorney-client privilege objections that were in the discovery deposition of Mr. Dulberg. There hasn't been any contact on that matter, and when I see what my -- what prior counsel did, none of my answers to the -- to the written discovery waive any of that, nor am I willing to waive any of it.

THE COURT: Okay. Well, I don't have that up for hearing today, and nor do I have on the -- yeah, I just had objections on written discovery. Nothing on the dep. So if he doesn't anything, I won't address the (indiscernible.) Is there any (f)(1) discovery that needs to be taken?

MR. TALARICO: Yes, Judge. And I'm sorry. My apology to the Court but the last 60 days based on

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the -- what do you call it, the written discovery, it put me back a little bit and it's my intention (indiscernible) the one -- the request to produce that Mr. Flynn had not responded to completely. So I'm going to present a motion, I haven't done it yet, a motion to spell. My client won't do (indiscernible) the amended pleadings to match the pleading facts. So there will be a motion to amend the pleadings.

THE COURT: Okay.

MR. TALARICO: And depending on today, that's really why everything has been, like, on hold, motion to strike all the answers of the discovery deposition that Mr. Flynn is claiming he would like to use in his motion for summary judgment which I haven't seen yet.

THE COURT: All right.

MR. TALARICO: So I don't expect to see it this early.

THE COURT: Well, yeah, he's still not here. Rarely are people late for Zoom hearings. And I don't see anybody outside. And it sounds like you guys are going to be coming back in the near future on other matters.

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MR. TALARICO: With all due respect, Judge, may I interject? The only contact I've had with Mr. Flynn in this 60 days plus, the 14, after I served him with the discovery responses, the amended, he sent me an email thanking me, and that's all I've heard.

THE COURT: All right. I'm going to continue the case assuming Mr. Flynn does not show up before I'm done. In light of what you have planned by way of discovery, I'm thinking 60 days, or do you want to go to a longer date? Mid August?

MR. TALARICO: Yeah, Judge, mid August.

THE COURT: All right. I'm just going to call it status (f)(1). How is August 18? That's a Wednesday.

MR. TALARICO: One second, your Honor, please.

THE COURT: Yeah. Any time around there is fine.

MR. TALARICO: Could we have the next day? Is there something available on the 19th of August?

THE COURT: Yeah. August 19 works. I'm going to wait three minutes -- two-and-a-half minutes, and I'll give them until 1:40 to show up for the 1:30 hearing. And if he does not, I'll set -- I'll sign

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the order putting this over to August 19.

MR. TALARICO: What time is that?

THE COURT: That will be at 8:45, and Zoom will still be available as far as I know.

Okay. Time is up. There is the order. August 19, 8:45, and we will see you then.

MR. TALARICO: All right. Thank you, Judge.

THE COURT: All right. Thank you.

MR. TALARICO: Thank you for the Court's time.

THE COURT: Have a good day.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, JUDY CARLSON, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Judy A. Carlson

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STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
vs.) No. 17 LA 377
)
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,)
)
Defendants.)

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 19th day of July, 2021, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by MR. ALPHONSE A. TALARICO (via Zoom)

On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by MR. GEORGE K. FLYNN

On behalf of the Defendants.

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THE COURT: Counsel?
MR. FLYNN: No. 10, your Honor. I see Mr. Talarico. George Flynn on behalf of defendant/movant.
THE COURT: Dulberg versus Mast?
MR. FLYNN: Yes.
THE COURT: Okay. I saw Mr. Talarico. All right. Mr. Talarico?
MR. TALARICO: Yes, Judge. Good morning.
THE COURT: All right. Counselor here in court, what's going on?
MR. FLYNN: Good morning, your Honor. We brought a motion to supplement our motion to compel. The Court ruled on April 6th and granted defendant's motion to compel and set a June 14 compliance date.
THE COURT: Okay.
MR. FLYNN: I'm sorry. June 1st compliance date with a June 14 hearing. Somehow I don't believe we got a copy of the file stamped order and it didn't get diaried, so I believe the case was called on June 14 --
THE COURT: Okay.
MR. FLYNN: -- and a continue date August 19th.
THE COURT: You got inadequate compliance, is

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that ultimately --

MR. FLYNN: That's our position, yes.

THE COURT: All right. I'm going to pass this. We'll come back to it. And let me see if I can take a look at the compliance at issue.

Mr. Talarico, just hang in there. I'll be back at the end of the call.

MR. FLYNN: Thank you, your Honor.

(Whereupon the afore-captioned cause was recalled.)

THE COURT: Let's go to Dulberg. All right. Plaintiff's counsel for the record, if you could identify yourself.

MR. TALARICO: Good morning, your Honor. My name is Alphonse Talarico. I represent Paul Dulberg.

MR. FLYNN: And good morning again, your Honor. George Flynn on behalf of Popovich and Mast.

THE COURT: All right. So tell me what the issue is.

MR. FLYNN: Again, your Honor, the Court ruled on April 6th that the plaintiff was directed to provide the specific answers and responses to each interrogatory and production request. So we did

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receive supplemental production responses and a supplemental interrogatory answer. With respect to the supplemental production, there is one document that I consider to be responsive and that is new.

THE COURT: I'm sorry?

MR. FLYNN: There is one document that was produced and I consider it to be responsive and a new production. The rest of the documents that were produced, it's unusual. There are actual pleadings from this case that were attached as responsive documents to my discovery requests. I don't see how those -- which basically just set forth the plaintiff's position in this case in response to the various arguments we've made in motions.

THE COURT: Well, what is it you're looking for? What didn't you get?

MR. FLYNN: I'm looking to strike any of those documents --

THE COURT: Okay.

MR. FLYNN: -- that are not responsive.

THE COURT: Is it -- I mean, really is it necessary to go to the trouble of striking them if they're -- I mean, ultimately they're not going to be relevant as a discovery response.

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MR. FLYNN: Only -- I just want to make sure there aren't any additional documents that were --

THE COURT: Are there any additional documents, Mr. Talarico?

MR. TALARICO: Judge, I have no idea if -- it's our position we complied completely. We filed our answers on June 1st. If the Court had -- I don't know if the Court remembers, you had ordered us, plaintiff and defendant, to talk up through June 14th to see if there were any issues. The only response I got from the defendants was an e-mail with one word. As I told you on June 14th, the only word was, Thank you. Now I am totally surprised, 73 days later, Judge, and I don't know what else -- I want time to respond in writing, Judge. This is --

THE COURT: I don't -- I don't want to do that.

MR. TALARICO: This has been difficult.

THE COURT: This is --

MR. FLYNN: Yes, it has, Judge.

THE COURT: So what is it you -- what is it you are looking for? Because I have a representation on the record -- and I'm assuming there's an affidavit of compliance.

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MR. TALARICO: There is.

THE COURT: Okay. Then -- and he says, I've given you everything.

MR. FLYNN: That's fine with respect to the production response. Now there's the interrogatory answer.

THE COURT: All right. Tell me -- we're moving on to the interrogatory.

MR. FLYNN: And again, this goes to the statute of limitations on a legal malpractice case. The plaintiff is claiming that he didn't discover it until after the 2 years --

THE COURT: Could you keep your voice up a little?

MR. FLYNN: Sure. Plaintiff is arguing for a tolling of the statute of limitations on a legal malpractice case. He was asked in Interrogatory No. 1, Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

His response -- his amended additional response discusses his pecuniary injury, that only addresses damages. With respect to the breach of

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the standard of care and how he discovered it, he simply says he knew that the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

THE COURT: Okay.

MR. FLYNN: That describes the date. It doesn't describe how he became aware of it, what Gooch told him. Now, again, I know your Honor is aware of the deposition testimony in this case regarding that December 16 time period. If the answer is that Dulberg doesn't remember what Mr. Gooch told him, if Gooch said simply, You have a case, that's fine. That's what they should say. But I've already taken his deposition. There are no specifics that explain to me why Mr. Gooch crystallized this breach of the standard of care on December 16. But if this is all they have, then that's what he should say, is that I don't remember what Mr. Gooch told me.

THE COURT: I mean, he's -- I think he's complied. I'm not sure --

MR. FLYNN: What is the breach of the standard of care?

THE COURT: I'm sorry?

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MR. FLYNN: And what is the breach of the standard of care? That's what I've asked in the interrogatory. They don't say.

THE COURT: Well, I think that -- all right. I guess that is -- my reading on it, it's implied it's a statute of limitations. But --

MR. FLYNN: No, the statute of limitations is the issue in this case.

THE COURT: All right. What is the --

MR. FLYNN: The underlying personal injury case --

THE COURT: What is the breach? Did Mr. Gooch advise him what the breach was?

MR. TALARICO: Judge, all that Mr. Dulberg recalls was relayed in the responses. There were no recordings that were going on. Nothing was done in writing. I'm not sure how I can possibly respond anymore, to give anymore.

THE COURT: I have a representation that this is all there is.

MR. FLYNN: That's satisfactory to me. As long as when I file my summary judgment motion there's not some new discovery discussion as to --

MR. TALARICO: Judge --

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MR. FLYNN: -- what the breach was and what --
MR. TALARICO: I'm sorry. I hate to interrupt. Judge?
THE COURT: Yeah.
MR. TALARICO: We -- again, we were -- our response, I believe is in total compliance with the Court order of June 6th and your instructions on that day from the court record. And I'd like to respond in writing to establish that we did that.
THE COURT: No. No. I mean, you're -- you only need to respond in writing if we're going to have a hearing. If you want to file a brief that -- just in the file, that's fine, but I think we have a resolution today and I don't want to spend more time reading briefs resolving an issue that's moot. So I think this is resolved. What else is outstanding?
MR. FLYNN: I think that does resolve -- the representation resolves both issues, so --
THE COURT: I have -- you have advised -- well, you've advised that's all there is, so I'm finding you in compliance.
MR. TALARICO: Thank you, your Honor.
THE COURT: Okay. Is there anything else we need to do?

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MR. FLYNN: I suppose with respect to the summary judgment motion that I anticipate, Judge, there was one document that was produced in order to avoid a second deposition of Mr. Dulberg to authenticate this document, which is a letter from Attorney Thompson -- I'm sorry -- Attorney Ferris -- that goes to the issue of the statute of limitations. If Mr. Talarico would stipulate to the authenticity of this March 4, 2015 letter on the record, I don't need to send a request to admit for --

THE COURT: Can you hear all that?

MR. TALARICO: I heard it, Judge, but I'm not familiar with that document. A request to admit would be welcome.

MR. FLYNN: Fair enough.

MR. TALARICO: Just so I can see what it is.

THE COURT: That's fine. We're back again on August 19th. Do you want to delay that date in light of the fact you may be issuing a request to admit?

MR. FLYNN: I think that would make sense.

THE COURT: All right. So let's strike August 19th and tell me when it makes sense to come

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back.

MR. FLYNN: I'll need at least 30 days, so --

THE COURT: 60 days?

MR. FLYNN: A 60-day date would be great.

THE COURT: How's September 17th? That's a Friday.

MR. TALARICO: Fine with me, Judge.

MR. FLYNN: That works for me.

THE COURT: All right. So that will be at 8:45 and then we'll see what you guys want to do when you come back. And are you withdrawing your motion or ...

MR. FLYNN: I think that --

THE COURT: Or do you want me expressly to find compliance based on representations in open court?

MR. FLYNN: I'm not requesting a hearing any longer. I think we resolved the matter. So yeah, I'll withdraw it.

THE COURT: All right. Motion's withdrawn. The record still stands. I did find that you were in compliance and we'll deal with the next step whenever it comes up. But I will see you September 17th and if you could draft the order.

MR. FLYNN: I will. Thank you, your Honor.

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THE COURT: All right. Thank you.

Mr. Talarico, anything else?

MR. TALARICO: No, Judge, thank you for your time.

THE COURT: All right. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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I, CRISTIN M. KELLY, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Cristin M. Kelly
Certified Shorthand Reporter
License No. 084-004529
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Clerk of the Circuit Court

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
vs.) No. 17 LA 377
)
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,)
)
Defendants.)

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 7th day of September, 2021, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by MR. ALPHONSE A. TALARICO (via Zoom)

On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by MR. GEORGE K. FLYNN (via Zoom)

On behalf of the Defendants.

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THE COURT: Dulberg versus Mast?
MR. TALARICO: Alphonse Talarico for the plaintiff, Mr. Dulberg.
MR. FLYNN: Good morning, your Honor. George Flynn for the defendants, the movants.
THE COURT: All right. I have a defendant motion.
MR. FLYNN: Yes, we have a motion to deem facts admitted as well as response filed --
THE COURT: Okay. I didn't see that. Do you want to file a reply?
MR. FLYNN: I don't think it's necessary. I have a comment or two I'd like to make, but I don't think I need to file a reply.
THE COURT: If you want to wait until the end of the call, I'll address it and we'll walk through it. What would you like to do?
MR. FLYNN: That would work. The comment is really just respect to the motion -- with respect --
THE COURT: You have to wait, so --
MR. FLYNN: Fair enough.
THE COURT: I got to take a look at it and I've got a bunch of people waiting, so I will circle back to you.
(Whereupon the afore-captioned

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cause was recalled.)

THE COURT: Do we have a defense attorney on Dulberg versus Mast? All right. Mr. Talarico, we're missing a defense --

MR. TALARICO: Yes, your Honor.

THE COURT: Oh, we do?

MR. FLYNN: George Flynn for defendants.

THE COURT: All right. Oh, we were going to do the -- I'm sorry. I skipped ahead.

MR. FLYNN: That's okay.

THE COURT: There's a lot of people here.

(Whereupon the afore-captioned cause was recalled.)

THE COURT: All right. I'm going to deal with Mr. Talarico.

MR. TALARICO: Yes, your Honor.

THE COURT: Okay. Going back to your case. All right. Mr. Flynn, what is the basis of your motion?

MR. FLYNN: Good morning, your Honor. George Flynn on behalf of defendant/movant. The basis is it's a motion to deem facts admitted. We were trying to authentic a document that was the subject of some discussion the last couple of times we appeared before your Honor. I filed the request to

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admit. We received objections that we believe are inappropriate and just moving for ruling on those objections and some other relief. The -- the response that they filed, essentially is a motion to strike based on the failure to conduct a 201(k) conference, which I don't think is required with respect to objections and a request to admit, which is a hybrid discovery and evidentiary tool.

So with respect to the motion itself, I really have nothing to say more than what's in the motion. I'd be happy if the Court wanted to take it under advisement after it has an opportunity to review the attachments and the motion.

THE COURT: No, I won't take it under advisement. We'll go back to that in a minute.

Mr. Talarico, do you have any case law that says a 201(k) conference is required before 216 -- or in a 216 situation?

MR. TALARICO: Yes, your Honor. Supreme Court Rule 201(a) typically says the request to admit --

THE COURT: Do you have any case law?

MR. TALARICO: No, I have no case law, your Honor.

THE COURT: Okay. Because I don't think it does. I think by its own -- by the language of the

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rule, it's 28 days. And in fact, I believe the rule requires that the request to admit facts explicitly disclosed if you're not -- if you don't respond in 28 days, the answers are deemed admitted. So there is no requirement to engage in a 201(k) conference to resolve differences because by its own language, it resolves itself.

So let's get into the answers. Okay. Anything you want -- I see No. 1, they seem to be asking you to admit or deny the genuineness of the document that was attached?

MR. TALARICO: Correct, your Honor.

THE COURT: And do you have any -- anything to say beyond what you've written in response?

MR. TALARICO: Your Honor, use of the words defendant put into his motion, request to admit, are subject to various interpretations. And he did not include the definition of the specific words that he was using, so I relied upon the Black's Law Dictionary for definition. And within that, we were -- we reviewed the fact of the document.

THE COURT: Okay.

MR. TALARICO: The document -- the document is not accurate. It's not true. It's none of the

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above. It has a wrong date of accident, the wrong date of meeting. It has a lot of inaccuracies on it, Judge.

THE COURT: Okay. I'm going to strike the implicit objection regarding what is genuine. That being said, I do have what appears to be an admission. Mr. Flynn?

MR. FLYNN: Yeah, Judge. I mean, it's -- I guess if it was an admission buried in these objections. But the entire document is muddled up with these various objections. I'm just asking if this is a true copy of the letter that his client received. I'm not asking if it's -- if information contained is true and accurate. If you read it, it's admit Exhibit A attached hereto is a true, accurate, and genuine copy of a March 4, 2015, letter drafted by Attorney Saul Ferris. He concluded with the content of the letter. That's not what I'm asking about.

MR. TALARICO: Your Honor, that is not in true -- truth is not within that document. That's what we're saying. Those are false statements.

THE COURT: And that's fine. But it is -- he doesn't need to lay a foundation for the document;

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am I correct?

MR. TALARICO: No. But the question -- I'm sorry.

THE COURT: Are you -- are you admitting -- I'm assuming, Mr. Flynn, this is for purposes of a foundation? You're not asking him to admit the contents?

MR. FLYNN: That's correct. This is produced -- again, late produced in discovery after the plaintiff's deposition. He should have produced this document years ago when he's placed the discovery of his malpractice at issue. So then he produces this letter. I don't want to have to take Saul Ferris's deposition, so I'm just asking, this is the letter that Mr. Dulberg produced and that it's a genuine copy of what he received in the mail?

THE COURT: Okay. Mr. Talarico, yes or no?

MR. TALARICO: Judge, that is a genuine copy. We don't know -- when examined, Mr. Dulberg does not recall. And in the deposition, he said he did not recall when he received it or how he received it. That is left open.

THE COURT: Mr. Talarico, I asked you a yes or no question, not asking for an explanation, which is consistent with what request to admit facts require.

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So are you admitting to the foundation of this document or denying --

MR. TALARICO: Yes, your Honor.

THE COURT: Okay. Then we will proceed. That's deemed admitted for purposes of foundation.

Next one -- Mr. Flynn, the next one at issue?

MR. FLYNN: Judge, there was 2 and 3, and I attempted to pin them down on when he received it. So I asked No. 2, if Mr. Dulberg received a copy of this letter within 7 days of the date dated. And then, the next one, I asked if he received it within 30 days of the date it was dated. He doesn't answer either of those.

THE COURT: Okay. Mr. Talarico?

MR. TALARICO: Judge, with all due respect, Mr. Dulberg answered as best he could. This was alleged to be sent by U.S. Mail. He has no idea. It was many years ago. So he answered as truthfully, as cooperatively as possible, that he has no independent recollection of when this letter was received. He did a search of his own records, as presumed, at my request. He has no envelope.

THE COURT: If -- what it boils down to from my perspective is I'm reading it as a denial. And

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actually, that subjects you to 219(c) fees if they have -- for those fees associated with the cost of proving it up. But I'm reading it as a denial. Can I -- do you have any problem with my reading it as a denial? Am I incorrect?

MR. TALARICO: No, your Honor, you're not.

THE COURT: Okay. Mr. Flynn, anything you want to add? My interpretation of all of that is a denial.

MR. FLYNN: If that's what the answer is, then he's denied that he received this letter within 30 days of the date that the lawyer put the -- stamped it. So yeah, if I need to prove it up by taking Mr. Dulberg's -- retaking Dulberg's deposition and then taking Saul Ferris's deposition, and as I've indicated in the motion, I'm seeking fees and costs.

THE COURT: Yeah. I'm going to interpret 30 -- or I'm sorry -- 3 the same way. I interpret that as a denial and you just have to prove it up.

Next one?

MR. FLYNN: The next one is just regarding the meeting that is referenced in the letter. Admit that you met with Saul Ferris upon or about December 31, 2014, with regard to your personal

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injury case.

THE COURT: Okay. I --

MR. FLYNN: And he's denying -- he denied the date. He then says it's a later time period between February 23rd and March 6th of 2015, which also coincided with the drafting of that letter, by the way. So he's changed the premise of No. 4, but sort of provided an answer --

THE COURT: I think that's a denial because of the way you phrase your question. Anything after denies that he met Saul Ferris on or about December 31, 2014, with regard to -- with regard to the personal injury case, everything after that is surplusage. So you have a denial. All right. Is there anything else?

MR. FLYNN: No. The relief will be requested now that these denials and improper objections were raised. I'm going to have to retake Mr. Dulberg's deposition at least on the subject matter of this letter and I'll probably have to take Mr. Ferris's deposition to prove-up the foundation for the letter as well.

THE COURT: Certainly --

MR. FLYNN: So I would ask for fees and costs.

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THE COURT: You have leave to depose Mr. Ferris. I'm not sure you need Mr. Dulberg's deposition -- I'm willing to listen -- because your deposition of Mr. Dulberg would merely result in him repeating --

MR. FLYNN: Raising the same denial, so --

THE COURT: I mean, he's on the record denied any recollection. So I don't think you need the deposition to get him to say that in the transcript because you've got it in the request to admit. And I'll hold him to that unless there's something else you think you need from the deposition.

MR. FLYNN: No, Judge. I -- as you said, I think he's going to make the same denials and in my opinion play the same games he's been playing. So I'll take Mr. Ferris's deposition. I'll seek -- I'm requesting fees and costs in connection with the deposition because it shouldn't be necessary.

THE COURT: Well, I think -- and unless there's a different issue with respect to the cost associated with that deposition, I think that's an issue that I would have to address after trial because my reference to 219(c) is when you have to expend money to prove-up a fact that they deny, then you are entitled to those fees, but -- so I couldn't

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award them yet because you haven't --

MR. FLYNN: Fair enough.

THE COURT: -- you haven't done it. And I can only do that after the fact because if you fail to prove it up, you're not entitled to those fees, obviously.

MR. FLYNN: Understood.

THE COURT: So is there anything else we need to do today?

MR. FLYNN: I don't think so, Judge. If I could just clarify the order that will read that No. 1 is admitted, 2, 3, and 4 are denied.

THE COURT: Yes.

MR. FLYNN: That I have leave to depose Mr. Ferris.

THE COURT: Yes.

MR. FLYNN: And then I assume come back for status.

THE COURT: Yeah, we're back on September 17th. That's awful soon in light of what you're now going to do. I'm thinking more like 60 days unless you guys have a better idea.

MR. FLYNN: I agree.

MR. TALARICO: Judge?

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THE COURT: 60 days puts us into -- actually November 8th is my default date. Any time earlier is fine.

MR. FLYNN: That works for me.

MR. TALARICO: Fine, Judge.

THE COURT: All right. Mr. Flynn, since it's going to be a more complicated order, can you send it in?

MR. FLYNN: Yes.

THE COURT: Can you copy --

MR. FLYNN: I will.

THE COURT: Do you have our address?

MR. FLYNN: I do, I do. And I'll send a copy of the draft to Mr. Talarico this morning. I'd like to hear back from him by noon so there's no confusion.

THE COURT: Okay. I will --

MR. FLYNN: All right.

THE COURT: -- wait for the order. And then otherwise -- and please strike September 17th.

MR. FLYNN: We will. Thank you, Judge.

THE COURT: Thank you.

(End of proceedings.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, CRISTIN M. KELLY, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

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Certified Shorthand Reporter
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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendant.

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 8th day of November, 2021, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE LAW OFFICE OF ALPHONSE TALARICO, by
MR. ALPHONSE TALARICO, (Via Zoom)
On behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE FLYNN, (Via Zoom)
On behalf of the Defendants.

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THE COURT: Dulberg versus Mast.

MR. FLYNN: Good morning, your Honor. George Flynn for defendants.

THE COURT: Okay.

MR. TALARICO: Good morning, your Honor. Alphonse Talarico for the plaintiff, Paul Dulberg.

THE COURT: Okay. I saw attorney -- did the deposition of the attorney go?

MR. FLYNN: It did.

THE COURT: Okay. And so what's going on now?

MR. TALARICO: Well, your Honor, we are waiting -- I haven't received a transcript of a -- (indiscernible) that day. Additionally, I have discovered that it's possible that there is some outstanding discovery from the prior attorneys on this case. So I think (indiscernible) Mr. Flynn is probably the next step to get this thing moving.

THE COURT: Okay. Have you told Mr. Flynn what it is you are looking for?

MR. TALARICO: No, I haven't. This is the reason that I found this while I was going through.

MR. FLYNN: Is this discovery the defendants propounded or the plaintiffs propounded?

MR. TALARICO: Plaintiff's attorneys, former

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attorneys.

MR. FLYNN: Yeah, I'm not aware of anything that's outstanding.

THE COURT: Okay. So let's assume that Mr. Flynn produces whatever it is you're looking for within the next two, three weeks, what do you anticipate doing next on this case, Mr. Talarico?

MR. TALARICO: Well, Judge, proceed forward towards trial. I don't know if Mr. Flynn is going to be filing a motion for summary judgment. That maybe the next step or --

THE COURT: Okay. Mr. Flynn, is a summary judgment in the offing, or have you decided yet?

MR. FLYNN: We have certainly decided. There are at least two grounds that I plan to bring at the end of the fact discovery. Just because of the underlying record, I have two more arguments to make that may be more appropriate for later on in the case.

THE COURT: Okay. Well, it tells me, then, we have to ramp up at one before we can move onto your motion. I'm going to put this out for 30 days. And I'm going to order all outstanding written to be completed by that date. And we will wait and see

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what it is that is outstanding.

Certainly, I'll work with you if that's going to be time consuming. But I'm assuming it's just going to be a simple matter of turning over something.

So I'm going to put -- tell me a day you want to come back in early December. How is the 8th, that's 30 days?

MR. TALARICO: That will be fine with the plaintiff, Judge.

MR. FLYNN: Judge, I think I may be in New York that day. I would be free on Tuesday the 7th.

THE COURT: How is -- Mr. Talarico, how is the 7th?

MR. FLYNN: The 7th would work, Judge.

THE COURT: Okay.

MR. FLYNN: I'll prepare the order, Judge.

THE COURT: Drafted the order, December 7, 8:45.

MR. FLYNN: Thank you.

MR. TALARICO: Thank you, your Honor.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, JUDY CARLSON, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Judy A. Carlson

Certified Shorthand Reporter

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AMENDED CERTIFICATION PAGE

COUNTY OF MCHENRY)
)
STATE OF ILLINOIS)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT

MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff,	)
vs.	) NO. 17 LA 377
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	)

The ELECTRONICALLY RECORDED Court Proceedings had at the hearing in the above-entitled cause in front of the HONORABLE THOMAS MEYER, held on the 7th day of December, 2021, at the Michael J. Sullivan Judicial Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICES OF ALPHONSE A. TALARICO
BY: MR. ALPHONSE TALARICO (via Zoom)
Appeared on behalf of Plaintiff

KARBAL COHEN ECONOMOU SILK DUNNE, LLC
BY: MR. GEORGE K. FLYNN (via Zoom)
Appeared on behalf of the Defendants

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THE COURT: Okay. Do I have both sides on anything or an agreed order?

MR. TALARICO: On Dulberg, Your Honor. I see Mr. Flynn.

THE COURT: Mr. Flynn, are you on Dulberg?

MR. FLYNN: Good morning, Your Honor.

THE COURT: Good morning. Are you on Dulberg?

MR. FLYNN: Yes.

THE COURT: Okay. And for the record, if you -- plaintiff's counsel, if you could identify yourself?

MR. TALARICO: Your Honor, my name is Alphonse Talarico. I'm here for the plaintiff, Mr. Paul Dulberg.

And if I could take a moment of the Court's time just to send warm wishes on Pearl Harbor Remembrance Day to everyone and especially to the Court.

THE COURT: Okay. Thank you.

Mr. Flynn, if could you identify yourself.

MR. FLYNN: George Flynn for defendants.

THE COURT: All right. Plaintiff's counsel, you have a motion to compel.

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MR. TALARICO: Yes, Your Honor.
THE COURT: All right. Mr. Flynn, what -- What's your response on that?
MR. FLYNN: Judge, I just filed a response yesterday afternoon.
THE COURT: Yes.
MR. FLYNN: There was some exhibits. I imagine it will take a little time for the Court to review it.
THE COURT: Yeah. I do see that now.
And what I was intending to do was just to go through your answers.
I'd like to resolve this today if you guys can -- can hang around until the end. And how much time do you have?
MR. FLYNN: Well, Judge, I don't think that -- In my view, I think that if the Court were able to review the response and the exhibits, that it might change the game plan a little bit as far as going through each of these.
THE COURT: Okay.
MR. FLYNN: I have a letter from plaintiff's prior counsel, which in my view resolves all of these issues.

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THE COURT: All right. I will -- I'll --
MR. TALARICO: May I speak?
THE COURT: -- take a look at your response.
Mr. Talarico, do you want to file a reply?
MR. TALARICO: Yes, I do, Judge. And --
THE COURT: And how long do you need to reply?
MR. TALARICO: -- I think it's warranted.
THE COURT: I'm sorry?
MR. TALARICO: I said, I think it's warranted, Your Honor.
THE COURT: Okay. How long do you need?
MR. TALARICO: If I could have fourteen days.
THE COURT: Okay. Fourteen days will take us to December 21. And --
MR. FLYNN: Judge --
THE COURT: Yes?
MR. FLYNN: The plaintiff just filed this motion late last week.
I had my response on file yesterday afternoon.
I think that a couple of days is really all that is necessary, and we'd like to get that discovery closed so we can move on.

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THE COURT: Yeah, but --
MR. FLYNN: Fourteen days? I don't know --
THE COURT: Fourteen days, given the time of the year, it doesn't make a whole lot of difference because I wouldn't be able to set you for hearing next week simply because of my schedule.
So it -- It, unfortunately, works better for me to kick it over into January. I can do it January 4th, Tuesday.
MR. FLYNN: One second.
MR. TALARICO: That's fine, Your Honor.
THE COURT: All right. Mr. Talarico, could you send in the order setting it for 10:00 a.m. on January 4th and giving yourself fourteen days?
MR. TALARICO: Judge, I have -- I have one other request.
THE COURT: Yeah?
MR. TALARICO: May I -- May I file with my reply discovery so that the Court can see what the questions were as exhibits?
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all that. We'll walk through it on the 4th at 10:00 a.m.

When I see the order, I'll sign it.

MR. TALARICO: Thank you, Your Honor.

THE COURT: All right. Take care.

MR. FLYNN: Thank you.

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AMENDED CERTIFICATION PAGE

COUNTY OF MCHENRY)
)
STATE OF ILLINOIS)

I, Heather Voska Hartwig, one of the Official Court Reporters of the 22nd Judicial Circuit of Illinois, do hereby certify that the foregoing is a true and correct transcription to the best of my ability of all the proceedings heard on the electronic recording system in the above-entitled cause.

Heather Voska Hartwig

Heather Voska Hartwig, CSR
Official Court Reporter
Illinois #084-003574

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McHenry County, Illinois
17LA000377
Date: 4/1/2022 4:23 PM
Katherine M. Keefe
Clerk of the Circuit Court

COUNTY OF MCHENRY)
)
STATE OF ILLINOIS)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT

MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)
Plaintiff,	)
vs.	) NO. 17 LA 377
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)
Defendants.	)

The ELECTRONICALLY RECORDED Court Proceedings had at the hearing in the above-entitled cause in front of the HONORABLE THOMAS MEYER, held on the 7th day of December, 2021, at the Michael J. Sullivan Judicial Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICES OF ALPHONSE A. TALARICO
BY: MR. ALPHONSE TALARICO (via Zoom)
Appeared on behalf of Plaintiff

KARBAL COHEN ECONOMOU SILK DUNNE, LLC
BY: MR. GEORGE K. FLYNN (via Zoom)
Appeared on behalf of the Defendants

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THE COURT: Okay. Do I have both sides on anything or an agreed order?

MR. TALARICO: On Dulberg, Your Honor. I see Mr. Flynn.

THE COURT: Mr. Flynn, are you on Dulberg?

MR. FLYNN: Good morning, Your Honor.

THE COURT: Good morning. Are you on Dulberg?

MR. FLYNN: Yes.

THE COURT: Okay. And for the record, if you -- plaintiff's counsel, if you could identify yourself?

MR. TALARICO: Your Honor, my name is Alphonse Talarico. I'm here for the plaintiff, Mr. Paul Dulberg.

And if I could take a moment of the Court's time just to send warm wishes on Pearl Harbor Remembrance Day to everyone and especially to the Court.

THE COURT: Okay. Thank you.

Mr. Flynn, if could you identify yourself.

MR. FLYNN: George Flynn for defendants.

THE COURT: All right. Plaintiff's counsel, you have a motion to compel.

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MR. TALARICO: Yes, Your Honor.
THE COURT: All right. Mr. Flynn, what -- What's your response on that?
MR. FLYNN: Judge, I just filed a response yesterday afternoon.
THE COURT: Yes.
MR. FLYNN: There was some exhibits. I imagine it will take a little time for the Court to review it.
THE COURT: Yeah. I do see that now.
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THE COURT: -- take a look at your response.
Mr. Talarico, do you want to file a reply?
MR. TALARICO: Yes, I do, Judge. And --
THE COURT: And how long do you need to reply?
MR. TALARICO: -- I think it's warranted.
THE COURT: I'm sorry?
MR. TALARICO: I said, I think it's warranted, Your Honor.
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MR. TALARICO: May I -- May I file with my reply discovery so that the Court can see what the questions were as exhibits?
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When I see the order, I'll sign it.

MR. TALARICO: Thank you, Your Honor.

THE COURT: All right. Take care.

MR. FLYNN: Thank you.

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COUNTY OF MCHENRY)
)
STATE OF ILLINOIS)

I, Heather Voska Hartwig, one of the Official Court Reporters of the 22nd Judicial Circuit of Illinois, do hereby certify that the foregoing is a true and correct transcription to the best of my ability of all the proceedings heard on the electronic recording system in the above-entitled cause.

Heather Voska Hartwig

Heather Voska Hartwig

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McHenry County, Illinois
17LA000377
Date: 1/10/2022 1:28 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
vs.) No. 17 LA 377
)
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS)
MAST,)
)
Defendants.)

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 4th day of January, 2022, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO
BY: MR. ALPHONSE A. TALARICO (Via Zoom)

On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK & DUNNE, LLC
BY: MR. GEORGE K. FLYNN

On behalf of the Defendants.

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THE COURT: And it appears we are all here on Dulberg versus Popovich.

For the record, here in court we have?

MR. FLYNN: George Flynn on behalf of defendants.

THE COURT: Plaintiff's counsel?

MR. TALARICO: Good morning, Judge. My name is Alphonse Talarico for Mr. Dulberg.

THE COURT: Okay. Where are we because I know there was a dispute over whether discovery had been produced, and it seems to have been -- I think I directed it be produced again and just get past this.

So what is the current status of the motion? I'll ask plaintiff.

MR. TALARICO: At this moment, Judge, there has been a motion, a response, and reply filed. There has been no determination by the Court whether or not plaintiff's claims are justified, so at this moment that's what the motion to compel is before you.

THE COURT: Well, the issue as I -- the core issue is, as I understood it, is you alleged that

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they had not complied with discovery and defendant said otherwise saying they had previously produced it. It was my recollection I directed them to send it again.

Is that a fair assessment?

MR. FLYNN: Not exactly, your Honor.

MR. TALARICO: No, Judge.

MR. FLYNN: If I could explain.

THE COURT: Yeah, go ahead. I'll ask defense counsel.

MR. FLYNN: Mr. Talarico is the third lawyer representing Mr. Dulberg in this case. The first lawyer, Tom Gooch, propounded discovery -- written discovery shortly before he withdrew from the case.

And Julia Williams from the Clinton Law Firm came into the case, propounded discovery -- written discovery, a separate set, and we agreed that I would not be answering the written discovery that Pop- -- I'm sorry -- Gooch had propounded. We answered two and a half years ago.

Mr. Talarico came in the case. And I've laid out an outline of all the pertinent dates in our response, but I did have an agreement. Ms. Williams has confirmed this just back in

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December. I think it was December 3rd. She wrote to me and confirmed all of my representations that she had never intended for me to answer the first set of discovery. We answered the second set of discovery. Moved on. We reported to the Court that discovery had been answered. We moved on to depositions. I deposed the plaintiff. She then deposed Hans Mast, one of the defendants I'm representing, and then her firm later withdrew.

Mr. Talarico never raised an issue until over 13 months after he was in the case, so we've raised the timeliness issue. Moreover, I had an agreement with counsel that we would not be answering the first set. And, again, it's laid out in detail.

THE COURT: There is also -- Ultimately did you produce copies of the discovery you previously answered?

MR. FLYNN: We've -- I'm not sure what the issue is there. So Ms. Williams had issues with some blank pages contained in our --

THE COURT: But there was -- you referred to the first set of discovery. I think you called it the Gooch discovery.

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MR. FLYNN: We never answered the Gooch discovery --

THE COURT: Okay.

MR. FLYNN: -- because by agreement we weren't --

THE COURT: But you answered somebody's discovery. Forgive me if I misunderstood.

MR. FLYNN: We answered Ms. Williams' discovery --

THE COURT: All right.

MR. FLYNN: -- which included interrogatories to both the Popovich firm and Hans Mast, request for production to both, and 213 interrogatories, so I laid out all of our witnesses. Went through several rounds of 201(k) discussions with Ms. Williams.

She thought that there were some blank pages contained in our large production, and this production included transcripts from depositions of several doctors and other witnesses we obtained at our expense and then produced to her. She didn't take copies of everything, but we gave her the opportunity to inspect the file live.

I met her at my client's office.

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She went through it. And then as we represented that these blank pages were actually just page dividers in the original physical file, she was satisfied and we moved on.

THE COURT: Okay. Mr. Talarico?

MR. TALARICO: There was a lot there, Judge. Let me think. First of all, there was no -- there was no Gooch responses. There was no documentation of withdrawal of Gooch's discovery. The Court had not been made aware of it. The client had not been made aware of it.

The Gooch discovery question has major questions which the Clinton discovery does not have. It refers as to the standard of care in a legal malpractice case and as to conflicts of interest. Those types of questions have disappeared.

Now, the questions that did go from the Clinton's, a lot of the responses, and I outlined them specifically, was See Document 1 through 1,455. Nothing more specific than that.

So in my -- my -- what I'm trying to do is get the answers to the Gooch discovery. I'm trying to get the answers to the Clinton discovery.

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I have very little -- very little documentation unless I'm -- you know, I've got 1400 pages I have to search through, but nothing specific. And those answers were over -- probably six or seven times they answered that same way.

As to Julia Williams, I tried to contact her when Mr. Flynn said, well, Julia Williams agreed to that. I sent an email to her. She has not yet responded. That was before Mr. Flynn even talked to her. Then Mr. Flynn talked to her, and his -- his letters, which are included which I attached, are don't you remember, don't you agree, don't you do this, don't -- he's -- he's giving her the answers. He's leading her. And in her answers I specify it and show it in my reply that she says, um, I'm not sure. I think. I believe we did that. None of this was absolute.

So what I have and the reason why I didn't see this is because I see -- according to 201(m), Supreme Court Rule 201(m), I see file of discovery, answer of discovery. I don't -- I didn't -- when the Clinton discovery was filed, they did not file a 201(m). They called it the

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first set. It wasn't. It was the second set. When Mr. Flynn answered, he called it the first set. It wasn't. It was the second set.

When I got into the case, I saw this and I saw your standing order about discovery. I thought everything was -- everything was answered and done.

Now, the Clintons turned over information to me piecemeal by different attorneys. They had different attorneys working the file, and different attorneys sent me different documents. I'm still not sure I have a complete set. So they are --

THE COURT: So what is it ultimately -- Ultimately what are you looking for?

MR. TALARICO: Answers to the discovery. Answers to the Clinton discovery.

THE COURT: Well, are any of these -- I'm assuming some of these are duplicative. I can't imagine that the Gooch discovery omitted or was entirely radically different from what was filed by Williams.

MR. TALARICO: With all due respect --

MR. FLYNN: Judge, many of them -- I'm sorry.

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MR. TALARICO: I'm sorry.

THE COURT: Go ahead. Plaintiff.

MR. TALARICO: With all due respect, it was because it did not talk about conflicts of interest, which was a question that I believe Mr. Gooch was trying to get to, and also standard of care questions were not asked.

THE COURT: In the Williams' discovery?

MR. TALARICO: Yes.

THE COURT: Okay. Defense counsel?

MR. FLYNN: I disagree, Judge, not pointing to any specific interrogatory or production request. In any event, it's late. You know, we are not -- I would request that the Court not reopen written discovery at this late date. We answered two and a half years ago, presented a lawyer for his deposition.

THE COURT: Here is one of the problems I have with that. I think technically you have a very valid point, but I suspect that if I submitted this or if this was submitted to the Appellate Court, they would say give him another chance. And they probably wouldn't like my saying that, but that is a common complaint. At this level when we

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attempt to strictly enforce the rules as we are told, the frequent result is give them one more chance. So we take that into consideration. So that is why I fashioned my -- or tried to make sure everybody gets what they want.

MR. FLYNN: I understand that and I appreciate it, and that's why I laid out in the response to the motion the extensive history and my agreements with Ms. Williams.

Now, I did stand up here in front of your Honor as I am doing today, and I understand the Appellate Court issues and that's one reason I am here right now because my -- my testimony is part of this motion.

THE COURT: And what would happen if I granted leave to issue supplemental discovery?

MR. FLYNN: You know, Judge, the expenses that my clients have incurred because of the third -- the third attorney coming in --

THE COURT: Realistically.

MR. FLYNN: I have to question whether Mr. Dulberg and his current attorney have even had an opportunity to review the correspondence between me and Ms. Williams because there have been several

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instances where it is apparent to me that they have not either willing -- they are either unwilling or unable to, and I don't know what the answer is.

And I can give you another example of that when we get to the next motion that Mr. Talarico has brought relative to the affirmative defenses. I have the documentation. He's made accusations in the motion that Ms. Williams was somehow misled because of the labeling and the content of my affirmative defense; but as the Court will see, that is not the case at all. So I have to question whether Mr. Dulberg and his lawyer even have the communication between me and Ms. Williams.

When we first appeared here back in November and Mr. Talarico indicated that he may be bringing a motion to compel, he didn't even know what it was going to be. I had to write to him and ask him what is this outstanding discovery that is purportedly missing. He then wrote back to me and said, well, you didn't sign the interrogatories and the discovery and only one of your clients did.

Well, that wasn't true either. I forwarded him the transmittal emails from my

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secretary to Ms. Williams with all the signatures from all three parties involved, me and my two clients.

So, you know, we are ready to file a summary judgment motion. There isn't anything relative to the standard of care in the discovery and that they haven't had a chance to already explore with my client. He was deposed for --

THE COURT: Maybe you're right.

MR. FLYNN: -- two or three hours. He's a lawyer. They had the chance.

THE COURT: I am sympathetic, but in the back of my head I'm -- I suspect I know what would happen at the next level. If we proceeded to summary judgment and I granted it, there would remain that issue, well, you should have given him this discovery.

And my policy is when a summary judgment is filed, I'll ask, typically the plaintiff, is there anything you need before you respond and I give it to them because I don't want that to come haunting -- and haunt any decision I made that, oh, you should have let this -- you should have let them do this one little bit of

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discovery. I want to be a hundred percent satisfied that everything is done. And I know that's not fair to you under the circumstances, but I think in the long run that policy serves us all well even if it means we may spend time and money in some cases that's not necessary.

MR. FLYNN: I appreciate that. That is why I laid the entire history out in the response. I would just implore the Court to review that before final ruling on --

THE COURT: Your -- your -- I think -- I won't say that because the record may be reviewed, but I'm very cautious about barring discovery. I mean, we would have to be on the eve of trial for me to feel comfortable doing that based on the Appellate Court decisions I've read, and generally the theme is give them one more chance. And so I'm going to adhere to that, which is why I am focusing on what it is we are looking for.

And so I'm now looking at Mr. Talarico. What are you looking for?

MR. TALARICO: Judge, I'd like to respond to Mr. Flynn's allegations against me.

THE COURT: No, no.

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MR. TALARICO: I just want to say one --

THE COURT: No, no. You guys -- you guys want to argue what you want to argue about. I want to -- I want to cut to the chase because if you start -- if you respond, he has to respond. So anything he said that might have attacked your character in any way, shape, or form is not relevant to me and I didn't consider it. So let's move on.

So what is it you are looking for?

MR. TALARICO: Judge, I'm looking for the answers to the Gooch discovery and for the Clinton discovery. Nothing new. Just answered this time.

THE COURT: Well, I think -- I think the suggestion that they've avoided answering it is probably inaccurate because until this moment it had not been brought to my attention, meaning with respect to this motion, that it was an issue. So to -- and I'll ask counsel here in court, how much overlap is there between the Clinton and the Gooch discovery before we get to the Williams' discovery?

MR. FLYNN: Ballpark, 75 percent at least.

THE COURT: Okay. And if your answers can say see this answer to --

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MR. FLYNN: That's the problem because what he's pointing to in the motion is my -- the issues that I took --

THE COURT: How many interrogatories are there?

MR. FLYNN: -- with respect to Dulberg's answers and what I considered to be invasive written and oral discovery answers because we were trying to get to a specific point and that is the statute of limitations in his discovery and his incurred damages.

On the other hand, when I'm faced with a production request, for example, that says produce the client file from your representation of Mr. Dulberg and I say, See Pages 1 through 1400, that's the client file, that's the client file.

THE COURT: That's adequate.

MR. FLYNN: That's a different inquiry. So, you know, if there had been something specific they were looking for, I thought it would have come out by now.

THE COURT: And a corollary concern is how many interrogatories are we talking about?

MR. FLYNN: And that's a good question, your

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Honor. With respect -- I'm not sure if we've reached 30 with respect to --

THE COURT: I can't believe we haven't.

MR. FLYNN: Each -- each -- well, I think there were about ten or fifteen Gooch, ten or fifteen from -- from Ms. Williams, and then there were the -- you know, I answered the 213 witness interrogatories which I consider to be a separate requirement whether they are propounded on the party or not, so I answered the 213(f)(1), (2), and (3) discovery as if someone had propounded it on me. So have we reached the 30? It's probably not too much greater than 30, to be honest.

THE COURT: All right. So, Mr. Talarico, rather than just telling me you want answers to everything because I got to believe that the interrogatories are duplicative and the fact that you've got three sets of interrogatories filed by three different sets of attorneys doesn't mean you get each one of them. There are --

MR. TALARICO: Correction.

THE COURT: -- two.

MR. TALARICO: There's only two sets.

THE COURT: I'm sorry.

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MR. TALARICO: And those are the -- those are the Gooch and the Clinton. I have not filed any. I'm trying to get answers to the Gooch and (audio distortion).

THE COURT: I don't know who that is.

MR. FLYNN: It couldn't be me. I'm live.

THE COURT: Okay. So why can't you identify the specific Gooch interrogatories that you need answered, and we can then omit the duplicative ones because I've got to believe that are duplicative ones.

MR. TALARICO: Judge, a review doesn't show -- I don't remember any duplicative ones. They went in different directions completely. Like I said, the Gooch stuff involves conflicts of interest and standard of care. Those were, you know, the major issues. That's none of that in the Clinton.

MR. FLYNN: If he could even identify by interrogatory where the standard of care was posed and not answered, I would -- that would be even helpful to me.

I think one of the other issues we'll run into, Judge, is that we've spent hours

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and hours and hours on the document production portion.

Now, Ms. Williams may not have taken everything. I don't think she asked for copies of all of the documents we had. But not only did we produce them and copy them for them, I drove to McHenry to my client's office and met with her at his office where she went through the file and decided what she wanted. So for my client to have to go through the cost again --

THE COURT: It's all you've got to do.

MR. FLYNN: -- is -- All the interrogatories?

THE COURT: No. With respect to the production request, you gave her the opportunity to review. She took advantage of that.

MR. FLYNN: She did.

THE COURT: And whatever she took is whatever she took, so I don't know that it's your burden to fill in gaps if she left something undone.

Mr. Talarico, tell me your position on that.

MR. TALARICO: Judge, what -- a lot of Mr. Flynn's answers are, See Document 1 through 1405. Those answers, I believe, are

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nonresponsive.

THE COURT: Okay. That's a different issue. That's a different issue than what we were just talking about, so --

MR. TALARICO: Judge, the issue he's talking -- Mr. Flynn is talking about are 106 pages that were blacked out in what I received, completely blacked out, although they were counted in the Popovich Bates stamp. I wanted to know what those 106 blacked out pages were. That's what he's talking about. He's talking about the Clintons, we went -- they also wanted to know. And as far as Mr. Flynn has represented to the Court, the Clintons were satisfied. I don't know if they were. All I know there is black -- there is 106 black pages -- blacked out pages.

THE COURT: Well, the fact that the Clintons didn't push the issue suggests to me that they didn't see it as an issue. It's incumbent on them to bring it to my attention otherwise I assume they are satisfied.

That being said, what about the 106 pages?

MR. FLYNN: I don't know that that's the

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exact number, but there were a significant number of blank pages in the document production. The record is clear and I've attached some of the commentary on that between myself and Ms. Williams, but in any event, she raised the issue, said why are these pages redacted. I checked with my client. It turns out they were not redacted pages. They were actually pink. I remember the color. They were pages of pink paper -- construction paper or, you know, 8 and a half by 11 paper that divided certain sections of the file. So in order to confirm that, Ms. Williams came to Mr. Popovich's office, looked at it, saw those pink pieces of paper dividing the files, and was satisfied. And then we moved on. We came back into court, reported the --

THE COURT: Do I have the production response attached in --

MR. TALARICO: You have it all, your Honor.

THE COURT: What's it attached to?

MR. TALARICO: It's attached to my reply.

THE COURT: All right. Let me find it.

MR. FLYNN: So following these 201(k) conferences, phone calls, emails, and meeting, we

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reported that the parties had answered discovery and moved on to depositions.

Now, had there been any outstanding issues, I wouldn't have proceeded. I wouldn't have presented my client for deposition, and I don't think Ms. Williams would have taken the deposition. But I don't want to --

THE COURT: I accept all that. I mean, it all --

MR. FLYNN: Makes sense.

THE COURT: -- logically makes sense.

All right. Do we still have -- No, we don't. Let me -- All right. I'm looking at Page 39 of the reply. Okay. With respect to Request Number 1, it's my assumption, and you can correct me, but the nature of the question followed by the answer tells me that Page 1 through 1455 is all correspondence, communications, emails, or text messages, and I -- I'm not sure how I can make him break it down further. I'm assuming that that's exactly what's in that 1400-some-odd pages.

Mr. Talarico?

MR. TALARICO: Correct, Judge, but there are multiple times that same answer is given that can

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be specific -- specifically answered.

THE COURT: All right. The fact that you have the same answer to Number 2 with respect to pleadings tells me Number 1 includes documents that are not responsive to Number 1 because Number 1 doesn't ask for pleadings.

MR. FLYNN: I suppose Number 2 is over -- or, well, I'm sorry, no, I guess Number 1 would be overinclusive because the 1 through 1455 is --

THE COURT: There is overlap.

MR. FLYNN: -- was everything that we had. That included pleadings.

THE COURT: So your response is, here is the entire file.

MR. FLYNN: Right, these were not specific. If they had been more specific, I would have broken down Bates ranges for particular things, but I think it's kind of silly. And 1400 pages is really not that much in the grand scheme of things.

THE COURT: As a rule, I don't like it when -- these are a little broader than I was expecting, but if somebody says produce all letters written on this date and you say look at --

MR. FLYNN: And I wouldn't have done that.

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THE COURT: -- 1500 pages, that's nonresponsive, and I see it quite a bit.

MR. FLYNN: I agree.

THE COURT: I think the solution -- Well, Mr. Talarico, have you been given an opportunity to review the file?

MR. TALARICO: No.

THE COURT: Okay. Can you make that available for him?

MR. FLYNN: To review which file?

THE COURT: Your -- your client's file, the file that Ms. Williams previously reviewed.

MR. FLYNN: He's never asked for it. Should we be required to go through that again?

THE COURT: Well, yeah, I recognize the operative word here is again, but the -- I don't think it's reasonable to make you do again what you've done if there have been no objections over the past however long.

MR. FLYNN: I don't -- Yes, I don't think there has ever been a request by Mr. Talarico to review the file.

THE COURT: No.

MR. FLYNN: He should have the 1400 pages

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which were transmitted and anything over and above that --

THE COURT: You've produced all 1400 pages?

MR. FLYNN: Yes, I believe -- I can't recall if it was a thumb drive or some other electronic transmittal, but they have those pages. Now, if he didn't receive them from prior counsel, again, that's an issue between --

THE COURT: Have you, Mr. Talarico? I'm sorry.

MR. TALARICO: I'm sorry, Judge?

THE COURT: Do you have them? Do you have the pages, all 1400 pages?

MR. TALARICO: I believe I do in one of the Julia Clinton files.

I would like to make a statement about that type of response. When Mr. Flynn was searching for information and I responded the same as he's saying now, okay, I told this Court, the Honorable Court that I believe Ms. Clinton -- Ms. Williams and Mr. Flynn reached an agreement. They just had switched documents. She gave him many thousands of documents. He gave her many -- or 1500 documents. When that was presented to the

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judge, to yourself, you said that's not a good answer.

THE COURT: No.

MR. TALARICO: In other words, I said the same thing, Look at page something through something. You said, no, you need a specific answer, and you made me give specific answers to those questions rather than the range of documents.

THE COURT: There is a little bit -- there is one significant difference in here, at least as far as I understand, and that's the fact that he's previously answered these, and you are raising objections to discovery that was submitted and implicitly accepted by prior counsel. Now you are trying to revisit the issue. Fine. I'm supportive of getting you what you want, but I'm -- I'm reluctant to dump on counsel to do again what prior -- your prior plaintiff's attorney accepted.

So the end result is I want to get you everything you think you need, and I also don't want to unfairly burden one or the other of you.

MR. FLYNN: Judge, what I think he's saying is what's good for the goose is good for the gander. This is not a situation -- it's not

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oranges and oranges here.

So when I sought -- when I propounded discovery seeking production of documents that supported Dulberg's claim that he did not discover the malpractice and incur damages until December of 2016, a very specific inquiry, and they gave us very general answers. That was when I brought the motion to compel. And I had also taken his deposition and asked it about ten different ways in cross-examination, and that was when I brought the motion to compel. So to try to compare that situation to these general answers to general production requests is inaccurate.

THE COURT: So, Mr. Talarico, what is it specifically you want because I want to get you that, but I need to know what it is you are wanting?

MR. TALARICO: Excuse me for me (indiscernible). Judge, I would like answers to the Gooch discovery and answers to the Clinton discovery so I can pin someone down as to a document or a response or a position. I just have general statements.

THE COURT: Well, you have the production of

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the client file effectively serving as the answer. Now we are switching back to interrogatories, I'm assuming. I'm talking about the production request.

So are you switching to the interrogatories now?

MR. TALARICO: I'm switching to discovery as a whole because the answers go back and forth. But, yes, the interrogatories are the same thing.

THE COURT: What page -- Well, I'll just assume they are not responded to. So I can't compel defendant to answer discovery that prior counsel waived. And I can't resolve, short of a deposition of Ms. Williams, I can't resolve whether or not she waived the requirement for that discovery.

So I think the solution here is that I'm going to give you leave to issue ten supplemental interrogatories, and we'll just move forward from that because of all the problems associated with what prior counsel may have agreed to or may not have. And I think we can spend a lot of time to figure that out to no avail, so it's not going to advance the case at all. So I'm just

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going to give you ten supplemental interrogatories. You can ask whatever you like.

And with respect to the production request, I -- the nature of your questions are fairly broad, but I agree with you on some level that the answers to your production request should have been a little more detailed as to what pages that's on.

So as far as production request is concerned, what do you want to do?

MR. TALARICO: Judge, because it's so encompassing, okay, again, I'd like to have answers. I'd like to have any and all of those that I noted in my -- in my -- in my motion what I considered nonresponsive in my initial motion and the reason why I considered it nonresponsive. I'd like responses.

THE COURT: But this is on potentially waived discovery, so, again, we are just going to start fresh. I'll give you ten supplemental production requests. You can ask what you want, the way you want, and you'll get specific answers. And we don't have to rely on other attorneys to tell us what they did or did not agree on.

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How quickly can you get those issued?

MR. TALARICO: Judge, I'm going to be -- I'm having a medical problem. I think the Court has been made aware and Mr. Flynn has too. I'm facing vision surgery for a detached retina, so I could use a little time. I've been trying to get this done.

THE COURT: Okay.

MR. TALARICO: With the COVID-19 situation and the courts, the hospitals are backed up. I was scheduled on 11/11 and they canceled. I was scheduled on December, I think it was, 20 -- December 21st. I was scheduled for January 7th. I've just been canceled again.

THE COURT: Yeah, the --

MR. TALARICO: My vision is -- is slacking. I have to at least have cataract surgery, and the ophthalmologist said it looks like you have a detached retina. And my vision is becoming very bad very quickly. This is not a secret. I let Mr. Flynn know that.

THE COURT: And I suspect, based on what I'm reading, that would be considered elective surgery

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and you've got to wait. Is that a fair --

MR. TALARICO: That's what I'm guessing although the thought of being nearly blind or blind doesn't fit with elective surgery.

THE COURT: Oh, I agree, but from the medical perspective, they might call it -- you might fall into elective, so --

MR. TALARICO: They just canceled me again before this court date. They just called.

THE COURT: All right.

MR. TALARICO: Can I have 60 days? I don't know when I'm going to -- I've got to move fast. If they open -- if something opens up, I have to start calling more hospitals.

THE COURT: Okay. I'm going to enter and -- I'm going to give you 28 days. We are going to enter and continue this 28 days to give you status. And if you issued it, fine, then we've got a schedule. If not, I'll give you more time. But you are kind of in limbo right now, so I think a shorter date makes sense.

MR. TALARICO: Thank you, Judge.

THE COURT: Formally I'm denying your motion to compel, and the reason for that is because of

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the questions of dealing with prior counsel's representations and the fact that the objections to the answers that have been filed are somewhat late to put it mildly, but I'm going to still try and address the issue. I'm giving you leave to issue ten supplemental interrogatories and ten production requests with the expectation they be issued in the next 28 days, but we'll see about your medical condition in 28 days.

If for some reason you are unable to appear in 28 days, please notify Mr. Flynn and I'm sure he'll be happy to tell me, and I'll give you more time. But that -- I'm not granting leave for depositions. I'm not granting leave for anything else, just those specific discovery requests.

Is there anything else we need to do?

MR. TALARICO: Yes, Judge, I have a second --

MR. FLYNN: Judge, I would just ask to --

MR. TALARICO: -- motion --

MR. FLYNN: -- before we get to the motion --

MR. TALARICO: Oh, I'm sorry. Excuse me.

MR. FLYNN: Sorry. To the extent that these supplemental interrogatories and production

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requests are being allowed, I would just request, because I have to ask, that the cost and expenses be borne by the plaintiff because of the duplicative nature and the late nature of these requests. We've been through all of this. My client has incurred thousands and thousands of dollars in responding to this discovery, so I understand that the Court is giving latitude to the plaintiff, but I would also ask that the cost be borne by the plaintiff. It's not my client's fault that they are on their third lawyer, and it's not Mr. Talarico's fault either. But this is a problem for Mr. Dulberg.

THE COURT: I suspect, and here's my -- my logic is I suspect we save money by just reissuing the discovery and my granting leave to do it than we go through the process of deposing Ms. Williams and have further hearings on this, so it is an effort on my part to forestall further expense. Whether or not it actually saves you anything, I don't know, but it is my -- and I'm also saving arguably a wasted appeal, so I'm -- I'm trying to bear in mind your client's expenses and keep them to a minimum, and I'm not going to grant your

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request.

MR. FLYNN: Understood.

THE COURT: It's an unfortunate -- it's unfortunate, but I don't think I could come up with a better solution at this stage.

So that being said, the affirmative defense issue?

MR. TALARICO: Yes, your Honor, as part of the review of the discovery, I found, I noticed that the Clintons did not respond to Mr. Flynn's fourth affirmative defense which was filed and served separately much later.

When the complaint was filed, Mr. Flynn filed an answer and three affirmative defenses. I think, and I don't have it in front of me, quite a while later he filed a fourth affirmative defense. The Clintons were still, you know, in the case. The affirmative -- the fourth affirmative defense was titled the judge -- the attorney judgmental rule, but in reality, the first two paragraphs were a restatement of the first affirmative defense. So they are talking about I think it was contributory negligence under the guise of judge -- attorney judgmental rule. The

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final one, Paragraph 3, dealt with what the affirmative defense was titled.

Now, the Clintons didn't respond. My only guess because she will not -- well, at this time she hasn't had the opportunity to communicate, although I've reached out --

THE COURT: Okay.

MR. TALARICO: -- is that when she read the fourth affirmative defense, she just thought it was a continuation or a restatement of the first one. She never responded. I've attached the response denying the first -- stating that the first two are the exact same as the first one and then making a statement as to the attorney judgmental rule.

THE COURT: So you are asking leave to file -- late file a response to the fourth affirmative defense?

MR. TALARICO: That is correct, your Honor.

THE COURT: Response?

MR. FLYNN: It's really the background that I need to respond to, Judge. If you may allow me to briefly. Again, this is a problem that would have been solved had the plaintiff reviewed the correspondence between me and Ms. Williams and the

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court file.

So I have an email chain between me and Ms. Williams, and, again, I have to ask whether they even have access to it because this will --

THE COURT: Let's say everything you say is right, what prevents me from granting leave to make their late filing to the amended affirmative defense?

MR. FLYNN: I'm actually not objecting to it, Judge.

THE COURT: Okay. Then prolem solved.

MR. FLYNN: If I could still talk for a minute.

THE COURT: Okay. I'll let --

MR. FLYNN: And I just want to point out because --

THE COURT: I cut him. I've got to cut you off because it sounds like you are going into a statement regarding opposing counsel. The only thing that --

MR. FLYNN: I'm not. I'm not. But the representation was made that somehow I misled Ms. Williams and that's why she didn't answer it. And I --

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THE COURT: She's not here, and I don't believe that. So it's not relevant to anything I'm doing. So I'm going to grant leave to file the answer to the amended affirmative defense, and I'll give you seven days to do it. I know it's already prepared, but I'll make it formal and you have seven days.

MR. FLYNN: And just so we are clear, that it's the fourth affirmative defense. So I filed a motion, which is in the court file, seeking leave to file an amended affirmative defense. Ms. Williams told me in this email from October 30th that she's not objecting and that she was going to appear by CourtCall on Monday. That's in an October 30 email. Then we got a November 4th order, which I drafted, stated in Paragraph 1, Popovich is granted leave to file an amended affirmative defense. So what we did is we added one to the first three.

THE COURT: Yeah, you have leave.

MR. FLYNN: And there is nothing confusing about it.

THE COURT: If there is any question, you have leave to --

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MR. FLYNN: So they are answering Number 4?
THE COURT: You are answering Number 4, Mr. Talarico?
MR. TALARICO: I am.
THE COURT: Okay. And I'll give you seven days. Is there anything else that we need to do?
MR. FLYNN: And I wouldn't have objected to that. It was not a request, by the way.
THE COURT: I'm sorry?
MR. FLYNN: I would not have objected to that request. I was never asked.
THE COURT: Thank you.
MR. TALARICO: Judge, finally, the reply I filed on -- which was filed timely because of the problems that were going on, and I --
MR. FLYNN: No objection.
MR. TALARICO: -- again, I'm losing documents from E-File Illinois about their failure. I filed it on the proper date, 21st. They made me refile it on the 22nd, and they gave me the date of the 22nd, therefore, I am technically one day late.
THE COURT: All right. I'll grant you leave. I'll extend.
MR. TALARICO: Thank you.

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THE COURT: Who is going to draft the order for me?

MR. FLYNN: I'm here. I'll take a stab at it.

THE COURT: Okay. Mr. Flynn says he'll do it, so -- and we don't have a future date, so let's come back in 30 days. 30 days is Thursday, February 3rd.

Does that day work for both of you?

MR. FLYNN: I believe so.

MR. TALARICO: This will take a few seconds, Judge. The ISBA has not issued their calendars for this year, so I'm sorry, but they claim there is a shortage of cardboard, so -- and I ordered my calendar in the fall.

Okay. That's fine with me, Judge.

THE COURT: All right. February 3rd, 8:45 status of -- status of discovery. And if by some miracle we are all done, I guess we'll move to your summary judgment, but that's -- I'm assuming that's what you're waiting for, and we'll get to that eventually.

MR. FLYNN: Yes.

THE COURT: Anything else?

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MR. FLYNN: No.

MR. TALARICO: No, Judge.

THE COURT: Okay. Mr. Flynn will draft the order, and I'll sign it when I see it.

MR. TALARICO: Okay. Thank you, Judge, for your time.

Thank you, Mr. Flynn, for your time.

THE COURT: Okay. Thank you.

MR. FLYNN: Thank you, Mr. Talarico.

Thanks, Judge.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
vs.) No. 17 LA 377
)
THE LAW OFFICES OF THOMAS J. POPVICH, P.C. and HANS MAST,)
)
Defendants.)

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 3rd day of February, 2022, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

MR. ALPHONSE TALARICO (via Zoom)
ATTORNEY AT LAW

On behalf of the Plaintiff;

MR. GEORGE K. FLYNN (via Zoom)
ATTORNEY AT LAW

On behalf of the Defendants.

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THE COURT: Dulberg versus Mast?

MR. TALARICO: Your Honor, Alphonse Talarico for the plaintiff.

THE COURT: Okay.

MR. TALARICO: Good morning, Mr. Flynn.

MR. FLYNN: Good morning, your Honor. Good morning, Mr. Talarico. George Flynn, F-L-Y-N-N, for defendants.

THE COURT: Okay. What's going on? Plaintiff was going to issue supplemental, as I recall. So what's going on?

MR. TALARICO: Your Honor, (indiscernible), we issued them, we served them, and now with the 28-day period requesting responses.

THE COURT: Okay. Mr. Flynn?

MR. TALARICO: That's correct. They were served on February 1, so we'll answer those. As expected, many of the requests are duplicative of discovery that's already been done in this case and I'll just answer it accordingly.

THE COURT: Okay. That's fine. Why don't we go 45 days, which should give you more than enough time then to answer. And 45 days is going to put us to March 21st and a Monday. Does that day work for

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both of you?
MR. FLYNN: I may be downtown --
THE COURT: Tell me a date that works better.
MR. FLYNN: As of now, I'm scheduled as of next -- after April 1st, actually.
THE COURT: Okay. How about --
MR. FLYNN: You know, Judge, I can have someone else handle it, because I'd like to move it along.
THE COURT: It's going to be two weeks, tops. How's April 5th?
MR. FLYNN: That works.
THE COURT: Default 60-day date.
MR. TALARICO: April 5th is fine with me, your Honor.
THE COURT: All right. I'm just going to -- I'll do the order because I'm just going to continue it for status on (f)(1). There's the order and my scribble that says, Status (f)(1).
MR. FLYNN: Thank you, your Honor.
THE COURT: All right. We'll see you then.
MR. TALARICO: Thank you.
(Which were all the proceedings had in the above-entitled cause this date.)

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COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS MEYER, Judge of said Court of McHenry County, Illinois, on the 5th day of April, 2022, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE LAW OFFICE OF ALPHONSE TALARICO, by
MR. ALPHONSE TALARICO, (Via Zoom)
On behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN, (Via Zoom)
On behalf of the Defendants.

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THE COURT: Are we ready to proceed on Dulberg right now? Dulberg versus Mast.

MR. FLYNN: Mast and Popovich.

THE COURT: Okay. Plaintiff's counsel, if you can identify yourself?

MR. TALARICO: Yes. My name is Alphonse Talarico for the plaintiff, Paul Dulberg.

THE COURT: Okay.

MR. FLYNN: George Flynn on behalf of the defendants, Hans Mast and the Popovich Law Offices.

THE COURT: All right. Plaintiff's counsel, what's going on?

MR. TALARICO: Judge, the last time we were here -- actually in January, you allowed plaintiff ten additional interrogatories and ten additional requests to produce and you had stated reasons which I won't go through right now. But we served the ten additional interrogatories, ten additional requests to produce. The defendants have answered that, and at this moment, we are -- we are still talking. 201(K) conversations are going on.

THE COURT: What's the -- if he's answered, what's the 201(k) conference?

MR. TALARICO: Basically, how best can I say it,

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nonresponse to a lot of answers.

THE COURT: All right. So Mr. Flynn, you're aware of their objections?

MR. FLYNN: Yes, Judge. We painstakingly responded to discovery. Much of it was duplicative. I had a paralegal go through all the prior discovery including deposition testimony and pinpointed citations where the discovery was duplicative. There was other discovery that was irrelevant, though we answered it best we could. But for example, going on conflict of interest, the conflicts checks that were prevented (indiscernible) the case. There has never been an allegation in five years that there was an issue of conflict.

THE COURT: All right.

MR. FLYNN: Nevertheless --

THE COURT: Hang on. Hang on. I'm going to hold you guys to the end, and I'm going to try and work our way through this as best we can. I see that we have an April 13 -- I think it's April 13 motion to compel. I assume that's plaintiff's motion, am I correct?

MR. TALARICO: That's correct, your Honor. But I have not filed a motion because of we are still in

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201(k). I set the date when I first got a response.

THE COURT: Okay. Let me --

MR. FLYNN: I have not seen -- I have not seen that motion --

THE COURT: There is not a motion in the file. There is just a date reserved. So I'm going to pass this. I'll come back to you guys, and we will try and work this out without further motions.

(Whereupon the afore-captioned cause was recalled.)

THE COURT: All right. Go back to Dulberg. Sorry about the lengthy wait. All right. Dulberg, do I -- and maybe I can't address your issue. But most of these are a -- more easily resolved than writing motions.

So Mr. Talarico, if you could tell me what the issue is with their response specifically.

MR. TALARICO: Judge, well, specifically, I submitted a six-page letter with numerous issues to Mr. Flynn for us to talk about pursuant to Supreme Court Rule 201. I can name a few. But it's a six-page document.

THE COURT: Yeah. That -- yeah, you are right. I was overly ambitious. So Mr. Flynn, you made

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reference, and I'm hoping to provide some guidance so we waste as little time as possible. That's not directed at either one of you.

You made reference to duplicative, is that correct?

MR. FLYNN: Yes, I did.

THE COURT: All right. And I limited them, and I'm thinking out loud. I certainly am not looking at the interrogatories or your answers or the basis of your objection, but is -- the failed to have may be duplicative tells me you can just refer to the prior answers. Or did you do that?

MR. FLYNN: Judge, I have actually done that.

THE COURT: Okay.

MR. FLYNN: In fact, I've referenced even specific deposition pages.

THE COURT: All right. But where -- the fact that it shows up in the deposition, in my opinion, doesn't make it duplicative, doesn't prohibit them from asking in writing effectively the same question. I mean -- and I'm just trying to be clear.

So in your answer relative to the deposition, you said, see answer on Page 45,

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Lines 10 through 12 or something like that.

MR. FLYNN: Some cases, yes.

THE COURT: Then I guess I will have to -- I -- what I was afraid of you're saying is see deposition, and you didn't do that so that's --

MR. FLYNN: I just put specific page numbers of the deposition testimony. If you think it's (indiscernible.)

THE COURT: Okay.

MR. FLYNN: It was after -- after the discovery was already done.

THE COURT: All right.

MR. FLYNN: Those --

THE COURT: Have you seen his letter?

MR. FLYNN: I have, Judge. To be honest, I got it yesterday. I received it yesterday.

THE COURT: All right.

MR. FLYNN: By the way, I never did receive whatever was noticed from the 13th. But the letter is --

THE COURT: Yes, there isn't a notice. So --

MR. FLYNN: It's hard for me to follow the letter, to be honest. I don't really (indiscernible) 201(k) discussions or letters back

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and forth (indiscernible) to advance the case. But on the other hand, I don't see how the Court can make rulings without copies of the discovery responses and the (indiscernible) pages that I have referenced.

THE COURT: All right.

MR. FLYNN: And other --

THE COURT: I was kind of hoping I would find them in the court file. That was dumb on my part, and I feel bad for making you wait because this was --

MR. FLYNN: No. No. That's okay.

THE COURT: So what I would -- what I don't want to do is have you brief it. What I -- what I prefer to do, and I don't know if we have done it previously in this case, is just walk through them and I'll make my rulings. You can tell me orally what your -- your objections are and why you think it's inappropriate. And hopefully we will save some time, effort and money by doing it that way unless you have a specific issue with it. Mr. Talarico?

MR. TALARICO: Judge, I'm willing to any way that we can resolve this.

THE COURT: Six pages sounds like it's going to

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take some time. How about the week of April 25? I can do -- I can give you a 10:00 o'clock on the 27th or 28th, and we will take as long as we need.

MR. FLYNN: The 27th would be better for me.

MR. TALARICO: That's fine.

THE COURT: All right. I'm going to draft the order. Hang on a second. If you guys are able to resolve any of these disputes in the interim, please feel free to do so. And --

MR. FLYNN: This will be April 27 at what time, Judge?

THE COURT: I'm sorry?

MR. FLYNN: April 27 at what time?

THE COURT: 10:00 o'clock.

MR. FLYNN: 10:00 o'clock.

THE CLERK: Are we keeping the April 13?

THE COURT: Is it --

THE CLERK: Motion to compel.

THE COURT: I'm going to strike April 13 even though it wasn't formally noticed.

MR. FLYNN: I have a deposition at 1:00.

THE COURT: Okay. What I --

MR. FLYNN: Judge.

THE COURT: Yeah.

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MR. FLYNN: As far as courtesy copies of the documents we submit to you -- as far as the documents themselves should be (indiscernible) to the Court.

THE COURT: Yeah.

MR. FLYNN: For instance, deposition --

THE COURT: You are cutting in and out. But what I -- I agree. I'm going to need copies of the interrogatories, production requests that are at issue. Probably it wouldn't hurt to have your -- the plaintiff's letter documenting what he finds objectionable. So that will give you some guidance in preparation. And what I anticipate doing then is asking your response and explaining your answers. And I'll make a ruling on the fly whether or not that's responsive to the interrogatory of production request.

Okay. Any questions? All right. I have drafted the order. It just says hearing on discovery objections. I will await your courtesy copies. I guess you can file them at the proposed orders email address and then get to me. You don't need to physically file them. So that would be helpful. All right anything else?

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MR. TALARICO: No, Judge.

THE COURT: All right. We will see you then on April 27. Thank you.

MR. TALARICO: Thank you, counsel. Thank you, Judge.

THE COURT: All right.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, JUDY CARLSON, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Judy A. Carlson

Certified Shorthand Reporter

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STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	No. 17 LA 377

ELECTRONICALLY RECORDED Report of Proceedings had in the above-entitled cause before The Honorable Thomas A. Meyer, Judge of the Circuit Court of McHenry County, Illinois, on the 27th day of April, 2022, in the Michael J. Sullivan Judicial Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by:
MR. ALPHONSE A. TALARICO,
Appearing via videoconference,
on behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by:
MR. GEORGE K. FLYNN,
Appearing via videoconference,
on behalf of the Defendants.

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THE COURT: Good morning. If everybody can hear me, this is on Dulberg versus Mast. If plaintiff counsel can identify himself.

MR. TALARICO: Good morning, Judge. My name is Alphonse Talarico and I represent the plaintiff, Paul Dulberg.

THE COURT: And defendant?

MR. FLYNN: Good morning, Your Honor. George Flynn on behalf of defendants Mast and Popovich firm.

THE COURT: Okay. And for the record I also note that Mr. Dulberg is attending via Zoom.

So what do you guys want to do today? What do you intend to do?

MR. TALARICO: Judge, I think both of us -- and I won't speak for Mr. Flynn, but it appears that Mr. Flynn has objections to my questions, and I have objections to his answers --

THE COURT: Well, I thought this was on interrogatories and a production request. Am I correct?

MR. TALARICO: That is correct.

THE COURT: I didn't get copies.

MR. TALARICO: Oh.

THE COURT: I got sent copies of exhibits from the deposition.

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MR. FLYNN: Judge, my office actually sent copies of the discovery documents very early on, maybe even the day that we last appeared.

THE COURT: Hard copies?

MR. FLYNN: By email. Linda Walters, my secretary, sent those.

THE COURT: Do you know about when?

MR. FLYNN: I want to say -- I think I can pull it up here, actually.

THE COURT: I do have it.

MR. FLYNN: It was the afternoon after we appeared last.

THE COURT: Yeah, okay. I think I've got it.

MR. FLYNN: So, you know, I don't know that we actually have a motion pending, although I know the court would like to resolve these discovery differences.

THE COURT: We don't really have a motion pending. The way I interpret what's happened is plaintiff brought to my attention your objections, which I think satisfies his burden to resolve them, but it -- I hate to have people draft motions on these things because I end up doing the hearing this way anyway. So is there an objection to proceeding?

MR. TALARICO: Judge, since you haven't read --

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THE COURT: Well, I have it --
MR. TALARICO: -- (indiscernible).
THE COURT: I have it now.
MR. TALARICO: I'm sorry.
THE COURT: It's okay.
MR. TALARICO: My understanding --
THE COURT: But I have what you sent me, which is deposition exhibits, and have not seen what the defendant had sent me.
MR. TALARICO: That's -- I'm just being -- I'm just being civil towards Mr. Flynn, my own office, and saying we should put this off for 30 days, give you a chance to read what he's filed.
THE COURT: Well, he just filed the interrogatories. I mean, I'm looking at this -- I don't see this -- I see this as time-consuming, but I don't see it as complicated.
MR. TALARICO: Well, -- excuse me, Your Honor. I'm sorry.
THE COURT: Go ahead.
MR. TALARICO: Well, one of the things I believe Mr. Flynn's office filed was my letter, my 201(k) letter, explaining why these questions -- why I'm saying they're nonresponsive. I'm pretty sure that was of part

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of -- in fact, I am sure, it was part of what Mr. Flynn -- Mr. Flynn's office sent.

MR. FLYNN: I sent it; I did not file it. It was part of a courtesy copy package.

MR. TALARICO: I'm sorry, please repeat.

MR. FLYNN: I -- I included the -- what I guess could be described as a 201(k) letter from plaintiff to me in the package. I did not file what I sent. I provided it as a courtesy copy.

MR. TALARICO: All right. I stand corrected. He said, Judge, Mr. Flynn's office sent to you a six-page draft that I made that explained all of my -- my allegations of non- -- of Mr. Flynn's office being nonresponsive in the request to produce for both defendants and the interrogatories for both defendants.

MR. FLYNN: Well, these are my clients' answers and production responses, but I signed (indiscernible) for purposes of the objections.

THE COURT: Okay. So let's attempt to go through these. I'm not finding the letter, but --

MR. FLYNN: The letter is not on a letterhead, Judge. I think it might have been a Word document and that -- that was the manner in which I received it.

THE COURT: Your volume dropped.

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Okay. I have Hans Mast's response to Dulberg, defendants' nonresponsive answers -- These are how they are titled -- Hans Mast's dep miniscript, letter to judge -- Let me just check -- No, that's Mr. Flynn's letter. But in the list of attachments, I'm not seeing that's readily identifiable as plaintiff's letter.

MR. FLYNN: I think it was described in the PDFs as a 201(k) letter perhaps.

THE COURT: Here's what I -- Well, let me just -- I didn't pull this up.

All right. Here's the list of items: Notice of service, Law Office Popovich answers, Law Office Popovich response, Hans Mast answer additional, Hans Mast response to Dulberg court-ordered -- I'm just reading the titles -- defendants' nonresponsive answers, PDF --

MR. FLYNN: That's probably it.

THE COURT: All right. Let me pull that up.

MR. TALARICO: Additionally, Your Honor, there was a deposition that Mr. Flynn's office sent that -- that corresponds to my adding the exhibits to that deposition.

THE COURT: All right.

MR. TALARICO: So --

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THE COURT: Yeah, this isn't the --

MR. TALARICO: -- I do --

THE COURT: -- letter, what I am looking at. It appears to be -- the document that you said might be the letter does not have a cover page. It starts with Defendants' answers to Plaintiff's court-allowed additional -- ten additional interrogatories and ten additional Request to Produce are nonresponsive as follows. Looks like page two of a -- perhaps a letter. Could that be --

MR. FLYNN: It does, but --

MR. TALARICO: If I might, Judge. Initially, in the spirit of cooperation, I sent a 201(k) letter to Mr. Flynn saying, you know, I have a problem, this is a 201(k) letter. I think your -- I think your answers are nonresponsive. He said, okay, send me -- you know, send me your documents, send me something to show me why they're not.

That's what I did. I just -- That was an attachment. That wasn't meant to be the letter by its independent self. It was a six-page attachment.

THE COURT: All right. In any event, guide me through the interrogatories. Which one do you want to start with? And I'll find it.

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MR. TALARICO: I'm sorry, Judge. I didn't hear you.

THE COURT: Which set of interrogatory or production requests do you want to start it off?

MR. TALARICO: Okay. I guess, Judge, the simplest one would be the response of Mr. Thomas J. Popovich to the court-ordered interrogatories.

THE COURT: All right. I'm looking at a document entitled The Law Office of Thomas J. Popovich PC Answers to Dulberg's Court-Ordered Additional Interrogatories. Is that the document you mean?

MR. TALARICO: Yes, Your Honor.

THE COURT: Okay. Tell me the first one that's at issue.

MR. TALARICO: Number one I say is nonresponsive.

THE COURT: Okay. I've seen -- read the interrogatory: Please identify with specificity any and all conflicts of interests checks performed pursuant, et cetera; an objection, irrelevant, not reasonably calculated, et cetera, that no allegation of a conflict of interest has ever been raised or alleged.

All right. Mr. Flynn, you want to add anything?

MR. FLYNN: I don't think I have anything to add.

THE COURT: Okay. Mr. Talarico, I'm reading this

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interrogatory. It was my recollection as well that conflicts of interests was not an issue in this case.

MR. TALARICO: At this point it wasn't, Judge, by the -- by the pleadings that were filed by the Gooch office and the Clinton office, but, Judge, I would like an answer to that question because I can still amend the pleadings. It's relevant to whether or not there was legal malpractice or settlement malpractice.

THE COURT: Okay. But you have an answer.

MR. TALARICO: Judge, the answer is objection. There's an objection that needs to be ruled on.

THE COURT: He says Tom Popovich conducted a conflicts check by personal recollection as sole shareholder in the firm and -- I mean, do you have a problem with the information contained in that answer?

MR. TALARICO: All right. Judge, then -- then if that stands as the answer, then the objection is waived by Mr. Flynn?

THE COURT: The objection remains. It doesn't need to be ruled on because he's answered it, but it's not presently relevant, as near as I can tell, but he answered it. So I don't -- I don't see it as an issue. It's effectively waived.

MR. TALARICO: With all due respect, the question is

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lead to -- evidence or lead to relevant also. Not just relevant, but could lead to.

THE COURT: It could, but it's not -- it's not an issue at this point because he answered the question. If he said I'm not answering, then I think you would have a point, but he did give an answer.

MR. FLYNN: After nearly five years of litigation in this case, there's never been an allegation of a conflict of interest (Zoom audio feed fading) (indiscernible) --

THE COURT: That's my recollection too, but --

MR. FLYNN: It seems -- I mean, it's almost the definition of a fishing expedition.

MR. TALARICO: Judge, the (indiscernible) -- I'm sorry.

THE COURT: We're beyond that. We have an answer. So, I mean, you made the objection. You objected on relevance. It's noted for the record. But you provided an answer. So is there a problem with the answer on the last line of -- in the last line of that statement?

MR. TALARICO: Sorry, Judge, are you addressing me?

THE COURT: I'm addressing you, Mr. Talarico.

MR. TALARICO: No, Judge.

THE COURT: Okay. Then I will -- I -- there is

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nothing -- I will find that defendant's answer to additional interrogatory number one is responsive.

Next one?

MR. TALARICO: All right. My response is that that answer is nonresponsive.

THE COURT: Which one, number two?

MR. TALARICO: Number two, Judge, yes.

THE COURT: All right. My reading of number two, it says Popovich was the supervising partner in the firm and implicitly, as I'm reading this, that Mr. Popovich performed the supervisory role.

Is that a fair assessment, Mr. Flynn?

MR. FLYNN: That's to the extent necessary. The way that the interrogatory was phrased (indiscernible) leading to a legal conclusion.

THE COURT: Okay. You're breaking up a little, but go on.

MR. FLYNN: The way that the interrogatory reads, it finishes with a legal conclusion that there is a requirement under the rule of professional conduct 5.1 that there is a necessity of supervision. In any event, Popovich is the owner of the firm. Hans Mast is someone that has practiced as a lawyer since 1991. Mast testified --

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THE COURT: Your volume's going --

MR. FLYNN: That's strange. It's a brand new computer, brand new (indiscernible) camera. (Indiscernible).

THE COURT: Much better. Much better. I guess (indiscernible).

MR. FLYNN: (Zoom audio feed distortion) if I sit back.

I mean, Mast testified that he was responsible for the case, that he had been practicing for twenty-five -- seven years. I'm not sure what else we can say.

THE COURT: And am I correct in reading this that you're disclosing Tom Popovich was responsible as the -- was the supervisor of Mr. Mast to the extent that there was any?

MR. FLYNN: For the factual standpoint in time Popovich owns the firm and Hans Mast was an associate.

THE COURT: Yeah.

MR. FLYNN: I think that we're getting into expert testimony if we go any further.

THE COURT: If -- Here's my take on this: Unless Mr. Mast is an independent contractor and not an employee or agent of the law firm, in some way, shape or

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form his superior is a supervisor, technically, at least as far as the hierarchy of the firm is concerned. What's involved in that I think is a separate issue, but, I mean, somebody's got to be responsible. So --

MR. FLYNN: Yes, again, Popovich owns the firm; Mast was an associate. I don't think there's any dispute about that.

THE COURT: Okay. Mr. Talarico?

MR. TALARICO: Judge, first of all, the answer of "Popovich" doesn't -- is non- -- I'm sorry, nonresponsive because under -- there was more than one Popovich attorneys, or more than one Popovich working at the firm at the time, and there were more than one Popovich licensed to practice law in the United States. I need a definite answer. I don't just need Popovich.

THE COURT: Okay.

MR. TALARICO: Also, --

THE COURT: I think that's reasonable. And I don't know the timeframe as to whether Kim Popovich was still working there, but, Mr. Flynn, could you clarify that.

MR. FLYNN: This was Tom Popovich --

THE COURT: Yeah.

MR. FLYNN: Tom Popovich.

THE COURT: I think it needs to be in writing, but I

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think that -- yeah, just for clarification, if you could put it in writing. So if you could amend that to reflect that Tom Popovich was the supervising partner, I think that's adequately responsive.

Unless I'm missing something, Mr. Talarico.

MR. TALARICO: There's an additional answer there, Judge. It says see generally Hans Mast's deposition testimony, it being instructions. I believe that's the answer.

THE COURT: I'm sorry.

MR. TALARICO: If I'm misreading it, please correct me. It says see generally Hans (indiscernible) -- Hans' deposition testimony. My instruction says that when the response is to a document already submitted, a specific area or label or place should be noted. That's not responsive. It just says see generally. I don't know what he wants me to go look -- or not Mr. Flynn. I'm sorry. I don't mean Mr. Flynn. I mean the office that is representing --

THE COURT: Okay. Mr. Flynn, do you have any more specific answer as to where -- what you're referring to?

MR. FLYNN: I do not with respect to this particular interrogatory. I mean, --

THE COURT: I'm sorry?

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MR. FLYNN: Not with respect to this particular interrogatory.

THE COURT: Can you identify where in Mr. Mast's deposition he discusses his -- how he's supervised, if anywhere?

MR. FLYNN: (Indiscernible) sure I can, Your Honor, but the answer is that it's Tom Popovich that owns the firm and who is responsible. (Indiscernible) if I need to amend the answer to include "Tom," I think that's the more efficient way to do this.

THE COURT: All right. I mean, you've answered, but you really do answer adequately by -- if you say Tom Popovich was the supervisor. I don't know that you need to identify it elsewhere, so -- All right.

Mr. Talarico, anything else on that?

MR. TALARICO: Well, I am unclear as to the -- identifying where in the Mast deposition. Is Mr. Flynn or Mr. Flynn's office responsible for identifying where he is specifying the response to this question is within the deposition?

MR. FLYNN: I'm going to object to that. I'm going to answer the interrogatory -- the supplement, and anything else is duplicative. I was trying to be helpful, but I'm not going to go through this exercise

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and waste time unnecessarily.

THE COURT: You don't have to. You don't have to. You've asked for -- Your question is, who is the supervisor, and he's answered it.

MR. TALARICO: Is the instruction to see the deposition stricken?

THE COURT: That -- I think he -- I assume that's what he was saying he was going to do and if he strikes that, then there is no need to identify where in the deposition it says it because he's answered it.

MR. TALARICO: That's fine. If he strikes that in his answer and if he gives me the correct Popovich, then that answer is acceptable and it is responsive.

THE COURT: Okay.

All right. Next one?

MR. TALARICO: Okay. Number three: It's objection, interrogatory three calls for a response which would be violative of the attorney-client privilege. I don't know what attorney-client privilege he's referring to. I don't have -- he hasn't included the privilege log or whatever information. I don't know if he's talking about a relationship between Mast and Popovich and Dulberg or is there another relationship? I don't know. What attorney-client privilege?

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THE COURT: I think that's reasonable.

Mr. Flynn?

MR. FLYNN: The attorney-client privilege between my office and --

THE COURT: Okay.

MR. FLYNN: -- my clients. The majority of the work (indiscernible) done here.

THE COURT: Could you identify that. Could you specify that is the privilege you're referring to.

MR. FLYNN: Yes.

THE COURT: Anything else on number three?

MR. TALARICO: That's all that's in that group, Your Honor.

THE COURT: All right. The next one -- Let me just close this out.

MR. TALARICO: The next one would be the -- excuse me, Judge, -- the interrogatory answers by Hans Mast.

THE COURT: All right. Hang on. Interrogatory answers?

MR. TALARICO: Yes, Judge.

THE COURT: I have a document entitled Defendant Hans Mast's Answer to Plaintiff's Court-Ordered Additional Interrogatories to Hans Mast. Is that the one?

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MR. TALARICO: It is, Judge.

THE COURT: All right. Tell me the first one that's at issue.

MR. TALARICO: Well, let me go down the line, Judge. I'm saying that all seven are nonresponsive.

The first one is please identify the nonparty witness or potential nonparty witness in the underlying matter that you or someone under your control and direction interviewed or attempted to interview.

THE COURT: Okay. So what -- where is it deficient? Tell me what's missing.

MR. TALARICO: I will, Judge. My note's saying what specific deposition, Judge. There is no related -- there is nothing there that says as -- in the second sentence, it says see also Mast's response to supplemental request to produce number two relative to discovery which was conducted in the underlying case including the depositions of various treating physicians.

I need something more specific. I have to know what he's referring me to.

THE COURT: He's told you what he's referring to in the supplemental request number two, so he's directed you and he's stuck with that, whatever the answer is.

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There is no question about that.

With respect to various treating physicians, what -- what is -- were there any doctor deps?

MR. FLYNN: Yes, Judge, there was a handful of doctors' deps. I think four or five are identified in response to (Zoom audio feed fading).

MR. TALARICO: Judge, those depositions --

(Cross talking.)

THE COURT: Hang on. Mr. Flynn, you cut off again.

MR. FLYNN: Well, those discovery depositions were identified in the supplemental production response. I consider the discovery deposition to be an interview. I think that is responsive to this (Zoom audio feed fading).

THE COURT: Yeah, I would agree with that.

Mr. Talarico?

MR. TALARICO: Just please keep in mind, Your Honor, that those discovery responses were not included in the 1455 documents that were -- that later on in a response that those were all included and that's all the documents. All of the depositions of the doctors were not included.

THE COURT: They don't have to. They don't have to give you all those deps. You asked for the names.

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MR. TALARICO: Judge, -- Okay. If I might, Judge, just to make it as simple as possible, there have been questions before by the Clinton firm give me all your documents, give me all your documents. Answer's here are all my documents.

The last time we were up before Your Honor, Mr. Flynn indicated that Julia Williams also agreed to not take settlement documents, so that the answer give me all your documents, here are all my documents, that's -- it's not correct. It has to be another agreement between Mr. Flynn's office and the Clinton office.

THE COURT: That's a different issue.

Mr. Flynn, do you have a response?

MR. FLYNN: I don't understand the point, but if there's a question about whether Popovich ordered the transcripts of the doctors, I don't think that they did. And, matter of fact, when I got this case years ago, I went out and ordered the transcripts of the fact witnesses which were not contained in the file and we paid for them, so, you know, the plaintiff is welcome to contact court reporters for depositions that have not been written. It's not our job to do that work for them.

THE COURT: Okay. Well, that's a different issue.

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I'm not going down that road yet.

MR. FLYNN: I think that's what the point is that's being made.

THE COURT: I'm sorry?

MR. FLYNN: I think that's the point. I think that he believes that there are transcripts that are not in our possession that were not produced and we don't have them.

THE COURT: Well, I mean, I'm looking at the interrogatory and it just says give me the names.

MR. FLYNN: Right.

THE COURT: And whether or not you produced documents isn't, I don't think, relevant to this interrogatory, so maybe it will come up later. But I think if your request -- your response to supplemental request to produce number two identifies all these individuals, that's responsive.

Is there an issue I'm missing?

MR. FLYNN: I don't think so. Judge, just for the record, page four is where we begin to identify all the discovery subpoenas, depositions that were taken. The entire list is right here.

THE COURT: And that's attached to your response?

MR. FLYNN: That is the Defendant Hans Mast's

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Response to Plaintiff's Court-Ordered Additional Request for Production to Defendant Hans Mast.

MR. TALARICO: And so they're not including depositions, just notices of depositions.

MR. FLYNN: Again, depositions were taken, were not necessarily ordered. So you asked what discovery was done. We listed it.

THE COURT: And that -- if there's a demand for a production of the transcripts, I haven't seen it yet. And we'll cross that bridge when we get to it and I'll address the interrogatory as far as costs are concerned, but this interrogatory number one has been answered, and I find the -- it -- the answer is responsive.

Is there anything else?

MR. TALARICO: Judge, just to clarify, and forgive me, but I'm trying to make it -- I need the court's help to get information, I need to explain why I'm trying to get this help from the court.

In the Clinton discovery, they asked for all documents --

THE COURT: That's a different issue.

MR. TALARICO: -- in the file.

THE COURT: Let's not conflate issues. Number one asked for the identity of witnesses. Number one is

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responsive.

I'll deal with these based on the language of the individual requests, not the other problem about whether or not there was full compliance with Clinton. I mean, we can come back to that. So can we move on to number two. Number one is responsive.

MR. TALARICO: Judge, -- Oh, there is two things in here. The statement of -- the defendants -- respondent is deciding that the lawsuit is in violation of the statute of limitations and also the word -- the use of the word "likely." Likely is a nonresponsive answer. Likely is a range, a percentage --

THE COURT: Speculation.

MR. TALARICO: -- (indiscernible).

THE COURT: He's speculating. He doesn't know. I mean, that's how I read it. He doesn't know and he's stuck with that. I mean, I interpret this answer as saying I don't remember or I don't know. And if there's -- if there's an issue -- I agree, "likely" doesn't tell me he did anything; it's just speculation.

MR. TALARICO: Judge, likely he can come back later and say, well, now in October it was likely and here's more information. If that's stricken, okay.

THE COURT: It's -- it is stricken to the extent

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that it doesn't tell me anything. It's -- I interpret this answer as saying one of two different things: Either I don't know or I don't remember. And, unfortunately, as we all know, people remember things they forget at their convenience. No offense to Mr. Popovich or anybody else. It's just, we've all experienced it, convenient memories.

So, I mean, if suddenly there's a detailed recollection as to what was reviewed, you can attempt to impeach; but that -- that's the answer. I interpret this as I don't recall or I don't know.

Mr. Flynn, can you weigh in.

MR. FLYNN: I believe line two actually even says, quote, it is difficult to recall each and every --

MR. TALARICO: (Indiscernible).

MR. FLYNN: I don't see any need to strike the answer. The answer is what it is.

MR. TALARICO: Judge, if I might explain and I'll move on -- move on after this, but "likely" is a nonresponsive answer. You can take judicial notice of that fact. He's already said it is -- it is not an answer. If it's stricken, I have no problem.

THE COURT: See, it's kind of an answer because I suspect that this is giving you a heads-up that he's

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going to tell you what his custom and practice is, but he has no specific recollection of what he did here, and I think that is responsive. I think that is -- if he has no records, as I am interpreting this -- and I would hold them to that -- if he has no records, then he can't suddenly produce them and say, oh, here's the list of all the cases I reviewed, so he's stuck with his memory. I don't -- I don't recall. And he's told you his custom and practice. I -- where we go with that, I don't know, but I don't think I have to strike it.

To the extent that you want an order, my interpretation -- or a finding, my interpretation of number two is that the deponent is saying I don't recall, and then we have to deal with that at some later date.

MR. TALARICO: Yes, Your Honor.

THE COURT: If anybody has case law on all of the problems raised with "I don't recall," I'm happy to look at it, but it's always been a problem, probably always will be.

MR. FLYNN: Goes to the weight of the evidence, doesn't it, Judge?

MR. TALARICO: Your Honor, I do have case law on the "likely" issue, or at least the common -- the court's

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ability to take judicial notice of common terms and what they mean, but if that's not what you're aiming at, then let's just move on.

THE COURT: He's saying "my custom and practice is," that's how I interpret that, and there may have been a -- it may be worded differently, but that's how I interpret this. My custom and practice is X, but I don't recall.

MR. TALARICO: Thank you.

THE COURT: All right. Next one?

MR. TALARICO: First is an objection as to duplicative -- of previous discovery, Judge. That's in opposition to exactly what you said, we're starting fresh, I can ask what I want. I've cited the place in the last transcript of report of proceedings that you -- that you made that clear because in lieu of -- in lieu of deposing Julia Williams, you were giving me ten interrogatories and ten requests to produce, but you specifically said that we're starting fresh.

MR. FLYNN: I don't recall that being the language. I thought that the court admonished the plaintiff not to be duplicative.

MR. TALARICO: Actually, I can cite it in the record if you want to wait a second.

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THE COURT: Well, here's my interpretation. I don't think -- I think what I might have been concerned about is duplicating a prior interrogatory, but your response tells me that this information is contained in depositions or in a production response. Is that fair? Because it just says see POP 192, 93, and I don't know what that is.

MR. FLYNN: That's correct. That's correct, Judge. And 201(a) prohibits duplicative discovery or at least it (Zoom audio feed fading).

THE COURT: Is --

MR. FLYNN: (Indiscernible).

THE COURT: Well, generally I agree, but --

MR. TALARICO: Judge, --

THE COURT: Well, hang on. Let me find out a little bit more.

So what is this duplicating? How did they get this information previously? Because you don't tell me.

MR. FLYNN: Through document production and testimony, so if they're asking for a third -- if they're asking for a third sworn interrogatory, I don't think we should be required to do that. It's going to be used for impeachment.

THE COURT: Well, yeah.

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MR. FLYNN: If there's a comma (indiscernible) -- if there's a comma that's different or a word that's different, I can see that this will be used for impeachment, so --

THE COURT: I need to see the other -- the other request in order to determine this is duplicative and your response is not telling me it's duplicative. It's just saying we've addressed this elsewhere. And if it's duplicative, then it's got to be pretty much exactly the same, from my perspective, and I -- if you're producing documents, that tell -- that tells me it's a little bit different, so I'm not quite sure and since I'm not looking at the documents, I can't resolve that.

MR. FLYNN: The documents are several correspondence regarding offers and settlement demands that were contained in the document production.

THE COURT: Is that each and every settlement demand slash offer?

MR. FLYNN: Those were all the settlement demands in writing that we were able to locate.

THE COURT: Okay. Mr. Talarico?

MR. TALARICO: First of all, Judge, the rule that Mr. Flynn quoted, that's fine. This honorable court has plenty of leeway to pursue this -- to pursue discovery

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and help my client get answers to his questions.

THE COURT: I'm not sustaining the objection, so I want to get to the end here and get you your answers. And so my question for Mr. Flynn is, are the five documents identified in your response to interrogatory number three representative of all written settlement demands and offers as requested in the interrogatory?

MR. FLYNN: I believe so, Your Honor.

THE COURT: All right. And --

MR. FLYNN: There's extensive testimony regarding the settlement offers --

THE COURT: Yeah, and I -- and --

All right. Mr. Talarico, what about oral --

MR. TALARICO: That's not specific enough. I need to know is this his answer or is this part of an answer, is there more answer?

MR. FLYNN: Judge, there's a 79-page deposition transcript of Hans Mast that was taken in this case. You know, first (Zoom audio feed fading).

THE COURT: You're cutting in and out. It's kind of weird; but I'm having that problem with a number of people, so it could be on this end.

MR. FLYNN: Okay. It's a 79-page deposition transcript that the plaintiff is (indiscernible) to read

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it just as much (Zoom audio feed distortion) --

THE COURT: My -- my general rule is that if you're going to refer to a cache of documents, you've got to identify where those documents are. You can't say see the deposition of so-and-so; you've got to say see page 20 of the deposition of so-and-so, and then that's -- that's adequate. So -- and given the nature of this case, I imagine you're going to say something like see pages 10 through 30, or something else, of the deposition, but you've got to direct him of where to find it.

MR. FLYNN: There are a number of -- as you said, there are a number of pages where settlement demands and offers are discussed.

THE COURT: Yeah.

MR. FLYNN: I believe -- I believe it's actually covered in some of these other discovery responses. We had talked about this.

THE COURT: We'll come back to it if it is.

Mr. Talarico, comment?

MR. TALARICO: No, Judge, you're ruling that they're going to direct -- they're going to give me direction in that answer --

THE COURT: Yeah, they're going to give you two

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things: They're going to make it clear that the five documents identified are all the written documents, and if they're going to rely on a discovery deposition, they've got to tell you whose dep and what pages.

MR. TALARICO: All right. Thank you, Judge.

THE COURT: All right. Next one?

MR. TALARICO: Again, Judge, --

THE COURT: Hang on a second. I'm waiting for a call from the state and this may be it. I'll be right back.

(A recess was had.)

THE COURT: Surprise, surprise. It was my warranty on my car.

MR. TALARICO: Uh-oh.

THE COURT: Yeah, I've been waiting for the state to call me back for two days, and when they call, you better take it or you'll never get back online.

Let's go back. We're on number four, I assume?

MR. TALARICO: Yes, Judge.

THE COURT: All right.

MR. TALARICO: The same -- it's basically the same, duplicative, previous discovery, Hans Mast deposition, and, by the way, I object to the use of Hans Mast's deposition because there's exhibits missing. But as it

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stands right now, as the answer stands, that doesn't tell me this is his answer, whether or not (Zoom audio feed distortion).

THE COURT: I see that -- I mean, he's told you exact -- I assume "Popovich documents" refers to a cache of documents that you both -- that has meaning to both of you. I -- it doesn't -- I don't know exactly what it is. And he tells you where to find it and he also directs you to the pages of Hans Mast's deposition.

MR. TALARICO: Yes, Judge, but -- I'm sorry. Forgive me.

But within that range, 205 to 304, are some -- are 23 blacked-out pages. I don't know what that is.

THE COURT: And I sure don't.

Mr. Flynn?

MR. FLYNN: I don't know. In this case, there was an issue with respect to dividers -- well, --

MR. TALARICO: Then, Judge, how can that be responsive? Giving me --

MR. FLYNN: I'm looking at -- I'm looking at the testimony and the question in the deposition, pages 50 to 52, Julia Williams produced a document, presented it to the witness, they discussed case law. You know, page 51, Miss Williams: Were there any pinnacle cases that

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stuck out to you one way or the other as to whether the McGuires could be liable? Was there any specific cases that made you think the McGuires may not be liable given the facts in Paul's case?

And then Hans' response: I mean, we deal with this issue a lot. I can't think of one particular name of a case, that these cases all go along the same lines, so there are a lot of cases on this one particular issue. It wasn't a complicated issue.

They go on (indiscernible) an independent contractor, so there's several pages of testimony about this issue. I don't know what else we can do to respond to this.

THE COURT: Well, what are -- I mean, you're referring to Popovich documents 205 to 304. What are those?

MR. FLYNN: Offhand, I'm not sure. The testimony, just so you have a reference, is also identified in the answer here pages 50, 51 and 52.

THE COURT: That's fine. But if you are identifying documents and the plaintiff is telling me he can't see them, then I -- I have an issue.

So, Mr. Talarico, you've got 23 blank pages that are at issue?

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MR. TALARICO: Blacked-out pages. I submitted them to the court.

THE COURT: Yeah, I -- well, I, you know -- I -- in any event, when you say blacked out, redacted?

MR. TALARICO: I don't know. Mr. Flynn calls them blank. At times they're called black. They appear to be black. I don't know what they are, Judge. But they are not -- they can't be responsive to -- 23 black, blanked-out dividers, I don't know, how can they be responsive --

THE COURT: Mr. Flynn, can you -- can you tell us what those are?

MR. FLYNN: I'm -- Judge, I'm not sure as I sit here, but I'm reading the testimony. It looks to me like -- at least on the question from Miss Williams, she had these pages and does not complain about them being blacked out, so I don't know if this is an issue of copies on the plaintiff's end now.

THE COURT: All right.

MR. FLYNN: She questioned Hans about some case law, so I can check and see what those pages in our production look like.

THE COURT: Okay.

MR. FLYNN: She's actually referring to her own

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production here, --

THE COURT: Yeah.

MR. FLYNN: -- Dulberg 304, that's not on me.

THE COURT: Okay. But you're referring to them as Popovich documents, so I'm -- I'm a little confused.

MR. FLYNN: 205 through 304, okay. I'll have to track those down.

THE COURT: Is Williams Mr. Dulberg's prior attorney?

MR. FLYNN: Correct.

THE COURT: Okay.

All right. Mr. Talarico, if they track that down, I don't know what the end result is, but does that satisfy you for now?

MR. TALARICO: For now, Judge, yes.

THE COURT: Okay.

MR. FLYNN: But just for the record, Judge, I think there may have been a typo in the response because Miss Williams is discussing Dulberg pages 205 -- or 204 through 304.

THE COURT: All right.

MR. FLYNN: She goes back and forth with the numbers. This is at page 50 of (Zoom audio feed fading).

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THE COURT: Okay. Well, I'm going to strike the answer to number four and let you file an amended response.

MR. FLYNN: Okay. Thank you, Your Honor.

THE COURT: All right. Next one?

MR. TALARICO: Again, Judge, an objection, it's duplicative of previously discovered -- I'm sorry, previous discovery.

THE COURT: Well, I struck it, so he has to file a new response.

MR. TALARICO: No, I'm talking about number five, Judge. I'm sorry. I thought you moved on.

THE COURT: Okay. I did. I didn't know you were talking about number five.

All right. So they -- they object, but then they answer and he identifies the pages in the deposition as well as documents. So tell me what's nonresponsive.

MR. TALARICO: Well, Judge, I raised this before verbally and what I'm trying to inform the court is that the deposition is missing an exhibit. There is no record of a -- there's a record of an exhibit, but it's not attached to defendants' responses, and within the mini index, it designates or shows that the exhibit is

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missing --

THE COURT: Which exhibit?

MR. TALARICO: Exhibit No. 12.

THE COURT: Okay. Mr. Flynn, -- And that's referenced in those deposition pages?

MR. FLYNN: It is.

THE COURT: All right. So, Mr. Flynn, do you have number 12?

MR. FLYNN: I don't know. Judge, we -- the court invited the parties to submit documents for purposes of this hearing. I submitted certain documents, including the mini-script, and I (indiscernible) include deposition exhibits because I didn't know that the court wanted to see everything.

THE COURT: Okay. And I --

MR. FLYNN: And Mr. Talarico had the opportunity to (indiscernible) through additional documents, and he said what he chose to say.

THE COURT: All true, perhaps, but do you have number 12?

MR. FLYNN: I may. I don't know. I haven't looked for it.

THE COURT: Can you produce number 12 if it's in your possession? Which I hope it is.

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MR. FLYNN: If it is.

THE COURT: Is it part of the deposition transcript?

MR. FLYNN: It is. It's (indiscernible) -- this is plaintiff's deposition. They took my client and it was a Zoom deposition early on in the pandemic.

THE COURT: All right.

MR. FLYNN: So they have as much access to it as I do. I may have that. (Indiscernible).

THE COURT: If -- and I'm trying to --

MR. FLYNN: The court reporter's name is on the front of the transcript and (indiscernible) page two.

MR. TALARICO: Judge, in the mini index it indicates in the transcript that Exhibit 12 is missing.

THE COURT: All right. Who took the dep?

MR. FLYNN: Miss Williams.

THE COURT: All right. And whose exhibit was it?

MR. FLYNN: Plaintiff's exhibit.

THE COURT: All right. So how do I penalize or sanction defendant for the failure to produce a document that constructively is yours? Unless you can show me that they removed it.

MR. TALARICO: I have no idea, Judge. I just saw now that 12 was missing when Mr. Flynn's office submitted the deposition without exhibits to you.

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THE COURT: Mr. Flynn, can you address that. If you have number 12, please produce it, and if you do not, please explicitly say so, that you don't have it, and I'll -- we'll just have to go from there.

MR. FLYNN: Okay.

MR. TALARICO: Judge, just again remind you that my experience with the prior counsel, she's been nonresponsive to me. I can't (indiscernible) -- she did not respond to the -- We did this before with the blacked-out pages, that Mr. Flynn (indiscernible) reached an agreement. I tried to reach that person and they won't respond. And we made that -- we made that clear in court and effectively said in lieu of this, you'll get the ten and ten rather than bring her in for a deposition.

THE COURT: Okay. The issue that I'm dealing with right now is their production of what ultimately was your Exhibit No. 12, and I'm asking Mr. Flynn to produce it if he has it; if he doesn't have it, to tell you. And if nobody has it, then we're going to have to figure out how to find it.

MR. TALARICO: Yes, Judge.

THE COURT: But I can't make him produce it if he's telling me he doesn't have it. That's not an end,

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that's just -- particularly under these circumstances, I can't determine that he's constructively in possession of something your predecessor had, presumably.

Next one?

MR. TALARICO: Okay, Judge, that's basically the same answer. It objects as to duplicative and also makes reference to the Hans Mast deposition.

THE COURT: Okay. But I -- and I -- but he identifies the pages of Hans Mast.

MR. TALARICO: Uh-hum (indicating an affirmative response).

THE COURT: And I think that's adequate.

MR. TALARICO: Okay then.

THE COURT: The fact that he objects for the record doesn't make it nonresponsive.

Next one?

MR. TALARICO: Number seven I ask for facts. Their response is improperly calls for a legal conclusion. I didn't ask for a legal conclusion. I asked for facts. And then later in the answer it says that -- it talks about, again, what the defendants' going to do in the future. Will be argued, which will form generally, I mean, I've got to have answers to deal with -- that's not an answer to the discovery. This was going to

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happen in the future.

THE COURT: Okay. Mr. Flynn, did you provide all facts on which your client relied in determining that Mr. Dulberg gave his consent?

MR. FLYNN: Judge, the way I read this, this is an improper interrogatory seeking a legal conclusion regarding the -- whether the consent was --

THE COURT: Well, you're --

MR. TALARICO: As I read it --

MR. FLYNN: -- informed consent.

THE COURT: Okay.

MR. TALARICO: Judge, I read this as, the answers to the question is going to be given in the future sometime. They may be. Because the words are will be argued, will form the basis for supporting facts establishing -- again, they have facts, but they're going to give them to me in the future.

THE COURT: You're -- Mr. Flynn, you're relying on a deposition and -- and that's fine --

MR. FLYNN: Judge, they want what my argument is going to be on the summary judgment. That's what this is.

THE COURT: Yeah, but I'm assuming that it's more -- there's more than just what Mr. Dulberg said, so I --

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and forgive me and maybe I'm wrong, but is that -- is Mr. Dulberg the sole respository of the facts that support this? That --

MR. FLYNN: The informed consent? No, Judge. I mean, I can summarize how this went down and we already discussed some of the paperwork relative to the settlement demand. Dulberg was provided with an offer of $5,000 in early December or even November. Then came in with his friend to see Hans Mast, discussed the $5,000 offer --

THE COURT: Okay.

MR. FLYNN: -- (indiscernible), and this is -- this is over several, several pages of deposition.

THE COURT: Well, do you have -- are there any written documents? And forgive me for challenging you, but I --

MR. FLYNN: There are --

THE COURT: -- I mean, --

MR. FLYNN: There are transmittal letters relative to the demand when he came in for a face-to-face meeting, and all of this is going to be argued in a summary judgment motion. They are very well aware of it. Why we have to regurgitate it here -- and, again, this is our theory of the case and our -- our motion for

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summary judgment. Now they're asking, informed consent, well, that's their -- that's where we --

THE COURT: They're asking facts. They're asking for all the facts that you relied on in determining he gave his consent, and if all those facts are contained in his deposition and in the attachments to your -- or otherwise identified in your summary judgment, I think it's adequate to identify where in the summary judgment that can be found as an easy -- as an easy way to respond to this, but I think you need the answer. I think you need to answer this a little better.

MR. FLYNN: Again, these are (Zoom audio feed fading).

THE COURT: Yes, you're right. But I did allow these interrogatories with the expectation there would be overlap. And my goal is to get to the end rather than to quibble about whether it is 100 percent duplicative.

Yeah, I'm sure this issue's been raised, but maybe not exactly in this manner, so my preference is to get an answer to it and move on.

MR. FLYNN: My point I was making, though, is this: So this testimony is from Mast. It's also from Dulberg and --

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THE COURT: Okay. Just identify it. And I'm not -- I mean, you're referencing your summary judgment, but you're not telling me what it is in the summary judgment is responsive.

MR. FLYNN: Well, I haven't filed it yet, so that's the thing. You're asking for what our theory's going to be.

THE COURT: Of course they are. But the issue of consent is not limited to the summary judgment and I think it is in effect a contention interrogatory. We contend he gave his consent. Please state all those facts on which you rely on the determination or the allegation that he gave his consent. I --

MR. FLYNN: That's a great point, Judge. We haven't even made that contention yet. I haven't filed the summary judgment motion. They're assuming that we're making the contention that he did give informed consent. Haven't made that argument.

THE COURT: Informed -- informed -- I think when you say informed consent, I think more -- that's more of a legal issue, but consent is -- is factual and I --

MR. FLYNN: But informed consent is the way the interrogatory is worded. They even cite to the rule of professional conduct.

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MR. TALARICO: And I ask for a fact --

THE COURT: Yeah, it was -- You're right, "or was informed consent." You can't -- you can't answer that. I'm sorry. And I'm focusing on the first part of your question. Can you identify the facts that established that plaintiff gave consent. So --

MR. FLYNN: I can and -- but they're well aware of it, Judge. This is all scattered all throughout the depositions.

THE COURT: They -- I agree they probably are well aware of it, but they still are entitled to an answer and -- just to make sure that you don't have any extra facts, and I -- so this is to pin you down and they have a right to do that. So --

MR. FLYNN: Okay. But, again, if I include 19 pages of testimony, and there happen to be 20 or 21 (indiscernible), should we be limited to that? I mean, this is a --

THE COURT: I'm sorry.

MR. FLYNN: If I cite to, say, 19 pages of testimony and on this one because there happens to be about 20 or 22 pages, I just don't think we should be limited. I mean, this is an over-arching theme. They are well aware of facts --

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MR. TALARICO: I object to him asking for a ruling before it's been done. He wants to know what you're going to rule if he does something.

THE COURT: To -- Mr. Talarico has a point, and -- but if you leave stuff out, then we got to fix it; and if there's an objection as to compliance, then we go through the hearing and I ask you where else it is, you tell me and then I say you produce it.

So I would prefer to avoid having to come back and have this argument, so answer -- answer as best you can.

MR. FLYNN: Okay. Thank you.

THE COURT: Sorry for the punt -- punting on that, but I think that's the only answer I can give.

MR. FLYNN: Okay.

THE COURT: All right. I'm going to close this particular discovery request.

What's the next one?

MR. TALARICO: I believe, Judge, we're done with the interrogatories. I believe we're -- I think there were three in the first one, seven in the second, so that's all ten. I think we should be moving on to the request for production.

THE COURT: Okay. To who? Because I've lost track.

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Did we do Popovich?

MR. TALARICO: Request for production would be (indiscernible). I mean, with Popovich. We'll start with Popovich.

THE COURT: All right. I'm looking at -- And the reason I said that is because I'm looking at Defendant Law Office of Popovich Response to Plaintiff's Court-Ordered Additional Request for Production. Is that the one?

MR. TALARICO: That's it, Judge.

THE COURT: All right. Tell me the first one.

MR. TALARICO: Number three is the first and one I say is nonresponsive.

THE COURT: I thought I saw this check.

MR. TALARICO: Excuse me?

THE COURT: I thought I saw this check.

MR. TALARICO: I sent that to you, Judge.

THE COURT: Okay. So did they -- did they provide it to you or did you have it on your own?

MR. TALARICO: What they provided -- what they provided is not the front and back. I asked for it twice now. It's been asked for twice. They show a front and they don't show the back.

THE COURT: Mr. Flynn, do you have the back of the

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check?

MR. FLYNN: I don't believe so.

THE COURT: All right. Then I -- you've got to say so. Although you say "see front and back of settlement check contained in documents previously produced, POP 658," so did that have the front and the back?

MR. FLYNN: I think there was some question on 658.

MR. TALARICO: Judge, you can take judicial notice that that's not the back of the check.

THE COURT: Well, I don't know if that's -- if that's what he's produced, and if it's -- if he's got the front and back, problem solved. I don't need to do anything.

MR. FLYNN: I'm not -- We've got the front. What is (indiscernible) on the back of the check, I don't know, but --

THE COURT: I'm sorry?

MR. FLYNN: I don't understand what the relevance of the back of the check is in this case --

THE COURT: Maybe it's not, but he has a right to ask. So do you have a copy of the back of the check?

MR. FLYNN: I don't believe so, but I will double-check.

THE COURT: All right. And if you don't, then

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please explicitly say so. So I'm going to direct you to supplement your answer to number three.

Mr. Talarico, anything else on that one?

MR. TALARICO: Not on number three, Judge.

THE COURT: All right. Next one?

MR. TALARICO: That's the duplicative -- that's the -- that's the one that I'll say we had permission.

THE COURT: Well, you're talking about request number four.

MR. TALARICO: Yes, I am.

THE COURT: All right. And he objects saying it's duplicative, but then -- Okay.

MR. TALARICO: Judge, Popovich 1 through 1455 is not all inclusive of what the documents that the -- that the plaintiff -- I mean, sorry, that defendant has that were revealed in the transcript, in the last report of proceedings, the last time we were before the court.

THE COURT: Mr. Flynn?

MR. FLYNN: I'm sorry, I don't understand the --

THE COURT: Your volume is a little off.

MR. FLYNN: I don't understand --

THE COURT: Huge difference when you do that.

In fact, Mr. Talarico, is his volume cutting in and out for you?

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MR. TALARICO: Yes, Judge.

THE COURT: All right. At least it's not just me.

Mr. Flynn, it seems that when you lean forward something -- it cuts off somehow, or it's like there's an obstruction. Don't ask me to figure it out. That's what I've noticed.

MR. FLYNN: (Indiscernible).

THE COURT: The -- so tell me what documents 1 through 1455 are. Is that everything?

MR. FLYNN: I believe that's everything that Williams passed and we produced, and that includes -- As we get to the next document (Zoom audio feed distortion) discovery that was done, it includes deposition transcripts that I obtained after (Zoom audio feed distortion).

THE COURT: Mr. Talarico, what are you looking for? Because it sounds like you're just saying give me everything all over again.

MR. TALARICO: Well, that was -- that was what was alleged to be done, that everything was given. Judge, everything was not given. There were depositions of at least five physicians that were not turned over --

THE COURT: So you're asking for the deposition transcript.

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Mr. Flynn, -- and I don't recall -- do you have those transcripts?

MR. FLYNN: We do not have the depositions of the doctors.

THE COURT: Okay. So let -- rather than say give me everything in your file, if you're looking for something specific, tell us what that is and then we can address it. Because I don't like the way this request is phrased, but you're looking for something, so let's find out what that is.

MR. TALARICO: Okay. Judge, with all -- I'm sorry.

THE COURT: Go ahead.

MR. TALARICO: With all due respect, the indication that page 1 through 1455 is the entire file that they have is inaccurate. Am I going, you know, --

THE COURT: Maybe it is, but I don't like your request. I think it's just -- I don't think it's appropriate to say give me everything you got. And -- because that doesn't -- that really doesn't narrow anything down, doesn't tell me if it's relevant, doesn't tell me anything, and there is no way they can comply with that.

So is what you're looking for deposition transcripts?

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MR. TALARICO: Yes.

THE COURT: All right. Is that the -- is there anything else --

MR. TALARICO: Yes, Mr. Flynn indicated there were witness trans- -- witness depositions.

THE COURT: Okay.

MR. FLYNN: So they were included.

THE COURT: Anything other than witness -- anything other than deposition transcripts?

MR. TALARICO: If there were other than the three witnesses that they gave -- that they included, there were three -- I think the name was Michael Atore (phonetic) I think. And forgive me if I'm saying it wrong. And then two defendants. The defendants were named McGuire, Carolyn and William McGuire.

If there are other depositions taken, other witnesses, or other people they've inquired of --

THE COURT: So if he identifies all depositions that were taken, all transcripts in his possession and as well as all witness statements that were obtained, is that what you're looking for in number four?

MR. TALARICO: Yes, Judge.

THE COURT: All right. Mr. Flynn, I know you had an attachment.

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MR. FLYNN: I did.

THE COURT: Does that -- does that provide the information I just mentioned?

MR. FLYNN: Yes. I'd like to direct the court's attention to the response to request for production number two from Hans Mast.

THE COURT: Okay. I deleted it -- or not deleted it, but I closed it, so I -- and I'd have to look through all of them again. So tell me what it --

MR. FLYNN: (Indiscernible) part of this page-and-a-half long recitation of the discovery that is contained in our document production are six deposition transcripts that are contained in that document production. They're identified by date range. First one being POP 1210 to 1244, that is the Carolyn McGuire deposition transcript; followed by David Gagnon deposition transcript; Paul Dulberg deposition transcript; plaintiff's answers to interrogatories; then the Michael McArtor deposition transcript. That's at page 1416 through 1436. Popovich 1437 through 1455 is the William McGuire deposition transcript.

This is in our answer. All you have to do is read it. I don't understand --

THE COURT: See, I don't know in looking at this

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that documents 1 through 1455 incorporates all deposition transcripts in your possession. Does it?

MR. FLYNN: No, no, I've identified the actual page ranges here, Judge.

THE COURT: All right. Okay. But that -- all those depositions are included in what you call documents 1 through 1455?

MR. FLYNN: All these depositions are included, yes.

THE COURT: All right.

Mr. Talarico, --

MR. TALARICO: But he's not -- I'm not arguing those depositions. I'm arguing others, witness depositions, witness interrogatories -- not interrogatories. I'm sorry. Interviews --

THE COURT: Okay. Do you have any other documents, Mr. Flynn?

MR. FLYNN: No.

THE COURT: All right. Then --

MR. FLYNN: We didn't order the doctors' deposition transcripts. I don't know how many times --

THE COURT: He doesn't have to produce them if he doesn't have them, and he gave a list of who he has deposed, which I think gives you more information than you asked.

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What else do you need in answer to number four?

MR. TALARICO: For now that's all I need.

THE COURT: Okay. And -- Well, you've got a list of the dep transcripts that were not ordered or the witness -- or the deposition -- depositions, and I'll let you pursue that on your own.

Is there anything else -- can I close this particular request?

MR. TALARICO: Yes, Judge.

THE COURT: That's closed.

The next one I have open is Defendant Hans Mast's Response to Plaintiff's Court-Ordered Additional Request for Production. Is that -- did we do this one or --

MR. TALARICO: What we had to -- what's left to do, Judge, is Defendant Hans Mast's Response for Request to Produce one through six I believe.

THE COURT: I think I'm looking at this -- the correct one.

MR. TALARICO: (Indiscernible), Judge?

THE COURT: Yeah, okay. Yeah, that's it. That's -- and I am now seeing the list directly Mr. Flynn just showed me.

In any event, tell me which is the first one at

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issue.

MR. TALARICO: Number two, Judge. I asked for all discovery served upon defendant by you on behalf of Paul Dulberg in the underlying matter, and I also asked for -- but the response I get is served by any party. That response is not the same as the question.

THE COURT: Okay. Well, discovery served by -- All right. That seems like everything. That sounds like more than you asked. You wanted served by them, but they've given you everything.

Mr. Flynn, does this include everything you've served?

MR. FLYNN: I'm sorry, Judge, would you say that again.

THE COURT: Let me -- Yeah, it was a bad question.

Does the response to number two include everything the Popovich office served, all the discovery served by the Popovich office, in the underlying matter?

MR. FLYNN: Yes, Judge, this is everything. It includes, the other documents, the other discovery, that the other parties did too. If we had it in the file, I cited (indiscernible) it here.

THE COURT: Okay. So I'm -- Mr. Talarico, what are you missing?

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MR. TALARICO: I need an answer. Judge, what I repeated -- what I think I -- what I'm presenting to the court is that I only want the answer of the discovery served by defendants. I don't want all the rest of this.

THE COURT: Okay. But it certainly is responsive. If they give you more than you ask, I'm not going to strike the question. Is it -- I'm assuming you've got the documents at issue that they're referencing here.

MR. TALARICO: As long as they're within the 1455 pages, yes. Anything outside of that is (indiscernible).

THE COURT: It appears they are, and I think this is responsive, so I will sustain -- I don't know that I'm really sustaining. There isn't an objection. I'm overruling your objection to his response.

So, next one, number three or is it a different one?

MR. TALARICO: Again, it's the same thing. I'm asking for defendants' discovery served upon -- upon defendants by co-defendants and that's not the answer.

THE COURT: And he gives you everything.

Mr. Flynn?

MR. FLYNN: This -- this is everything, Judge. This

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is everything.

THE COURT: Okay. Mr. Talarico, other than the objection that they failed to differentiate between their stuff and the stuff served by the co-defendant, do you have any objection?

MR. TALARICO: No, Judge.

THE COURT: All right. Because I think each document is self-explanatory, and they've identified it. I'm going to overrule your objection to number three unless you are somehow prejudiced because the documents speak for themselves as to who served them, and perhaps they could have presented it in a less -- I won't say less -- ah, less confusing manner, they still responded.

So next one?

MR. TALARICO: I believe the response in number five -- number four is clearly nonresponsive.

THE COURT: All right. Number four regarding assets?

MR. TALARICO: Yes, Judge.

THE COURT: All right. And they say all three defendants were deposed in the underlying case. I read that as saying the same thing as nothing other than their deposition testimony.

And, Mr. Flynn, is there any objection to my

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interpretation?

MR. FLYNN: No.

THE COURT: Okay. I mean, they're stuck with that. That's an answer.

MR. TALARICO: Your Honor, the instruction again -- I'm sorry.

THE COURT: Go ahead.

MR. TALARICO: The instruction to the request (indiscernible), if there's a document tell me where, if it's a document already produced.

THE COURT: Okay. And I'm assuming that the deposition transcripts are identified in number three. Is that fair?

MR. FLYNN: Well, two and three.

THE COURT: I'm sorry?

MR. FLYNN: Number two and three.

THE COURT: All right. Can you identify the deposition -- technically, you gotta. Can you identify the depositions of the defendants and the page numbers?

MR. FLYNN: With respect to --

THE COURT: Number four.

MR. TALARICO: Judge, with respect to assets and net worth, I don't know where in those depositions he's referring me to.

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THE COURT: That's it. He's telling you. The deposition. And if there are no questions, I mean, -- I don't know how he can pin it down further. You said all investigation or analysis done. The depositions. I think that's responsive.

Next one?

MR. TALARICO: And, then, Judge, I'm asking for specifics and the responses seem like basically see my deposition.

THE COURT: He says there's none. You're talking about number five.

MR. TALARICO: Yes.

THE COURT: And he says no litigation risk analysis in written form exists. And then he references his deposition, but the answer is none.

Did I pretry this, the underlying matter? I seem to think I did.

MR. TALARICO: You did.

MR. FLYNN: I think so, Judge. You did disclose that to the parties at least one time.

THE COURT: All right. Well, this is -- I keep thinking the answers to some of these would incorporate pretrial discussions with me, even though I don't have a recollection of what I would have said, but I'm sure

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that we discussed these things; and I don't know if that's makes any difference, but I think that is part of the answers, if we had these kind of discussions. I'll defer to Mister --

MR. FLYNN: Well, this is a production -- this is a production request. He's asking for documents that exist.

THE COURT: Okay. But what about the interrogatories? Didn't they get into that?

MR. FLYNN: I'm --

THE COURT: All right. Well, it's --

MR. FLYNN: (Indiscernible) litigation risk analysis.

THE COURT: I thought there was an interrogatory that would have somehow incorporated the pretrials and -- at least in my opinion. I'll leave that to you guys to figure it out and in case there's any question, I have no notes or records and barely any recollection of what transpired at any pretrial. I tend to forget that quickly, and that's kind of the plan. The -- but I -- did this involve -- Forgive me again. This involved a chainsaw or trees?

MR. FLYNN: Yes.

MR. TALARICO: Chainsaw, Judge.

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THE COURT: All right. Yeah. I -- I remember aspects of it, but I don't remember too much beyond that. So I'll share that with you and I'll share it with you probably a few more times.

In any event, I'll let you guys deal with that as you wish. Is there anything else that we haven't dealt with?

MR. TALARICO: No, Judge.

THE COURT: Okay. Mr. Flynn, how long do you need to file this supplemental answer?

MR. FLYNN: Twenty-one days, Judge.

THE COURT: All right. I'll give you 21 days. Do you want to come back in about five or six weeks for status of compliance?

MR. FLYNN: That's fine, Judge. And then we've been asking for months for fact discovery to be closed so we can move on to the summary judgment motion.

THE COURT: Yeah.

MR. FLYNN: (Zoom audio feed distortion) issued -- issued a handful of fact (Zoom audio feed fading).

THE COURT: You're -- you're -- I don't know what the problem is.

MR. FLYNN: -- number of them -- Plaintiff has just issued a number of subpoenas that may cause this to drag

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on even longer. Just want the court to be aware that the subpoenas were issued --

THE COURT: Well, the subpoenas should be answered by the time we return in June based on my time schedule, at least I'm hoping.

Comments?

MR. TALARICO: Judge, the subpoenas are not at issue. Have been answered. I've indicated that.

THE COURT: All right. Well, --

MR. FLYNN: I have not seen any answers to the subpoenas, so I think those would be responsive --

MR. TALARICO: Judge, I need -- I need to address one of them before I respond. I need to address this to the court. One of the responses, -- what I have, Judge, is a question about forged signatures on depositions by the court reporters -- or the certified court reporters.

THE COURT: Okay.

MR. TALARICO: There are questions about that. I have done -- subpoenaed some of them, got their documents. Judge, some of those documents contain a lot of personal information. If I turn that over -- I'm leery of that. I noted it's a subpoena and response, but I didn't turn over the documents themselves (indiscernible) this moment. I'm a little leery of

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doing that because it has a lot of personal information.

THE COURT: Turn over to Mr. Flynn?

MR. TALARICO: Yes, to Mr. Flynn or to file it with the court.

THE COURT: All right. Well, I don't know what you mean by personal information, and you don't have to turn it over to me, unless it's an exhibit in something, so what -- what ultimately is your concern?

MR. TALARICO: Again, Judge, that I am in possession of a respondent's very personal information. They gave me all their mortgage documents, et cetera, signatures, addresses, Social Security number.

THE COURT: From whom -- I'm sorry, from whom?

MR. TALARICO: One of the court reporters, one of the certified court reporters.

THE COURT: Why did the court reporter give you mortgage documents? I'm not looking at the subpoena, but --

MR. TALARICO: I really can't answer that, but that was what they gave me.

THE COURT: All right. Mr. Flynn, comment?

MR. FLYNN: I would just make a general comment that the subpoenas were issued. I have not seen any response to any of them. To the extent that my -- our -- the

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defendants' prior discovery requests call for supplementation and that these subpoena responses are responsive to prior discovery requests, they should be produced. I haven't made a specific request for copies of any subpoena response, but I wasn't aware that they had been made.

THE COURT: All right. With respect to the seemingly nonresponsive and personal information, private information, produced by the deponents, I think you got to disclose that to Mr. Flynn and then agree to destroy them, but he at least gets to see them so he can determine that they're -- they should be destroyed.

MR. TALARICO: Absolutely.

THE COURT: So don't file them with the court. I don't want them. And if you both agree that there's -- they're not relevant and they should be destroyed, then let the deponent know and/or destroy them or return them. I'll let you choose your path.

All right. What other issues are out there? Okay.

MR. TALARICO: I have none at the moment.

THE COURT: Here's my plan. Let's assume that the answers are -- that the supplemental answers are responsive. Then it is my intent to close discovery

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when we return and if plaintiff is going to argue he needs more discovery, he can argue it; but I'm going to need to understand what more you need and why that should delay things and I may just proceed with the summary judgment if I don't think that the discovery -- the discovery should hold it up. So I'll cross that bridge when I come to it.

MR. TALARICO: With all due respect, Judge, there is no summary judgment pending.

THE COURT: Yeah, but he keeps saying he's going to file it.

MR. TALARICO: I know.

THE COURT: So if he files it, when we come back and I close discovery and he files the motion, then we'll proceed with a briefing schedule. So I'm just trying to map out where we're going to go from here.

So let me just pick a date. How is June 8th? That's a --

MR. TALARICO: I think that is not good for me, Judge.

THE COURT: I can do the 7th, 8th or 9th -- or the 10th, really, all at 9:45.

MR. TALARICO: Could we have -- Mr. Flynn, June 10th?

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MR. FLYNN: Any of those dates are fine.

THE COURT: All right. I'm going to say 9:45. I'm going to need you guys to submit the order because it isn't -- it's something a little bit beyond just a continuance. I'm giving you a 9:45 time because I anticipate we're going to have some discussion beyond merely status of discovery, so we'll have more time, a little more time.

Is there anything else we need to do today? I'm going to figure out who's going to send me the order.

MR. TALARICO: With all due respect, I don't have all the notes clearly to be able to draft it.

THE COURT: Okay.

MR. TALARICO: I could order the transcript and go from there.

THE COURT: You guys order the transcript anyway, so, I mean, it's going to be there.

MR. TALARICO: Yeah, I mean, but that will take a few days.

THE COURT: Yeah, it will take a few days.

Mr. Flynn, comment?

MR. FLYNN: I have notes, Judge. I think I could put it together, but I would just request -- I have a

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brief that's due by the end of the day, and I have several hours of work to put in on it.

THE COURT: Okay.

MR. FLYNN: So could we get you the order tomorrow?

THE COURT: Yeah, yeah. That's fine.

I mean, if you'd get it -- we have a little bit of time. We know our timeframe. Please include the date -- today's date on the order, though, because, otherwise, I got to plug in my own and then that screws things up. And, yeah, I'll sign it when I see it. What's today? Wednesday? If you get it to me by Friday, that's fine.

MR. FLYNN: Okay. Thank you, Your Honor.

THE COURT: Okay?

MR. TALARICO: Judge, thank you for your time. Mr. Flynn, thank you for your time and good luck on your brief.

THE COURT: Okay. June 10th at 9:45.

MR. FLYNN: Thank you.

MR. TALARICO: Thank you, Judge.

THE COURT: Okay. Thank you. Disconnecting.

(Which was and is all of the evidence offered at the hearing of said cause this date.)

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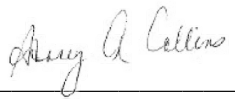
STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

I, Stacey A. Collins, an Official Court Reporter of the 22nd Judicial Circuit of Illinois, do hereby certify the foregoing to be a true and accurate transcription to the best of my ability and based on the quality of the recording of all the proceedings heard on the electronic recording system in the above-entitled cause.



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2017LA000377
Date: 6/15/2022 10:25 AM
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Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before The Honorable Thomas A. Meyer, Judge of said Court of McHenry County, Illinois, on the 10th day of June, 2022, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

(No appearances given.)

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THE COURT: And on the Dulberg matter, we're still waiting for Mr. Talarico, unless there's an agreed order.

A VOICE: (Indiscernible.)

THE COURT: Okay.

(Whereupon the afore-captioned cause was recalled.)

THE COURT: Dulberg. Have we heard anything from Mr. Talarico?

A VOICE: Judge, not yet. I did send him an e-mail at 9:54, so...

THE COURT: All right. We'll wait a couple of minutes.

A VOICE: All right.

(Whereupon the afore-captioned cause was recalled.)

A VOICE: Judge, there was an e-mail from Mr. Dulberg. I don't know if you see that.

THE COURT: A chatmail? No.

A VOICE: Chatmail, yes.

THE COURT: No, I -- I don't show it, so it must have gone just direct to you.

Is there an issue?

A VOICE: Yeah. He says Mr. Talarico sends his

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apologies for not being here. I received a message at 5:30 a.m. saying he was in a lot of pain and seeking medical attention.

THE COURT: Okay. Well, I guess that -- All right. Hopefully everything's okay. I'll continue the case.

What -- I was curious -- You have a pending motion, am I correct, or you just haven't filed it?

A VOICE: No, I don't think there were any motions pending. I was waiting for fact discovery to be closed. (Indiscernible) the issues on the discovery. There was a follow up. The Court ordered an extensive order on May 2.

I can tell your Honor that Mr. Talarico had an issue with stipulations being contained in the order. I don't see there's a problem. The Court executed the order. So that was really the last I heard from him a few weeks ago.

THE COURT: All right.

A VOICE: He hasn't filed any motions, and there have been no depositions noticed up. So, again, I would request that fact discovery be closed and then I plan to file summary judgment motion (indiscernible) within 45 days thereafter.

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THE COURT: Okay. I have...

A VOICE: Just one other thing to report. The plaintiff had issued, months ago, several subpoenas directed at court reporters who, I believe, were involved in the underlying case.

THE COURT: All right.

THE VOICE: I'm not sure what they are attempting to find. (Indiscernible) several -- a few of the court reporters responded with signatures, handwritten signatures. I don't know if there was some issue there. I haven't been aware of it until now in this case.

THE COURT: All right.

A VOICE: I don't see how it would affect arguments on the settlement (indiscernible).

That's sort of all that's been going on.

THE COURT: Okay. All right. I'm going to take the case into July, and I can -- We can do it July 8th, Friday, or the 7th, Thursday, at 8:45. 9:45 is possible, too. What's your preference?

A VOICE: Just checking. I'm actually on vacation just that Thursday and Friday, so I'm going to be gone.

THE COURT: Why don't we do it Monday? Can you

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show up --

A VOICE: (Indiscernible.)

THE COURT: Yeah. Mr. Dulberg's saying -- Let's keep it at 9:45. You like July 11th?

A VOICE: July 11th works, 9:45.

I've requested (indiscernible) facts to be closed, Judge. Is that under consideration?

THE COURT: Yeah. I've called it Status on Defendant Motion to Close F(1).

A VOICE: Okay.

THE COURT: All right. I'm going to call that -- put it at 9:45.

Mr. Dulberg's indicated his approval of the July 11th, 9:45 date.

There's the order. Okay. We will see you on July 11th.

A VOICE: Thank you, your Honor.

THE COURT: All right. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, KATHLEEN STROMBACH, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

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Official Court Reporter
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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 11th day of July, 2022, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by
MR. ALPHONSE A. TALARICO, (Via Zoom)
On behalf of the Plaintiff,
KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN, (Via Zoom)
On behalf of the Defendant.

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THE COURT: Any other agreed uncontested or both sides?

MR. FLYNN: Judge, I think both sides will be on the Dulberg matter.

THE COURT: Dulberg. Okay. Just looking for it.

MR. FLYNN: 17 LA 377.

THE COURT: No. 24. You got it. All right.

Plaintiff's counsel, if you can identify yourself?

MR. TALARICO: Good morning, your Honor. My name is Alphonse Talarico for the plaintiff. And before we go any further, I would like to apologize for missing court last time.

THE COURT: Okay.

MR. TALARICO: It was a medical and non-medical matter which I -- I'm under certain care.

THE COURT: Okay.

MR. TALARICO: So I apologize.

THE COURT: Defense counsel, if you could identify yourself?

MR. FLYNN: George Flynn for defendants.

THE COURT: All right. I was going to close (f)(1). What's going on, plaintiff?

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MR. TALARICO: Judge, I don't think closing (f)(1)s is going to be appropriate at this moment. And some things have evolved. Some things have happened. I don't know how this electronic Zoom system works, but is there a way of speaking in camera?

THE COURT: Yeah. I mean, I will pass you guys, and I will come back to you shortly. So let me get rid of all the many other people on my call right now, and then I'll deal with you at the end. And it's 8:44.

(Whereupon the afore-captioned cause was recalled.)

THE COURT: Mr. Flynn, on Dulberg, do you have any objection to Mr. Talarico having a confidential discussion with me regarding whatever issue this is?

MR. FLYNN: Ex parte?

THE COURT: Yeah.

MR. FLYNN: We have an objection.

THE COURT: All right. Then, are you able to do a conference call?

MR. FLYNN: A conference call?

THE COURT: Yeah.

MR. FLYNN: Sure.

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THE COURT: All right. Who is going to initiate the call?

MR. TALARICO: Judge, are you -- with your Honor and with Mr. Flynn, is that the --

THE COURT: Yeah. He's objecting. I can't just go off the record and have a conversation with you unless I formally set it as a pretrial. And I don't have this as a pretrial. And I'm reluctant to have a confidential discussion over objection at this point.

So what would you like to do? I can set it over for pretrial, but I don't know what you want to do.

MR. TALARICO: My entire goal is to limit the amount of ears to what I have to say, and --

THE COURT: Well, why don't you -- can you talk to Mr. Flynn while I'm wrapping up these other things?

MR. TALARICO: Yeah, I guess we could.

THE COURT: Okay. Remember to mute your computer. Give him a call, and you guys can discuss what the issue is.

MR. FLYNN: Judge, can I just interject one thing? I thought that Mr. Talarico initially asked

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for an in camera hearing. It wasn't necessarily ex parte. I thought he just didn't want to necessarily do it in front of the other attorneys in the room. Is that correct?

MR. TALARICO: That's correct. I'm here --

THE COURT: Okay. Then I'm going to -- I'm going to make you guys wait. I'm going to leave the courtroom for five minutes and keep everybody else on the line, and we will have it answered for you soon.

MR. FLYNN: Thank you, your Honor.

MR. TALARICO: Thank you.

(Whereupon the afore-captioned cause was recalled.)

THE COURT: Back on the record on the Dulberg matter.

Plaintiff's counsel, if you can identify yourself?

MR. TALARICO: Judge, my name is Alphonse Talarico for Mr. Dulberg.

MR. FLYNN: George Flynn for the defendants.

THE COURT: Okay. And you indicated in camera which I interrupted to mean confidential and not on the record. Everything we are saying, even if the

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other attorneys are out, is going to be on the record because the recording system is going to pick it up.

That being said, Mr. Talarico, what do you want to do?

MR. TALARICO: Um.

MR. FLYNN: Judge, can I just address that because I'm -- I do have an objection to this discussion not being on the record.

THE COURT: Okay.

MR. FLYNN: There's never been a motion filed. I'm not even sure what this is about. There have been some notices relative to court reporting in the case and in the underlying case. Some subpoenas issued to court reporters and for the circuit clerk here, but I really don't know what this is about. And since no motion has ever been filed on this issue, I would object to this hearing not being recorded.

THE COURT: No. I'm not really -- I'm not sure that I am conducting a hearing, but I -- but I'm now curious. But you are right, I don't have anything pending in front of me. So what do you guys want to do?

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MR. TALARICO: Okay. Judge, I think that if you are simply okay with it being on the record, then, I'm okay with it too.

Your Honor, the sensitivity of the matter is such that I thought it would be better for fewer ears, but that's okay. I don't have a problem with that.

What I -- what this is all about, and I think Mr. Flynn has an indication at least of it is the Exhibit 12 to Mr. Hans Mast's deposition. If you remember this case, this Exhibit 12 issue has been ongoing. I think the last time we spoke of it -- we spoke to it, you said -- you told us that when -- either produce it or saying you don't have it.

What I have gotten in return is what I believe, I hate to use this word, but a forgery, a false document, a document that is not part of the record was created recently.

THE COURT: Okay.

MR. TALARICO: Now, how do I know this? I -- I did a records only subpoena to the court reporter. She answered, which her answers were sent to Mr. Flynn. Thereafter, she sent me a flash drive

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with -- because -- because she said all her notes were not -- were too large to send by the proper response. The flash drive was also sent to Mr. Flynn.

What she said -- what is there is that there was no Exhibit 12. She never produced Exhibit 12. The issue -- the mini and the total original had no Exhibit 12, but somehow I have received a copy of Exhibit 12.

I also sent Exhibit 12 to a document examination, a professional. I got his report this morning -- I'm sorry, last night at 11:15 p.m., and the indication what was sent is -- does not match the other sections, the other labels -- the other 14 exhibits. Someone, it appears, has created something new and sent it to me saying this is Exhibit 12. So I -- I think that I should be --

THE COURT: What's Exhibit 12? What is that? What is it?

MR. TALARICO: I'm sorry. What is Exhibit 12?

THE COURT: What is Exhibit 12? What is the document?

MR. TALARICO: It is a list of cases that Mr. Hans Mast had talked to Mr. Dulberg about in

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the -- in the period of time of convincing him to settle the case for $5,000 --

THE COURT: Identified a number of -- he allegedly identified a number of similar cases?

MR. TALARICO: Judge, even that is an issue because there was some problem on the Internet between Mr. Flynn's office, Ms. Clinton's office and the recordings for the Zoom deposition.

My whole thing is, Judge, I have a 50-page order -- 50-page report saying -- well, just, for example, you can take judicial notice, the label is -- the label that was sent to me in April of this year misspelled the defendant's name.

THE COURT: Okay. Well, that's a different issue. That's on the merits of your anticipated motion with -- whatever it may be with respect to what you've told me is Exhibit 12. Exhibit 12 is an attachment to a deposition as opposed to something that took place in court, is that true?

MR. TALARICO: That is correct.

THE COURT: All right.

MR. TALARICO: There was a deposition.

THE COURT: And what -- let's assume -- Mr. Flynn, no offense. But let's assume 100 percent

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of what you're saying is true that it's a forged document, how does that impact what we're doing right now?

MR. TALARICO: How it impacts us is because I would like to have the opportunity to present a motion to exclude Mr. Hans Mast's deposition. This is just one of the issues that -- that are centered on that deposition. The Internet -- the Internet not working properly during it, the Exhibit 12 that was never produced by the reporter, the cases that came in this April filing does not include one of the major cases that was part of that, it was called (indiscernible) versus Spangler, and that's not in there.

So there are so many issues that are centered on that deposition that I would like some time to file a motion to exclude that and then (indiscernible) over.

THE COURT: Mr. Flynn, and please ignoring the implied accusations because that's not relevant to what I'm interested in, what is your original motion? Forgive my lack of memory.

MR. FLYNN: The original motion that we are here for today was just simply a motion to finally close

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(f)(1) discovery. There was an oral motion only because this has been an ongoing issue. If we could just (indiscernible) the case. Counsel came into the case I think a year and three quarters ago and hasn't noticed up a certain deposition. The case just needs to move along. I -- I haven't really had a need for a summary judgment motion --

THE COURT: That's what I was thinking. Okay. I was thinking you had filed your summary judgment.

MR. FLYNN: We had not. Waiting for fact discovery to be closed. I was present for Hans Mast's deposition back in I think it was the spring of 2020 at the onset of the pandemic. It was done by Zoom. I was in his -- Hans Mast's office, at the time our office, and plaintiff was represented by Julia Williams from the Clinton Law Firm. It was her deposition, her exhibits, and I haven't read any (indiscernible) because there has been no motion. I didn't realize there was this issue, but I can't see how any of the exhibits from that deposition being forged.

From what I recall of Exhibit 12, I believe it was some photocopies of case law from an -- it looked like it had been copied from a -- one of the

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old law books. I think --

THE COURT: Okay.

MR. FLYNN: -- the Court, if I remember correctly. And asked Mast about those documents at his deposition, not in great detail, by the way, but I believe he was asked about his depositions -- I'm sorry, those cases.

So I don't understand what the issue is. I don't see how having a hearing on the summary judgment of this case moving along. There have been a number of conspiracy theories put forth that have never -- never been filed in court. And I would just request strenuously that the (f)(1) discovery be closed, and we move along so that motions could be addressed.

THE COURT: Okay. Mr. Talarico, I don't have a motion, and --

MR. TALARICO: That is correct. What I'm asking for right now, by the same token there is no -- there is only an oral motion, while I wasn't here last time because of my own illness, I was hospitalized, et cetera. So the (f)(1)s, I believe, should not be closed because if I -- if my motion is granted and Mr. Mast's deposition is stricken,

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that -- that may lead to other people I have to -- I have to list as (f)(1)s, and it may also impact Mr. Flynn's motion -- motion for summary judgment.

But this entire thing, the deposition itself should be stricken. That's why I may not have time to file a motion for. I have a court -- I have a court reporter saying on her -- sending it in responses to my records only subpoena, that she -- every time they tried -- whoever tried to keep sending her that exhibit, the first 22 pages were blank. She's written it over and over and over again in her response which I sent to Mr. Flynn.

How can they now come up with 25 or 27 pages to put in a full -- with a label that misspelled the defendant's name and with a label that is not --

THE COURT: You are arguing the merits. You are arguing the merits.

MR. TALARICO: May I please file that motion?

THE COURT: You can file your motion. But I don't know that -- how that the anticipated motion prevents me from otherwise closing discovery. You can file your motion. You can ask to have it reopened to address issues. But that's still going

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to be your burden because you haven't otherwise identified discovery you want to take other than related to this deposition issue.

And have you -- forgive me for fishing a little bit, but have you talked to Ms. Clinton, I guess that was the name of the attorney, Mr. Flynn?

MR. FLYNN: Ms. Williams.

THE COURT: Ms. William. I'm sorry. The Clinton Law Firm. Is that what you told me? All right. Have you contacted them for whatever Exhibit 12 is?

MR. TALARICO: No, Judge. If you remember when we talked about the pink pages, the black -- the blank pages, she would not respond to me back on that issue.

THE COURT: All right. I think I do recall that. All right. And have you issued a subpoena for Exhibit 12? Because I can't see how an attorney-client privilege would attach to a document that was used as an exhibit in the course of a discovery deposition.

MR. TALARICO: Judge, if -- maybe I'm misunderstanding. There is no Exhibit 12. That -- I can't subpoena what doesn't exist.

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THE COURT: Well, we don't have a formal response from her one way or another, do we?

MR. TALARICO: No, we don't. But we have a forged Exhibit 12, and we have the reporter saying there is no Exhibit 12.

THE COURT: She says she doesn't have it. She didn't say there was no such thing.

MR. TALARICO: No, excuse me, Judge. In her handwriting, the discussion about asking the Clinton firm for Exhibit 12 over and over and over again and getting no response.

THE COURT: That -- that doesn't look good, but it doesn't resolve the issue because I'm imagining, correct me if I'm wrong, that the record reflects a discussion of Exhibit 12.

MR. FLYNN: And I believe that being the case, Judge. I don't -- I can pull the transcript. I have it here within a few feet of my desk. But I recall Mr. Mast being questioned about Exhibit 12. Now --

THE COURT: I think that's obvious simply because there was no discussion of it, we wouldn't -- their wouldn't be -- if there was no testimony regarding the existence of Exhibit 12, we

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wouldn't be having this discussion.

And I think that in the end, I'm going to ask you to get a formal response out of that law firm or that attorney as to whether or not Exhibit 12 exists. And if they are going to claim attorney-client privilege, I don't see how. But I mean, I'll look at whatever their responses are. But if they have got it, they should produce it. Mr. Talarico?

MR. TALARICO: Judge, whatever way you want to go, I will do.

THE COURT: Okay. I have not -- and I'll show my hand a little bit, if everything you're saying is true with respect to the court reporter not having Exhibit 12, that's not going to be enough for me to strike the deposition and/or bar the use of Exhibit 12. It's going to create some issues, but given the fact that it was not an in-person deposition, her testimony does not -- her anticipated testimony doesn't establish for me that Exhibit 12 does not exist or that Exhibit 12, as produced in discovery in this case, is a forgery. I don't know.

MR. TALARICO: But Judge, if you -- may I speak?

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THE COURT: Yeah.

MR. TALARICO: If you recall, this all started when we -- with the deposition was about -- was going to be used, the deposition of Hans Mast. And in the deposition as it was produced, there was no Exhibit 12. It says Exhibits 1 to 11, 13 through 15. That's when I brought it to your Honor's attention. When it was produced, there was no Exhibit 12. As of April of this year, there is Exhibit 12.

THE COURT: But there is testimony regarding Exhibit 12.

MR. TALARICO: There is.

THE COURT: And if -- if we have -- if the attorney who presented Exhibit 12 isn't responsive, then -- then, I think we have to address the issue. But I need to know what she says. If she says I don't have it, it never existed, yeah, there is a problem. But if she produces an Exhibit 12, then we have to discuss that.

MR. FLYNN: Judge, just my recollection of the transmittal of this deposition once it was written up is there was -- it was done electronically. I could be wrong again. I didn't realize -- I wasn't

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aware of what the issue was here. But my recollection was that the court reporter sent us the transcripts and sent the exhibits electronically. So perhaps I'm wrong, you know. It was a couple years ago, but that was my understanding.

THE COURT: Yeah, I want to know what the attorney says. I mean, that's really the bottom line.

MR. TALARICO: Judge, are you suggesting a deposition of Ms. Williams to get that?

THE COURT: I don't know that that's necessary. I mean, a subpoena -- if you issue a subpoena and she produces one -- produces Exhibit 12, we will talk about whether or not a deposition is necessary.

MR. TALARICO: Okay.

THE COURT: And -- or -- I mean, I can see laying a foundation, but if she -- for it, or if we want to take her deposition, yeah, I'd probably be open to letting you do that. But I do agree with Mr. Flynn, it's time to get moving on this.

And Mr. Flynn, without showing me your hand, can I ask if Exhibit 12 is relevant to you're anticipated motion? If you don't want to answer, you don't have to.

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MR. FLYNN: I -- you know, I suppose it may be discussed. It's part of the overall advice that was given relative to my client recommending a settlement. It's not a major part of the motion. You know, we've got statute of limitations issues which would be part of the summary judgment motion. So I don't think had any bearing on that argument.

THE COURT: Is it possible that -- to split this motion?

MR. FLYNN: Well, I -- I've always anticipated, you know, unlike my motion this morning on another matter which is one issue, I would have four or five issues on summary judgment in this case. If the Court would allow it, I could use the extra pages anyhow, or I may need to to square it up, and I really won't know until I start writing it, to tell you the truth.

THE COURT: Okay. Well, my -- and forgive me if I'm contradicting something, because I'm -- that I've said or done in the past, but is, in effect, the statute of limitations argument is 2-619 generally. And I would think that could be isolated from anything involving -- and I would make Mr. Mast's testimony -- we wouldn't have to touch

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it, I don't think, but I don't know. I don't know what -- I don't know the issues. That's just my general recollection.

And I'm thinking of if we are able to at least get rid of some of this without having to reopen discovery, because I anticipate that Mr. Talarico's issues could lead to more depositions. And I'll let you guys proceed how you want. I just want to get something done.

MR. FLYNN: I --

THE COURT: Let me add to this, the Supreme Court has made it clear that we have to move cases, and if we don't cases --

MR. FLYNN: I understand that.

THE COURT: -- within the allotted time, we will be punished. They are vague about what punishment is.

MR. FLYNN: I understand. I think there are multiple issues on -- I thank you for the (indiscernible) page limit. I may have some problems with that anyway. So I suppose if the Court would allow it, I could attempt to break up the various issues.

THE COURT: I'll consider any motion you guys

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want to file.

MR. FLYNN: Okay.

THE COURT: And -- but if it's impossible to split it up, then we will waive. Okay.

MR. FLYNN: There are a lot of intertwined issues for the Court's ruling. So I'll do my best to make it easy on us all if I can.

THE COURT: You know, if they are all intertwined, forget everything I said.

Mr. Talarico, do you want to weigh in?

MR. TALARICO: Just so I understand, Judge, you are suggesting, and I will comply, a subpoena on Julia Williams as to Exhibit 12, and -- well, if I -- well, then, depending on -- well, I would still like to do a motion to -- to strike or exclude the deposition of --

THE COURT: You can, but I think that attorney's testimony or subpoena response is going to be critical to my decision on that --

MR. TALARICO: Then, I would --

THE COURT: -- because court reporters make mistakes as to attorneys as to judges, and the court reporter's perspective isn't determinative of whether or not an Exhibit 12 was identified and

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relied upon by all the parties at the deposition and she just doesn't have it. I -- so that -- that's not going to result in my barring the dep or the exhibit, just her testimony.

MR. FLYNN: Judge, may I just comment on that as well?

THE COURT: Sure.

MR. FLYNN: I just wanted to point out and just for the record that these issues for all on the -- according to this side of the aisle, the deposition was taken by the plaintiff. The exhibit was introduced by the plaintiff. It is plaintiff's new counsel now that is moving to strike that deposition that was taken by the plaintiff.

The only thing I did in this case was pass along what I thought was Exhibit 12 after it was sent to me by the court reporter.

THE COURT: And you raise an interesting point, but I'll address that at the appropriate time.

MR. TALARICO: Judge, can I make a comment?

THE COURT: Sure. Sure.

MR. TALARICO: I -- the court reporter gave me no indication that she passed on Exhibit 12 to Mr. Flynn. So that's -- that's a question now.

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That --

THE COURT: Well, it was a Zoom dep, wasn't it?

MR. FLYNN: It was.

MR. TALARICO: It was a Zoom dep.

THE COURT: And was the court reporter even present?

MR. TALARICO: No.

THE COURT: You see, that's -- that's an issue for me because you've got everybody in separate locations.

MR. TALARICO: All I'm saying, Judge, is the documents I sent to Mr. Flynn by the court reporter, there were -- there were ongoing issues with Exhibit 12 saying I don't have it, I don't have it, somebody give it to me, what is this. There is for the -- we have got two things. You've got the reporter actually focusing on 12 and saying I don't have it, the reporter --

THE COURT: I believe it.

MR. TALARICO: -- not producing an Exhibit 12, and then the document expert saying it's a forgery.

THE COURT: I --

MR. FLYNN: I may be able to shed a little bit of more light on this as well. This is just for

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purposes of moving forward.

So my recollection was Ms. Williams forwarded the proposed exhibits of the deposition prior to the deposition. My recollection was that some of them were fairly extensive, and I didn't print out every single one. I recall getting hard copies of some of the exhibits to Mr. Mast's office.

We had some technical issues with screen sharing the exhibits. I recall showing him one or two hard copies of exhibits. But again, my recollection of the exhibits were sent in the proposed form prior to the deposition. That may, at least, help us, not that I am getting -- chasing down this issue because I'd rather not spend time on it. But just for everyone's edification, I think that was the case.

THE COURT: Okay. Mr. Talarico, anything to add?

MR. TALARICO: No, Judge.

THE COURT: All right. So please issue a subpoena. I guess I had misunderstood. I thought that the deposition was from a companion case, not this case. So simply by names of the attorneys, I had overlooked that. And we will have to address

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that when we get to it.

But if you want to file a motion, file a motion. But I think issuing a subpoena or even contacting her and getting an affidavit is fine. I don't care. But I want to know what she says. And I just don't know where we are going if you file a motion based upon the court reporter saying I never got them because that doesn't establish for me that Exhibit 12 doesn't exist or that the one that you've been produced is the wrong one then, and I don't know how to resolve that.

MR. TALARICO: All right, Judge. I will gladly take your advice and move forward with a -- with a subpoena.

THE COURT: Okay. When did we want to come back?

MR. FLYNN: Judge, is that -- I'm happy to prepare the order. Is fact discovery closed?

THE COURT: Yeah.

MR. FLYNN: Okay.

THE COURT: Closing fact discovery on my motion today. But that does not prevent Mr. Talarico from filing a motion to reopen discovery for purposes of pursuing this issue. So you're really -- with

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respect to the issues Mr. Talarico has raised today, there is no prejudice. He can still pursue exactly what I said he could pursue.

So in case there is any question, I will explicitly grant leave to issue his subpoena or obtain an affidavit from that attorney in question regarding Exhibit 12.

MR. FLYNN: Showing who the parties in the order.

THE COURT: I think that's better. Mr. Talarico, does that cover what you want to cover?

MR. TALARICO: Yes, Judge.

THE COURT: So realistically, I'm thinking 60 days to resolve the issue with the attorney. That puts us into mid September. How is September 16, a Friday?

MR. FLYNN: Works for me.

MR. TALARICO: I'm checking, your Honor.

THE COURT: Okay.

MR. TALARICO: Fine.

THE COURT: All right. That will be -- well, let me look at my schedule because I anticipate -- let's say 9:30.

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MR. TALARICO: Okay.

MR. FLYNN: And Judge, in this court this morning earlier on the Interrante case, this matter was scheduled for 9:45. I wasn't sure (indiscernible) did we both have to be here, or if I missed something as far as --

THE COURT: I have it -- I think I had your other case up at 8:45.

MR. TALARICO: Mr. Flynn, you were right, this case was scheduled for 9:45 also.

MR. FLYNN: It was. I think, Judge, you drafted the last order. I'm not trying to blame you, but I think originally 8:45 and then it was stricken on the order and then changed 8 to 9:45.

THE COURT: That was my mistake, and somebody brought it to my attention and made fun of me. I will accept blame for that.

Let's go 9:30. You put it in the order, and you can even say by order of the Judge at 9:30. And the reason for that is so that we don't have to wait for a large call to dissipate before talking.

MR. FLYNN: I'll draft the order, Mr. Talarico. I should be able to get it to you within an hour or so.

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MR. TALARICO: Thank you, sir.
THE COURT: All right.
MR. FLYNN: That's it.
THE COURT: I'll sign it when I see it, and then we will see you at 9:30 on September 16.
MR. TALARICO: May I say one more thing, Judge?
THE COURT: Yes.
MR. TALARICO: I'm sorry. I'm apologizing again for missing court. This is probably the first time in my life, but it was a medical emergency and --
THE COURT: Understood.
MR. TALARICO: -- I missed court, and I apologize.
THE COURT: Okay.
MR. FLYNN: No apology necessary. Thank you.
THE COURT: No problem. All right. We will see you next month -- or in September.
MR. FLYNN: Thank you.
THE COURT: Thank you. Bye. Disconnecting.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, JUDY CARLSON, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Judy A. Carlson

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before The Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 16th day of September, 2022, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by
MR. ALPHONSE A. TALARICO, (via Zoom)
On behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN, (via Zoom)
On behalf of the Defendants.

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THE COURT: Now, moving on to Dulberg versus -- Forgive me for not remembering. Dulberg versus Mast.

Plaintiff's counsel, if you can identify yourself?

MR. TALARICO: Good morning, Judge. My name is Alphonse Talarico for the plaintiff.

THE COURT: Okay. And defendant?

MR. FLYNN: Good morning, your Honor. George Flynn for defendants.

THE COURT: All right. We have a -- What's going on? Let me just put it that way.

MR. TALARICO: You're right. What is going on? Okay. The last time we were up, you gave me permission to subpoena the records and the deposition of Hans Mast, especially Exhibit 12, which I've been challenging as fraudulent.

Served the subpoena on both Ms. Williams and Mr. Clinton. Those are two people that handled the case for the Clinton Law Firm.

I got -- The day before they were supposed to respond, I called to try to ask if, you know, they're going to respond. They said yes. They sent me some documents, but other documents, they claim

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that they are not all that they want -- that they could respond to and were not going to respond. They won't give -- They're not in compliance. They won't give me an affidavit of completion, et cetera.

As a courtesy to other -- to two members of the bar, I said, Okay, look, I'll extend this. Can you consider this and do this?

So I -- I sent them a notice that I changed the compliance date to October 6th. The earlier compliance date was September 22nd. But every indication in writing is if I -- if I do a motion to compel, they're going to claim attorney-client privilege and work product.

THE COURT: Well, they've got to do something. My interpretation of the law is if you're not going to comply with the subpoena, your options are -- your only option, then, is to file an objection. You can't just refuse.

The ball is in their court. They've done nothing. And you may want to pass that information on to them that unless or until I see something filed on their behalf objecting to the scope of your subpoena, I assume it's appropriate and should be complied with. If you want to do a rule, do a rule,

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and I'm fine. But they're going to have to do something. They can't just say, No, we're not gonna.

MR. TALARICO: That is, so far, what I've gotten, but I will pass that along, your Honor.

THE COURT: All right. Yeah. I expect if they're not going to give full compliance -- and based on what you're telling me they're acknowledging it's not full compliance -- if they are not going to give you full compliance, they need to come to court.

MR. TALARICO: I'll pass that along.

THE COURT: Either voluntarily or involuntarily. It's their call.

THE COURT: All right. Anything else?

MR. FLYNN: Judge, so yesterday we filed our summary judgment motion on the statute of limitations issue. You may recall we discussed that we believe there were multiple grounds for summary judgment, but they're separate grounds and it made sense to separate those issues.

This record relies mainly on the testimony in this instant malpractice case; whereas, some of the other grounds are more geared toward the

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underlying case.

THE COURT: All right.

MR. FLYNN: Number one, whether there could have even been liability on the part of the property owners; and secondly, I believe, which dovetails with that, would be the attorney judgment -- attorney immunity doctrine, essentially.

So those (indiscernible) all relied on facts regarding the accident itself that would have taken, you know, additional five to ten pages of facts that are -- So we'd like to do that separately. In fact, we might wait until if and when expert discovery is completed, but -- I'm going to have some more thoughts, but I think we have plenty to chew on now.

As far as the Exhibit 12 from the Hans Mast deposition, I have forwarded a copy of that to counsel. I don't frankly understand what the issue is. I was there for the deposition. Perhaps, at some point, if some motion could clarify what the problem is, but I just don't understand it, and hopefully won't delay the issue -- delay the summary judgment briefing.

THE COURT: I don't have any reason to believe

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it does, but if plaintiff wants to bring that to my attention, I'll listen.

MR. TALARICO: Judge, if I might, as to Exhibit 12 in the deposition, I've already drafted the first part of a motion to exclude the deposition, and it's based on Supreme Court Rule 206(h)(2). This is not before the Court yet, but I'm giving you some idea of where I'm going.

THE COURT: All right.

MR. TALARICO: 206(h)(2), and orders of the Supreme Court MR30370 and MR303 -- twice amended. It was amended. So two orders, plus the fact that the exhibit, in any form, was not at the deposition and not shown.

THE COURT: Mr. Flynn, for you, is the exhibit and/or deposition relevant to your motion?

MR. FLYNN: It is. This is the deposition of my client, Hans Mast.

THE COURT: All right.

MR. FLYNN: The attorney that handled the underlying case for the Popovich firm. I don't know that Exhibit 12, in particular, has any bearing on the motion. The deposition, overall, does and it will also effect the future motion for summary

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judgment if that ever becomes necessary.

THE COURT: All right. Until I see the motion, both motions, I can't really determine to what extent one is going to impact the other. So I'll wait and see and I'll -- Because summary judgment isn't in the file yet, and --

MR. TALARICO: I haven't got notice either.

THE COURT: Okay.

MR. FLYNN: Counsel, my secretary sent a drop box link to your e-mail address yesterday. So you're aware of it.

MR. TALARICO: I'm aware of it. I didn't know you noticed -- I haven't gotten notice that you put it on today's call because I got it yesterday, and all I got was the document. I don't deny that, Mr. Flynn, of course I did. All I'm saying is it wasn't put on the Judge's call, and I didn't know that. So --

THE COURT: I'm going to put, on my motion -- because here's what I want to do. Your compliance date on the subpoena, the second one -- I think you said October 6th?

MR. TALARICO: October 6th, yes.

THE COURT: So why don't we come back on the 7th

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for status of compliance and status on the motion for summary judgment, at which time we'll also, perhaps, address the motion you intend to file. Then I'll have an opportunity to look at them and maybe we'll have compliance by that date. But they're -- They've got to do something. They can't just say, No, we're excused. They've got to come to court and say, We're protected by attorney-client privilege, so this is all the compliance we need to give. They don't get to call those shots.

That being said, let's put it on the call for 9:30. Let's say 9:45, sorry, on the 7th.

Who wants to send me the order?

MR. FLYNN: Well, Judge, I'm happy to send it. Will a briefing schedule be entered today or not until --

THE COURT: He doesn't have the motion. It's not noticed up today. I was reluctant -- I can do it, if you're agreeable, but I was (indiscernible) Mr. Talarico's comments that he would be objecting.

Mr. Talarico, what do you want to do?

MR. TALARICO: I would object because, your Honor, first, it's not on the call, and second, I want to see what's going to happen with the

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compliance, if there's going to be compliance. Because then my motion to strike the deposition, which is part of his summary judgment motion, would be -- have to be --

THE COURT: I'll take a look at it. I'm not going to enter a briefing schedule. I want to take a look at both motions to determine if we can proceed with the summary judgment or if I've got to resolve the motion to strike first.

MR. TALARICO: Okay. Thank you, Judge.

MR. FLYNN: So the compliance date of the subpoena was October 6th? I just -- I hate to delay this any further. If there's going to be a motion, I would like to see it on file. Fact discovery has been closed for some time.

THE COURT: Yeah. You mean the motion to strike the deposition?

MR. FLYNN: Right. Right now it's just a thought. There's no motion on file. The fact discovery has been closed --

THE COURT: I got the idea it was about to be filed, but maybe that was an incorrect assumption.

Mr. Talarico?

MR. TALARICO: I'm sorry?

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THE COURT: When will you file your motion?

MR. TALARICO: When? If I could have a week after the 6th when I know -- I'll file my motion within a week after --

THE COURT: You're filing a motion to strike the deposition, and I -- I didn't know that was dependent on compliance. How is it dependent on compliance?

MR. TALARICO: That's the -- I don't know what information I'm going to get from them regarding the deposition.

THE COURT: Okay. How about we come back October 14th? That gives you enough time. Then your motion will be on file by that day and we can deal with everything.

MR. TALARICO: Fine with me, your Honor.

THE COURT: You know what? I've got to do it on the 13th. I can't do it on the 14th.

Can you make it the 13th at 10:00 o'clock?

MR. TALARICO: I can, Judge.

MR. FLYNN: I'm available. Again, Judge, I've forwarded the exhibits to counsel's attention. I was there at my client's deposition. It was taken by Zoom. The exhibits were scanned electronically.

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I just don't see what the issue is. It seems as if it's a another dilatory tactic to avoid --

MR. TALARICO: I don't do dilatory --

THE COURT: Hold on. I can't rule on the motion until I see it. I can't rule -- I can't determine whether or not the issues raised about the deposition are even relevant to your motion -- to the motion for summary judgment until I see it because I do have questions, and I want to resolve those on my own.

I don't want any unnecessary delay, either, and that's why I'm trying to give this a short date after the compliance date. I do want to move this along, and the Supreme Court tells me it should have been resolved two years ago, but they don't have to deal with the actual case. Not this one in particular, but all cases should be resolved at three.

That being said, is there anything else we need to address today?

MR. TALARICO: No, Judge. The only thing I want to say is happy almost fall to everybody.

THE COURT: So we'll see you at 10:00 o'clock on October 13th.

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MR. TALARICO: Thank you, Judge.

THE COURT: And, Mr. Flynn, if you could send in the order?

MR. FLYNN: Judge, just to be clear, it's 10:00 o'clock?

THE COURT: Yeah.

MR. FLYNN: Okay. 10:00 o'clock on 10/13. Okay.

THE COURT: All right. We'll see you then.

(Which were all the proceedings had in the above-entitled cause this date.)

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) SS:
COUNTY OF McHENRY)

I, KATHLEEN STROMBACH, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

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STATE OF ILLINOIS)
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COUNTY OF MCHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT

MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, -vs- HANS MAST, ET AL.,	)	Case No. 17 LA 377

ELECTRONICALLY RECORDED Report OF Proceedings in the above-entitled cause before the Honorable Thomas A. Meyer, Judge of said Court of McHenry County, Illinois, on the 13th day of October 2022, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES ON ZOOM:

LAW OFFICE OF ALPHONSE A. TALARICO, by
MR. ALPHONSE A. TALARICO, Attorney
on behalf of the Plaintiff;
KARBAL COHEN ECONOMOU SILK & DUNNE, by
MR. GEORGE FLYNN, Attorney
on behalf of the Defendant.

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THE COURT: Dulberg versus Mast. Plaintiff's counsel, if you can identify yourself. You're on mute.

MR. TALARICO: Good morning. My name is Alphonse Talarico for the plaintiff Paul Dalberg.

THE COURT: Okay. Defendant?

MR. FLYNN: Morning, Your Honor. George Flynn on behalf of the defendant Popovich and Mast. Good morning, counsel.

THE COURT: Okay. Mr. Talarico, it's come to my attention we have reason to believe that Mr. Dulberg is recording these hearings and I think that's very likely. So you might want to talk to your client about that because I will hold him in contempt of court for doing that and I will refer that for criminal prosecution, if need be. So you might want to talk to him about it.

MR. TALARICO: Yes, Your Honor, I will.

THE COURT: I'm not going to make you have that conversation here on the record, but it's not going to happen again. And the source of that information is Mr. Dulberg himself, in case you're curious. He has had discussions with our court reporters and he has challenged aspects of the transcript, and the only reasonable way that a person could challenge a transcript would be by having a separate recording, some of the nature of his challenges.

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So he exposed himself on that issue. It's not going to happen anymore. And if I find out it is, we will pursue it. All right. Let's move on. Let's go back to your motion.

MR. FLYNN: Judge, can I address that issue very briefly?

THE COURT: Yes.

MR. FLYNN: Whatever these communications were with the court staff or circuit clerk personnel are ex parte, I don't know if --

THE COURT: He is contacting the court reporter's office. He orders the transcripts. And when they produce the transcripts, apparently he is challenging the language in the transcripts, and there's only one way to do that. There's only one way an individual would be able to have information that would contradict the recordings -- and I'm pointing at the microphones -- the recordings is by having one of his own, so I suspect he's recording these.

MR. FLYNN: Okay.

THE COURT: And I think the information I have is probably reliable. I'm not going to ask him to respond, but I'm bringing this to the attention of his attorney. It's not going to happen anymore.

MR. FLYNN: Very well.

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THE COURT: And, of course, I could issue a subpoena. I could order -- not issue a subpoena, but I could order production of all those recordings because that may be something that Mr. Flynn wants. I don't know. But in any event, I will move on. With respect to your motion, Mr. Talarico, tell me what's going on.

MR. TALARICO: Well, Your Honor, last time we were up you allowed me to subpoena, the record subpoenas, on two of Mr. Dulberg's former attorneys, Julia C. Williams and I think his name is Edward X. Clinton. I have had communications with them, and they have filed documents which I have -- which is part of the clerk's file. I had it filed so that the Court could see what they responded to or how they responded.

But my position is very clear. My position is they are not in compliance for a variety of reasons I state within the motion. Starting off with Mr. Clinton hasn't filed a response or an affidavit of compliance. Secondarily, Miss Williams has attempted to amend my affidavit of compliance without asking me or asking the Court's permission to do that. She has changed the wording of the affidavit of compliance. Third of all, she's trying to -- she's attempting to file on behalf of herself and --

THE COURT: What's the date of this filing?

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MR. TALARICO: I don't have it in front of me, Judge, but it was fairly recent. I can't -- I must say I can't go back to the Court's file right now because something new has happened electronically in the last couple of days and I can't get back there.

THE COURT: Yeah, we're having issues. I only just got back in 20 minutes ago.

MR. TALARICO: So I really can't pull that out right now.

THE COURT: In any event, what would you like to do? Because I'm able to pull up the compliance document.

MR. TALARICO: Okay. In the compliance document, Your Honor, they have general objections of attorney/client privilege and work product. Without presenting that to you, I have no idea what those documents are. And so I believe they have to bring those to you before they can withhold them from me.

THE COURT: Well, I'll just order -- I will order them to produce all such documents being withheld under claims of privilege or work product to me for an in camera inspection.

MR. TALARICO: Okay. That's just to clarify, Your Honor, to make it easy on them because in conversation they're talking about a blanket waiver and I believe

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Illinois Rules of Evidence 502 allows Mr. Dulberg to do a limited waiver and that's what we -- we just want you to, if you would so kindly, include that in the order saying the waiver is relative to --

THE COURT: A waiver of what?

MR. TALARICO: Of any information sought in their subpoena that is in response to the issue, the subject of the subpoena.

THE COURT: So you would waive the attorney/client privilege to the extent that it affects any of the documents to be produced?

MR. TALARICO: Correct.

THE COURT: Okay. And certainly that doesn't address work product, but I guess I'm confused by that assertion by them. In any event, Mr. Flynn, any comments?

MR. FLYNN: Well, Judge, there were a couple of filings or at least motions that had been forwarded to me that I guess should be discussed. So as you know, we filed a summary judgment motion on September 15th. I'm going to ask -- continue to ask that a briefing schedule be set on that. Late last night or late yesterday afternoon I received a motion. It's a long title, but it's a motion to exclude Hans Mast's deposition. Hans Mast is my client. He was deposed by the plaintiff in this case at the

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beginning of the Pandemic remotely.

THE COURT: I haven't seen that. I haven't seen the motion, the motion to exclude, and I'm looking through the court file right now.

MR. FLYNN: This was suggested, I guess, by counsel during our last hearing. We discussed the timing of any such motion, again, in view of my summary judgment and request for a briefing schedule.

THE COURT: And I take that back. You're right. It was a very long title. I was reading this as a motion to compel, but I see the reference to barring Hans Mast in there as well.

MR. FLYNN: Well, there's a confusion, though, there's some confusion because the motion to exclude is contained in the title, two different versions that I received. So one of the motions is directed to the Williams and Clinton firms as a motion to compel. I think it should probably be couched as a petition for rule to show cause because they're third parties at this point. But be that as it may, the second motion that I received late yesterday afternoon was directed at excluding Mast's deposition.

THE COURT: Okay. I'm going to let Mr. Talarico explain that to me. On what basis?

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MR. FLYNN: Okay. Last thing when we were before you, Judge, the indication was that -- a discussion was that Hans -- I would be bringing a motion to exclude the discovery deposition of Hans Mast after I got the replies from Julia Williams and Edward Clinton. The replies I received were non-compliant and, therefore, what I'm asking in addition is that when I do get compliance, I can amend my motion. The motion was served yesterday. It was supposed to be last Thursday, Judge. There was electronic problems with the court's filing system, so it just got submitted yesterday. The one that was served -- I mean submitted on Thursday didn't get accepted until Tuesday of this week, so I didn't --

THE COURT: Well, for my purposes, on what basis would I be able to bar Hans Mast's deposition? And correct me if I'm wrong, because I'm relying on memory, the deponents you're seeking records from are your client's former attorneys, aren't they?

MR. TALARICO: They are.

THE COURT: Okay. So I guess there's a disconnect and maybe I'm missing something. How would I sanction Hans Mast for something your client's attorneys did or allegedly did?

MR. TALARICO: The deposition was -- what's it

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called -- a remote deposition violated the Supreme Court rules and Supreme Court orders. At the time I explained it and spell it out in detail. And it's not just Julia Williams, but Mr. Flynn's electronic equipment stopped working, and I have quotes from him in the deposition. The entire deposition should be wiped out because it's non-compliant. The exhibits, they don't know what numbers they're looking at. They're missing exhibits. It never got concluded.

We started with Exhibit 12. Exhibit 12 was never part of the deposition. It was served, I believe, 12 days later after the conclusion. I have to have all this put out. If you read the deposition, Judge, and I cite all of these questions and answers in what's being filed, there has been a total disconnect. They kept saying I can't see that, what's the exhibit, my internet is down. It's not just one. It's through the entire deposition. And, Judge, I would stand on the motion I filed when you see it. I'm quoting them.

THE COURT: Is this -- Let me -- Hang on. Mr. Flynn, I don't recall, but is your motion based on anything Hans Mast says from the dep?

MR. FLYNN: Well, if I may, Judge, the motion is based on Hans Mast's deposition. I attached it. It's not

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a reliance on the pages where he was questioned about Exhibit 12.

THE COURT: All right.

MR. FLYNN: So if I can back up a little bit and explain our position on this. I understand the Court hasn't read the motion to exclude, but I would like to raise some points that hopefully the Court will find relevant when it does read the motion. So Mast was deposed in 2020. Plaintiff's counsels realized -- The deposition was noticed by the plaintiff, perpetuated by the plaintiff, taken by the plaintiff.

THE COURT: I realize that, but let's go back to my question because I'm not going -- I haven't read the motion, so I'm not going to rule on the motion I haven't read. But I am trying to get some background. And the purpose of my question about your motion for summary judgment is I wondered is this even a necessary issue before we proceed on your motion. If you're not relying on Hans Mast's deposition, then I think I can defer it until some later date.

MR. FLYNN: I'm getting there. I'm sorry. It's taken me a minute, but I just thought it would be important to provide his background, Judge. The answer is no, I don't think it's dependent and the summary judgment

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briefing should not be held up.

But to continue on, Paul Dulberg appeared by Zoom during this remote deposition. By the way, it's not my equipment. It was my client Hans Mast's equipment at his law office at I believe it's called the Compton law firm. I was in his office physically and we were both attending by Zoom that day. You know, as I sit here, I don't know if I had a separate laptop that I brought and I know Hans was using his iPhone for at least part of the deposition. The Wifi went out once or twice. It was really not a huge issue.

With respect to Exhibit 12, Mast was questioned about that at pages 49 through 53 of his deposition. It's very general questioning about some case law that was contained in his file relative to the underlying case and the liability of the property orders. That is a motion that we plan to bring, if necessary, a motion at a later date demonstrating that the property owners could never have been found liable and, furthermore, that the attorney judgmental immunity, also known as the attorney judgment rule, bars this claim. The current pending motion for summary motion is based on the statute of limitations. It's my position that that testimony at pages 49 through 53, relative to Exhibit 12 have nothing to do and no

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bearing on the pending motion for summary judgment.

THE COURT: Okay. So I could exclude this -- Could I exclude this from consideration on your motion for summary judgment and then we can move on to the motion?

MR. FLYNN: I don't think there's any need to exclude it. And there are a few other points, Judge. The parties waived any objection to the (indiscernible) to enter.

THE COURT: I recognize that, but I'm reluctant to rule until I actually see the motion. But what I'm looking for, a separate path here, is if you're able to tell me yeah, you can exclude reliance on Hans Mast's deposition and we'll stand on our motion otherwise, then this dispute over Exhibit 12 and his deposition is no longer an obstacle to our proceeding on the motion, your motion.

MR. FLYNN: I don't see why the defendants really should have to concede or waive anything. The plaintiff is not explaining why it is --

THE COURT: I'm just asking you. If you --

MR. FLYNN: Right, right. I understand. The path of at least resistance sometimes is the way to go, but I just don't see it here. Plaintiff hasn't identified any reason why the deposition should be excluded relative to

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this motion, anyway.

THE COURT: I'm not ruling that. But if you were going to tell me it makes no difference, I'll concede the point for purposes of my motion for summary judgment, then we -- And I think that it's fine.

MR. FLYNN: I think that that portion that he's relying on relative to this exhibit which was part of the deposition and was shared on the screen, although there apparently was some confusion again on the plaintiff's side when his lawyer transmitted it to the court reporter. So none of these disputes and issues --

THE COURT: You're arguing the merits of a motion I haven't read yet.

MR. FLYNN: Okay.

THE COURT: It's not in the court file.

MR. FLYNN: Judge, I think that generally the deposition, although it's not heavily relied on, it is part of the motion and I don't think we can exclude it. The plaintiff hasn't explained why it does have a bearing on these issues.

THE COURT: I don't know, and I've got to wait and I've got to read the motion, and hopefully the motion will explain to me why it is relevant and necessary for me to address this. That being said, we will enter or grant

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the request of the plaintiff to compel production of those documents to be produced to the Court for an in camera inspection.

Did you want to include the waiver in the order that the plaintiff explicitly waives any claim of attorney/client privilege with respect to such documents?

MR. TALARICO: Absolutely, Judge.

THE COURT: Then we'll put that in the order. That means one of you gets to draft it. How long do you think it's going to take them to produce the records? I know it's not you, but --

MR. TALARICO: They've been resistant all along, Judge. It started in August when we first started.

THE COURT: Well, I'm entering an order compelling that they give them to me.

MR. TALARICO: Correct.

THE COURT: The issue is whether or not -- And I'm not -- I haven't looked at it for this purpose, whether or not the Court has jurisdiction over them, but I will happily hold them in contempt, assuming we've got all our T's crossed and I's dotted to do so because I just want the record.

MR. TALARICO: I don't think it would take them long. They must have them.

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THE COURT: So if I were to put this out two weeks, do you think that is something that can be done?

MR. TALARICO: I really don't know, Judge, but I can guess yes.

THE COURT: I mean it doesn't sound like we're talking about a lot of documents. Do you have a guess from what they've said?

MR. TALARICO: No, Judge, because there's a couple of things that appeared, like Julia Williams has used another name in some of her communications regarding this matter. She used the name Floyd as her email name. So I really don't know if there's Julia Williams Floyd documents. It's in her emails, but we're requesting that communication --

THE COURT: I'm going to grant your motion for a rule to show cause.

MR. TALARICO: Okay.

THE COURT: And I'm going to ask that you -- I'm worried about the notice issue. So I'm going to order that they produce these documents for an in camera inspection or in the alternative that they appear, this is a fake rule to show, I guess, or that they appear in court to explain why they haven't complied with the subpoena. Because I don't think you've noticed up a rule to show cause, but on my

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motion I'm going to ask that they come in and explain to me what the problems are if they don't send me for in camera inspection, these documents.

Mr. Flynn, is there a hole in my thinking?

MR. FLYNN: I don't think so. I'm just concerned about the summary judgment. I -- At least issues and disputes between the plaintiff and his various attorneys that we've been ensnared in, I'd rather just stay out of it, but --

THE COURT: Well, as a third party to this discussion, I was wondering if -- Because we're not formally doing it the right way, I think in a perfect world plaintiff issues a petition for rule to show cause and let's just leave it that way. Issue -- Have the order reflect that I'm ordering them to comply and submit the records for in camera inspection. And that you are explicitly waiving any attorney/client privilege with respect to any documents that are produced to me for in camera inspection. And I'm granting you leave to file a petition for a rule to show cause against them, and then we'll have that noticed for the date we return. And I think I'm playing a little too fast and loose and we'll do it in the right order. If they don't show up or don't comply, I'll issue the rule and we'll see what happens.

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So when can you come back? I'm thinking two weeks is going to put us to October 27th. Any day after that is fine by me. You know what, I'm going to put you over to Thursday, November 3rd at 9:15. There is a chance the trial that is scheduled to start next week will still be going, in which case I might not be available, but I'll try and work that out.

MR. FLYNN: Judge, I have a 9:00 o'clock in Joliet that day. Well, it's probably going to be attended by Zoom. I know that particular judge, usually he's not on the bench until about 9:15 or 9:20.

THE COURT: Let's go Friday, the 4th. Does that work?

MR. FLYNN: If it's early, yes.

THE COURT: At 9:15, does that give you enough time?

MR. FLYNN: Yes. Back to the pending summary judgment motion again because the motion to exclude technically I don't think has even been noticed for hearing.

THE COURT: No.

MR. FLYNN: Although we did discuss it today. The motion does not provide a basis or a reason to exclude it relative to the summary judgment motion.

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THE COURT: I'm sorry. To exclude Hans Mast's deposition?

MR. FLYNN: Exclude Hans Mast's deposition relative to the summary judgment. So I mean I would just ask a schedule be entered; and if they want to attack it, they need to notice up the motion and explain why.

THE COURT: I have an October 6th filing that I -- based on what has been said, I don't think it's the same document. Mr. Talarico, is there a subsequent motion?

MR. TALARICO: There was one filed yesterday, Judge.

THE COURT: So yeah, I'll enter a briefing schedule over objection.

MR. TALARICO: Yes, Judge, I object. I don't see why -- if this is a key document, first Mr. Flynn said he would let it go, last time he said it's important, now he changes. You've ruled and now he just talked you into changing again.

THE COURT: I'm sorry. What did I rule on?

MR. TALARICO: He told us everything that you wanted in the order.

THE COURT: I'm sorry?

MR. TALARICO: I'm sorry.

MR. FLYNN: It's relative to the motion to compel

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on petition for rule.

THE COURT: I'm letting you do that. And I'm going to assume compliance with the subpoena by the time we return and my intention is to factor in that delay in the time that you're given to respond to the motion. And if something arises, then certainly you've got time to file a motion and we can address it. But I'm going to assume that by the time we return on November 4th, you're in possession of these documents. And if there's another issue, then it's going to be incumbent on you to bring it to my attention.

MR. TALARICO: And, Judge, just -- Okay. I think enough has been said on this matter.

THE COURT: All right. We'll, as far as -- So let's assume you've got all the documents in your hands on or about November 4th, Mr. Talarico. How long after that do you need to respond?

MR. TALARICO: Mr. Flynn's motion is quite extensive. I think it's over 400 pages. No, more than that, maybe 600 pages. I'm just estimating. I'm guessing. So Mr. Flynn, please, correct me if I'm wrong, but I would think at least 60, if not 90 days. There's a lot of -- a lot of -- I think the first filing was 464 pages.

THE COURT: And 118.

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MR. FLYNN: The motion itself, memorandum is combined, it's 15 pages or less. So the remainder of the pages are exhibits which have been well-known to all the parties for many years in this case.

THE COURT: I agree, but here's an additional complicating factor. Let's assume, just for sake of argument, I give him the standard 28 days. How long would you need to reply?

MR. FLYNN: 28 days from -- So another complication, I'm having a total knee replacement on November 17th, so that's why.

THE COURT: I'll explain my smile in a moment.

MR. FLYNN: Okay.

THE COURT: I'm getting a hip in January. So that's why -- So based on your old man surgery and my old man surgery, I think we're going to have to look at a date after I return for the hearing simply because we'd be cutting it close. I anticipate the earliest date post-surgery, post-anticipated surgery that I think I can give you is February 1st.

MR. FLYNN: Okay. Again, the motion has already been on file for nearly a month, so --

THE COURT: It is, but unfortunately, you're stuck with my schedule and yours, so I can blame you. How

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long are you going to be out, out of curiosity?

MR. FLYNN: This doctor claims it's a fairly non-evasive surgery. I mean I may be working within seven days, but realistically I'm going to plan for about three weeks.

THE COURT: Okay. I was curious about that. I know they've had tremendous advances in the surgery, but still.

MR. FLYNN: They have. I'm actually doing it over Thanksgiving holiday, the week before to try to use those long weekends to recover, so I hope to be back in the saddle right after Thanksgiving, but you never know.

THE COURT: Yeah, you do never know. February 1st.

MR. FLYNN: February 1st hearing, sure.

THE COURT: Yeah, and that will be at 10:00 o'clock. All right. And all I ask, then, let's work backwards from that date. If let's say that can you -- Let's say the final brief is due -- the reply is due January 19th, that's a Thursday. How long would you need for your reply because you've also got the Christmas holidays?

MR. FLYNN: If I could have 21 days from the date it's served, I mean that should be sufficient.

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THE COURT: So if we go the 19th, then 21 days back appears to be December 29th. And so Mr. Talarico, can you finish your brief by the 29th? We'll say the 28th.

MR. TALARICO: Yes, Your Honor.

THE COURT: Okay. So we have the motion on schedule and I will await any motions that are filed. I look forward to the petition for rule to show cause; and when the other motion shows up, I'll take a look at that as well.

MR. FLYNN: Judge, did you say 12-28 for the response to the summary judgment?

THE COURT: Yeah.

MR. FLYNN: Okay. Last thing, now that I've been given a few minutes to think about this, I would ask that any recording of any court hearing in this case be made part of the court file. I'm sure Mr. Dulberg would expect nothing less if it were done on the other side, so that's my request.

THE COURT: I'm going to ask you to put that in writing.

MR. FLYNN: Okay.

THE COURT: And we'll address that further when we return. All right.

MR. FLYNN: Thank you, Your Honor.

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THE COURT: Okay. Is there anything else? Who is going to send me the order? Mr. Flynn, can you send the order?

MR. FLYNN: I'll do my best to capture everything and I'll send it to Mr. Talarico for review first.

THE COURT: Fine. All right. Thank you and I will sign the order when I see it.

MR. FLYNN: Okay. Thank you, Your Honor.

THE COURT: Thank you.

MR. TALARICO: Thank you, Judge, thank you from the plaintiff.

MR. FLYNN: Thank you.

(Which were all the proceedings had)

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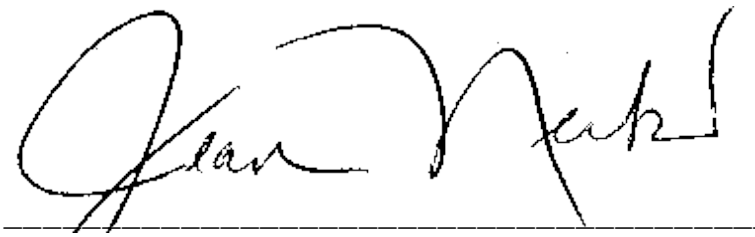
STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

I, JEAN NERBO, an Official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.



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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
vs.) No. 17 LA 377
)
THE LAW OFFICES OF THOMAS)
POPOVICH, et al.,)
)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 4th day of November, 2022, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by
MR. ALPHONSE A. TALARICO (via Zoom),

On behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN (via Zoom),

On behalf of the Defendants.

ALSO PRESENT:

MR. EDWARD CLINTON (via Zoom)
MS. JULIA C. WILLIAMS (via Zoom)

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THE COURT: All right. If everybody could identify themselves, starting with plaintiff's counsel, then defendant.

MR. TALARICO: Good morning, your Honor. Good morning, Counsel. I am Alphonse Talarico for the plaintiff, Paul Dulberg.

THE COURT: Okay. Defense.

MR. FLYNN: Good morning, your Honor. George Flynn on behalf of the defendants, the Popovich firm and Hans Mast.

THE COURT: Okay. Mr. Clinton.

MR. CLINTON: Good morning, your Honor. Ed Clinton, former counsel to Mr. Dulberg.

THE COURT: All right. And --

MS. WILLIAMS: Good morning, your Honor. Julia -- Julia Williams on behalf of -- former counsel to Mr. Dulberg.

THE COURT: Okay. And for the record, we have Mr. Dulberg on screen.

In any event, plaintiff's counsel, where do you want to start?

MR. TALARICO: Judge, I would guess that Mr. Clinton and Ms. Williams' motion to vacate would be the beginning. I filed a rule pursuant to

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your last -- the transcript -- your last order said if there's something else that comes up.

I did file a rule after I read their motion to vacate. Historically, or chronologically, I think maybe that's the starting point. (Indiscernible) you held them in contempt and --

THE COURT: I did?

MR. TALARICO: -- here we are. You did.

THE COURT: When did I hold them in contempt? I'm looking at --

MR. TALARICO: I think so. The last order.

THE COURT: Okay. I'm looking at October 17th. He must appear. Yeah, I don't see an explicit finding of contempt, at least in the October 17th order. Was --

MR. TALARICO: I thought -- with all due respect, Judge, if I can find the order, I think the first sentence says you grant my motion.

THE COURT: Plaintiff's motion to compel is granted as --

MR. TALARICO: Oh, I'm sorry. Compel. Forgive me.

THE COURT: All right.

MR. TALARICO: My mistake.

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THE COURT: In any event, I read the motion to vacate and I -- are you -- and this is directed at Mr. Clinton -- are you concerned about the order to produce, or something else?

MS. WILLIAMS: Would you like me to --

MR. CLINTON: Yeah, go ahead.

MS. WILLIAMS: Your Honor, we're not concerned about producing. We're -- Mr. Dulberg is entitled to these documents, even without a subpoena.

THE COURT: Yeah.

MS. WILLIAMS: So the production is not our concern. It's the portion of the order that insinuates that we weren't try -- not complying with the subpoena when we were rightfully doing so.

So we are (indiscernible) --

THE COURT: Thank you.

MS. WILLIAMS: So that's what we're concerned about.

THE COURT: All right. I'll vacate that because -- yeah, I don't see that as critical.

So to the extent that you're concerned, any suggestion in the order of October 17th suggesting or implying that you had failed to cooperate, I will vacate. I saw from your motion to vacate you were

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contesting that issue, and I'm not going to go down that path to find out who's right, ultimately, because it doesn't make any difference, at least to me.

So all I care about is the production of the documents. And am I correct that -- my reading of your response indicated that you've produced the documents. Is that -- was that accurate?

MS. WILLIAMS: Yes, your Honor. So we have produced nonconfidential documents to both -- at this point, we've now produced to both counsels of record in this case, plaintiff's counsel and defendant's counsel. The only thing that has not been produced to defendant's counsel is the communication between our firm and Mr. Dulberg, which was produced to plaintiff's counsel. And then there are, I want to say, about 13 pages of e-mails that were internal work product communications within our office that have not been produced to any -- anyone.

THE COURT: Um, why would you -- and here's, I guess, my confusion. Why would you withhold those from Mr. Dulberg? And I --

MS. WILLIAMS: The work product -- product

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privilege -- I mean, we can --

MR. CLINTON: We can give them.

MS. WILLIAMS: We can give that.

MR. CLINTON: We're not going to give you a hard time about that.

MS. WILLIAMS: We'll waive that and give those to Mr. Dulberg.

THE COURT: Because I'm --

MS. WILLIAMS: (Indiscernible.)

THE COURT: -- starting from the premise, at least based on the order, that Mr. Dulberg is, through counsel, waiving any attorney/client privilege. And, yeah, if we get into the issue -- my problem is if it's work product, arguably, Mr. Dulberg is entitled to those documents, and if he chooses to disclose them, that's up to him. But I'm not -- unless there's something else I'm missing, if Mr. Clinton or -- is it Ms. Williams?

MR. CLINTON: (Indiscernible.)

THE COURT: Is it Ms. Williams?

MS. WILLIAMS: Yes.

MR. CLINTON: And we'll turn them over today.

MS. WILLIAMS: We'll turn them over today.

THE COURT: Okay. Mr. Talarico.

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MR. TALARICO: Judge, your last order included a limited waiver. It's not waiver for all things. It's waiver -- waiver for the responses to the subpoena.

THE COURT: Yeah. Okay. But are you saying that that should or should not include work product? I don't have a problem either way, but, really, it's your call.

MR. TALARICO: Judge, I believe work product and -- and attorney/client privilege, yes. He's including all of that --

THE COURT: All right. So --

MR. TALARICO: -- in response to the subpoena.

THE COURT: -- you want -- and I'm not trying to box you in, but I just want to understand.

You want them to produce the entire file, including their work product, and you are waiving any claim of privilege related to work -- to attorney/client insofar as those records are concerned. Is that accurate, or did I miss something?

MR. TALARICO: Again, your Honor, Mr. Dulberg is specifically waiving the attorney/client -- client privilege for documents that are in response to the

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subpoena served upon Mr. Clinton and Ms. Williams.

THE COURT: Okay. And that includes work product?

MR. TALARICO: Yes, it does.

THE COURT: All right. Problem -- I think, problem solved.

Mr. Clinton or Ms. Williams, comment?

MR. CLINTON: We have no problem with that at all.

MS. WILLIAMS: I think we're (indiscernible).

THE COURT: Okay. So how quickly can you turn those over?

MS. WILLIAMS: We've already produced them to your Honor, so we have them. So I will -- I can e-mail them to both counsel --

THE COURT: Yeah, you did.

MS. WILLIAMS: -- today.

THE COURT: All right. I do have that.

MS. WILLIAMS: (Indiscernible).

THE COURT: But I didn't really make a point of looking through them too much, so -- because I'm not ruling on privilege, so it was not necessary for me to see the internal workings of the file.

That being said, Mr. Talarico, does that

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satisfy your concerns or interest?

MR. TALARICO: It does.

THE COURT: All right. And now -- so are you -- do you have any objection to my vacating any orders to compel or orders of compliance against Mr. Clinton and Ms. Williams?

MR. TALARICO: No, your Honor. That's the appropriate move.

THE COURT: I'm going to ask that Mr. Clinton and Ms. Williams send in the order memorializing the -- that. If you can send it in to this e-mail -- you can take --

MS. WILLIAMS: Yes.

MR. CLINTON: Thank you. We will do that.

MS. WILLIAMS: (Indiscernible.)

THE COURT: And be sure to copy Mr. Talarico and Mr. Flynn, if you have both of their e-mail addresses.

MR. CLINTON: Of course.

THE COURT: Do you have Mr. Flynn's?

MR. CLINTON: We do.

MS. WILLIAMS: We do.

THE COURT: All right. I see Mr. Flynn raising his pen. Yes.

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MR. FLYNN: (Indiscernible) next question, Judge.

THE COURT: Yeah. What is your question?

MR. FLYNN: Okay. My understanding, then, is that these documents that are being produced that were previously withheld are being produced to all parties in this case.

THE COURT: I'm going to shift that to Mr. Talarico. Is that your understanding?

MR. TALARICO: That is my understanding.

THE COURT: Okay. Does that satisfy your concerns, Mr. Clinton and Ms. Williams?

MR. CLINTON: Yes, your Honor.

MS. WILLIAMS: Yes, your Honor. If the client is waiving --

MR. TALARICO: We waived privilege.

MS. WILLIAMS: -- (indiscernible) to produce to -- we will produce in compliance with the subpoena, and we will submit those both to Mr. Talarico and Mr. Flynn at the same time.

THE COURT: All right. For purposes of clarity, what I am understanding just transpired is that plaintiff's current attorney, Mr. Talarico, has waived the attorney/client privilege and any claim

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of work product with respect to your file, and further, granted you permission to issue copies of that subpoena response to defense counsel, Mr. Flynn, at the same time.

Any -- if there's anything incorrect with what I said, tell me.

MR. TALARICO: If you're saying that I'm -- that Mr. Dulberg is waiving all attorney/client --

THE COURT: No.

MR. TALARICO: -- privilege -- just -- just in response to the subpoena, that's all.

THE COURT: Exactly.

MR. TALARICO: Yes.

THE COURT: Okay. Does that cover --

MR. FLYNN: Thank you, Judge.

THE COURT: All right. So send in your order and I -- I will vacate any order directed against you, because we're resolved, and as soon as I see it I will sign the order.

MS. WILLIAMS: Thank you very much, your Honor.

MR. CLINTON: Thank you, Judge.

THE COURT: Okay. And you know what? Are you in our e-mail system? Did they have to sign up --

MS. WILLIAMS: I believe we are, your Honor,

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because we were parties to the -- we were counsel in the case, so we should be.

THE COURT: Yeah. Forgive me. Okay. Then no problem. I'll sign it whenever it shows up.

MR. CLINTON: Thank you, Judge.

MS. WILLIAMS: Thank you very much.

(WHEREUPON, Mr. Clinton and Ms. Williams disconnect.)

THE COURT: All right. Moving on.

Mr. Flynn, we have your motion for summary judgment; am I correct?

MR. FLYNN: That's already been --

THE COURT: Yeah, I do see that.

MR. FLYNN: Yeah. The briefing schedules are set on that. There, actually, was another motion that relates to Ms. Williams and this Exhibit 12 from the Hans Mast deposition. I was kind of hoping that she might stay on the line there.

THE COURT: I apologize.

MR. FLYNN: That's okay.

THE COURT: I -- you know, Mr. Talarico, can you call them back? If you have their number.

MR. TALARICO: I don't.

THE COURT: Or, Mr. Flynn, if you've got their

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number, one of you. Because, yeah, I screwed up there.

MR. FLYNN: I'll see if I can. I think I've got a number here.

THE COURT: All right. Thank you.

MR. FLYNN: Judge, I was able to reach Mr. Clinton and Ms. Williams. I think they're going to log back on.

THE COURT: All right. As soon as I see them, I'll let them in.

MR. FLYNN: Thank you.

(WHEREUPON, Mr. Clinton and Ms. Williams reconnect.)

THE COURT: There he is. All right. I apologize. Mr. Flynn pointed out that I was dumb, and I let you go before we resolved one other question.

Mr. Flynn, I'll let you speak.

MR. FLYNN: And for the record, I did --

THE COURT: And for the record --

MR. FLYNN: -- not say that.

THE COURT: -- he implied.

So, Mr. Clinton -- Mr. Flynn, you had a question for Mr. Clinton.

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MR. FLYNN: Well, for Ms. Williams. It's not necessarily a question, but I think that this next motion -- there's a motion to exclude the Hans Mast deposition. Ms. Williams was involved in that, noticed the deposition, took the deposition, was involved in the communications with the court reporter.

So I thought that if she could and would be willing to explain what happened. And, you know, it's my position that there's nothing nefarious about this deposition. It was taken at the beginning of the pandemic when lawyers were still trying to figure out how to use the Zoom deposition method. All objections to that manner were waived by both parties. The deposition was, again, noticed by the plaintiff, Mr. Dulberg's agents. The court reporter was hired by the plaintiff, his agents.

THE COURT: But your question for Ms. Williams is?

MR. FLYNN: If she could explain what happened with Exhibit 12. I think I know what -- and, again, there's been a 213(f)(3) opinion that was just disclosed a day or two ago. I think it's improper because --

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THE COURT: In this case?
MR. FLYNN: (Indiscernible). In this case.
THE COURT: Oh, I don't (indiscernible).
MR. FLYNN: It was a document examiner who was identified by the plaintiff.
THE COURT: But that's a different issue, so I'm going to cut you off.
MR. FLYNN: No, it's not a different issue.
THE COURT: I want to cut -- I want to cut to what my one question is.
Ms. Williams, what can you tell us about Exhibit 12?
MS. WILLIAMS: So -- so my understanding -- as I recall, yes, it was the beginning of the pandemic. We had Mr. Mast's deposition, I believe, scheduled, I want to say, for March, and we canceled it because it was March 2020, right when everything was -- was starting, and it was canceled due to COVID concerns. And -- and so we -- we opted to utilize the -- the court's -- I think it was the Illinois Supreme Court that came out with the rules as to -- and I could be incorrect, it could be each county court, but that said you could do Zoom depositions.
So we noticed it up for a remote

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deposition, and we utilized a court reporter. I can't remember the court reporter's name. There are several e-mails about this with Mr. -- Mr. Flynn that -- that have been produced pursuant to the subpoena that we received. And my recollection is is that we took that deposition, and there were several difficulties with Mr. Mast's internet connection, and so we had come on and off, but we did get through the deposition.

Mr. Flynn had -- I had produced to Mr. Flynn, prior to the deposition, all of the exhibits that I believed we would use. And then I also, during the deposition, uploaded them into the court reporting system so that the court reporter would have them and mark them.

As to Exhibit 12, we had uploaded it into the system. I don't know that Mr. Mast could actually see those, so he may have used the paper copies that Mr. Flynn had.

And then after the deposition, the court reporter notified me that Exhibit 12, specifically, was -- they couldn't read it, and we needed to get them a copy. I believe there's e-mails to that effect, as well. If I'm recalling correctly, a

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number of the pages were blank. It was a larger exhibit. I want to say it was around 27 pages, I think, or 25 pages.

So sometime after the deposition, we -- we did provide the exhibit that was utilized in the deposition to the court reporter, and at that time they marked it and sent it back to everyone.

THE COURT: Okay. What was Exhibit 12 again?

MS. WILLIAMS: It was a series of cases. I don't know that -- I just can't recall what all was asked about it, but I know there were -- it was -- it was --

THE COURT: All right. These would have --

MS. WILLIAMS: -- copies of case law.

THE COURT: All right.

MR. FLYNN: They were photocopies of the old books, Judge, cases that were contained in Mast's file.

THE COURT: Okay.

MR. FLYNN: And he was -- you know, they have -- they're, obviously, not complete because they -- placed on a printer, appeared like we used to do in the old days.

THE COURT: Yes.

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MR. FLYNN: So the issue now, though, is that the plaintiff knew --

THE COURT: Hang on. Before -- before we get into argument, Mr. Talarico, is there anything -- any questions you have, since we have Ms. Williams here?

MR. TALARICO: Yes. Was the Tilsner case included in -- in the blank Exhibit 12 you sent to U.S. Legal, Barbara Schmidt? And was -- when you discussed with Mr. Flynn the failure of his -- or Mr. Mast's internet, didn't he say, I can't see these, I can only see their first one (indiscernible), which was the Lagano (phonetic) case? And wasn't there continued discussion by Mr. Flynn that he didn't -- he didn't produce all of the documents you sent on -- in hardcopy because he wanted to save paper?

MS. WILLIAMS: So that's -- I guess that's a lot of questions. So what --

MR. TALARICO: It is.

MS. WILLIAMS: What -- what -- I cannot recall what cases were included and weren't included at this point. There -- there was an e-mail to Mr. Flynn with the exhibit that is attached that I

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believe was produced in the subpoena.

So whatever that exhibit was is -- is what I would have used. So I know there was, like, a Laravo case or -- I remember the first case was like Laravo or Lavajo, L-A-V-A-J-O, or something like that.

But right now, off the top of my head, I don't remember what other cases were included.

MR. TALARICO: I'm talking about -- Judge, if I might, please? Excuse me. I'm sorry, Ms. Williams.

There was -- what the reporter had was blank. What Mr. Flynn's client said was, I see the Lagano (phonetic) one. So the Exhibit 12 that was sent, like, a week or two after the deposition had Lagano, Troy, and the same exact Lagano case, and it did not have the Tilsner case involved, and the Tilsner case was very important. So it was an exact duplication of one case and a second case.

But this is -- Judge, it's not just the Exhibit 12. The entire deposition --

THE COURT: Well, are you asking a question about Exhibit 12? Because if we're done asking questions, I'm gonna let her go.

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MR. TALARICO: Okay. Yep. I'm done.

THE COURT: Okay. Mr. Flynn, anything?

MR. FLYNN: Yes, Judge. So, again, this -- this 213(f)(3) report that was just produced --

THE COURT: Well, do we need the Clinton -- Mr. Clinton and Ms. Williams for this?

MR. FLYNN: Yes. I'm getting there.

THE COURT: Okay. Sorry.

MR. FLYNN: So if you can just indulge me for a moment.

So the expert document reviewer is of the opinion that the exhibit sticker on Exhibit 12 did not come from the same batch as the other exhibit stickers.

The defense's position is, so what? You know, these kind of things happen, I'm sure, with the court reporter, and if it was marked later because it was not sent in until later, that makes perfect sense.

But this is -- this is -- the argument that's being made is that -- and there's no other conclusion, it's just that it didn't come from the same batch. So, again, it's the so-what position on our part.

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But because it's being used to exclude the deposition, it's our position that the deposition was fine -- finally concluded to the satisfaction of plaintiff's counsel, that there was never any indication that they needed a follow-up deposition or a supplemental deposition or a Session 2.

So in our view, any objection to that deposition has been waived. And, again, there was nothing nefarious. Ms. Williams was nothing but professional and courteous during her tenure in this case.

This motion -- this conspiracy that's been presented and caused the defendant to be caught in the crossfire between the plaintiff and his former attorney is through no fault of theirs, and should not continue.

THE COURT: All right. Mr. Talarico, you can respond.

MR. TALARICO: Two points, Judge. First of all, what's very obvious -- the label on Exhibit 12 doesn't even have the deponent's name spelled right.

THE COURT: Okay. But what does -- what impact does that have?

MR. TALARICO: What impact is that it was not

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done at the same time by the same people. It was never produced in time.

Secondarily, about Mr. Flynn's allegation of some type of conspiracy, if he wants to push that, I think I have evidence that, if necessary, that -- that Mr. Flynn and Ms. Williams have consulted at times.

THE COURT: I'm sorry? Have what?

MR. TALARICO: Consulted.

THE COURT: Okay. Frankly, Counsel, if you're suggesting that either one of them has engaged in unethical behavior, I'm sure you're aware of the Himmel decision, and --

MR. TALARICO: I am.

THE COURT: -- it's not something you can threaten; you have to do.

MR. TALARICO: And I will.

THE COURT: Don't make that threat and not follow through with it if, in fact, there's anything to it. You don't -- you don't have an option. And you put a burden on me, as well, when you start going down this road.

So you've got to make a decision, and --

MR. TALARICO: (Indiscernible.)

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THE COURT: -- I'm not going to hear -- I'm not going to hear suggestions of unethical behavior.

I mean, you're either going to pursue it or we're not even going to entertain that, so please continue.

MR. TALARICO: Well, Judge, I will -- I will not pursue it if Mr. Flynn (indiscernible) --

THE COURT: It's not an issue. You don't get to choose.

MR. TALARICO: I'm aware.

THE COURT: I'm not -- I'm not telling you that you have to do one thing or the other. But the Himmel decision removes discretion from the equation. You have to act, if you are aware.

So I'm not telling you that -- that you've got to file. You know what you have. But what I'm saying is, if you're going to make an argument suggesting that other attorneys engaged in unethical behavior, I'm not going to listen to it unless you're also making a -- making a complaint with the ARDC.

So I'm not interested in attorneys casting aspersions on each other and then not following through, if that makes sense. Following through

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with the ARDC.

That being said, what -- what is your response on the -- do we have to keep Ms. Williams and Mr. Clinton here? Does anybody else need them?

MR. TALARICO: I have no need for them.

MR. FLYNN: I don't. Just in closing, with respect to Ms. Williams, again, I was just provided these documents by Ms. Williams and/or her court reporter and then passed them along. I had nothing to do with -- with anything other than I did print out certain of the exhibits for ease of use at the deposition when I went to Hans Mast's office. And because I was working from home at the time, I printed a few of them out, not all of them, due to a limited amount of printer paper. And that is my total involvement in Exhibit 12.

THE COURT: Okay. Ms. Williams and Mr. Clinton, do you want to stay? You can, until we resolve the issue, since we're addressing you guys. What do you want to do?

MS. WILLIAMS: Your Honor, if you wish for us to stay, we're happy to stay.

MR. CLINTON: I think we can stay.

THE COURT: All right. I was giving you the

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option to leave, if you wanted.

All right. So, Mr. Talarico, we're moving on to your motion to -- to bar; am I correct?

MR. TALARICO: Yes, your Honor. Within the motion, I asked to amend the motion after I get the responses from Clinton and Williams. They may be appropriate to put into the motion. I filed a motion. The motion can be -- actually, Mr. Flynn just responded to the motion without responding -- without responding.

I don't know how you want to look at it. If that was his response, I'll file a reply to what he said. But I still -- I have asked, from the beginning, to be allowed to amend that motion once I find out what Mr. Clinton and Ms. Flynn have -- I'm sorry, Ms. Williams. Forgive me.

THE COURT: All right. Can you -- are you asking me for leave to supplement your motion?

MR. TALARICO: Not -- Judge -- yes. If you want me to make a determination now, yes.

THE COURT: All right. And we haven't proceeded to hearing.

Mr. Flynn, have you filed a response to the motion? I'm not seeing it.

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MR. FLYNN: Judge, I have not. And my -- my point is that there hasn't even been a prima facie showing of any prejudice to the plaintiff with respect to his deposition. For my client to again have to file a written response to a brief of this nature --

THE COURT: You don't really have -- I don't know that -- I mean, it's up to you as to whether or not you want to file a written response. I've heard your argument. Plaintiff -- more importantly, plaintiff's counsel has heard your argument, so there's -- there's not going to be any prejudice if he simply files his reply or if I allow amendment and then we proceed to hearing. I don't think it's that complicated an issue.

MR. FLYNN: I don't either.

THE COURT: So I don't know that we need further briefing.

What do you want to do, Mr. Flynn, because the ball will be in your court once he files his amendment.

MR. FLYNN: I'd like to examine whatever the amendment is and then, if necessary, request, I guess, what will be called a surreply. However, I'm

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doubtful that I would need to file it.

THE COURT: Mr. Talarico, when can you file your -- your brief?

MR. TALARICO: Well, after I get and review the response from Ms. Williams and Mr. Clinton, two weeks.

THE COURT: Mr. Clinton, how quickly can you get him the documents? I know you said it earlier. You're on mute.

MR. CLINTON: My apology, again. We can get them to him today.

THE COURT: Okay. So I think two weeks from today, ultimately, is plenty of time. That would give plaintiff until --

MR. TALARICO: (Indiscernible.)

THE COURT: -- November 18th to file his amended response -- or amended motion. And then why don't we -- and then I'm out.

So I'll give plaintiff until the 21st and then we'll come back on November 28th, and then, Mr. Flynn, at that point, you can tell me what you want to do.

MR. FLYNN: Thank you, your Honor. And, again, I know -- I understand this is not on the table but

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it's a housekeeping issue with respect to this f(3) opinion. This (f)3 opinion, the document examiner was disclosed as a trial witness relative to this Exhibit 12. I don't think that's proper --

THE COURT: Yeah, I -- you know --

MR. FLYNN: And then he called it a mini trial but not trial.

THE COURT: The -- I -- I haven't seen the report, but if the expert is going to render opinions on case law, copies of case law that were allegedly tendered by former counsel to Mr. Dulberg, I don't see how that comes up in the trial of the matter.

MR. FLYNN: He's really only opining on the authenticity of the exhibit sticker and whether it came from the same batch as the other stickers in that deposition.

So it has nothing to do with the standard of care in this case or any --

THE COURT: I don't know. I'll let Mr. Talarico tell me otherwise. Not now, but I -- there's a couple of thresholds. I don't know. I haven't seen exactly what he says, and I -- I suspect we could even stipulate that the sticker is different without

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a whole lot of -- a whole lot of effort or prejudice to anybody. Because based on what you've told me, it likely is a different sticker because of the way the documents were transferred back and forth and the problem at the deposition.

That all being said, I'm -- I'm going to be -- frankly, Mr. Talarico, I'm going to be hard-pressed, but I need to see the report before I can say anything further, so I'll quit speculating.

Anything else that we've got to deal with today? No?

MR. TALARICO: No.

THE COURT: All right. Mr. Talarico or Mr. Flynn, can you send in the order memorializing what we're doing on your case? And then, of course, Mr. Clinton and Ms. Williams will send in the order that is vacating any -- any order compelling them to do anything.

MR. FLYNN: Judge, I actually have a meeting with a client in about ten minutes. If Mr. Talarico wouldn't mind preparing the order this time, I'd appreciate it.

MR. TALARICO: I will.

THE COURT: Okay. All right. Then we'll see

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you on the 28th.

THE CLERK: What time?

MR. FLYNN: Thank you Mr. Clinton and Ms. Williams for your time.

MR. TALARICO: Thank you, your Honor.

THE CLERK: What time on the --

THE COURT: You know what? Hang on. Hang on. Make it 9:15, not 8:45. At 9:15.

MR. FLYNN: I'm sorry. On what date again?

THE COURT: On November 28th at 9:15.

MR. TALARICO: Thank you, Judge.

MR. FLYNN: You know, Judge, we talked last time about my knee replacement. Is there any way we could bump that back one more week?

THE COURT: Wait. Yeah, I can do it the --

MR. FLYNN: Although, I hope for a speedy recovery. The surgery is on the 17th and --

THE COURT: Sure. Sure. If you want to come -- what's the next week? December 5th?

MR. FLYNN: I'm very hopeful that that will work.

THE COURT: All right. Good luck.

MR. FLYNN: Thank you.

THE COURT: All right. December 5th at 9:15.

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MR. TALARICO: Your Honor, what --
THE COURT: Yes?
MR. TALARICO: December 5th?
THE COURT: Yeah.
MR. TALARICO: Thank you, your Honor.
THE COURT: All right. Thank you.
Disconnecting.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, KATHLEEN STROMBACH, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Kathleen Strombach
Kathleen Strombach
Official Court Reporter
License No. 084-003755

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Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 5th day of December, 2022, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by
MR. ALPHONSE A. TALARICO, (Via Zoom)
On behalf of the Plaintiff;
KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN (Via Zoom),
On behalf of the Defendant.

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THE COURT: All right. In the meantime, do we have everybody on Dulberg?

MR. FLYNN: I believe so, your Honor.

THE COURT: Mr. Dulberg has, I think you can see it, I tested my speakers. They work. I believe the Court has my audio muted. I do not. I have done nothing. So I don't know what the problem is. In any event, although, I might think about it -- might have thought about doing that, but in any event -- and that's because of the prior issues regarding the recording of these proceedings.

In any event, Mr. Talarico, do you have the records from the former attorneys? Do you have everything?

MR. TALARICO: I have -- I have a response from -- yes. I have response from Williams and Clinton.

THE COURT: Okay. Are you satisfied they are complete?

MR. TALARICO: I am.

THE COURT: Okay. Mr. Flynn, do you have a motion?

MR. FLYNN: Yes, I do. And this relates to that production. Judge, after we were on the record,

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after the parties went back and forth on the language of your order from November 9, Ms. Williams and Mr. Clinton forwarded by email the records that were at issue that had previously been tendered to the Court and had been identified as responsive to Mr. Talarico, Mr. Dulberg's subpoena. And what I received were redacted copies, even though the understanding was that unredacted copies would be sent to me and to Mr. Talarico.

So they sent me a redacted copy. They sent an unredacted and a redacted copy to Mr. Talarico. So I emailed Ms. Williams and asked what was going on, and she said, well, we have now determined that those withheld documents are not responsive to the subpoena, even though, as I indicated in my motion, they identified them as being responsive before.

So -- so we filed a motion to enforce your order from November 9. I've got the motion. I don't know what to say other than that there was an agreement. There were plenty of representations on the record, and we should have these records.

THE COURT: Okay. Forgive me, but I'm confused. So let me explain or tell you what I'm drawing from this. After the fact, Clinton and company decided

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that certain of their records were nonresponsive and withheld them or redacted them or both?

MR. FLYNN: They were redacted.

THE COURT: All right. So -- but as far as the documents are concerned, you guys have everything you think you are entitled to.

MR. FLYNN: I think we had those in the first place, Judge. The whole purpose of that hearing was -- was relative to those documents. So I don't know what the whole point of the November 9 hearing was because we already had those -- your Honor had copies of those for an in camera inspection which never occurred. And then they decided, okay, well, we are not going to produce the unredacted copies to defense counsel, only to plaintiff's counsel pursuant to a subpoena.

THE COURT: If -- if -- all right. Mr. Talarico, what comment, if any, do you have?

MR. TALARICO: May I start, Judge, with happy holidays --

THE COURT: Thank you.

MR. TALARICO: -- to you and Mr. Dulberg and Mr. Flynn. And I'm sorry to hear that things are going to be changing there as far as what kind of

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cases you'll be hearing. I think -- well, I won't tell you what I think, but -- okay.

Now, as far as -- first thing is there is a motion that's just up. I want time to respond. I mean -- but if you want me to tell you what I'm thinking, that's easy. But I would like time to respond to the motion so I have -- so I have it of record.

THE COURT: Well, here is my -- let me walk through a little of this.

The prior order says attorney-client and work-product privileges are waived. Therefore, any redactions based upon attorney-client privilege or work product are inappropriate based on my order. I think that's pretty black and white, and I covered it, I think, extensively because I was concerned about this issue. And I was concerned that Clintons would be afraid of disclosing documents for fear of a malpractice claim.

So I'm at a loss to see what -- what remains at issue because my order is straightforward and we addressed this. But Mr. Talarico, I'll let you respond.

MR. TALARICO: Your Honor, what Ms. Clinton

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redacted was nonresponsive answers. There were -- there were a time frame and a subject matter and your order was -- and we waived all attorney-client privilege and work product in response to the subpoena. And Mr. -- Mr. Flynn received those.

THE COURT: But then she decided that -- all right. So you are saying that the redactions contain irrelevant information.

MR. TALARICO: Correct.

THE COURT: All right. And the -- if that's the basis of your position, I don't think it's a valid one because you don't make the determination of relevance at this stage. Relevance is determined at trial. And certainly, it may not be permitted at trial, but --

MR. TALARICO: I'm sorry.

THE COURT: It's not a -- relevance is not an objection I put a lot of weight on in the course of written discovery.

MR. TALARICO: Judge, the word relevant -- I'm not saying relevant.

THE COURT: Okay.

MR. TALARICO: Responsive. Responsive. That's what we waived, what was responsive to the subpoena.

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Anything and everything she had that was responsive, and Mr. Flynn has received that.

THE COURT: But you got them too.

MR. TALARICO: Of course.

THE COURT: So he is being denied possession of documents that you were given, and the contention is that they -- what you were given isn't responsive. I guess I'm having a hard time reconciling this argument with the discussion we had, and I've also reviewed those documents, although, I don't have them in front of me right now. And that wasn't an issue that jumped out at me as I read them.

So I really don't know where we are going because responsive is kind of an odd objection. I think that really is something that rests with the defendant in this case, not you, on behalf of Clinton.

MR. TALARICO: Well, Judge, I'm not objecting. This is what Ms. Williams decided was responsive to the subpoena, and she sent it to Mr. Flynn. Now, what we are talking about as what's responsive and not responsive is documents that are outside the date range, outside the subject range, anything and anything -- anything and everything that are not

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responsive, we didn't waive. We waived everything that's responsive. Anything that's from a year ago that's in those documents is not responsive, and she -- and she -- she struck that.

And I -- I (indiscernible) Mr. Flynn if he has an issue, it's with her, not with me. I'm not going to turn over documents that I wasn't ordered to turn over. But we are only talking about things that were stricken that were not responsive, dates and subject matter. If they are talking about -- or if their documents are in reference to something other than what the subpoena called for which was the deposition of Hans Mast on June, I believe 25, 2020, that's not -- that's not what we waived.

THE COURT: Okay. But then, if you have waived your attorney-client and work-product privilege, then there really doesn't seem to be a basis on which you can withhold the documents, and I --

MR. TALARICO: Judge, we didn't waive -- I'm sorry. I apologize.

THE COURT: Well, that's where I'm having a problem.

MR. TALARICO: Judge, we didn't waive all attorney-client. It was a limited waiver, if you

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remember. It was limited to the responses to the subpoena.

THE COURT: Those documents. No. No. I'm not buying this. Mr. Flynn, what do you got?

MR. FLYNN: Same argument, your Honor. I mean, these documents were tendered to the Court as being responsive to that subpoena. There was a subpoena response that Williams and Clinton served, and they served an amended response.

THE COURT: Okay.

MR. FLYNN: We had a lengthy discussion on the record. I have attached the transcript and the order to my motion this morning. Now, they -- to turn around in their third -- third swoop here and saying, well, they are not responsive. Well, I don't buy it either. Of course, I can't read the documents because I -- they are redacted as far as the version I got. But they can't have it both ways.

THE COURT: All right. So Mr. Flynn, what's the relief you're asking for?

MR. FLYNN: I didn't notice Ms. Clinton and Mr. Williams -- I'm sorry, Mr. Clinton and Ms. Williams on this motion because plaintiff has

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copies of these records. They are pursuant to this subpoena. I'm just asking that the Court order the plaintiff to turn these over unredacted.

THE COURT: Okay. I'm going to grant that request. I'm going to direct plaintiff to turn them over to you in seven days, and -- because I -- we have been through this and we have been through this extensively, and I don't think nonresponsive is a valid objection at this stage, particularly in light of the fact that I have previously reviewed the documents.

And responsiveness, I don't think that that's an objection that the plaintiff is able to make when we are talking about documents that were produced by a third party. So they can't be withheld, and since plaintiff has them, defendant gets them. And the only bases under which I would allow plaintiff to withhold them is if they breached attorney-client or work-product privilege, but as we have disclosed, that's been waived.

So plaintiff has seven days to turn them over, and let's come back in ten days for status of compliance. Ten days would take us to December 15th, that's a Thursday. Does that day

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work for both of you? 16th is fine too.

MR. FLYNN: The 15th is better for me, your Honor, if that's okay.

MR. TALARICO: 16th is better for me.

THE COURT: All right. Let's check 16th. How about 9:15 on the 16th?

MR. FLYNN: I have a 9:00 o'clock. Can we make it say 9:30 or 9:45?

THE COURT: 9:30.

MR. FLYNN: Okay.

THE COURT: Sorry. I can't give you 10:00.

MR. FLYNN: And then there is the other matter, Judge, the motion to exclude the Hans Mast deposition. Plaintiff filed his --

THE COURT: All right. Let me switch gears for a moment because Ms. Vernagallo and Ms. Polo are waiting, and they have -- want something really simple.

(Whereupon the afore-captioned cause was recalled.)

THE COURT: All right. Now, we will go back to Dulberg. Mr. Flynn, what were you saying?

MR. FLYNN: Yes, your Honor. The Court granted the plaintiff leave to file a second amended motion

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to exclude the Hans Mast deposition. We had some extensive argument about the motion at the last hearing. At the time, I didn't expect to file a response, but after having received the second amended motion that was filed after the hearing, and despite my knee replacement, I decided -- I thought I'd get something on record. So I did file a response on November 30.

THE COURT: Okay. So Mr. Talarico?

MR. TALARICO: Judge, I'd like to -- I want to file a reply.

THE COURT: All right.

MR. TALARICO: I'd like 14 days.

THE COURT: Sure. I'll give you 14 days. All right. 14 days will give you until the 19th, and I think one way or another, even if I'm gone, this is more appropriately brought back in front of me. So I can do the hearing at 9:30 on December 21, that is a Wednesday. Does that work for you guys?

MR. FLYNN: That day works, Judge. May I just address the request for the reply, though?

THE COURT: Yeah.

MR. FLYNN: Given that this is the second amended motion, I mean, this -- I did file a

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response, you know, not even pursuant to the briefing schedule. I got it on file quickly.

We have a summary judgment motion pending. The last thing that I want is for the dates to be affected by any of these motions.

THE COURT: What's the date of your summary judgment?

MR. FLYNN: It's -- the plaintiff's response is due on December 28. The motion was originally filed way back on September 15. So it's -- we have had an extensive amount of time.

THE COURT: I won't be hearing the summary judgment. So --

MR. FLYNN: Yeah. I understood there was some comments being made before I left about your Honor's handling the case or --

THE COURT: Well, after 13 years, they have decided this is the worst place for me. So I'm being moved to traffic, and then, Judge Berg is taking over January 1. So it's -- I don't know what's going to happen with the scheduling of your summary judgment because he's going to be combining his small claims call with a law division jury, and I -- I question the practicality of that but that's

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not my -- that's not my call.

MR. FLYNN: Well, then, I would request from the chief judge that your Honor hear this motion through since it's -- because of your familiarity with the case over these many years.

THE COURT: Yeah, but I don't make the rules. So --

MR. FLYNN: Sure. I understand.

THE COURT: Mr. Talarico, what did you want to say?

MR. TALARICO: Yes, Judge. I was allowed to file an amended motion, and Mr. Flynn has filed two responses. The first one was before you, an oral response, if you remember --

THE COURT: Yes.

MR. TALARICO: -- the transcript. And you said to him, if you decide to do a written one -- he called it a sur-response, I want to sur-reply.

THE COURT: Okay.

MR. TALARICO: He's had two shots at this already.

THE COURT: You got it. You got it.

MR. TALARICO: But he's -- yes. Thank you.

THE COURT: So can we do the hearing on the Hans

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Mast deposition on the 21st?

MR. TALARICO: Judge, that's -- can we do it the 9th? It's going to affect my time no matter what. Can it be done closer to Christmas, like the 23rd or -- the 23rd I can do.

THE COURT: Nope. Nope.

MR. FLYNN: The 21st works for me.

THE COURT: The 21st is my last day before vacation. And as much as I love you guys, I'm not coming back for you. It will -- yeah, we got to get it done on the 21st, and -- because, frankly, given the status of this motion, I can't imagine Judge Berg not sending it back to me to complete it.

So I think for -- it's all in our best interests to get this done in front of me before the 21st. So that's why I'm picking 9:30 on the 21st. Can we do that?

MR. FLYNN: That works for me, Judge.

MR. TALARICO: Judge, I'll move things around.

THE COURT: Okay. I mean, is there a time that day that works better?

MR. TALARICO: I have to move things around no matter what.

THE COURT: You know what, I can do -- I can do

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it later. I've got -- I could do it at 10:00 o'clock or -- also.

MR. FLYNN: What is the other date that we are coming back, Judge?

THE COURT: I don't know.

THE CLERK: December 16.

THE COURT: The 15th?

THE CLERK: 16th.

THE COURT: 16th we are coming back.

MR. FLYNN: I mean, could this be done by then? I mean, I've got my response on file, given the knee replacement and Thanksgiving holiday, a couple of days. So --

THE COURT: We can --

MR. TALARICO: I'm sorry.

THE COURT: Why don't we do both hearings at the same time rather than come back on the 16th. I -- that makes sense since it's only four days -- five days. Can we do them both on the 21st?

MR. FLYNN: Sure.

MR. TALARICO: Yeah. Yes, Judge.

THE COURT: What time do you want because I'm free from 10:00 o'clock on?

MR. TALARICO: Like I said, whatever is more

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convenient for Mr. Flynn. I have to move things around one way or the other. Morning or afternoon.

MR. FLYNN: I'm wide open on the 21st.

THE COURT: All right. Why don't we say at 10:00 o'clock. And Mr. Flynn, I would ask that you prepare the order --

MR. FLYNN: I will.

THE COURT: -- and send that in. As soon as I see it, I'll sign it.

MR. FLYNN: Okay.

THE COURT: All right.

MR. FLYNN: Thank you, your Honor.

THE COURT: Okay. Thank you. Anything else?

MR. TALARICO: No. Just happy holidays to everyone.

THE COURT: Thanks.

MR. FLYNN: Happy holidays.

THE COURT: Thank you. All right. We will see you the 21st.

MR. TALARICO: All right. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, JUDY CARLSON, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Judy A. Carlson

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 21st day of December, 2022, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by MR. ALPHONSE A. TALARICO (via Zoom),

On behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by MR. GEORGE K. FLYNN (via Zoom),

On behalf of the Defendants.

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THE COURT: For the record, this is on Dulberg versus Mast.

Plaintiff's counsel, if you could identify yourself.

MR. TALARICO: Yes, your Honor. My name is Alphonse Talarico.

THE COURT: And defendant.

MR. FLYNN: Good morning, your Honor. George Flynn for the defendants.

THE COURT: And for the record, I -- Mr. Dulberg is in attendance, and once again, I hope we're not being recorded. That being said, we'll move on to the motion.

Plaintiff, you have a motion.

MR. TALARICO: Yes, Judge. I'd like to -- we filed our motion -- we filed -- counsel filed a response, we filed a reply. We'd like to rely on that, with one additional presentation or request of the Court.

THE COURT: Okay. What is that?

MR. TALARICO: I'd like to offer an informal proof -- an offer of proof, which is the exact and -- and -- what is the best way -- the audio transmission of the deposition, in full, with all

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the parties, which was sent to us through a subpoena.

THE COURT: Okay. You mean from Mr. Mast's -- or Mast's -- deposition?

MR. TALARICO: Correct. Everything that -- that would help the Court understand all of these problems. Because you --

THE COURT: Well, we do have -- we have the transcript.

MR. TALARICO: Yes, your Honor, but the transcript is selective.

THE COURT: Okay. Mr. Flynn, comment.

MR. FLYNN: I would object, Judge. The plaintiff has already filed a second amended motion and response. He's had plenty of opportunity to bring this to the Court's attention.

THE COURT: Okay. Mr. Talarico, final word.

MR. TALARICO: Judge, this is for the aid to -- for the Court -- this Honorable Court to understand what's going on.

As to the second amended, I replied to that, that -- the only difference between the amended and the second amended, Judge, was the stamp on Exhibit 17 didn't show up, so I re-filed it. But

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it was filed timely. As soon as I realized the stamp didn't show up on Exhibit 17, I re-filed it with an emphasis on the Exhibit 17. Mr. Flynn received it on time with notification that it's Exhibit 17.

THE COURT: Well, that's not the issue, but the issue is --

MR. FLYNN: It's not. And just for the record, there was a typo in my response brief. I wasn't taking issue with the timing of the filing of the second amended, other than the fact that it's two years after the deposition.

THE COURT: But that -- that's a different --

MR. FLYNN: But --

THE COURT: That's a different issue.

MR. FLYNN: Exactly.

THE COURT: The first issue is whether or not to -- the Court will accept plaintiff's request to submit the audio of the deposition at issue of Mr. Mast that, I believe, was taken June 25th, 2020.

And, Mr. Talarico, anything else to say in support of that oral motion?

MR. TALARICO: No, Judge. That -- that's -- if you'll accept it, it's in the -- I believe

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Mr. Dulberg is in the courtroom, and if he may approach the bench, he will hand it to you.

THE COURT: No, he's on Zoom. In any event, I'm going to deny the -- oh, are you -- Come on up.

MR. SCOTT DULBERG: Do you mind if I just hand it here?

THE COURT: Well, no, you're going to come up. I'm not going to accept that.

Your name, sir?

MR. SCOTT DULBERG: Scott Dulberg.

THE COURT: Okay. And you're here to deliver a Zip drive of the audio; am I correct?

MR. SCOTT DULBERG: Yes.

THE COURT: All right. And I -- But I'm going to rule on plaintiff's motion. I'm not going to accept it. I'm not going to consider it for purposes of the hearing on this motion. So you can keep it, but thank you for -- for showing up and bringing it.

MR. SCOTT DULBERG: Thank you.

THE COURT: Because -- I'm not going to accept it because I don't think it adds, materially, to my understanding of what transpired. I've got the deposition transcript. I've read the parts that I

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believe are relevant. I've read the motions. I've heard this argument.

I don't think that the audio tran- -- the audio recording is going to assist me in any way, based upon my understanding of what the ultimate issue is on this motion.

So that will be denied, and we'll incorporate that into the motion -- or in the order. I'm sorry.

Moving on to the motion, this is plaintiff's motion to either re-depose or strike, or both, the deposition of Mr. Mast taken June 25th, 2020; am I correct?

MR. TALARICO: Yes, your Honor.

THE COURT: And, further, am I correct that the -- the reason for this is issues with respect to what's identified as Exhibit 12?

MR. TALARICO: No, your Honor. That's just one small part of it. The entire motion is based on Supreme Court rules and on -- or in effect at the time the deposition was taken.

THE COURT: No, no, no. Tell me the substance. Don't tell me what the rules are. Because my reading of your motion focused on Exhibit 12 and the

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failure -- or the alleged failure to produce it prior to the deposition or give an exhibit list.

So tell me, what is the reason why you want to re-depose Mr. Mast? Because I think that's ultimately your request.

MR. TALARICO: That's right. Judge, within our motion and our reply, we've indicated that it's not just Exhibit 12. Focusing on Exhibit 12 makes it too easy. The entire deposition -- the Internet went down almost the entire time. It's in the notes that I highlighted. It's in the transcript. They were not seeing Exhibits 1 through 15 at the same time. They weren't seeing them. They weren't being uploaded to the admin- -- the administer of -- of oath. 12 wasn't even part of it. It was added, I don't know, 14 days later.

THE COURT: But, ultimately --

MR. TALARICO: So we --

THE COURT: -- the exhibits were seen; am I correct?

MR. TALARICO: No. They were not seen.

THE COURT: None of the exhibits were seen?

MR. TALARICO: They were not seen in accordance with the rules, your Honor.

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THE COURT: That's -- see, you --
MR. TALARICO: The rules --
THE COURT: You throw those phrases in, in accordance with the rules.
Did the deponent see the exhibits, yes or no?
MR. TALARICO: No.
THE COURT: Mr. Flynn, comment.
MR. FLYNN: Judge, to say that the Internet was down for --
THE COURT: I don't want to go down there. Did the -- did Mr. Mast see the exhibits?
MR. FLYNN: My recollection and understanding is that Mr. Mast saw all of the exhibits. There may have been an issue with a portion of Exhibit 12; however, he was -- he was cross-examined at Page 49 through 52 regarding Exhibit 12, generally speaking, and the case law that was contained in his file.
The bottom line is, it doesn't add anything. He didn't recall the specific cases that he discussed with --
THE COURT: Did he see the exhibits? That's all I wanted to know.
MR. FLYNN: I don't know that he saw the full

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exhibit in its entirety.

THE COURT: Okay.

MR. FLYNN: It -- But it wasn't necessarily provided to him, so --

THE COURT: For purposes of this record, Exhibit 12 is copies of case law; am I correct?

MR. FLYNN: Generally speaking, correct.

THE COURT: Mr. Talarico.

MR. TALARICO: That's correct, Judge. But, again, we're not just focusing on Exhibit 12. We're focusing on all the exhibits that were supposedly shown to Mr. -- to Mr. Mast. He didn't see them. He didn't see them.

THE COURT: Okay.

MR. TALARICO: There was confusion as to what the numbers were.

THE COURT: Whose exhibits were they?

MR. TALARICO: They were the plaintiff's, but it was the defendant's equipment that caused the problem.

THE COURT: And the plaintiff conducted the deposition; am I correct?

MR. TALARICO: That is correct.

THE COURT: And the plaintiff was aware of

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any -- the plaintiff's attorney, at that time, was aware of any glitches or difficulties with respect to having the deponent view all of the exhibits; am I correct?

MR. TALARICO: That's correct, your Honor.

THE COURT: And the plaintiff (sic) who was representing Mr. Dulberg at the time, for whatever reason, did not raise an objection at the time or ever with respect to the manner in which the deposition proceeded.

MR. TALARICO: No, your Honor. (Indiscernible) she left it to me -- or to the following counsel. She said to Mr. Dulberg, Mr. Dulberg, whatever those objections are, your next counsel has to make them.

THE COURT: Okay. Well, that -- but the handling attorney at the time who represented Mr. Dulberg's interests proceeded with the deposition and did not give notice to anyone of any complaint with respect to the manner in which it was conducted; am I correct?

MR. TALARICO: You are correct.

THE COURT: Okay. What else do you want me to know?

MR. TALARICO: I want you to know, Judge, also,

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that not only does the objection have to take place at the time of the deposition itself. When the evidence is being brought -- when the evidence is being subject to admission, I can bring that -- I can raise that now and object to it.

THE COURT: Okay. But the -- the exhibits were always in control of the plaintiff's attorneys, and you're asking to penalize the defendant for what appears to be a -- an issue you have with the manner in which prior counsel conducted the deposition.

MR. TALARICO: No, your Honor. It's -- as far as the defendant, it's their electronic equipment that failed.

THE COURT: And there were no objections made at the time or subsequent, and this motion was brought approximately two and a half years after the deposition in question; am I correct?

MR. TALARICO: You are correct. But it's also within the time of the ruling. I can do this now.

THE COURT: You can file any motion you like, but I'm -- I'm going to deny your request. I don't think that there's any reasonable basis under which I can compel the defendant to appear for a second deposition because of these issues. It appears that

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prior counsel was satisfied with the -- her ability to conduct the deposition, and she was always in control of all of the exhibits, so I don't see a problem there.

If anybody should have been raising an objection about the problems, it should have been defendant, not -- not the plaintiff two and a half years after the deposition they proceeded with. So I'm going to deny the request.

Anything else that we need to do today?

MR. FLYNN: Judge, just that there was some additional relief requested in the latest reply brief filed, and that included a request that the Court take judicial notice of -- what's really an implication. I think this is on Page 17 of the response.

I would just request that that specific request for relief also be denied in connection with the motion.

THE COURT: Okay. Let me just call it up. I'm looking at Page 18. What is it?

MR. FLYNN: I believe it was on Page 17 of the response -- I'm sorry -- the reply brief that was

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just filed.

THE COURT: Okay. The notice of the adjudicative facts?

MR. FLYNN: Correct. I think it says in Paragraph 12(j), plaintiff requests that this Honorable Court take judicial notice of the adjudicative fact that the references to Restatement (Second) of Torts Section 318 impliedly references Tilschner versus Spangler.

THE COURT: That -- that's not really ultimately the purpose of this motion, and it's not contained in the prayer for relief. That strikes me as a new motion. Wasn't going to consider it, and so I'm -- to the extent that I have to rule on it, on an issue I don't even think that's in front of me appropriately --

MR. FLYNN: It's just relief that was in -- in this response that I didn't have any opportunity to address.

THE COURT: I will -- I will deny all aspects of plaintiff's motion.

MR. FLYNN: Okay.

THE COURT: I think that covers it.

Is there anything else?

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MR. FLYNN: Thank you. That's it.
THE COURT: Okay. We have a future date, don't we?
MR. FLYNN: We have a pending motion for summary judgment, and plaintiff's response is due, I think, next week.
THE COURT: Okay. All right.
MR. FLYNN: But I don't --
THE COURT: You're back February 1st, and I -- Mr. Flynn, could you draft the order and please get it in as early as possible.
MR. FLYNN: I will. And, Judge, we spoke last time about your continued handling of the case. Do you have any information to share in that regard?
THE COURT: Nope. Nope. I -- I'm in a different division and, um, I can't take cases with me.
MR. FLYNN: Okay.
THE COURT: That would be interesting, but no, I can't take them. I can't take them with me. Too many --
MR. FLYNN: Okay. So --
THE COURT: -- egos involved. Not -- I'm not

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referring to Judge Berg.

MR. FLYNN: Sure.

THE COURT: But there -- Yeah, there's too many hurdles to try --

MR. FLYNN: I understand. So the schedule stands?

THE COURT: The schedule stands. If you wish to have that addressed, you'll have to bring it in front of Judge Berg.

MR. FLYNN: Okay.

THE COURT: I will warn you, he's got a small claims call. I would -- I'm warned to avoid Thursdays and Fridays for hearing because those, apparently, are heavy days.

But you may find out the hard way. Who knows?

MR. FLYNN: Okay.

THE COURT: All right.

MR. FLYNN: Thank you very much, your Honor.

THE COURT: You can send in the order. I will sign it when I see it.

MR. FLYNN: Thank you.

THE COURT: All right. Thank you. Have a good

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day.

MR. FLYNN: You, too. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, KATHLEEN STROMBACH, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Kathleen Strombach
Kathleen Strombach
Official Court Reporter
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Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable JOEL D. BERG, Judge of said Court of McHenry County, Illinois, on the 1st day of February, 2023, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE TALARICO, by
MR. ALPHONSE TALARICO, (Via Zoom)
On behalf of the Plaintiff;
KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendant.

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THE COURT: You are here on Dulberg against Mast?

MR. FLYNN: I am, Judge.

THE COURT: I have the other side here on that as well. Well, no. I have Mr. Dulberg here. I have Mr. Talarico as well. Mr. Talarico, are you ready for a hearing if I call it early, sir? I'm sorry, sir, you are muted. I'm not --

MR. TALARICO: Yes, your Honor.

THE COURT: Good morning. Are you ready for hearing a couple minutes early, sir?

MR. TALARICO: Absolutely.

THE COURT: Thank you very much. This is Dulberg against Mast, et al. I have Mr. Talarico present via Zoom as is Mr. Dulberg. Counsel, would you please state your name?

MR. FLYNN: Thank you, your Honor, George Flynn on behalf of the defendants.

THE COURT: Thank you, Mr. Flynn. We are before the Court for a hearing on pending motions. The one most notable is the summary judgment. What else are we hearing this morning, gentlemen?

MR. FLYNN: That's all we have, as far as I know, Judge.

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THE COURT: Good. Because that's all I read.

MR. TALARICO: That's all I know, Judge.

THE COURT: Now I feel way better. It just said pending motions. All I could find was summary judgment. I read the motion. I read the response. I read the reply. I have read all the attachments, as they were relevant. It's your motion.

MR. FLYNN: Thank you, Judge. And I wasn't sure I -- with Judge Meyer's standing orders, with respect to courtesy copies, I wasn't sure if the Court had a chance to review the briefs, but since your Honor has indicated that you have --

THE COURT: I have read everything. It's all based on a two-year statute of limitations on a lawsuit over a chain saw.

MR. FLYNN: That's exactly right. So I will be brief. The only case cited by the plaintiff in its response with respect to the accrual of the injury was a Suburban Real Estate case which is a transactional legal malpractice case, not a litigated matter. I think the -- all of the cases we have cited and including the dicta in that Suburban Real Estate case indicates that the accrual date in a litigated matter is the date of

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settlement, judgment or dismissal.

Here, we had a January 14 settlement that was consummated. There was a good faith finding and dismissal at that time. Mast and Popovich continued to represent Mr. Dulberg for another year or so and prosecuting the case against the other defendant in the case.

Dulberg became disillusioned with Mast, admitted that he was looking for additional counsel -- or substitute counsel even as early as July of 2014. Ultimately, Mast and Popovich withdrew in March of 2015. The case proceeded against Gagnon. There was a mediation in December of 2016 at which time he indicates now that he first became aware of his legal malpractice case.

Mr. Dulberg had every opportunity in discovery through interrogatories, production requests, I took his deposition. I asked him over and over again in several different ways how he first became aware of his injury and that it was wrongfully caused. The only response he could give was that a lawyer told him that he had a case. He couldn't provide any specifics. He has a burden of proving the -- a late discovery. He cannot meet it.

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He will never be able to meet it.

THE COURT: Do we know, by the way, how did he come to me because the lawyer, if I recall, was Mr. Gooch. So he was represented by I believe Mr. Balke if I recall correctly followed by Mr. Baudin.

MR. FLYNN: That's correct.

THE COURT: Where did Mr. Gooch come into this? Who shipped him off to Mr. Gooch to even get opinion, do we know?

MR. FLYNN: One of those two lawyers, I think, recommended that he seek an opinion from a lawyer, generally speaking, that handles legal malpractice cases. Whether it was a direct referral, I don't know if the evidence shows that. I think Mr. Dulberg testified that I believe it was Mr. Baudin recommended that he see a legal malpractice attorney.

So Mr. Gooch met with him. Allegedly provided an opinion that there was a case without any reason and then almost a year later filed a lawsuit. Again, first Mr. Dulberg raised privilege when I asked him how -- how and what -- how you became aware of this legal malpractice case, the

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injury and the wrongful causation, he claimed privilege. Finally, that was waived or otherwise disposed of, and then, he admitted he couldn't -- I said the legal opinion Dulberg received from Gooch was verbal. Gooch simply stated you have a case here. You have a valid case. When asked did he tell you exactly what they did wrong in connection with the representation, Dulberg said he probably did. I'm not recalling it right now. I'm pulling a blank. There are no specifics.

So again, the burden is his to prove a later discovery. He's not able to do that. I'm happy to answer any questions the Court has, but again, I'll rest on the briefs.

THE COURT: Thank you very much. Mr. Talarico, sir?

MR. TALARICO: Yes, sir. I'm -- what would you like me to address first? I guess we could start with the fact that defendant didn't follow the local rules, and therefore, plaintiff could not properly respond. And the local rule says that if they do not follow the local rules, you can strike the motion or deny it.

All I'm asking is deny the motion based on

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the fact that they did not follow the local rules.

THE COURT: I respectfully decline to do so, sir. A written motion could have been filed expressly asking for that relief. A response was filed that addressed it. I've read the response. I understand your concerns that by not following the local rules, they may have made it more difficult for us to suss out what are the disputed issues of material fact and what aren't. But I've been able to pretty much get a grip on everything the way it's been filed.

MR. TALARICO: All right. Thank you, Judge. The second thing is, again, we didn't follow the rules that (indiscernible) we didn't respond -- we responded generally. So I would like that the ruling you just made to extend to our response too.

THE COURT: Of course it does.

MR. TALARICO: Thank you, sir. Okay. Then, the next issue is the Suburban case. Plaintiff -- defendant, I'm sorry, defendant seems to indicate -- well, he does indicate that the reason that Suburban doesn't apply is that there is a difference between a transactional case and a litigation case. Now, I read the Suburban case many, many times over and the

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Supreme Court does not distinguish that their ruling is for one type of case or the other. What their ruling is is that the statute of limitation and they construed the exact specific statute does not begin until there is a pec -- pecuniary loss.

Prior to that, Mr. Dulberg would have brought an action, he would have had no damages. So that -- what that does is because the general rule and which has been voiced in -- by the Illinois Supreme Court Justice Thomas in the Porter case is that when the Supreme Court construes a statute, that becomes part of the statute until the -- the -- I can't think of the word, legislation -- legislature decides to change it. So what we have is the prior cases cited by Mr. Dulberg are not effective because he's citing it to the rule and not to the particular case we are talking about. The Suburban case says no damages, the statute does not begin to run. And that is part of the statute. It hasn't been changed.

Now, as to the last thing, we have raised many affirmative -- I mean, I'm sorry, many issues of material fact that are in dispute. But most important -- the clearest ones, Judge, are the

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defendant's affirmative defenses. There are four affirmative defenses which -- which plaintiff has denied all four.

Now, there is a recent case, if you'll hold on just one second, and I'll find it, but the indication -- it's not that recent, but it's -- the indication is that -- this is West Suburban Mass Transit versus Consolidated Rail Corporation. It's 1-89-2916. If this was done the Appellate Court but it was by the -- the opinion was by Justice McMorrow, who of course became Supreme Court judge, that summary judgment is not appropriate when there is affirmative defenses in dispute.

I think that pretty much sums it all, Judge. We have got many material facts in dispute, including four affirmative defenses which were denied specifically by plaintiff.

THE COURT: Respectfully, sir, merely saying something is in dispute does not make it so though, does it?

MR. TALARICO: Judge, I'm saying that the answer filed was it was in dispute.

THE COURT: So by filing a response to their affirmative defense denying the affirmative defense,

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you're telling me that that in and of itself is sufficient to defeat summary judgment.

MR. TALARICO: Yes, I am.

THE COURT: What if your client --

MR. TALARICO: I --

THE COURT: What if your client at subsequent depositions testifies inconsistent with the answer?

MR. TALARICO: In the case that I cited, Judge, the burden is upon the person, in effect, in this case the defendant, to eliminate that dispute. The dispute exists as he did not resolve that dispute.

THE COURT: So when did the cause of action arise?

MR. TALARICO: December 12, 2016, I believe.

THE COURT: Why on that date?

MR. TALARICO: Because there was an arbitrary -- a mandatory arbitration hearing which I included the -- the findings that showed that the judge -- the retired judge in that case evaluated it at $660,000, and Mr. Dulberg was not able to obtain anything close to that.

THE COURT: And why not?

MR. TALARICO: Well, for two reasons, one, because he settled first improperly for $5,000 with

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the landowner, and the second case is because he was instructed improperly to -- to sign -- well, he actually claims he never signed the agreement, but that there was an agreement to do a binding arbitration limited to the policy amount of 300,000.

THE COURT: Who entered into that agreement?

MR. TALARICO: That is a question of fact. I don't know, but Dulberg says he did not sign it and never wanted to.

THE COURT: When was the agreement entered into?

MR. TALARICO: I don't have the exact date, Judge. A few months before that. I can only say that that was -- that was during the time that Mr. Dulberg was in bankruptcy, and that was also part of the Baudin's instruction.

THE COURT: So the agreement to limit recovery to 300,000 was signed well after the Popovich firm was no longer representing Mr. Dulberg on this matter?

MR. TALARICO: Yes, that's true.

THE COURT: So how is his change in strategy somehow extend -- so in other words, what you're saying -- well, I'm trying to wrap my head around this. You are saying that that agreement your

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client never wished to enter into, he didn't sign, Popovich didn't sign, Mr. Mast didn't sign. His actual third attorney signed it, Mr. Baudin, not even Mr. Balke. But because that was somehow signed and in effect, then the cause of action against Mast and Popovich for legal malpractice is extended out to the date of the final mediation hearing because of an agreement and limitation on damages at the mediation hearing over which they had zero control?

MR. TALARICO: What I am saying, Judge, is the analysis in the Suburban case, the damages -- prior to that, Mr. Dulberg had no actual damages, therefore, he couldn't bring an action. He had nothing to say that Mast cost him this much or this much or Popovich cost him this much because that would -- that would have been stricken for -- they had no damages, so he had no cause of action.

The damages arrive -- arose on the days that Mr. Dulberg found out through the binding arbitration that the case was worth so much more than what he's going to get, and therefore -- that -- that enumerates the damages.

THE COURT: But respectfully, Mr. Talarico, and please correct me if I'm wrong because this is where

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I'm getting the disconnect, the but-for portion of this analysis but for the high-low agreement limiting damages to the policy amount of $300,000, he would have had a judgment for the entire $660,000 if Tom Popovich and Hans Mast had never even existed.

MR. TALARICO: I'm not clear on what you are asking, Judge. Could you --

THE COURT: What I'm asking is isn't the failure to recover the $660,000 as opposed to 300,000 attributable to the high-low agreement that was entered into well over a year or if not two or more years after Popovich and Mast were out of the case?

MR. TALARICO: Well, Judge, I -- first of all, he didn't enter into it. He's claimed over and over that that's not his signature. It was forged. There is many issues about that in the bankruptcy.

THE COURT: But again, counsel -- but again, my point being I don't really care if he signed it or didn't sign it. My point being that it is that agreement that limited his damages, and that agreement was entered into way after Popovich and Mast withdrew from this case, right?

MR. TALARICO: That's right, but --

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THE COURT: He so would have got -- so he would have gotten all 660,000 had that agreement not been entered into.

MR. TALARICO: Judge, but at -- before the judge ruled in that binding mediation, he had no idea how much the case was worth. They had told him it was worth $5,000 and then some. That -- that date -- that's the date when he knows when there was a factual pecuniary damage. He knows the case is worth much more than they told him and he's got numbers behind it. Before that, he had nothing to plead.

THE COURT: Respectfully, the case is worth that much against Mr. Gagnon, not necessarily against Mr. Gagnon's -- I believe it was his parents, the two people that settled out of it. The $660,000 is a finding of liability against Mr. Gagnon, isn't it?

MR. TALARICO: Yes, it is.

THE COURT: So how is it a finding of liability against the two people that were settled with?

MR. TALARICO: Because those people were settled with instructions by Mr. Mast that they could not win any money against them. His instructions were that they -- they would get out on summary judgment,

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he would get nothing, take $5,000 as a gift. He was over and over that that -- that that argument was made between Mast and between Dulberg, and some of those documents are part of what we filed.

THE COURT: All right. Anything else, Mr. Talarico?

MR. TALARICO: Not at the moment, Judge. Thank you.

THE COURT: Thank you, sir. Final word, please.

MR. FLYNN: Thank you, Judge. Just briefly with respect to the pecuniary loss, the loss or the injury, which is the language used in the statute, was in January of 2014 when the case against the McGuires, Bill and Caroline McGuire. Caroline was Gagnon's mother. Bill McGuire was the stepfather. That case was foreclosed in January of 2014. No recovery could have been had other than the $5,000 at that point in time. That's when there was an injury.

The question -- the second prong of the analysis is when did he have a reasonable belief that the injury was wrongfully caused. Dulberg had every opportunity, he admitted that he had talked to hundreds of lawyers. He could have asked Balke, he

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could have asked Baudin. He didn't ask any of them, allegedly.

Under Illinois law, he has a duty to investigate if he thinks there is an issue. He had -- he became disillusioned with Mast in 2014. Mast withdrew in March of 2015. Again, the injury is January 2014.

THE COURT: Thank you very much.

MR. TALARICO: Judge, may I say one thing?

THE COURT: You may.

MR. TALARICO: Thank you. The Supreme Court case, the Suburban case makes it clear that being alerted to a problem or alerted to malpractice is not sufficient enough until -- they use the specific word alerted and say that is not sufficient. There has to be a pecuniary loss.

So whether he talked to a thousand attorneys and whether they all told him all different things, he's alerted but he had to face a loss. That's all, Judge. Thank you.

THE COURT: Thank you. He was clearly alerted. Let's cut to the chase. He was hesitant -- he was hesitant to ever even sign the settlement agreement to the point where it took him over two months to do

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it. He clearly had his doubts. He clearly had his lack of faith. He signed the settlement agreement anyway. A year later, the attorneys withdrew. He went to another attorney, still raised the issue. Went to another attorney, still raised the issue. Met with hundreds of attorneys. He was clearly alerted.

When did the pecuniary loss occur? Here is the amazing part, and this is what -- where the disconnect comes on this case and it's why I'm having so much trouble with it, I'm being urged that the pecuniary loss occurred when the decision was given on the binding mediation. But the reason I believe that's a disconnect is because -- for two reasons. The loss that occurred on the binding mediation that is being urged upon the Court is a loss of what appears to be $360,000. The difference between the $660,000 that the mediator indicated the -- were the appropriate measure of damages against Mr. Gagnon and the $300,000 insurance policy limit, that $360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that somebody entered into. We don't know who that

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somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge.

But didn't the pecuniary loss itself, in fact, occur if there was a cause of action to which you were alerted? The pecuniary loss occurred when he only got $5,000. I agree with defense counsel. Statute of limitations lapsed. Merely denying the statute of limitation without more in the depositions and the sworn testimony does not itself create an issue of material fact.

The motion for summary judgment is heard. It is most respectfully allowed. Thank you very much, gentlemen.

MR. FLYNN: Thank you.

THE COURT: Both of you, outstanding. Even though they didn't comply with local rules, I will say gentlemen, to both of you, outstanding pleadings. Very thorough, very well written. I had no issues going through them. I spent three days going through all of them repeatedly, and you both made my job -- well, I'm not going to say easy, but you certainly did your jobs. And I very much

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appreciate your time. Thank you, gentlemen.

MR. FLYNN: Thank you, Judge. And for what it's worth, I apologize for not doing numbered paragraphs on the statement of facts. I did follow that format with Judge Meyer in another summary judgment motion that was granted. This case was originally before Judge Meyer. So --

THE COURT: I take no offense. I take no offense by anybody. The pleadings were what they were, and I had no issue reading them. Thank you all very much for your time.

MR. TALARICO: Thank you, Judge.

THE COURT: Thank you, sir.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, JUDY CARLSON, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Judy A. Carlson

Certified Shorthand Reporter

License No. 084-003347

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Transaction ID: 2-23-0072
File Date: 11/3/2023 7:49 PM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

SC

No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,	) Appeal from the Circuit Court of the) 22nd Judicial Circuit, McHenry County,) Illinois
Plaintiff-Appellant	) **Relief Sought: Appellant's Brief Due Date Extended** **) 35 Days to December 8, 2023; Appellant be allowed** **) to retain an auditor to review both the McHenry** **)Circuit Clerks systems and the Appellate Clerks** **)Systems for County Circuit Clerks systems for** **)changed or missing documents; Supplement the** **)Record on Appeal to include the known missing Report** **)of Proceedings;** **) Supplement the Record on Appeal to include the** **) subpoenaed recording of the Deposition of Defendant** **) Hans Mast and to include the original transcript of** **) the changed transcript of September 16, 2022**
HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C.	)
Defendants-Appellees	) Honorable Joel D. Berg, Judge Presiding) Date of Notice of Appeal March 3, 2023) Date of Judgment February 1, 2023, 2017 LA 000377) Date of Post judgment Motion Order: None) Circuit Court 2017LA000377

EMERGENCY MOTION

AND FOURTH MOTION TO EXTEND TIME TO FILE APPELLANT"S BRIEF

(CIVIL)

EMERGENCY MOTION TO CONDUCT AN AUDIT OF THE RECORD ON APPEAL TO DISCOVER CHANGED OR MISSING DOCUMENTS; SUPPLEMENT THE RECORD ON APPEAL AND, IF GRANTED, FOR 35 DAYS EXTENSION OF TIME AFTER THE TRIAL

COURT CLERK HAS SUPPLEMENTED AND/OR CORRECTED THE RECORD ON APPEAL TO FILE APPELLANT'S BRIEF

I. APPELLANT'S FOURTH MOTION FOR AN EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

1) On November 2, 2023, Plaintiffs Attorney communicated with Appellees' Attorney indicating the nature of this Motion, to which Appellees' Attorney indicating his objection to the Motion. (Ill. S. Ct. 361(a) and Local Rule Article 1 General Rules 102(b).

2) Appellant's Attorneys e-mailed a copy of this Motion to Appellees' Attorneys before filing it.

3) The number of days previously requested is 211, the number of days previously granted is 155, and the total number of days is 155. (Local rule 104 (a)(l))

4) The total number of days requested, and the total number of days granted to other parties are (0) none. (Local Rule 104(a)(2))

5) The number of days that will have elapsed from the date of filing of the Notice of Appeal to the date that the case will be ready for disposition is three hundred twenty-nine days. (Local Rule 104(a)(3), Local Rule 106(b) and Local Rule 108(a) & (b))

6) Appellant filed his Notice of Appeal on March 3, 2023.

7) The Record on Appeal was filed on April 24, 2023 and made available for download on April 25, 2023 at 8:48 AM. (Please

see Appellant Exhibit F attached)

7a. Common Law Volume 1 has a creation date of April 24, 2023 at 9:31 AM. Common Law Volume 2 has a creation date of April 24, 2023 at 9:28 AM. The Reports of proceedings has a creation date of April 25, 2023 at 806 AM. (Please see Exhibit G attached)

7b. Common Law Record Volume 1, Common Law Record Volume 2 and Reports of proceedings all have a submission date of April 24, 2023 from 10:00 Am to 10:03 AM. (Please see Appellant Exhibit H attached)

8) Appellant's Brief due date was first extended sixty days by this Honorable Court to July 31, 2023.

9) Appellant's Brief due date was thereafter extended a second time by this Honorable Court to September 29, 2023.

10) Appellant's Brief due date was extended a third time by this Honorable Court to November 3, 2023.

11) Twenty-One days is insufficient to prepare and file Appellant's Brief for the following reasons:

(a) The record on appeal consists of three volumes totaling 2,660 pages; Appellant requested the entire record be prepared, but Appellant's attorney has discovered missing Report of Proceedings, mismatched sections,

documents with only one of the Defendants' names where it should be all, Memorandums of Law where the body of the motions should be, violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal (Revised- Effective March 1, 2022) regarding §1. Definitions (i) Hyperlink... and so on. (Investigation Continues.)

(b) Appellant's attorney has made extensive efforts to have Appellant's Brief ready for filing by the November 3, 2023 considering his extremely heavy court schedule, with two active Appellate cases, two active Decedent's Estates, a First Judicial Law Division with nineteen named Defendants … and being a sole proprietor without full time staff and the following facts that relate to this matter.

II. APPELLANT's BASIS FOR AN EMERGENCY MOTION

1) Appellant has recently discovered that the Trial Court Judge for this case, 2017LA000377 from inception on November 28, 2017 to December 21, 2022 was a friend of Defendant The Law Offices of Thomas J Popovich, P.C.'s owner Thomas J. Popovich and said Judge had recused himself from at least one

case where Thomas J. Popovich was a named Defendant. (Please see Appellant's Exhibit A attached)

2) That the Trial Court Judge for this case, 2017LA000377 from inception on November 28, 2017 to December 21, 2022 was also the Judge at all times in 2012 LA 000178 where Appellant herein was represented by the Law Offices of Thomas A. Popovich P.C. and Thomas J. Popovich individually. (Please see Appellant's Exhibits B page 3 L22 to page 4 L5, C page 4L8-10) where the afore- mentioned Judge acknowledged this fact at least two separate times on the record.

3) That the Trial Court Judge refused a subpoenaed certified electronic thumb drive complete recording by the certified Shorthand Reporter of the deposition of Defendant Hans Mast which reflects the violations of Supreme Court rules and local rules during a hearing to strike the Deposition of Defendant Hans Mast. (Please see appellant's Exhibit D page 477 L21-24 to page 481 line 9)

4) Appellant has discovered missing Transcripts and a materially changed transcript to support Appellant's request for a professional audit trail be produced by an independent service and to supplement the questionable Record on Appeal. The Auditor's Report was finalized and submitted late in the day

yesterday, November 2, 2023 (and was the reason for the delay in filing and serving of this Emergency Motion).(Please see Appellant Exhibit E which is a sample test of changed and missing transcripts by an independent service.)

Wherefore, Plaintiff-Appellant prays that this Honorable Court recognize Plaintiff-Appellant's Attorney good faith and extensive efforts to comply with the extended briefing schedules, the problems caused by the Record on Appeal based on its page size and the errors by the Clerk of the 22nd Judicial Circuit in preparation of the Record on Appeal, grant Appellant a 35-day extension of time to file Appellant's Brief, allow Appellant to amend his Docketing Statement to include related cases, order the Clerk of the 22nd Judicial District to amend the Record on Appeal to include all missing documents and hyperlinks, allow Appellant to Request the Record on Appeal for all related cases, file and for any and all additional relief this Honorable Court deems equitable and just.

Dated: November 3, 2023

Respectfully submitted,

By: /s/ Alphonse A. Talarico ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico

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Transaction ID: 2-23-0072
File Date: 11/3/2023 7:49 PM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

PROOF OF DELIVERY

SC

I am sending this Motion for Extension of Time to File Appellant's Brief, Proposed Order and Notice of Filing to George K. Flynn and Michelle M. Blum , Karbal Cohen Economou Silk Dunne, LLC., 200 S Wacker Drive, Suite 2550, Chicago, Illinois 60606, Tel: (312) 431-3700, Fax: (312) 431-3670, gflyn@karballaw.com, mblum@karballaw.com by an approved electronic filing service provider (EFSP) on November 3, 2023 at 4:59 p.m.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement herein is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Dated: November 3, 2023

/s/ Alphonse A. Talarico ARDC
6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

EXHIBIT A

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McDonald
v.
Poborich

) Case No. 12LA326

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

FILED
OCT 19 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): friends with Defendant

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: _____

JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

Status on November 7, 2012 at 9:15am

☒ Assigned to the Civil Division, Courtroom 202

(Judge Michael J. Chmiel currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 10-19-12

Michael J. Sullivan, Chief Judge

Michael Holden
33 N. LaSalle St. Ste 2000
Chicago, IL 60602

Daniel Konicek
21 W. State St
Geneva, IL 60134

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on: 10-19-2012

** FILED ** Env: 17220244
McHenry County, Illinois
17LA000377
Date: 3/24/2022 10:51 AM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 3rd day of February, 2020, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE CLINTON LAW FIRM
BY: MS. JULIA C. WILLIAMS
On behalf of Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC
BY: MR. GEORGE K. FLYNN
On behalf of Defendants.

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THE COURT: Any other agreed, uncontested or sides?

MS. WILLIAMS: Good morning, Your Honor.

THE COURT: Good morning.

MS. WILLIAMS: Julia Williams. We're here on Dulberg vs. --

THE COURT: Okay. The Dulberg vs. Mast.

MS. WILLIAMS: Yes, that's correct. And I'm --

MR. FLYNN: Good morning, Your Honor.

MS. WILLIAMS: -- for plaintiff.

MR. FLYNN: George Flynn for defendants.

THE COURT: Okay. What are we doing?

MS. WILLIAMS: We're just going to set it out again for status on discovery. We are pretty well finished with written discovery, at least between the parties.

THE COURT: Really old for F1 written --

MS. WILLIAMS: Right. Here's our -- we're actually -- we should be done today. We had some 201(k) issues.

THE COURT: Okay.

MS. WILLIAMS: We are going to the law firm to look through their -- through their documents today. I believe everything has been produced, but we just

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want to verify -- there were some blank pages, and we just want to verify --

THE COURT: Okay.

MS. WILLIAMS: -- what those are.

So I think we're actually going to be fully completed with that today and looking to do -- getting ready to do deps, I think, is our next step --

THE COURT: How many are --

MS. WILLIAMS: -- for depositions.

THE COURT: How many F1 deps do you anticipate?

MS. WILLIAMS: Well, we'll have probably two. One from the firm and one -- defendant counsel and then defendant firm.

THE COURT: Okay.

MS. WILLIAMS: And then, obviously, the plaintiff. Now, whether we need more witness deps -- this is a legal malpractice case. Witness deps were taken in the underlying case. I don't know if we're going to need to take those a second time to --

THE COURT: I think I pre-tried the underlying case. I have a recollection of this, so -- but I'm not a hundred percent sure, so just throwing that

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out there...

MS. WILLIAMS: Okay.

MR. FLYNN: I think I did see Your Honor's name in connection with maybe one order in the case; but I don't see it as an issue.

THE COURT: Okay. I'll periodically throw it out there. But in any event, so if we come back in 60 days, do you think that gives you enough time to complete?

MR. FLYNN: I think it gives us enough time to complete the main F1 witnesses.

MS. WILLIAMS: At least the three parties.

MR. FLYNN: There were -- there were four -- four or five doctors deposed in the underlying case. And four other five other --

THE COURT: All right.

MR. FLYNN: -- (indiscernible). I don't know if we'll need to redo everybody, but I think we'll have a better idea after we take the party deps.

THE COURT: All right. Let's put it out 60 days. Can you make April 3rd, a Friday?

MS. WILLIAMS: Yes. Let me just double-check.

THE COURT: Okay.

MS. WILLIAMS: But I believe that's just fine.

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And that will be status completion of F1. That's -- yes.

THE COURT: That's just to tell me what we're supposed to be doing.

MS. WILLIAMS: Sure. So status completion of F1s on April 3rd, and we'll come back.

THE COURT: Okay.

MS. WILLIAMS: Thank you very much.

MR. FLYNN: Thanks, Judge.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, MAUREEN S. URBANSKI, an Official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Maureen S. Urbanski

Certified Shorthand Reporter
License No. 084-003308

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McHenry County, Illinois
17LA000377
Date: 1/25/2021 11:03 AM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 10th day of May, 2018, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE GOOCH FIRM, by
MS. SABINA WALCZYK,
On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.

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THE COURT: Let's go to work on Dulberg.

MS. WALCZYK: Good morning, Your Honor.

THE COURT: Good morning.

MS. WALCZYK: Sabina Walczyk on behalf of Dulberg.

MR. FLYNN: Good morning. George Flynn on behalf of the Popovich firm and Hans Mast.

THE COURT: It is -- it is rare when I know both the plaintiff and the defendant ahead of time. Only through the courtroom, but still unusual.

I looked at -- I'm going to tell you what I'm thinking. And then if you choose to argue, you can to -- if you wish to convince me that I'm wrong; or we can go forward. Either is fine.

I felt that the 2-615 motion was appropriate because I felt that -- and I -- for a specific reason, not -- not perhaps all the reasons that were cited by the defendant. I felt that the complaint, when it talked about how -- I'm looking for the words, misled -- when it said that the attorneys misled -- lied and misled Mr. Dulberg, I felt that there was some specificity that was going to be required. Because they -- ultimately, these things are going to factor into the statute of

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limitations issue. And if you're going to say that it was a breach of his duty in lying or misleading, I think we need more particularity in the allegations. You can't just make a conclusory statement to that effect.

That's my perspective. What would you like -- I'll give you an opportunity -- opportunity to replead; but if you want to argue against my thinking, I'll listen.

MS. WALCZYK: Well, Your Honor, I -- I won't argue with the Court. If Your Honor would like some more specificity as to those certain terms, we can certainly replead and plead those a little bit more specifically to --

THE COURT: And with respect to the discovery rule issue --

MS. WALCZYK: Uh-huh.

THE COURT: -- since it's going to come up one way or another, although I think it's a question of fact, I would like to see it touched upon, because I'm not following the -- the fact that he got more from the arbitrator than had been initially suggested by his attorneys, isn't really telling me anything. So I need maybe a little bit more

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information to understand the relationship of the two things.

With respect to the issue of -- on the 2-619, I felt that in light of how I was going with the 2-615, I really couldn't rule on the -- the application of the discovery rule. And, ultimately, I saw that in the long run, it was going to be a question of fact, and I would probably need -- and I could only address that with some more facts than what's just contained in the complaint.

With respect to estoppel, I didn't agree -- and you can tell me why you think I'm wrong, but I didn't agree with the argument that you were making because it -- it, carried to its logical conclusion, I could mislead and lie to my client about the -- about the implications and why he should settle, and then once he agrees to it, then I'm -- I'm released from my breach of my duty.

So I don't think that it -- that that was the type of scenario involved when the courts were discussing the estoppel issue.

Do you have anything -- do you want to contest that?

MR. FLYNN: Not at this time, Your Honor. I --

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I've always learned that it's better to quit while you're ahead. And with -- without giving a roadmap to the plaintiff, I do think that having their best complaint on file benefits us all.

THE COURT: Yes.

MR. FLYNN: So going back to the 2-615 issues, again, a legal malpractice case, they've got to plead and prove, not only the legal malpractice, but the elements of the underlying case. And it seemed to me, and as we pointed out, that -- that all of the allegations were very conclusory. That they would have gotten more, they wouldn't have done this, that the -- that Hans Mast and the Popovich firm should have undertaken additional actions in the underlying case, but they don't say what those are. And I think that they -- they're required to if they believe that there was a breach of a duty that led to damages.

The high-low agreement, which is very confusing to me and to my client, frankly, because he's never seen it, and as I understand it, that's outside of the four corners --

THE COURT: It is outside, but it did lead to an area where I was also a little bit confused. And

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I -- and I think you touched on -- I'll ask you: Is the complaint having to do with the settlement with the McGuires, or does it somehow relate to the suit that continued with respect to Gagnon and the high-low agreement?

MS. WALCZYK: Well, I think it's a little bit of both, because it started with the suit against McGuires, which settled. And then it looks like there was a high-low agreement signed.

THE COURT: Okay.

MS. WALCZYK: And --

THE COURT: Was it signed by Mr. Mast?

MS. WALCZYK: Oh, I believe it was signed by Mr. Dulberg. I haven't seen it.

THE COURT: Okay.

MS. WALCZYK: However, we can attach it if -- if you want --

THE COURT: If -- if you are going to allege malpractice as a result of entering into the high-low agreement, yes, I would require you, then, to attach it and to make that a little more explicit.

MS. WALCZYK: Yes.

THE COURT: Because I -- I came away thinking

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that was not part of your complaint, but I wasn't a 100 percent sure.

Also, let's see -- yeah, I need to know with some specificity what facts were concealed and how he was misled. I had problems with, particularly, I had -- paragraphs 20 and 21 and felt that you should have included more in that. And I won't probably say more than that.

MS. WALCZYK: Uh-huh.

THE COURT: And I -- on the estoppel argument, as I've said, I don't think that it is clear that the signing of the release was something that could be assumed to be knowing and voluntary when the plaintiff is alleging that he was misled as to the ramifications of that. Excuse me. Let's see. Okay.

Any -- so I'm granting on the 2-615. I will grant you leave to refile or replead.

MS. WALCZYK: Okay.

THE COURT: And what else? Is there anything else that we need?

MR. FLYNN: Just as a housekeeping, again, depending on what theory you're going under, if it's related to the Gagnon settlement, and we may have

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more people coming to the party; but if not, then that's it.

THE COURT: Yeah. I mean, if you're going to draw that in, then I need it a little more explicit.

MS. WALCZYK: Okay.

THE COURT: And I got -- in fact -- I'm reading from my notes. I need facts on what was false, misleading and what -- what you mean by coercion.

MR. FLYNN: So the 615 is granted with leave to replead.

THE COURT: Yes.

MR. FLYNN: I wasn't clear, I guess, on whether there's an actual ruling on the 619 or --

THE COURT: 619, I'm denying because --

MR. FLYNN: Okay.

THE COURT: -- there's a question of fact --

MR. FLYNN: Okay.

THE COURT: -- at this stage.

And I think that even if they include additional facts in their complaint, I would still come back to it being a question of fact, because I -- there's going to be a lot more about their relationship than I think can be reflected in merely the complaint. I would -- so I mean, if you were to

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bring another 2-619, feel free.

MR. FLYNN: Sure.

THE COURT: But I would still think it's going to be a question of fact as to what is clear -- Dulberg's claims are with respect to how he was misled or facts were concealed.

MR. FLYNN: Okay.

THE COURT: Because it's going to depend on their interaction.

MR. FLYNN: And it is the -- the language of statute is "knew or reasonably should have been known." And, again, this -- he does have counsel that came in right after my clients got out. So, again, the Blue Water Partners case says you -- potentially, you can't bury your head in the sand.

THE COURT: No, you can't. But because I -- of the absence of information --

MR. FLYNN: Fair enough.

THE COURT: -- I was reluctant to go further. The statute of limitations, you might get a little bit farther, but I still might run into a fact question.

MR. FLYNN: Understood.

THE COURT: So how long do you need?

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MS. WALCZYK: If I could have 28 days, Your Honor.

THE COURT: Sure.

MS. WALCZYK: We have a trial coming up.

THE COURT: And to answer or otherwise plead?

MR. FLYNN: 28, please.

THE COURT: All right. That would -- excuse me. Why don't we come back in -- 60 days is July 9th. How about July 11th, a Wednesday? Or do you have -- it's all the same to me, so long as I am here.

MR. FLYNN: Let's see. I believe I'm going to be out of state that week.

THE COURT: Okay. When is it convenient for you to come here? She's here all the time, so I don't --

MR. FLYNN: The following week would be --

THE COURT: What day works for either of you the following week?

MS. WALCZYK: We may actually have a trial that week. That may or may not go; I'm not sure at this point. At least the first two days, if we could do towards the end of week, that would be great for us.

THE COURT: 20th?

MR. FLYNN: 20th works.

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MS. WALCZYK: That's perfect.

THE COURT: All right. We'll see you on July 20th.

MR. FLYNN: Thank you, Your Honor.

MS. WALCZYK: Thank you very much.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, MAUREEN URBANSKI, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Maureen S. Urbanski

Certified Shorthand Reporter
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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 21st day of December, 2022, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by MR. ALPHONSE A. TALARICO (via Zoom),

On behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by MR. GEORGE K. FLYNN (via Zoom),

On behalf of the Defendants.

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THE COURT: For the record, this is on Dulberg versus Mast.

Plaintiff's counsel, if you could identify yourself.

MR. TALARICO: Yes, your Honor. My name is Alphonse Talarico.

THE COURT: And defendant.

MR. FLYNN: Good morning, your Honor. George Flynn for the defendants.

THE COURT: And for the record, I -- Mr. Dulberg is in attendance, and once again, I hope we're not being recorded. That being said, we'll move on to the motion.

Plaintiff, you have a motion.

MR. TALARICO: Yes, Judge. I'd like to -- we filed our motion -- we filed -- counsel filed a response, we filed a reply. We'd like to rely on that, with one additional presentation or request of the Court.

THE COURT: Okay. What is that?

MR. TALARICO: I'd like to offer an informal proof -- an offer of proof, which is the exact and -- and -- what is the best way -- the audio transmission of the deposition, in full, with all

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the parties, which was sent to us through a subpoena.

THE COURT: Okay. You mean from Mr. Mast's -- or Mast's -- deposition?

MR. TALARICO: Correct. Everything that -- that would help the Court understand all of these problems. Because you --

THE COURT: Well, we do have -- we have the transcript.

MR. TALARICO: Yes, your Honor, but the transcript is selective.

THE COURT: Okay. Mr. Flynn, comment.

MR. FLYNN: I would object, Judge. The plaintiff has already filed a second amended motion and response. He's had plenty of opportunity to bring this to the Court's attention.

THE COURT: Okay. Mr. Talarico, final word.

MR. TALARICO: Judge, this is for the aid to -- for the Court -- this Honorable Court to understand what's going on.

As to the second amended, I replied to that, that -- the only difference between the amended and the second amended, Judge, was the stamp on Exhibit 17 didn't show up, so I re-filed it. But

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it was filed timely. As soon as I realized the stamp didn't show up on Exhibit 17, I re-filed it with an emphasis on the Exhibit 17. Mr. Flynn received it on time with notification that it's Exhibit 17.

THE COURT: Well, that's not the issue, but the issue is --

MR. FLYNN: It's not. And just for the record, there was a typo in my response brief. I wasn't taking issue with the timing of the filing of the second amended, other than the fact that it's two years after the deposition.

THE COURT: But that -- that's a different --

MR. FLYNN: But --

THE COURT: That's a different issue.

MR. FLYNN: Exactly.

THE COURT: The first issue is whether or not to -- the Court will accept plaintiff's request to submit the audio of the deposition at issue of Mr. Mast that, I believe, was taken June 25th, 2020.

And, Mr. Talarico, anything else to say in support of that oral motion?

MR. TALARICO: No, Judge. That -- that's -- if you'll accept it, it's in the -- I believe

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Mr. Dulberg is in the courtroom, and if he may approach the bench, he will hand it to you.

THE COURT: No, he's on Zoom. In any event, I'm going to deny the -- oh, are you -- Come on up.

MR. SCOTT DULBERG: Do you mind if I just hand it here?

THE COURT: Well, no, you're going to come up. I'm not going to accept that.

Your name, sir?

MR. SCOTT DULBERG: Scott Dulberg.

THE COURT: Okay. And you're here to deliver a Zip drive of the audio; am I correct?

MR. SCOTT DULBERG: Yes.

THE COURT: All right. And I -- But I'm going to rule on plaintiff's motion. I'm not going to accept it. I'm not going to consider it for purposes of the hearing on this motion. So you can keep it, but thank you for -- for showing up and bringing it.

MR. SCOTT DULBERG: Thank you.

THE COURT: Because -- I'm not going to accept it because I don't think it adds, materially, to my understanding of what transpired. I've got the deposition transcript. I've read the parts that I

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believe are relevant. I've read the motions. I've heard this argument.

I don't think that the audio tran- -- the audio recording is going to assist me in any way, based upon my understanding of what the ultimate issue is on this motion.

So that will be denied, and we'll incorporate that into the motion -- or in the order. I'm sorry.

Moving on to the motion, this is plaintiff's motion to either re-depose or strike, or both, the deposition of Mr. Mast taken June 25th, 2020; am I correct?

MR. TALARICO: Yes, your Honor.

THE COURT: And, further, am I correct that the -- the reason for this is issues with respect to what's identified as Exhibit 12?

MR. TALARICO: No, your Honor. That's just one small part of it. The entire motion is based on Supreme Court rules and on -- or in effect at the time the deposition was taken.

THE COURT: No, no, no. Tell me the substance. Don't tell me what the rules are. Because my reading of your motion focused on Exhibit 12 and the

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failure -- or the alleged failure to produce it prior to the deposition or give an exhibit list.

So tell me, what is the reason why you want to re-depose Mr. Mast? Because I think that's ultimately your request.

MR. TALARICO: That's right. Judge, within our motion and our reply, we've indicated that it's not just Exhibit 12. Focusing on Exhibit 12 makes it too easy. The entire deposition -- the Internet went down almost the entire time. It's in the notes that I highlighted. It's in the transcript. They were not seeing Exhibits 1 through 15 at the same time. They weren't seeing them. They weren't being uploaded to the admin- -- the administer of -- of oath. 12 wasn't even part of it. It was added, I don't know, 14 days later.

THE COURT: But, ultimately --

MR. TALARICO: So we --

THE COURT: -- the exhibits were seen; am I correct?

MR. TALARICO: No. They were not seen.

THE COURT: None of the exhibits were seen?

MR. TALARICO: They were not seen in accordance with the rules, your Honor.

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THE COURT: That's -- see, you --
MR. TALARICO: The rules --
THE COURT: You throw those phrases in, in accordance with the rules.
Did the deponent see the exhibits, yes or no?
MR. TALARICO: No.
THE COURT: Mr. Flynn, comment.
MR. FLYNN: Judge, to say that the Internet was down for --
THE COURT: I don't want to go down there. Did the -- did Mr. Mast see the exhibits?
MR. FLYNN: My recollection and understanding is that Mr. Mast saw all of the exhibits. There may have been an issue with a portion of Exhibit 12; however, he was -- he was cross-examined at Page 49 through 52 regarding Exhibit 12, generally speaking, and the case law that was contained in his file.
The bottom line is, it doesn't add anything. He didn't recall the specific cases that he discussed with --
THE COURT: Did he see the exhibits? That's all I wanted to know.
MR. FLYNN: I don't know that he saw the full

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exhibit in its entirety.

THE COURT: Okay.

MR. FLYNN: It -- But it wasn't necessarily provided to him, so --

THE COURT: For purposes of this record, Exhibit 12 is copies of case law; am I correct?

MR. FLYNN: Generally speaking, correct.

THE COURT: Mr. Talarico.

MR. TALARICO: That's correct, Judge. But, again, we're not just focusing on Exhibit 12. We're focusing on all the exhibits that were supposedly shown to Mr. -- to Mr. Mast. He didn't see them. He didn't see them.

THE COURT: Okay.

MR. TALARICO: There was confusion as to what the numbers were.

THE COURT: Whose exhibits were they?

MR. TALARICO: They were the plaintiff's, but it was the defendant's equipment that caused the problem.

THE COURT: And the plaintiff conducted the deposition; am I correct?

MR. TALARICO: That is correct.

THE COURT: And the plaintiff was aware of

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any -- the plaintiff's attorney, at that time, was aware of any glitches or difficulties with respect to having the deponent view all of the exhibits; am I correct?

MR. TALARICO: That's correct, your Honor.

THE COURT: And the plaintiff (sic) who was representing Mr. Dulberg at the time, for whatever reason, did not raise an objection at the time or ever with respect to the manner in which the deposition proceeded.

MR. TALARICO: No, your Honor. (Indiscernible) she left it to me -- or to the following counsel. She said to Mr. Dulberg, Mr. Dulberg, whatever those objections are, your next counsel has to make them.

THE COURT: Okay. Well, that -- but the handling attorney at the time who represented Mr. Dulberg's interests proceeded with the deposition and did not give notice to anyone of any complaint with respect to the manner in which it was conducted; am I correct?

MR. TALARICO: You are correct.

THE COURT: Okay. What else do you want me to know?

MR. TALARICO: I want you to know, Judge, also,

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that not only does the objection have to take place at the time of the deposition itself. When the evidence is being brought -- when the evidence is being subject to admission, I can bring that -- I can raise that now and object to it.

THE COURT: Okay. But the -- the exhibits were always in control of the plaintiff's attorneys, and you're asking to penalize the defendant for what appears to be a -- an issue you have with the manner in which prior counsel conducted the deposition.

MR. TALARICO: No, your Honor. It's -- as far as the defendant, it's their electronic equipment that failed.

THE COURT: And there were no objections made at the time or subsequent, and this motion was brought approximately two and a half years after the deposition in question; am I correct?

MR. TALARICO: You are correct. But it's also within the time of the ruling. I can do this now.

THE COURT: You can file any motion you like, but I'm -- I'm going to deny your request. I don't think that there's any reasonable basis under which I can compel the defendant to appear for a second deposition because of these issues. It appears that

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prior counsel was satisfied with the -- her ability to conduct the deposition, and she was always in control of all of the exhibits, so I don't see a problem there.

If anybody should have been raising an objection about the problems, it should have been defendant, not -- not the plaintiff two and a half years after the deposition they proceeded with. So I'm going to deny the request.

Anything else that we need to do today?

MR. FLYNN: Judge, just that there was some additional relief requested in the latest reply brief filed, and that included a request that the Court take judicial notice of -- what's really an implication. I think this is on Page 17 of the response.

I would just request that that specific request for relief also be denied in connection with the motion.

THE COURT: Okay. Let me just call it up. I'm looking at Page 18. What is it?

MR. FLYNN: I believe it was on Page 17 of the response -- I'm sorry -- the reply brief that was

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just filed.

THE COURT: Okay. The notice of the adjudicative facts?

MR. FLYNN: Correct. I think it says in Paragraph 12(j), plaintiff requests that this Honorable Court take judicial notice of the adjudicative fact that the references to Restatement (Second) of Torts Section 318 impliedly references Tilschner versus Spangler.

THE COURT: That -- that's not really ultimately the purpose of this motion, and it's not contained in the prayer for relief. That strikes me as a new motion. Wasn't going to consider it, and so I'm -- to the extent that I have to rule on it, on an issue I don't even think that's in front of me appropriately --

MR. FLYNN: It's just relief that was in -- in this response that I didn't have any opportunity to address.

THE COURT: I will -- I will deny all aspects of plaintiff's motion.

MR. FLYNN: Okay.

THE COURT: I think that covers it.

Is there anything else?

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MR. FLYNN: Thank you. That's it.
THE COURT: Okay. We have a future date, don't we?
MR. FLYNN: We have a pending motion for summary judgment, and plaintiff's response is due, I think, next week.
THE COURT: Okay. All right.
MR. FLYNN: But I don't --
THE COURT: You're back February 1st, and I -- Mr. Flynn, could you draft the order and please get it in as early as possible.
MR. FLYNN: I will. And, Judge, we spoke last time about your continued handling of the case. Do you have any information to share in that regard?
THE COURT: Nope. Nope. I -- I'm in a different division and, um, I can't take cases with me.
MR. FLYNN: Okay.
THE COURT: That would be interesting, but no, I can't take them. I can't take them with me. Too many --
MR. FLYNN: Okay. So --
THE COURT: -- egos involved. Not -- I'm not

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referring to Judge Berg.

MR. FLYNN: Sure.

THE COURT: But there -- Yeah, there's too many hurdles to try --

MR. FLYNN: I understand. So the schedule stands?

THE COURT: The schedule stands. If you wish to have that addressed, you'll have to bring it in front of Judge Berg.

MR. FLYNN: Okay.

THE COURT: I will warn you, he's got a small claims call. I would -- I'm warned to avoid Thursdays and Fridays for hearing because those, apparently, are heavy days.

But you may find out the hard way. Who knows?

MR. FLYNN: Okay.

THE COURT: All right.

MR. FLYNN: Thank you very much, your Honor.

THE COURT: You can send in the order. I will sign it when I see it.

MR. FLYNN: Thank you.

THE COURT: All right. Thank you. Have a good

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day.

MR. FLYNN: You, too. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, KATHLEEN STROMBACH, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable JOEL D. BERG, Judge of said Court of McHenry County, Illinois, on the 1st day of February, 2023, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE TALARICO, by
MR. ALPHONSE TALARICO, (Via Zoom)
On behalf of the Plaintiff;
KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendant.

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THE COURT: You are here on Dulberg against Mast?

MR. FLYNN: I am, Judge.

THE COURT: I have the other side here on that as well. Well, no. I have Mr. Dulberg here. I have Mr. Talarico as well. Mr. Talarico, are you ready for a hearing if I call it early, sir? I'm sorry, sir, you are muted. I'm not --

MR. TALARICO: Yes, your Honor.

THE COURT: Good morning. Are you ready for hearing a couple minutes early, sir?

MR. TALARICO: Absolutely.

THE COURT: Thank you very much. This is Dulberg against Mast, et al. I have Mr. Talarico present via Zoom as is Mr. Dulberg. Counsel, would you please state your name?

MR. FLYNN: Thank you, your Honor, George Flynn on behalf of the defendants.

THE COURT: Thank you, Mr. Flynn. We are before the Court for a hearing on pending motions. The one most notable is the summary judgment. What else are we hearing this morning, gentlemen?

MR. FLYNN: That's all we have, as far as I know, Judge.

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THE COURT: Good. Because that's all I read.

MR. TALARICO: That's all I know, Judge.

THE COURT: Now I feel way better. It just said pending motions. All I could find was summary judgment. I read the motion. I read the response. I read the reply. I have read all the attachments, as they were relevant. It's your motion.

MR. FLYNN: Thank you, Judge. And I wasn't sure I -- with Judge Meyer's standing orders, with respect to courtesy copies, I wasn't sure if the Court had a chance to review the briefs, but since your Honor has indicated that you have --

THE COURT: I have read everything. It's all based on a two-year statute of limitations on a lawsuit over a chain saw.

MR. FLYNN: That's exactly right. So I will be brief. The only case cited by the plaintiff in its response with respect to the accrual of the injury was a Suburban Real Estate case which is a transactional legal malpractice case, not a litigated matter. I think the -- all of the cases we have cited and including the dicta in that Suburban Real Estate case indicates that the accrual date in a litigated matter is the date of

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settlement, judgment or dismissal.

Here, we had a January 14 settlement that was consummated. There was a good faith finding and dismissal at that time. Mast and Popovich continued to represent Mr. Dulberg for another year or so and prosecuting the case against the other defendant in the case.

Dulberg became disillusioned with Mast, admitted that he was looking for additional counsel -- or substitute counsel even as early as July of 2014. Ultimately, Mast and Popovich withdrew in March of 2015. The case proceeded against Gagnon. There was a mediation in December of 2016 at which time he indicates now that he first became aware of his legal malpractice case.

Mr. Dulberg had every opportunity in discovery through interrogatories, production requests, I took his deposition. I asked him over and over again in several different ways how he first became aware of his injury and that it was wrongfully caused. The only response he could give was that a lawyer told him that he had a case. He couldn't provide any specifics. He has a burden of proving the -- a late discovery. He cannot meet it.

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He will never be able to meet it.

THE COURT: Do we know, by the way, how did he come to me because the lawyer, if I recall, was Mr. Gooch. So he was represented by I believe Mr. Balke if I recall correctly followed by Mr. Baudin.

MR. FLYNN: That's correct.

THE COURT: Where did Mr. Gooch come into this? Who shipped him off to Mr. Gooch to even get opinion, do we know?

MR. FLYNN: One of those two lawyers, I think, recommended that he seek an opinion from a lawyer, generally speaking, that handles legal malpractice cases. Whether it was a direct referral, I don't know if the evidence shows that. I think Mr. Dulberg testified that I believe it was Mr. Baudin recommended that he see a legal malpractice attorney.

So Mr. Gooch met with him. Allegedly provided an opinion that there was a case without any reason and then almost a year later filed a lawsuit. Again, first Mr. Dulberg raised privilege when I asked him how -- how and what -- how you became aware of this legal malpractice case, the

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injury and the wrongful causation, he claimed privilege. Finally, that was waived or otherwise disposed of, and then, he admitted he couldn't -- I said the legal opinion Dulberg received from Gooch was verbal. Gooch simply stated you have a case here. You have a valid case. When asked did he tell you exactly what they did wrong in connection with the representation, Dulberg said he probably did. I'm not recalling it right now. I'm pulling a blank. There are no specifics.

So again, the burden is his to prove a later discovery. He's not able to do that. I'm happy to answer any questions the Court has, but again, I'll rest on the briefs.

THE COURT: Thank you very much. Mr. Talarico, sir?

MR. TALARICO: Yes, sir. I'm -- what would you like me to address first? I guess we could start with the fact that defendant didn't follow the local rules, and therefore, plaintiff could not properly respond. And the local rule says that if they do not follow the local rules, you can strike the motion or deny it.

All I'm asking is deny the motion based on

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the fact that they did not follow the local rules.

THE COURT: I respectfully decline to do so, sir. A written motion could have been filed expressly asking for that relief. A response was filed that addressed it. I've read the response. I understand your concerns that by not following the local rules, they may have made it more difficult for us to suss out what are the disputed issues of material fact and what aren't. But I've been able to pretty much get a grip on everything the way it's been filed.

MR. TALARICO: All right. Thank you, Judge. The second thing is, again, we didn't follow the rules that (indiscernible) we didn't respond -- we responded generally. So I would like that the ruling you just made to extend to our response too.

THE COURT: Of course it does.

MR. TALARICO: Thank you, sir. Okay. Then, the next issue is the Suburban case. Plaintiff -- defendant, I'm sorry, defendant seems to indicate -- well, he does indicate that the reason that Suburban doesn't apply is that there is a difference between a transactional case and a litigation case. Now, I read the Suburban case many, many times over and the

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Supreme Court does not distinguish that their ruling is for one type of case or the other. What their ruling is is that the statute of limitation and they construed the exact specific statute does not begin until there is a pec -- pecuniary loss.

Prior to that, Mr. Dulberg would have brought an action, he would have had no damages. So that -- what that does is because the general rule and which has been voiced in -- by the Illinois Supreme Court Justice Thomas in the Porter case is that when the Supreme Court construes a statute, that becomes part of the statute until the -- the -- I can't think of the word, legislation -- legislature decides to change it. So what we have is the prior cases cited by Mr. Dulberg are not effective because he's citing it to the rule and not to the particular case we are talking about. The Suburban case says no damages, the statute does not begin to run. And that is part of the statute. It hasn't been changed.

Now, as to the last thing, we have raised many affirmative -- I mean, I'm sorry, many issues of material fact that are in dispute. But most important -- the clearest ones, Judge, are the

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defendant's affirmative defenses. There are four affirmative defenses which -- which plaintiff has denied all four.

Now, there is a recent case, if you'll hold on just one second, and I'll find it, but the indication -- it's not that recent, but it's -- the indication is that -- this is West Suburban Mass Transit versus Consolidated Rail Corporation. It's 1-89-2916. If this was done the Appellate Court but it was by the -- the opinion was by Justice McMorrow, who of course became Supreme Court judge, that summary judgment is not appropriate when there is affirmative defenses in dispute.

I think that pretty much sums it all, Judge. We have got many material facts in dispute, including four affirmative defenses which were denied specifically by plaintiff.

THE COURT: Respectfully, sir, merely saying something is in dispute does not make it so though, does it?

MR. TALARICO: Judge, I'm saying that the answer filed was it was in dispute.

THE COURT: So by filing a response to their affirmative defense denying the affirmative defense,

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you're telling me that that in and of itself is sufficient to defeat summary judgment.

MR. TALARICO: Yes, I am.

THE COURT: What if your client --

MR. TALARICO: I --

THE COURT: What if your client at subsequent depositions testifies inconsistent with the answer?

MR. TALARICO: In the case that I cited, Judge, the burden is upon the person, in effect, in this case the defendant, to eliminate that dispute. The dispute exists as he did not resolve that dispute.

THE COURT: So when did the cause of action arise?

MR. TALARICO: December 12, 2016, I believe.

THE COURT: Why on that date?

MR. TALARICO: Because there was an arbitrary -- a mandatory arbitration hearing which I included the -- the findings that showed that the judge -- the retired judge in that case evaluated it at $660,000, and Mr. Dulberg was not able to obtain anything close to that.

THE COURT: And why not?

MR. TALARICO: Well, for two reasons, one, because he settled first improperly for $5,000 with

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the landowner, and the second case is because he was instructed improperly to -- to sign -- well, he actually claims he never signed the agreement, but that there was an agreement to do a binding arbitration limited to the policy amount of 300,000.

THE COURT: Who entered into that agreement?

MR. TALARICO: That is a question of fact. I don't know, but Dulberg says he did not sign it and never wanted to.

THE COURT: When was the agreement entered into?

MR. TALARICO: I don't have the exact date, Judge. A few months before that. I can only say that that was -- that was during the time that Mr. Dulberg was in bankruptcy, and that was also part of the Baudin's instruction.

THE COURT: So the agreement to limit recovery to 300,000 was signed well after the Popovich firm was no longer representing Mr. Dulberg on this matter?

MR. TALARICO: Yes, that's true.

THE COURT: So how is his change in strategy somehow extend -- so in other words, what you're saying -- well, I'm trying to wrap my head around this. You are saying that that agreement your

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client never wished to enter into, he didn't sign, Popovich didn't sign, Mr. Mast didn't sign. His actual third attorney signed it, Mr. Baudin, not even Mr. Balke. But because that was somehow signed and in effect, then the cause of action against Mast and Popovich for legal malpractice is extended out to the date of the final mediation hearing because of an agreement and limitation on damages at the mediation hearing over which they had zero control?

MR. TALARICO: What I am saying, Judge, is the analysis in the Suburban case, the damages -- prior to that, Mr. Dulberg had no actual damages, therefore, he couldn't bring an action. He had nothing to say that Mast cost him this much or this much or Popovich cost him this much because that would -- that would have been stricken for -- they had no damages, so he had no cause of action.

The damages arrive -- arose on the days that Mr. Dulberg found out through the binding arbitration that the case was worth so much more than what he's going to get, and therefore -- that -- that enumerates the damages.

THE COURT: But respectfully, Mr. Talarico, and please correct me if I'm wrong because this is where

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I'm getting the disconnect, the but-for portion of this analysis but for the high-low agreement limiting damages to the policy amount of $300,000, he would have had a judgment for the entire $660,000 if Tom Popovich and Hans Mast had never even existed.

MR. TALARICO: I'm not clear on what you are asking, Judge. Could you --

THE COURT: What I'm asking is isn't the failure to recover the $660,000 as opposed to 300,000 attributable to the high-low agreement that was entered into well over a year or if not two or more years after Popovich and Mast were out of the case?

MR. TALARICO: Well, Judge, I -- first of all, he didn't enter into it. He's claimed over and over that that's not his signature. It was forged. There is many issues about that in the bankruptcy.

THE COURT: But again, counsel -- but again, my point being I don't really care if he signed it or didn't sign it. My point being that it is that agreement that limited his damages, and that agreement was entered into way after Popovich and Mast withdrew from this case, right?

MR. TALARICO: That's right, but --

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THE COURT: He so would have got -- so he would have gotten all 660,000 had that agreement not been entered into.

MR. TALARICO: Judge, but at -- before the judge ruled in that binding mediation, he had no idea how much the case was worth. They had told him it was worth $5,000 and then some. That -- that date -- that's the date when he knows when there was a factual pecuniary damage. He knows the case is worth much more than they told him and he's got numbers behind it. Before that, he had nothing to plead.

THE COURT: Respectfully, the case is worth that much against Mr. Gagnon, not necessarily against Mr. Gagnon's -- I believe it was his parents, the two people that settled out of it. The $660,000 is a finding of liability against Mr. Gagnon, isn't it?

MR. TALARICO: Yes, it is.

THE COURT: So how is it a finding of liability against the two people that were settled with?

MR. TALARICO: Because those people were settled with instructions by Mr. Mast that they could not win any money against them. His instructions were that they -- they would get out on summary judgment,

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he would get nothing, take $5,000 as a gift. He was over and over that that -- that that argument was made between Mast and between Dulberg, and some of those documents are part of what we filed.

THE COURT: All right. Anything else, Mr. Talarico?

MR. TALARICO: Not at the moment, Judge. Thank you.

THE COURT: Thank you, sir. Final word, please.

MR. FLYNN: Thank you, Judge. Just briefly with respect to the pecuniary loss, the loss or the injury, which is the language used in the statute, was in January of 2014 when the case against the McGuires, Bill and Caroline McGuire. Caroline was Gagnon's mother. Bill McGuire was the stepfather. That case was foreclosed in January of 2014. No recovery could have been had other than the $5,000 at that point in time. That's when there was an injury.

The question -- the second prong of the analysis is when did he have a reasonable belief that the injury was wrongfully caused. Dulberg had every opportunity, he admitted that he had talked to hundreds of lawyers. He could have asked Balke, he

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could have asked Baudin. He didn't ask any of them, allegedly.

Under Illinois law, he has a duty to investigate if he thinks there is an issue. He had -- he became disillusioned with Mast in 2014. Mast withdrew in March of 2015. Again, the injury is January 2014.

THE COURT: Thank you very much.

MR. TALARICO: Judge, may I say one thing?

THE COURT: You may.

MR. TALARICO: Thank you. The Supreme Court case, the Suburban case makes it clear that being alerted to a problem or alerted to malpractice is not sufficient enough until -- they use the specific word alerted and say that is not sufficient. There has to be a pecuniary loss.

So whether he talked to a thousand attorneys and whether they all told him all different things, he's alerted but he had to face a loss. That's all, Judge. Thank you.

THE COURT: Thank you. He was clearly alerted. Let's cut to the chase. He was hesitant -- he was hesitant to ever even sign the settlement agreement to the point where it took him over two months to do

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it. He clearly had his doubts. He clearly had his lack of faith. He signed the settlement agreement anyway. A year later, the attorneys withdrew. He went to another attorney, still raised the issue. Went to another attorney, still raised the issue. Met with hundreds of attorneys. He was clearly alerted.

When did the pecuniary loss occur? Here is the amazing part, and this is what -- where the disconnect comes on this case and it's why I'm having so much trouble with it, I'm being urged that the pecuniary loss occurred when the decision was given on the binding mediation. But the reason I believe that's a disconnect is because -- for two reasons. The loss that occurred on the binding mediation that is being urged upon the Court is a loss of what appears to be $360,000. The difference between the $660,000 that the mediator indicated the -- were the appropriate measure of damages against Mr. Gagnon and the $300,000 insurance policy limit, that $360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that somebody entered into. We don't know who that

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somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge.

But didn't the pecuniary loss itself, in fact, occur if there was a cause of action to which you were alerted? The pecuniary loss occurred when he only got $5,000. I agree with defense counsel. Statute of limitations lapsed. Merely denying the statute of limitation without more in the depositions and the sworn testimony does not itself create an issue of material fact.

The motion for summary judgment is heard. It is most respectfully allowed. Thank you very much, gentlemen.

MR. FLYNN: Thank you.

THE COURT: Both of you, outstanding. Even though they didn't comply with local rules, I will say gentlemen, to both of you, outstanding pleadings. Very thorough, very well written. I had no issues going through them. I spent three days going through all of them repeatedly, and you both made my job -- well, I'm not going to say easy, but you certainly did your jobs. And I very much

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appreciate your time. Thank you, gentlemen.

MR. FLYNN: Thank you, Judge. And for what it's worth, I apologize for not doing numbered paragraphs on the statement of facts. I did follow that format with Judge Meyer in another summary judgment motion that was granted. This case was originally before Judge Meyer. So --

THE COURT: I take no offense. I take no offense by anybody. The pleadings were what they were, and I had no issue reading them. Thank you all very much for your time.

MR. TALARICO: Thank you, Judge.

THE COURT: Thank you, sir.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, JUDY CARLSON, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Judy A. Carlson

Certified Shorthand Reporter
License No. 084-003347

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AFFIDAVIT

Saira Pasha, being first duly sworn on oath, deposes and states as follows:

1. I am a licensed attorney in Illinois. I graduated from Chicago-Kent College of Law in 2012 and was admitted to the bar the same year. I have a Bachelor of Science degree in Operations and Information Management with an emphasis in information systems from Northern Illinois University. Since August 2020, I have worked as an independent consultant and testifying expert specializing in audit trail analysis, specifically in medical malpractice cases. I consult for and testify on behalf of both plaintiffs and defendants. A large portion of my work focuses on data integrity and completeness of production, such as obtaining prior versions of modified records and identifying, requesting, and obtaining data and records that were created but have not yet been produced. I have reviewed over 300 audit trails from more than 20 electronic medical record systems. The underlying concepts of audit trails for systems and the storage and retrieval of data from a database are essentially universal and apply to many kinds of systems, including court filing systems.

2. An audit trail is a timestamped report of actions performed by all users in a system, such as view, edit, add, delete, print, etc. In addition to audit trails, there are other reports and analytical tools that can be performed on record systems to conduct a comprehensive forensic analysis of electronically stored information.

3. I have been retained as a consultant by The Law Office of Alphonse A. Talarico for the purpose of evaluating file content discrepancies and missing file contents for a case under appellate review.

4. I reviewed the following materials for my analysis:

    - Transcript of court proceeding from 9/16/2022 titled “Dash Dash 09-16-2022 17LA377 Dulberg”
    - Transcript of court proceeding from 9/16/2022 titled “Dilatory Dilatory 09-16-2022 17LA377 Dulberg”
    - Emails to and from court reporters related to the transcripts listed above
    - Report titled “[Compare Report] Dash Dash 09-16-2022 17LA377 Dulberg”
    - Table of Contents of the Report of Proceedings filed on 4/24/2023 for the appellate case (2-23-0072) listing all Report of Proceedings in the file in chronological order
    - McHenry County Circuit Court’s Public Case Access website information for the underlying case (2017LA000377)

5. Based on my analysis of these materials, I conclude to a reasonable degree of professional certainty and recommend as follows:

- There are multiple substantive differences, including modifications and deletions, between two transcripts for the same court proceeding that took place on 9/16/2022. One of the edits is about a material issue: whether expert discovery was closed. To verify the accuracy of what was said at this proceeding, I recommend a forensic investigation, including but not limited to obtaining a copy of the original recording and obtaining an audit trail for the recording system itself. Based on what the audit trail from the audio recording system shows, a live forensic inspection of the system may be warranted.

- The Table of Contents for the Report of Proceedings for the appellate review that was filed on 4/24/2023 does not list all court proceeding recordings that were created in the underlying matter. It is also inconsistent with representations made on the McHenry County Circuit Court Public Case Access website. I recommend an audit trail of the appellate court's filing system(s) be produced to objectively determine which documents were uploaded to its system(s), when they were uploaded, the user(s) who uploaded the documents, and if applicable, which documents were removed from the appellate review file. Based on what the audit trails from the systems show, a live forensic inspection of the systems may be warranted.

- Because there are allegations of removing the existence of recordings from specific court proceedings from the public access website for the McHenry County Circuit, I recommend an audit and forensic investigation to obtain objective facts and the timeline of when data was added and then removed from the underlying case's record. I recommend obtaining the audit trails for McHenry County Circuit Court's filing system(s) and performing a live forensic inspection of the system if warranted by the audit trail data.

Discrepancies between two transcripts for the 9/16/2022 court proceeding

6. A court proceeding was held on 9/16/2022 in Judge Meyer's courtroom in the McHenry County Circuit Court courthouse for the underlying case (2017 L 000377).

7. The McHenry County Circuit Court courthouse uses technology that creates audio recordings of court proceedings which court reporters can access to create transcripts of those proceedings.

8. There are two distinct transcripts for this proceeding. The first transcript was emailed from a court reporter to Plaintiff on 9/26/2022 and is titled "Dash Dash 09-16-2022 17LA377 Dulberg." The second transcript was emailed from a different court reporter to Plaintiff on 9/27/2022 and is titled "Dilatory Dilatory 09-16-2022 17LA377 Dulberg." (The names of the files were presumably created to distinguish the transcripts).

9. There are multiple substantive differences between the two transcripts. Below is one example of a significant substantive difference in a statement made by defense counsel George Flynn about a material issue: expert discovery. The first transcript includes the phrase "You gave a ruling that expert discovery is completed" (page 5, lines 12-13)

So those (indiscernible) all relied on facts regarding the accident itself that would have taken, you know, additional five to ten pages of facts that are -- So we'd like to do that separately. In fact, we might wait until -- You gave a ruling that expert discovery is completed, but I'm going to (indiscernible) but I think (indiscernible).

10. The second transcript includes phrase "if and when expert discovery is completed" for the same page and line numbers:

So those (indiscernible) all relied on facts regarding the accident itself that would have taken, you know, additional five to ten pages of facts that are -- So we'd like to do that separately. In fact, we might wait until if and when expert discovery is completed, but -- I'm going to have some more thoughts, but I think we have plenty to chew on now.

11. These two statements are not only substantively different, they also do not sound alike when spoken aloud.

12. Another substantive difference between the two transcripts is the inclusion of the word "dilatory" in two sentences.

13. In the "Dash Dash 09-16-2022 17LA377 Dulberg" transcript (page 11, line 2) the court reporter uses "(indiscernible)", implying that the word stated by Mr. Flynn could not be understood. In the next line, there are hyphens at the end of "do" in Mr. Talarico's response, implying Mr. Talarico never said any word after "do."

```
just don't see what the issue is.  It seems as if
it's a (indiscernible) tactic to avoid --
    MR. TALARICO:  I don't do --
    THE COURT:  Hold on.  I can't rule on the motion
until I see it.  I can't rule -- I can't determine
```

14. In "Dilatory Dilatory 09-16-2022 17LA377 Dulberg," page 11, line 2, the transcription of defense counsel's statement by replacing the "(indiscernible)" with "dilatory " On the next line, plaintiff's Mr. Talarico's response is transcribed as "I don't to dilatory.." implying that the word was spoken, while the original transcript indicates no word was spoken nor was there an indiscernible sound.

```
I just don't see what the issue is.  It seems as if
it's a another dilatory tactic to avoid --
    MR. TALARICO:  I don't do dilatory --
    THE COURT:  Hold on.  I can't rule on the motion
until I see it.  I can't rule -- I can't determine
```

15. These are two examples of significant and substance differences between the two transcripts that warrant further investigation to confirm accuracy.

16. To verify the accuracy of both transcripts and determine what was actually said by the parties on 9/16/2022, I recommend obtaining the original recording of the proceeding from the McHenry County Circuit Court's audio recording system. I also recommend simultaneously obtaining an audit trail for the specific audio recording file at issue, from 9/16/2022 through present, to identify all parties who accessed the recording, when they accessed it, if any edits were made to the recording, and other objective data pertaining to the veracity of the recording.

Missing recordings of court proceedings from January and February 2018

17. The Table of Contents for the Report of Proceedings from the appellate case was filed on 4/24/2023. It lists all reports of proceedings from the underlying case included in chronological order beginning on 5/10/2018, as seen in the excerpt below:

Table of Contents 2-23-0072

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

DULBERG, PAUL
Plaintiff/Petitioner

v.

MAST, HANS ET AL
Defendant/Respondent

Reviewing Court No: 2-23-0072
Circuit Court/Agency No: 2017LA000377
Trial Judge/Hearing Officer: JOEL D BERG

E-FILED 2
Transaction ID: 2-23-0072
File Date: 4/24/2023 10:03 AM
Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

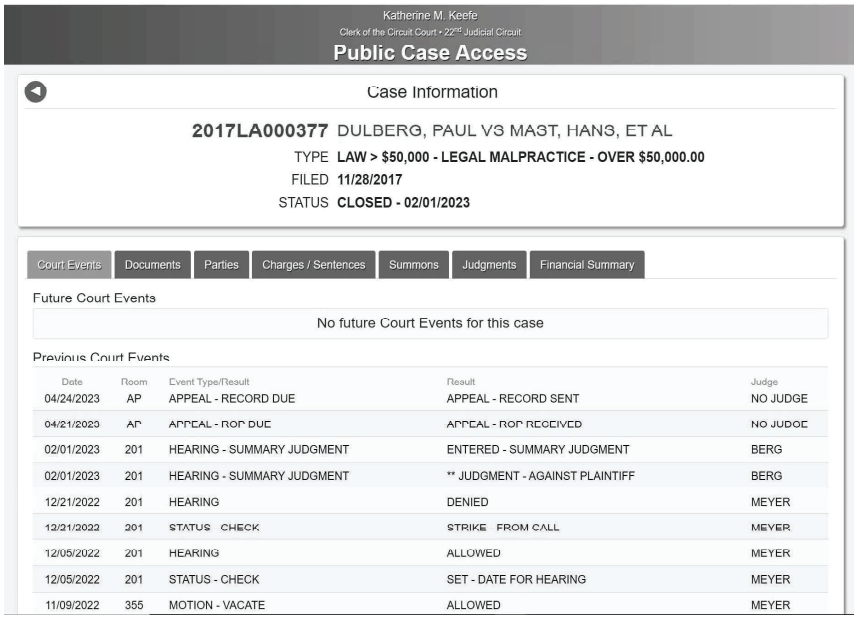
APPELLATE COURT, STATE OF ILLINOIS FIAT JUSTITIA JULY 1, 1877 SECOND DISTRICT

REPORT OF PROCEEDINGS - TABLE OF CONTENTS

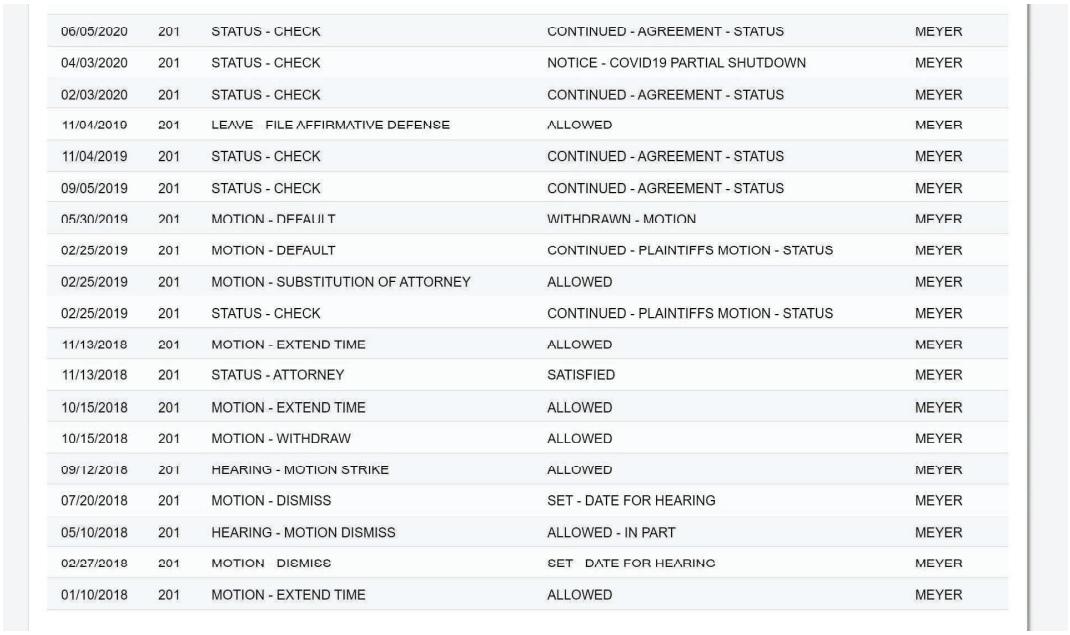
Page 1 of 2

Date of Proceeding	Title/Description	Page No.
05/10/2018	HEARING - MOTION DISMISS	R 3-R 14 (Volume 1)
07/20/2018	MOTDIM	R 15-R 18 (Volume 1)
09/12/2018	HEARING - MOTION STRIKE	R 19-R 28 (Volume 1)

18. The public case access website for the McHenry County Circuit Court allows users to search for court events and documents related to cases. For the underlying case at issue, the top of the "Court Events" tab looks like this:



19. Scrolling to the bottom of the same tab reveals the court events beginning from 1/10/2018.



06/05/2020	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
04/03/2020	201	STATUS - CHECK	NOTICE - COVID19 PARTIAL SHUTDOWN	MEYER
02/03/2020	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
11/04/2019	201	LEAVE FILE AFFIRMATIVE DEFENSE	ALLOWED	MEYER
11/04/2019	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
09/05/2019	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
05/30/2019	201	MOTION - DEFAULT	WITHDRAWN - MOTION	MEYER
02/25/2019	201	MOTION - DEFAULT	CONTINUED - PLAINTIFFS MOTION - STATUS	MEYER
02/25/2019	201	MOTION - SUBSTITUTION OF ATTORNEY	ALLOWED	MEYER
02/25/2019	201	STATUS - CHECK	CONTINUED - PLAINTIFFS MOTION - STATUS	MEYER
11/13/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER
11/13/2018	201	STATUS - ATTORNEY	SATISFIED	MEYER
10/15/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER
10/15/2018	201	MOTION - WITHDRAW	ALLOWED	MEYER
09/12/2018	201	HEARING - MOTION STRIKE	ALLOWED	MEYER
07/20/2018	201	MOTION - DISMISS	SET - DATE FOR HEARING	MEYER
05/10/2018	201	HEARING - MOTION DISMISS	ALLOWED - IN PART	MEYER
02/27/2018	201	MOTION DISMISS	SET DATE FOR HEARING	MEYER
01/10/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER

20. As seen in the screen shot above, there was a court event on 1/10/2018 during which a motion to extend time was granted and a court event on 2/27/2019 during which a motion to dismiss was set for hearing. The third court event listed took place on 5/10/2018.

21. The recordings from the first two court events in the underlying case were not included in the file contents for appellate review. I did perform a line-item check for evert court event; it is possible recordings for other events are also missing.

22. The 1/10/2018 court event was listed as "Motion – Extend Time." I reviewed the Table of Contents to determine if any recording for a "Motion- Extend Time" court event existed and found one for 3/15/2021. Therefore, there is no reason to conclude that the 1/10/2018 recording was not included in the file materials because that type of court event is not recorded.

02/10/2021	HEARING - MOTION COMPEL	R 101-R 124 (Volume 1)
03/15/2021	MOTION - EXTEND TIME	R 125-R 153 (Volume 1)
03/25/2021	HEARING - MOTION COMPEL	R 154-R 159 (Volume 1)

23. Plaintiff/Appellant alleges that the public record access system for McHenry County originally listed recordings for these two 2018 proceedings under the documents tab but were removed at a later date. Below is a screen shot of the top portion of the "Documents" tab for the underlying case. As the image below indicates, "Report – Proceedings" is a type of document included in the list.

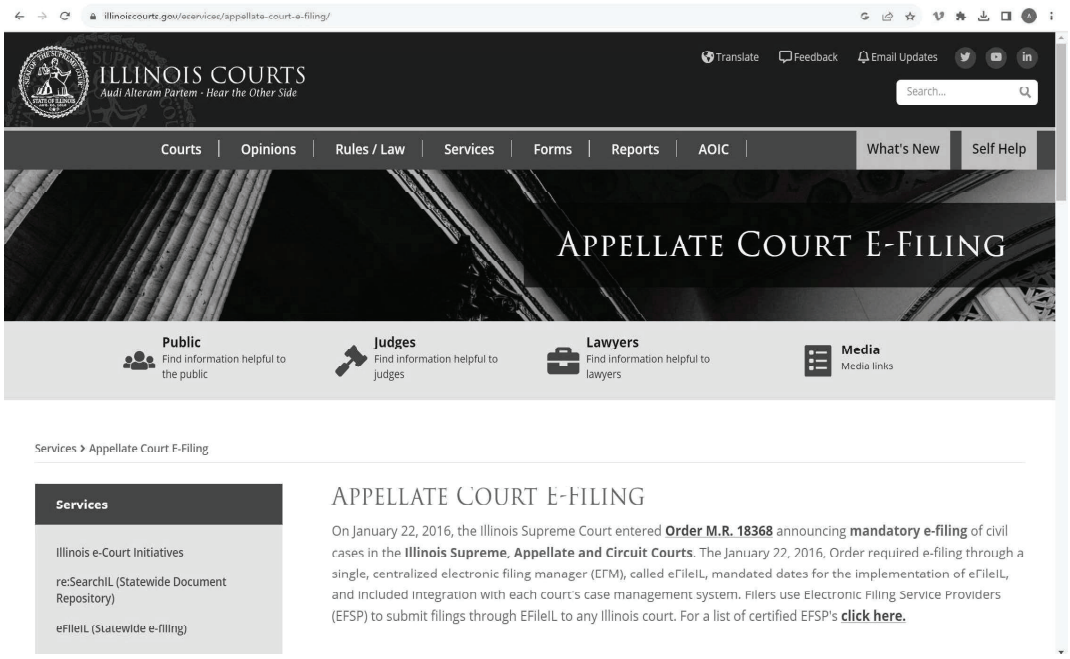


24. To objectively determine if the "Documents" tab of the McHenry County Circuit Court public portal ever included a listing of "Report – Proceedings" for the 1/10/2018 and 2/27/2018 court events, I recommend a forensic audit of the system(s) in which these data elements are stored and used to display information on the public access portal website.

25. To objectively determine if the recordings from the 1/10/2018 and 2/27/2018 court events were 1)ever part of the McHenry County Circuit Court file for the underlying, 2) were transmitted/uploaded to the appellate court filing system, and 3) were ever received or were part of the appellate court's filing system or file, audit trails from each of the respective systems must be generated and produced. Based on the data included in those reports, a live forensic inspection of the systems may be warranted. If audit trails from those systems are not produced, I recommend performing a live forensic inspection of the systems at issue.

26. To objectively determine if recordings were created for the 1/10/2018 and 2/27/2018 court events, an audit trail from the McHenry County Circuit Court audio recording system must be generated and produced. Based on the data contained in those reports, a live forensic audit of the audio recording system may be necessary.

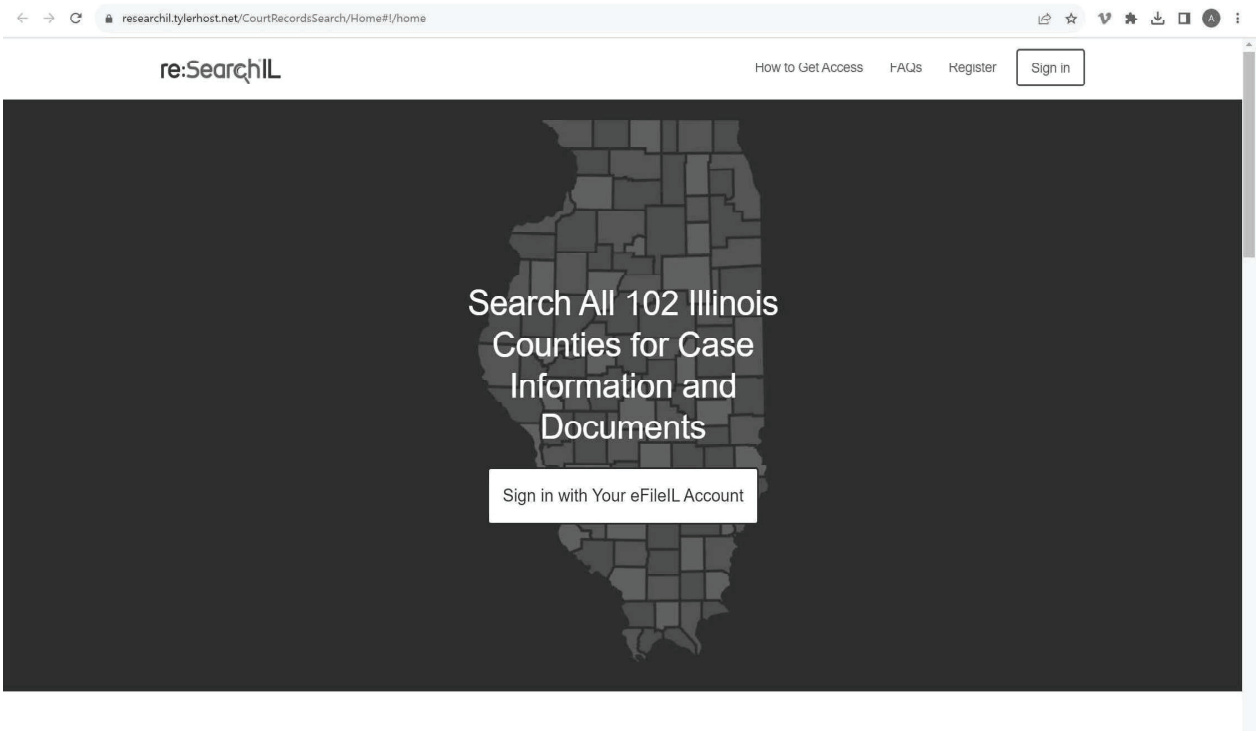
27. The website for Illinois's court systems makes reference to two distinct systems: one document repository system and efiling systems.



28. The website displays several options for efiling:



29. The document repository system link takes you to a separate system called re:SearchIL, managed by Tyler Technologies.



30. Based on my preliminary review of these websites and technologies, the systems used by both the appellate court and the circuit court in this case are capable of producing audit trails for regulatory and compliance reporting. These reports can also be used to verify the integrity of the records and data in this matter.

Under penalty of perjury, I certify the above statements are true and correct.

Saira Pasha

Exhibit F

From: **Alphonse Talarico** contact@lawofficeofalphonsetalarico.com
Subject: Fw: Appellate Court - 2nd District Case No. 2-23-0072: Record
Date: November 3, 2023 at 4:02 PM
To: Paul Dulberg pdulberg@icloud.com, Paul Dulberg Paul_Dulberg@comcast.net, T Kost tkost999@gmail.com

AT

From: DoNotReply-ILCourts@illinoiscourts.gov <DoNotReply-ILCourts@illinoiscourts.gov>
Sent: Tuesday, April 25, 2023 8:48 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Subject: Appellate Court - 2nd District Case No. 2-23-0072: Record

Record - Record on Appeal Filed has been filed by the Appellate Court - 2nd District in 2-23-0072.
This email was sent to contact@lawofficeofalphonsetalarico.com.

ILLINOIS APPELLATE COURT
SECOND DISTRICT

55 SYMPHONY WAY
ELGIN, IL 60120
(847) 695-3750

April 25, 2023

Alphonse A. Talarico
Law office of Alphonse Talarico
707 Skokie Boulevard, #600
Northbrook, IL 60062

RE: Dulberg, Paul R., v. Mast, Hans, et al.
Appeal No.: 2-23-0072
County: McHenry County
Trial Court No.: 17LA377

The electronic record on appeal in the above case has been filed. In most cases, you may access all sections of the electronic record at https://researchil.tylerhost.net. In any other case, a link to the appropriate section(s) of the electronic record will be e-mailed to you from no-reply@efilingmail.tylertech.cloud. (Please ensure that you are a service contact in Odyssey eFileIL.) The court hereby orders briefing due dates as follows:

Appellant's brief due:	05/30/2023
Appellee's brief due:	07/05/2023
Appellant's reply brief due: (Ill. S. Ct. Rs. 341, 342, 343)	07/18/2023

Jeffrey H. Kaplan
Clerk of the Court

cc: George Kenneth Flynn
Michelle Marie Blum

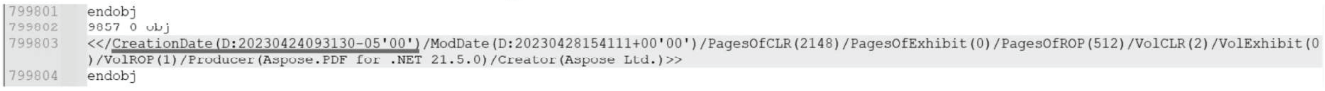
Exhibit G

Paul Dulberg <Paul_Dulberg@comcast.net>

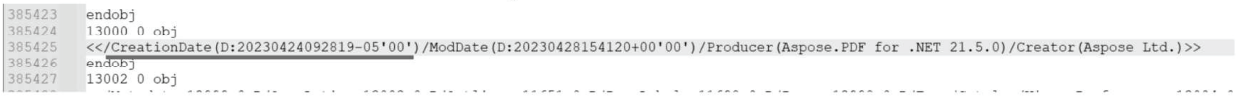
Fri 11/3/2023 4:51 PM

To:Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Common Law Record Vol 1 creation date pdf metadata:



Common Law Record Vol 2 creation date pdf metadata:



Reports of Proceedings creation date pdf metadata:

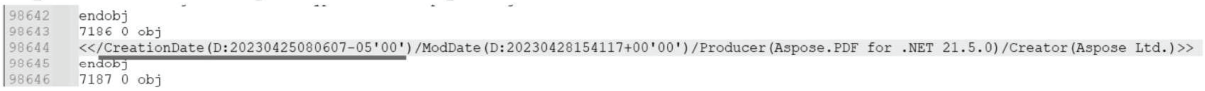


Exhibit H

Paul Dulberg <Paul_Dulberg@comcast.net>

Fri 11/3/2023 4:51 PM

To:Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

DOCUMENT	CREATION DATE	SUBMISSION DATE	
Common Law Record Volume 1	**April 24, 2023 at 9:31 AM**	ndent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:00 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **CERTIFICATION OF RECORD**	**SUBMITTED 29 MINUTES AFTER CREATED**
Common Law Record Volume 2	**April 24, 2023 at 9:28AM**	:/Respondent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:03 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **COMMON LAW RECORD - TABLE OF CONTENTS**	**SUBMITTED 35 MINUTES AFTER CREATED**
Report of Proceedings **(missing pages)**	**April 25, 2023 at 8:06AM**	Trial Judge/Hearing Officer: dant/Respondent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:03 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **REPORT OF PROCEEDINGS - TABLE OF CONTENTS**	**SUBMITTED 22 HOURS BEFORE CREATED**

A10

E-FILED
Transaction ID: 2-23-0072
File Date: 11/3/2023 7:49 PM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

SC

No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,	) Appeal from the Circuit Court of the) 22nd Judicial Circuit, McHenry County,) Illinois
Plaintiff-Appellant	) **Relief Sought: Appellant's Brief Due Date Extended** **) 35 Days to December 8, 2023; Appellant be allowed** **) to retain an auditor to review both the McHenry** **)Circuit Clerks systems and the Appellate Clerks** **)Systems for County Circuit Clerks systems for** **)changed or missing documents; Supplement the** **)Record on Appeal to include the known missing Report** **)of Proceedings;** **) Supplement the Record on Appeal to include the** **) subpoenaed recording of the Deposition of Defendant** **) Hans Mast and to include the original transcript of** **) the changed transcript of September 16, 2022**
HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C.	)
Defendants-Appellees	) Honorable Joel D. Berg, Judge Presiding) Date of Notice of Appeal March 3, 2023) Date of Judgment February 1, 2023, 2017 LA 000377) Date of Post judgment Motion Order: None) Circuit Court 2017LA000377

EMERGENCY MOTION

AND FOURTH MOTION TO EXTEND TIME TO FILE APPELLANT"S BRIEF

(CIVIL)

EMERGENCY MOTION TO CONDUCT AN AUDIT OF THE RECORD ON APPEAL TO DISCOVER CHANGED OR MISSING DOCUMENTS; SUPPLEMENT THE RECORD ON APPEAL AND, IF GRANTED, FOR 35 DAYS EXTENSION OF TIME AFTER THE TRIAL

COURT CLERK HAS SUPPLEMENTED AND/OR CORRECTED THE RECORD ON APPEAL TO FILE APPELLANT'S BRIEF

I. APPELLANT'S FOURTH MOTION FOR AN EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

1) On November 2, 2023, Plaintiffs Attorney communicated with Appellees' Attorney indicating the nature of this Motion, to which Appellees' Attorney indicating his objection to the Motion. (Ill. S. Ct. 361(a) and Local Rule Article 1 General Rules 102(b).

2) Appellant's Attorneys e-mailed a copy of this Motion to Appellees' Attorneys before filing it.

3) The number of days previously requested is 211, the number of days previously granted is 155, and the total number of days is 155. (Local rule 104 (a)(l))

4) The total number of days requested, and the total number of days granted to other parties are (0) none. (Local Rule 104(a)(2))

5) The number of days that will have elapsed from the date of filing of the Notice of Appeal to the date that the case will be ready for disposition is three hundred twenty-nine days. (Local Rule 104(a)(3), Local Rule 106(b) and Local Rule 108(a) & (b))

6) Appellant filed his Notice of Appeal on March 3, 2023.

7) The Record on Appeal was filed on April 24, 2023 and made available for download on April 25, 2023 at 8:48 AM. (Please

see Appellant Exhibit F attached)

7a. Common Law Volume 1 has a creation date of April 24, 2023 at 9:31 AM. Common Law Volume 2 has a creation date of April 24, 2023 at 9:28 AM. The Reports of proceedings has a creation date of April 25, 2023 at 806 AM. (Please see Exhibit G attached)

7b. Common Law Record Volume 1, Common Law Record Volume 2 and Reports of proceedings all have a submission date of April 24, 2023 from 10:00 Am to 10:03 AM. (Please see Appellant Exhibit H attached)

8) Appellant's Brief due date was first extended sixty days by this Honorable Court to July 31, 2023.

9) Appellant's Brief due date was thereafter extended a second time by this Honorable Court to September 29, 2023.

10) Appellant's Brief due date was extended a third time by this Honorable Court to November 3, 2023.

11) Twenty-One days is insufficient to prepare and file Appellant's Brief for the following reasons:

(a) The record on appeal consists of three volumes totaling 2,660 pages; Appellant requested the entire record be prepared, but Appellant's attorney has discovered missing Report of Proceedings, mismatched sections,

documents with only one of the Defendants' names where it should be all, Memorandums of Law where the body of the motions should be, violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal (Revised- Effective March 1, 2022) regarding §1. Definitions (i) Hyperlink... and so on. (Investigation Continues.)

(b) Appellant's attorney has made extensive efforts to have Appellant's Brief ready for filing by the November 3, 2023 considering his extremely heavy court schedule, with two active Appellate cases, two active Decedent's Estates, a First Judicial Law Division with nineteen named Defendants … and being a sole proprietor without full time staff and the following facts that relate to this matter.

II. APPELLANT's BASIS FOR AN EMERGENCY MOTION

1) Appellant has recently discovered that the Trial Court Judge for this case, 2017LA000377 from inception on November 28, 2017 to December 21, 2022 was a friend of Defendant The Law Offices of Thomas J Popovich, P.C.'s owner Thomas J. Popovich and said Judge had recused himself from at least one

case where Thomas J. Popovich was a named Defendant. (Please see Appellant's Exhibit A attached)

2) That the Trial Court Judge for this case, 2017LA000377 from inception on November 28, 2017 to December 21, 2022 was also the Judge at all times in 2012 LA 000178 where Appellant herein was represented by the Law Offices of Thomas A. Popovich P.C. and Thomas J. Popovich individually. (Please see Appellant's Exhibits B page 3 L22 to page 4 L5, C page 4L8-10) where the afore- mentioned Judge acknowledged this fact at least two separate times on the record.

3) That the Trial Court Judge refused a subpoenaed certified electronic thumb drive complete recording by the certified Shorthand Reporter of the deposition of Defendant Hans Mast which reflects the violations of Supreme Court rules and local rules during a hearing to strike the Deposition of Defendant Hans Mast. (Please see appellant's Exhibit D page 477 L21-24 to page 481 line 9)

4) Appellant has discovered missing Transcripts and a materially changed transcript to support Appellant's request for a professional audit trail be produced by an independent service and to supplement the questionable Record on Appeal. The Auditor's Report was finalized and submitted late in the day

yesterday, November 2, 2023 (and was the reason for the delay in filing and serving of this Emergency Motion).(Please see Appellant Exhibit E which is a sample test of changed and missing transcripts by an independent service.)

Wherefore, Plaintiff-Appellant prays that this Honorable Court recognize Plaintiff-Appellant's Attorney good faith and extensive efforts to comply with the extended briefing schedules, the problems caused by the Record on Appeal based on its page size and the errors by the Clerk of the 22nd Judicial Circuit in preparation of the Record on Appeal, grant Appellant a 35-day extension of time to file Appellant's Brief, allow Appellant to amend his Docketing Statement to include related cases, order the Clerk of the 22nd Judicial District to amend the Record on Appeal to include all missing documents and hyperlinks, allow Appellant to Request the Record on Appeal for all related cases, file and for any and all additional relief this Honorable Court deems equitable and just.

Dated: November 3, 2023

Respectfully submitted,

By: /s/ Alphonse A. Talarico ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico

E-FILED
Transaction ID: 2-23-0072
File Date: 11/3/2023 7:49 PM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

PROOF OF DELIVERY

SC

I am sending this Motion for Extension of Time to File Appellant's Brief, Proposed Order and Notice of Filing to George K. Flynn and Michelle M. Blum , Karbal Cohen Economou Silk Dunne, LLC., 200 S Wacker Drive, Suite 2550, Chicago, Illinois 60606, Tel: (312) 431-3700, Fax: (312) 431-3670, gflyn@karballaw.com, mblum@karballaw.com by an approved electronic filing service provider (EFSP) on November 3, 2023 at 4:59 p.m.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement herein is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Dated: November 3, 2023

/s/ Alphonse A. Talarico ARDC
6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

EXHIBIT A

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McDonald
v.
Poborich

) Case No. 12LA326

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

FILED
OCT 19 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): friends with Defendant

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: _____

JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

Status on November 7, 2012 at 9:15am

☒ Assigned to the Civil Division, Courtroom 202

(Judge Michael J. Chmiel currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 10-19-12

Michael J. Sullivan, Chief Judge

Michael Holden
33 N. LaSalle St. Ste 2000
Chicago, IL 60602

Daniel Konicek
21 W. State St
Geneva, IL 60134

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on: 10-19-2012

** FILED ** Env: 17220244
McHenry County, Illinois
17LA000377
Date: 3/24/2022 10:51 AM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 3rd day of February, 2020, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE CLINTON LAW FIRM
BY: MS. JULIA C. WILLIAMS
On behalf of Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC
BY: MR. GEORGE K. FLYNN
On behalf of Defendants.

Received 03-24-2022 10:58 AM / Circuit Clerk Accepted on 03-24-2022 11:13 AM / Transaction #17220244 / Case #17LA000377
Purchased from re:SearchIL

THE COURT: Any other agreed, uncontested or sides?

MS. WILLIAMS: Good morning, Your Honor.

THE COURT: Good morning.

MS. WILLIAMS: Julia Williams. We're here on Dulberg vs. --

THE COURT: Okay. The Dulberg vs. Mast.

MS. WILLIAMS: Yes, that's correct. And I'm --

MR. FLYNN: Good morning, Your Honor.

MS. WILLIAMS: -- for plaintiff.

MR. FLYNN: George Flynn for defendants.

THE COURT: Okay. What are we doing?

MS. WILLIAMS: We're just going to set it out again for status on discovery. We are pretty well finished with written discovery, at least between the parties.

THE COURT: Really old for F1 written --

MS. WILLIAMS: Right. Here's our -- we're actually -- we should be done today. We had some 201(k) issues.

THE COURT: Okay.

MS. WILLIAMS: We are going to the law firm to look through their -- through their documents today. I believe everything has been produced, but we just

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want to verify -- there were some blank pages, and we just want to verify --

THE COURT: Okay.

MS. WILLIAMS: -- what those are.

So I think we're actually going to be fully completed with that today and looking to do -- getting ready to do deps, I think, is our next step --

THE COURT: How many are --

MS. WILLIAMS: -- for depositions.

THE COURT: How many F1 deps do you anticipate?

MS. WILLIAMS: Well, we'll have probably two. One from the firm and one -- defendant counsel and then defendant firm.

THE COURT: Okay.

MS. WILLIAMS: And then, obviously, the plaintiff. Now, whether we need more witness deps -- this is a legal malpractice case. Witness deps were taken in the underlying case. I don't know if we're going to need to take those a second time to --

THE COURT: I think I pre-tried the underlying case. I have a recollection of this, so -- but I'm not a hundred percent sure, so just throwing that

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out there...

MS. WILLIAMS: Okay.

MR. FLYNN: I think I did see Your Honor's name in connection with maybe one order in the case; but I don't see it as an issue.

THE COURT: Okay. I'll periodically throw it out there. But in any event, so if we come back in 60 days, do you think that gives you enough time to complete?

MR. FLYNN: I think it gives us enough time to complete the main F1 witnesses.

MS. WILLIAMS: At least the three parties.

MR. FLYNN: There were -- there were four -- four or five doctors deposed in the underlying case. And four other five other --

THE COURT: All right.

MR. FLYNN: -- (indiscernible). I don't know if we'll need to redo everybody, but I think we'll have a better idea after we take the party deps.

THE COURT: All right. Let's put it out 60 days. Can you make April 3rd, a Friday?

MS. WILLIAMS: Yes. Let me just double-check.

THE COURT: Okay.

MS. WILLIAMS: But I believe that's just fine.

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And that will be status completion of F1. That's -- yes.

THE COURT: That's just to tell me what we're supposed to be doing.

MS. WILLIAMS: Sure. So status completion of F1s on April 3rd, and we'll come back.

THE COURT: Okay.

MS. WILLIAMS: Thank you very much.

MR. FLYNN: Thanks, Judge.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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Purchased from re:SearchIL

STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, MAUREEN S. URBANSKI, an Official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Maureen S. Urbanski

Certified Shorthand Reporter
License No. 084-003308

Received 03-24-2022 10:58 AM / Circuit Clerk Accepted on 03-24-2022 11:13 AM / Transaction #17220244 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 11951962
McHenry County, Illinois
17LA000377
Date: 1/25/2021 11:03 AM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 10th day of May, 2018, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE GOOCH FIRM, by
MS. SABINA WALCZYK,
On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.

Received 01-25-2021 11:17 AM / Circuit Clerk Accepted on 01-25-2021 11:24 AM / Transaction #11951962 / Case #17LA000377
Purchased from re:SearchIL

THE COURT: Let's go to work on Dulberg.

MS. WALCZYK: Good morning, Your Honor.

THE COURT: Good morning.

MS. WALCZYK: Sabina Walczyk on behalf of Dulberg.

MR. FLYNN: Good morning. George Flynn on behalf of the Popovich firm and Hans Mast.

THE COURT: It is -- it is rare when I know both the plaintiff and the defendant ahead of time. Only through the courtroom, but still unusual.

I looked at -- I'm going to tell you what I'm thinking. And then if you choose to argue, you can to -- if you wish to convince me that I'm wrong; or we can go forward. Either is fine.

I felt that the 2-615 motion was appropriate because I felt that -- and I -- for a specific reason, not -- not perhaps all the reasons that were cited by the defendant. I felt that the complaint, when it talked about how -- I'm looking for the words, misled -- when it said that the attorneys misled -- lied and misled Mr. Dulberg, I felt that there was some specificity that was going to be required. Because they -- ultimately, these things are going to factor into the statute of

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limitations issue. And if you're going to say that it was a breach of his duty in lying or misleading, I think we need more particularity in the allegations. You can't just make a conclusory statement to that effect.

That's my perspective. What would you like -- I'll give you an opportunity -- opportunity to replead; but if you want to argue against my thinking, I'll listen.

MS. WALCZYK: Well, Your Honor, I -- I won't argue with the Court. If Your Honor would like some more specificity as to those certain terms, we can certainly replead and plead those a little bit more specifically to --

THE COURT: And with respect to the discovery rule issue --

MS. WALCZYK: Uh-huh.

THE COURT: -- since it's going to come up one way or another, although I think it's a question of fact, I would like to see it touched upon, because I'm not following the -- the fact that he got more from the arbitrator than had been initially suggested by his attorneys, isn't really telling me anything. So I need maybe a little bit more

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information to understand the relationship of the two things.

With respect to the issue of -- on the 2-619, I felt that in light of how I was going with the 2-615, I really couldn't rule on the -- the application of the discovery rule. And, ultimately, I saw that in the long run, it was going to be a question of fact, and I would probably need -- and I could only address that with some more facts than what's just contained in the complaint.

With respect to estoppel, I didn't agree -- and you can tell me why you think I'm wrong, but I didn't agree with the argument that you were making because it -- it, carried to its logical conclusion, I could mislead and lie to my client about the -- about the implications and why he should settle, and then once he agrees to it, then I'm -- I'm released from my breach of my duty.

So I don't think that it -- that that was the type of scenario involved when the courts were discussing the estoppel issue.

Do you have anything -- do you want to contest that?

MR. FLYNN: Not at this time, Your Honor. I --

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Purchased from re:SearchIL

I've always learned that it's better to quit while you're ahead. And with -- without giving a roadmap to the plaintiff, I do think that having their best complaint on file benefits us all.

THE COURT: Yes.

MR. FLYNN: So going back to the 2-615 issues, again, a legal malpractice case, they've got to plead and prove, not only the legal malpractice, but the elements of the underlying case. And it seemed to me, and as we pointed out, that -- that all of the allegations were very conclusory. That they would have gotten more, they wouldn't have done this, that the -- that Hans Mast and the Popovich firm should have undertaken additional actions in the underlying case, but they don't say what those are. And I think that they -- they're required to if they believe that there was a breach of a duty that led to damages.

The high-low agreement, which is very confusing to me and to my client, frankly, because he's never seen it, and as I understand it, that's outside of the four corners --

THE COURT: It is outside, but it did lead to an area where I was also a little bit confused. And

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I -- and I think you touched on -- I'll ask you: Is the complaint having to do with the settlement with the McGuires, or does it somehow relate to the suit that continued with respect to Gagnon and the high-low agreement?

MS. WALCZYK: Well, I think it's a little bit of both, because it started with the suit against McGuires, which settled. And then it looks like there was a high-low agreement signed.

THE COURT: Okay.

MS. WALCZYK: And --

THE COURT: Was it signed by Mr. Mast?

MS. WALCZYK: Oh, I believe it was signed by Mr. Dulberg. I haven't seen it.

THE COURT: Okay.

MS. WALCZYK: However, we can attach it if -- if you want --

THE COURT: If -- if you are going to allege malpractice as a result of entering into the high-low agreement, yes, I would require you, then, to attach it and to make that a little more explicit.

MS. WALCZYK: Yes.

THE COURT: Because I -- I came away thinking

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that was not part of your complaint, but I wasn't a 100 percent sure.

Also, let's see -- yeah, I need to know with some specificity what facts were concealed and how he was misled. I had problems with, particularly, I had -- paragraphs 20 and 21 and felt that you should have included more in that. And I won't probably say more than that.

MS. WALCZYK: Uh-huh.

THE COURT: And I -- on the estoppel argument, as I've said, I don't think that it is clear that the signing of the release was something that could be assumed to be knowing and voluntary when the plaintiff is alleging that he was misled as to the ramifications of that. Excuse me. Let's see. Okay.

Any -- so I'm granting on the 2-615. I will grant you leave to refile or replead.

MS. WALCZYK: Okay.

THE COURT: And what else? Is there anything else that we need?

MR. FLYNN: Just as a housekeeping, again, depending on what theory you're going under, if it's related to the Gagnon settlement, and we may have

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more people coming to the party; but if not, then that's it.

THE COURT: Yeah. I mean, if you're going to draw that in, then I need it a little more explicit.

MS. WALCZYK: Okay.

THE COURT: And I got -- in fact -- I'm reading from my notes. I need facts on what was false, misleading and what -- what you mean by coercion.

MR. FLYNN: So the 615 is granted with leave to replead.

THE COURT: Yes.

MR. FLYNN: I wasn't clear, I guess, on whether there's an actual ruling on the 619 or --

THE COURT: 619, I'm denying because --

MR. FLYNN: Okay.

THE COURT: -- there's a question of fact --

MR. FLYNN: Okay.

THE COURT: -- at this stage.

And I think that even if they include additional facts in their complaint, I would still come back to it being a question of fact, because I -- there's going to be a lot more about their relationship than I think can be reflected in merely the complaint. I would -- so I mean, if you were to

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bring another 2-619, feel free.

MR. FLYNN: Sure.

THE COURT: But I would still think it's going to be a question of fact as to what is clear -- Dulberg's claims are with respect to how he was misled or facts were concealed.

MR. FLYNN: Okay.

THE COURT: Because it's going to depend on their interaction.

MR. FLYNN: And it is the -- the language of statute is "knew or reasonably should have been known." And, again, this -- he does have counsel that came in right after my clients got out. So, again, the Blue Water Partners case says you -- potentially, you can't bury your head in the sand.

THE COURT: No, you can't. But because I -- of the absence of information --

MR. FLYNN: Fair enough.

THE COURT: -- I was reluctant to go further. The statute of limitations, you might get a little bit farther, but I still might run into a fact question.

MR. FLYNN: Understood.

THE COURT: So how long do you need?

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MS. WALCZYK: If I could have 28 days, Your Honor.

THE COURT: Sure.

MS. WALCZYK: We have a trial coming up.

THE COURT: And to answer or otherwise plead?

MR. FLYNN: 28, please.

THE COURT: All right. That would -- excuse me. Why don't we come back in -- 60 days is July 9th. How about July 11th, a Wednesday? Or do you have -- it's all the same to me, so long as I am here.

MR. FLYNN: Let's see. I believe I'm going to be out of state that week.

THE COURT: Okay. When is it convenient for you to come here? She's here all the time, so I don't --

MR. FLYNN: The following week would be --

THE COURT: What day works for either of you the following week?

MS. WALCZYK: We may actually have a trial that week. That may or may not go; I'm not sure at this point. At least the first two days, if we could do towards the end of week, that would be great for us.

THE COURT: 20th?

MR. FLYNN: 20th works.

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MS. WALCZYK: That's perfect.

THE COURT: All right. We'll see you on July 20th.

MR. FLYNN: Thank you, Your Honor.

MS. WALCZYK: Thank you very much.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, MAUREEN URBANSKI, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Maureen S. Urbanski

Certified Shorthand Reporter
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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 21st day of December, 2022, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by MR. ALPHONSE A. TALARICO (via Zoom),

On behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by MR. GEORGE K. FLYNN (via Zoom),

On behalf of the Defendants.

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THE COURT: For the record, this is on Dulberg versus Mast.

Plaintiff's counsel, if you could identify yourself.

MR. TALARICO: Yes, your Honor. My name is Alphonse Talarico.

THE COURT: And defendant.

MR. FLYNN: Good morning, your Honor. George Flynn for the defendants.

THE COURT: And for the record, I -- Mr. Dulberg is in attendance, and once again, I hope we're not being recorded. That being said, we'll move on to the motion.

Plaintiff, you have a motion.

MR. TALARICO: Yes, Judge. I'd like to -- we filed our motion -- we filed -- counsel filed a response, we filed a reply. We'd like to rely on that, with one additional presentation or request of the Court.

THE COURT: Okay. What is that?

MR. TALARICO: I'd like to offer an informal proof -- an offer of proof, which is the exact and -- and -- what is the best way -- the audio transmission of the deposition, in full, with all

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the parties, which was sent to us through a subpoena.

THE COURT: Okay. You mean from Mr. Mast's -- or Mast's -- deposition?

MR. TALARICO: Correct. Everything that -- that would help the Court understand all of these problems. Because you --

THE COURT: Well, we do have -- we have the transcript.

MR. TALARICO: Yes, your Honor, but the transcript is selective.

THE COURT: Okay. Mr. Flynn, comment.

MR. FLYNN: I would object, Judge. The plaintiff has already filed a second amended motion and response. He's had plenty of opportunity to bring this to the Court's attention.

THE COURT: Okay. Mr. Talarico, final word.

MR. TALARICO: Judge, this is for the aid to -- for the Court -- this Honorable Court to understand what's going on.

As to the second amended, I replied to that, that -- the only difference between the amended and the second amended, Judge, was the stamp on Exhibit 17 didn't show up, so I re-filed it. But

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it was filed timely. As soon as I realized the stamp didn't show up on Exhibit 17, I re-filed it with an emphasis on the Exhibit 17. Mr. Flynn received it on time with notification that it's Exhibit 17.

THE COURT: Well, that's not the issue, but the issue is --

MR. FLYNN: It's not. And just for the record, there was a typo in my response brief. I wasn't taking issue with the timing of the filing of the second amended, other than the fact that it's two years after the deposition.

THE COURT: But that -- that's a different --

MR. FLYNN: But --

THE COURT: That's a different issue.

MR. FLYNN: Exactly.

THE COURT: The first issue is whether or not to -- the Court will accept plaintiff's request to submit the audio of the deposition at issue of Mr. Mast that, I believe, was taken June 25th, 2020.

And, Mr. Talarico, anything else to say in support of that oral motion?

MR. TALARICO: No, Judge. That -- that's -- if you'll accept it, it's in the -- I believe

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Mr. Dulberg is in the courtroom, and if he may approach the bench, he will hand it to you.

THE COURT: No, he's on Zoom. In any event, I'm going to deny the -- oh, are you -- Come on up.

MR. SCOTT DULBERG: Do you mind if I just hand it here?

THE COURT: Well, no, you're going to come up. I'm not going to accept that.

Your name, sir?

MR. SCOTT DULBERG: Scott Dulberg.

THE COURT: Okay. And you're here to deliver a Zip drive of the audio; am I correct?

MR. SCOTT DULBERG: Yes.

THE COURT: All right. And I -- But I'm going to rule on plaintiff's motion. I'm not going to accept it. I'm not going to consider it for purposes of the hearing on this motion. So you can keep it, but thank you for -- for showing up and bringing it.

MR. SCOTT DULBERG: Thank you.

THE COURT: Because -- I'm not going to accept it because I don't think it adds, materially, to my understanding of what transpired. I've got the deposition transcript. I've read the parts that I

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believe are relevant. I've read the motions. I've heard this argument.

I don't think that the audio tran- -- the audio recording is going to assist me in any way, based upon my understanding of what the ultimate issue is on this motion.

So that will be denied, and we'll incorporate that into the motion -- or in the order. I'm sorry.

Moving on to the motion, this is plaintiff's motion to either re-depose or strike, or both, the deposition of Mr. Mast taken June 25th, 2020; am I correct?

MR. TALARICO: Yes, your Honor.

THE COURT: And, further, am I correct that the -- the reason for this is issues with respect to what's identified as Exhibit 12?

MR. TALARICO: No, your Honor. That's just one small part of it. The entire motion is based on Supreme Court rules and on -- or in effect at the time the deposition was taken.

THE COURT: No, no, no. Tell me the substance. Don't tell me what the rules are. Because my reading of your motion focused on Exhibit 12 and the

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failure -- or the alleged failure to produce it prior to the deposition or give an exhibit list.

So tell me, what is the reason why you want to re-depose Mr. Mast? Because I think that's ultimately your request.

MR. TALARICO: That's right. Judge, within our motion and our reply, we've indicated that it's not just Exhibit 12. Focusing on Exhibit 12 makes it too easy. The entire deposition -- the Internet went down almost the entire time. It's in the notes that I highlighted. It's in the transcript. They were not seeing Exhibits 1 through 15 at the same time. They weren't seeing them. They weren't being uploaded to the admin- -- the administer of -- of oath. 12 wasn't even part of it. It was added, I don't know, 14 days later.

THE COURT: But, ultimately --

MR. TALARICO: So we --

THE COURT: -- the exhibits were seen; am I correct?

MR. TALARICO: No. They were not seen.

THE COURT: None of the exhibits were seen?

MR. TALARICO: They were not seen in accordance with the rules, your Honor.

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THE COURT: That's -- see, you --
MR. TALARICO: The rules --
THE COURT: You throw those phrases in, in accordance with the rules.
Did the deponent see the exhibits, yes or no?
MR. TALARICO: No.
THE COURT: Mr. Flynn, comment.
MR. FLYNN: Judge, to say that the Internet was down for --
THE COURT: I don't want to go down there. Did the -- did Mr. Mast see the exhibits?
MR. FLYNN: My recollection and understanding is that Mr. Mast saw all of the exhibits. There may have been an issue with a portion of Exhibit 12; however, he was -- he was cross-examined at Page 49 through 52 regarding Exhibit 12, generally speaking, and the case law that was contained in his file.
The bottom line is, it doesn't add anything. He didn't recall the specific cases that he discussed with --
THE COURT: Did he see the exhibits? That's all I wanted to know.
MR. FLYNN: I don't know that he saw the full

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exhibit in its entirety.

THE COURT: Okay.

MR. FLYNN: It -- But it wasn't necessarily provided to him, so --

THE COURT: For purposes of this record, Exhibit 12 is copies of case law; am I correct?

MR. FLYNN: Generally speaking, correct.

THE COURT: Mr. Talarico.

MR. TALARICO: That's correct, Judge. But, again, we're not just focusing on Exhibit 12. We're focusing on all the exhibits that were supposedly shown to Mr. -- to Mr. Mast. He didn't see them. He didn't see them.

THE COURT: Okay.

MR. TALARICO: There was confusion as to what the numbers were.

THE COURT: Whose exhibits were they?

MR. TALARICO: They were the plaintiff's, but it was the defendant's equipment that caused the problem.

THE COURT: And the plaintiff conducted the deposition; am I correct?

MR. TALARICO: That is correct.

THE COURT: And the plaintiff was aware of

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any -- the plaintiff's attorney, at that time, was aware of any glitches or difficulties with respect to having the deponent view all of the exhibits; am I correct?

MR. TALARICO: That's correct, your Honor.

THE COURT: And the plaintiff (sic) who was representing Mr. Dulberg at the time, for whatever reason, did not raise an objection at the time or ever with respect to the manner in which the deposition proceeded.

MR. TALARICO: No, your Honor. (Indiscernible) she left it to me -- or to the following counsel. She said to Mr. Dulberg, Mr. Dulberg, whatever those objections are, your next counsel has to make them.

THE COURT: Okay. Well, that -- but the handling attorney at the time who represented Mr. Dulberg's interests proceeded with the deposition and did not give notice to anyone of any complaint with respect to the manner in which it was conducted; am I correct?

MR. TALARICO: You are correct.

THE COURT: Okay. What else do you want me to know?

MR. TALARICO: I want you to know, Judge, also,

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that not only does the objection have to take place at the time of the deposition itself. When the evidence is being brought -- when the evidence is being subject to admission, I can bring that -- I can raise that now and object to it.

THE COURT: Okay. But the -- the exhibits were always in control of the plaintiff's attorneys, and you're asking to penalize the defendant for what appears to be a -- an issue you have with the manner in which prior counsel conducted the deposition.

MR. TALARICO: No, your Honor. It's -- as far as the defendant, it's their electronic equipment that failed.

THE COURT: And there were no objections made at the time or subsequent, and this motion was brought approximately two and a half years after the deposition in question; am I correct?

MR. TALARICO: You are correct. But it's also within the time of the ruling. I can do this now.

THE COURT: You can file any motion you like, but I'm -- I'm going to deny your request. I don't think that there's any reasonable basis under which I can compel the defendant to appear for a second deposition because of these issues. It appears that

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prior counsel was satisfied with the -- her ability to conduct the deposition, and she was always in control of all of the exhibits, so I don't see a problem there.

If anybody should have been raising an objection about the problems, it should have been defendant, not -- not the plaintiff two and a half years after the deposition they proceeded with. So I'm going to deny the request.

Anything else that we need to do today?

MR. FLYNN: Judge, just that there was some additional relief requested in the latest reply brief filed, and that included a request that the Court take judicial notice of -- what's really an implication. I think this is on Page 17 of the response.

I would just request that that specific request for relief also be denied in connection with the motion.

THE COURT: Okay. Let me just call it up. I'm looking at Page 18. What is it?

MR. FLYNN: I believe it was on Page 17 of the response -- I'm sorry -- the reply brief that was

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just filed.

THE COURT: Okay. The notice of the adjudicative facts?

MR. FLYNN: Correct. I think it says in Paragraph 12(j), plaintiff requests that this Honorable Court take judicial notice of the adjudicative fact that the references to Restatement (Second) of Torts Section 318 impliedly references Tilschner versus Spangler.

THE COURT: That -- that's not really ultimately the purpose of this motion, and it's not contained in the prayer for relief. That strikes me as a new motion. Wasn't going to consider it, and so I'm -- to the extent that I have to rule on it, on an issue I don't even think that's in front of me appropriately --

MR. FLYNN: It's just relief that was in -- in this response that I didn't have any opportunity to address.

THE COURT: I will -- I will deny all aspects of plaintiff's motion.

MR. FLYNN: Okay.

THE COURT: I think that covers it.

Is there anything else?

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MR. FLYNN: Thank you. That's it.
THE COURT: Okay. We have a future date, don't we?
MR. FLYNN: We have a pending motion for summary judgment, and plaintiff's response is due, I think, next week.
THE COURT: Okay. All right.
MR. FLYNN: But I don't --
THE COURT: You're back February 1st, and I -- Mr. Flynn, could you draft the order and please get it in as early as possible.
MR. FLYNN: I will. And, Judge, we spoke last time about your continued handling of the case. Do you have any information to share in that regard?
THE COURT: Nope. Nope. I -- I'm in a different division and, um, I can't take cases with me.
MR. FLYNN: Okay.
THE COURT: That would be interesting, but no, I can't take them. I can't take them with me. Too many --
MR. FLYNN: Okay. So --
THE COURT: -- egos involved. Not -- I'm not

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referring to Judge Berg.

MR. FLYNN: Sure.

THE COURT: But there -- Yeah, there's too many hurdles to try --

MR. FLYNN: I understand. So the schedule stands?

THE COURT: The schedule stands. If you wish to have that addressed, you'll have to bring it in front of Judge Berg.

MR. FLYNN: Okay.

THE COURT: I will warn you, he's got a small claims call. I would -- I'm warned to avoid Thursdays and Fridays for hearing because those, apparently, are heavy days.

But you may find out the hard way. Who knows?

MR. FLYNN: Okay.

THE COURT: All right.

MR. FLYNN: Thank you very much, your Honor.

THE COURT: You can send in the order. I will sign it when I see it.

MR. FLYNN: Thank you.

THE COURT: All right. Thank you. Have a good

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day.

MR. FLYNN: You, too. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, KATHLEEN STROMBACH, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Kathleen Strombach
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Official Court Reporter
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STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)
vs.) No. 17 LA 377
THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS MAST,)
Defendants.)

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable JOEL D. BERG, Judge of said Court of McHenry County, Illinois, on the 1st day of February, 2023, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE TALARICO, by
MR. ALPHONSE TALARICO, (Via Zoom)
On behalf of the Plaintiff;
KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendant.

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THE COURT: You are here on Dulberg against Mast?

MR. FLYNN: I am, Judge.

THE COURT: I have the other side here on that as well. Well, no. I have Mr. Dulberg here. I have Mr. Talarico as well. Mr. Talarico, are you ready for a hearing if I call it early, sir? I'm sorry, sir, you are muted. I'm not --

MR. TALARICO: Yes, your Honor.

THE COURT: Good morning. Are you ready for hearing a couple minutes early, sir?

MR. TALARICO: Absolutely.

THE COURT: Thank you very much. This is Dulberg against Mast, et al. I have Mr. Talarico present via Zoom as is Mr. Dulberg. Counsel, would you please state your name?

MR. FLYNN: Thank you, your Honor, George Flynn on behalf of the defendants.

THE COURT: Thank you, Mr. Flynn. We are before the Court for a hearing on pending motions. The one most notable is the summary judgment. What else are we hearing this morning, gentlemen?

MR. FLYNN: That's all we have, as far as I know, Judge.

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THE COURT: Good. Because that's all I read.

MR. TALARICO: That's all I know, Judge.

THE COURT: Now I feel way better. It just said pending motions. All I could find was summary judgment. I read the motion. I read the response. I read the reply. I have read all the attachments, as they were relevant. It's your motion.

MR. FLYNN: Thank you, Judge. And I wasn't sure I -- with Judge Meyer's standing orders, with respect to courtesy copies, I wasn't sure if the Court had a chance to review the briefs, but since your Honor has indicated that you have --

THE COURT: I have read everything. It's all based on a two-year statute of limitations on a lawsuit over a chain saw.

MR. FLYNN: That's exactly right. So I will be brief. The only case cited by the plaintiff in its response with respect to the accrual of the injury was a Suburban Real Estate case which is a transactional legal malpractice case, not a litigated matter. I think the -- all of the cases we have cited and including the dicta in that Suburban Real Estate case indicates that the accrual date in a litigated matter is the date of

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settlement, judgment or dismissal.

Here, we had a January 14 settlement that was consummated. There was a good faith finding and dismissal at that time. Mast and Popovich continued to represent Mr. Dulberg for another year or so and prosecuting the case against the other defendant in the case.

Dulberg became disillusioned with Mast, admitted that he was looking for additional counsel -- or substitute counsel even as early as July of 2014. Ultimately, Mast and Popovich withdrew in March of 2015. The case proceeded against Gagnon. There was a mediation in December of 2016 at which time he indicates now that he first became aware of his legal malpractice case.

Mr. Dulberg had every opportunity in discovery through interrogatories, production requests, I took his deposition. I asked him over and over again in several different ways how he first became aware of his injury and that it was wrongfully caused. The only response he could give was that a lawyer told him that he had a case. He couldn't provide any specifics. He has a burden of proving the -- a late discovery. He cannot meet it.

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He will never be able to meet it.

THE COURT: Do we know, by the way, how did he come to me because the lawyer, if I recall, was Mr. Gooch. So he was represented by I believe Mr. Balke if I recall correctly followed by Mr. Baudin.

MR. FLYNN: That's correct.

THE COURT: Where did Mr. Gooch come into this? Who shipped him off to Mr. Gooch to even get opinion, do we know?

MR. FLYNN: One of those two lawyers, I think, recommended that he seek an opinion from a lawyer, generally speaking, that handles legal malpractice cases. Whether it was a direct referral, I don't know if the evidence shows that. I think Mr. Dulberg testified that I believe it was Mr. Baudin recommended that he see a legal malpractice attorney.

So Mr. Gooch met with him. Allegedly provided an opinion that there was a case without any reason and then almost a year later filed a lawsuit. Again, first Mr. Dulberg raised privilege when I asked him how -- how and what -- how you became aware of this legal malpractice case, the

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injury and the wrongful causation, he claimed privilege. Finally, that was waived or otherwise disposed of, and then, he admitted he couldn't -- I said the legal opinion Dulberg received from Gooch was verbal. Gooch simply stated you have a case here. You have a valid case. When asked did he tell you exactly what they did wrong in connection with the representation, Dulberg said he probably did. I'm not recalling it right now. I'm pulling a blank. There are no specifics.

So again, the burden is his to prove a later discovery. He's not able to do that. I'm happy to answer any questions the Court has, but again, I'll rest on the briefs.

THE COURT: Thank you very much. Mr. Talarico, sir?

MR. TALARICO: Yes, sir. I'm -- what would you like me to address first? I guess we could start with the fact that defendant didn't follow the local rules, and therefore, plaintiff could not properly respond. And the local rule says that if they do not follow the local rules, you can strike the motion or deny it.

All I'm asking is deny the motion based on

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the fact that they did not follow the local rules.

THE COURT: I respectfully decline to do so, sir. A written motion could have been filed expressly asking for that relief. A response was filed that addressed it. I've read the response. I understand your concerns that by not following the local rules, they may have made it more difficult for us to suss out what are the disputed issues of material fact and what aren't. But I've been able to pretty much get a grip on everything the way it's been filed.

MR. TALARICO: All right. Thank you, Judge. The second thing is, again, we didn't follow the rules that (indiscernible) we didn't respond -- we responded generally. So I would like that the ruling you just made to extend to our response too.

THE COURT: Of course it does.

MR. TALARICO: Thank you, sir. Okay. Then, the next issue is the Suburban case. Plaintiff -- defendant, I'm sorry, defendant seems to indicate -- well, he does indicate that the reason that Suburban doesn't apply is that there is a difference between a transactional case and a litigation case. Now, I read the Suburban case many, many times over and the

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Supreme Court does not distinguish that their ruling is for one type of case or the other. What their ruling is is that the statute of limitation and they construed the exact specific statute does not begin until there is a pec -- pecuniary loss.

Prior to that, Mr. Dulberg would have brought an action, he would have had no damages. So that -- what that does is because the general rule and which has been voiced in -- by the Illinois Supreme Court Justice Thomas in the Porter case is that when the Supreme Court construes a statute, that becomes part of the statute until the -- the -- I can't think of the word, legislation -- legislature decides to change it. So what we have is the prior cases cited by Mr. Dulberg are not effective because he's citing it to the rule and not to the particular case we are talking about. The Suburban case says no damages, the statute does not begin to run. And that is part of the statute. It hasn't been changed.

Now, as to the last thing, we have raised many affirmative -- I mean, I'm sorry, many issues of material fact that are in dispute. But most important -- the clearest ones, Judge, are the

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defendant's affirmative defenses. There are four affirmative defenses which -- which plaintiff has denied all four.

Now, there is a recent case, if you'll hold on just one second, and I'll find it, but the indication -- it's not that recent, but it's -- the indication is that -- this is West Suburban Mass Transit versus Consolidated Rail Corporation. It's 1-89-2916. If this was done the Appellate Court but it was by the -- the opinion was by Justice McMorrow, who of course became Supreme Court judge, that summary judgment is not appropriate when there is affirmative defenses in dispute.

I think that pretty much sums it all, Judge. We have got many material facts in dispute, including four affirmative defenses which were denied specifically by plaintiff.

THE COURT: Respectfully, sir, merely saying something is in dispute does not make it so though, does it?

MR. TALARICO: Judge, I'm saying that the answer filed was it was in dispute.

THE COURT: So by filing a response to their affirmative defense denying the affirmative defense,

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you're telling me that that in and of itself is sufficient to defeat summary judgment.

MR. TALARICO: Yes, I am.

THE COURT: What if your client --

MR. TALARICO: I --

THE COURT: What if your client at subsequent depositions testifies inconsistent with the answer?

MR. TALARICO: In the case that I cited, Judge, the burden is upon the person, in effect, in this case the defendant, to eliminate that dispute. The dispute exists as he did not resolve that dispute.

THE COURT: So when did the cause of action arise?

MR. TALARICO: December 12, 2016, I believe.

THE COURT: Why on that date?

MR. TALARICO: Because there was an arbitrary -- a mandatory arbitration hearing which I included the -- the findings that showed that the judge -- the retired judge in that case evaluated it at $660,000, and Mr. Dulberg was not able to obtain anything close to that.

THE COURT: And why not?

MR. TALARICO: Well, for two reasons, one, because he settled first improperly for $5,000 with

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the landowner, and the second case is because he was instructed improperly to -- to sign -- well, he actually claims he never signed the agreement, but that there was an agreement to do a binding arbitration limited to the policy amount of 300,000.

THE COURT: Who entered into that agreement?

MR. TALARICO: That is a question of fact. I don't know, but Dulberg says he did not sign it and never wanted to.

THE COURT: When was the agreement entered into?

MR. TALARICO: I don't have the exact date, Judge. A few months before that. I can only say that that was -- that was during the time that Mr. Dulberg was in bankruptcy, and that was also part of the Baudin's instruction.

THE COURT: So the agreement to limit recovery to 300,000 was signed well after the Popovich firm was no longer representing Mr. Dulberg on this matter?

MR. TALARICO: Yes, that's true.

THE COURT: So how is his change in strategy somehow extend -- so in other words, what you're saying -- well, I'm trying to wrap my head around this. You are saying that that agreement your

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client never wished to enter into, he didn't sign, Popovich didn't sign, Mr. Mast didn't sign. His actual third attorney signed it, Mr. Baudin, not even Mr. Balke. But because that was somehow signed and in effect, then the cause of action against Mast and Popovich for legal malpractice is extended out to the date of the final mediation hearing because of an agreement and limitation on damages at the mediation hearing over which they had zero control?

MR. TALARICO: What I am saying, Judge, is the analysis in the Suburban case, the damages -- prior to that, Mr. Dulberg had no actual damages, therefore, he couldn't bring an action. He had nothing to say that Mast cost him this much or this much or Popovich cost him this much because that would -- that would have been stricken for -- they had no damages, so he had no cause of action.

The damages arrive -- arose on the days that Mr. Dulberg found out through the binding arbitration that the case was worth so much more than what he's going to get, and therefore -- that -- that enumerates the damages.

THE COURT: But respectfully, Mr. Talarico, and please correct me if I'm wrong because this is where

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I'm getting the disconnect, the but-for portion of this analysis but for the high-low agreement limiting damages to the policy amount of $300,000, he would have had a judgment for the entire $660,000 if Tom Popovich and Hans Mast had never even existed.

MR. TALARICO: I'm not clear on what you are asking, Judge. Could you --

THE COURT: What I'm asking is isn't the failure to recover the $660,000 as opposed to 300,000 attributable to the high-low agreement that was entered into well over a year or if not two or more years after Popovich and Mast were out of the case?

MR. TALARICO: Well, Judge, I -- first of all, he didn't enter into it. He's claimed over and over that that's not his signature. It was forged. There is many issues about that in the bankruptcy.

THE COURT: But again, counsel -- but again, my point being I don't really care if he signed it or didn't sign it. My point being that it is that agreement that limited his damages, and that agreement was entered into way after Popovich and Mast withdrew from this case, right?

MR. TALARICO: That's right, but --

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THE COURT: He so would have got -- so he would have gotten all 660,000 had that agreement not been entered into.

MR. TALARICO: Judge, but at -- before the judge ruled in that binding mediation, he had no idea how much the case was worth. They had told him it was worth $5,000 and then some. That -- that date -- that's the date when he knows when there was a factual pecuniary damage. He knows the case is worth much more than they told him and he's got numbers behind it. Before that, he had nothing to plead.

THE COURT: Respectfully, the case is worth that much against Mr. Gagnon, not necessarily against Mr. Gagnon's -- I believe it was his parents, the two people that settled out of it. The $660,000 is a finding of liability against Mr. Gagnon, isn't it?

MR. TALARICO: Yes, it is.

THE COURT: So how is it a finding of liability against the two people that were settled with?

MR. TALARICO: Because those people were settled with instructions by Mr. Mast that they could not win any money against them. His instructions were that they -- they would get out on summary judgment,

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he would get nothing, take $5,000 as a gift. He was over and over that that -- that that argument was made between Mast and between Dulberg, and some of those documents are part of what we filed.

THE COURT: All right. Anything else, Mr. Talarico?

MR. TALARICO: Not at the moment, Judge. Thank you.

THE COURT: Thank you, sir. Final word, please.

MR. FLYNN: Thank you, Judge. Just briefly with respect to the pecuniary loss, the loss or the injury, which is the language used in the statute, was in January of 2014 when the case against the McGuires, Bill and Caroline McGuire. Caroline was Gagnon's mother. Bill McGuire was the stepfather. That case was foreclosed in January of 2014. No recovery could have been had other than the $5,000 at that point in time. That's when there was an injury.

The question -- the second prong of the analysis is when did he have a reasonable belief that the injury was wrongfully caused. Dulberg had every opportunity, he admitted that he had talked to hundreds of lawyers. He could have asked Balke, he

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could have asked Baudin. He didn't ask any of them, allegedly.

Under Illinois law, he has a duty to investigate if he thinks there is an issue. He had -- he became disillusioned with Mast in 2014. Mast withdrew in March of 2015. Again, the injury is January 2014.

THE COURT: Thank you very much.

MR. TALARICO: Judge, may I say one thing?

THE COURT: You may.

MR. TALARICO: Thank you. The Supreme Court case, the Suburban case makes it clear that being alerted to a problem or alerted to malpractice is not sufficient enough until -- they use the specific word alerted and say that is not sufficient. There has to be a pecuniary loss.

So whether he talked to a thousand attorneys and whether they all told him all different things, he's alerted but he had to face a loss. That's all, Judge. Thank you.

THE COURT: Thank you. He was clearly alerted. Let's cut to the chase. He was hesitant -- he was hesitant to ever even sign the settlement agreement to the point where it took him over two months to do

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it. He clearly had his doubts. He clearly had his lack of faith. He signed the settlement agreement anyway. A year later, the attorneys withdrew. He went to another attorney, still raised the issue. Went to another attorney, still raised the issue. Met with hundreds of attorneys. He was clearly alerted.

When did the pecuniary loss occur? Here is the amazing part, and this is what -- where the disconnect comes on this case and it's why I'm having so much trouble with it, I'm being urged that the pecuniary loss occurred when the decision was given on the binding mediation. But the reason I believe that's a disconnect is because -- for two reasons. The loss that occurred on the binding mediation that is being urged upon the Court is a loss of what appears to be $360,000. The difference between the $660,000 that the mediator indicated the -- were the appropriate measure of damages against Mr. Gagnon and the $300,000 insurance policy limit, that $360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that somebody entered into. We don't know who that

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somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge.

But didn't the pecuniary loss itself, in fact, occur if there was a cause of action to which you were alerted? The pecuniary loss occurred when he only got $5,000. I agree with defense counsel. Statute of limitations lapsed. Merely denying the statute of limitation without more in the depositions and the sworn testimony does not itself create an issue of material fact.

The motion for summary judgment is heard. It is most respectfully allowed. Thank you very much, gentlemen.

MR. FLYNN: Thank you.

THE COURT: Both of you, outstanding. Even though they didn't comply with local rules, I will say gentlemen, to both of you, outstanding pleadings. Very thorough, very well written. I had no issues going through them. I spent three days going through all of them repeatedly, and you both made my job -- well, I'm not going to say easy, but you certainly did your jobs. And I very much

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appreciate your time. Thank you, gentlemen.

MR. FLYNN: Thank you, Judge. And for what it's worth, I apologize for not doing numbered paragraphs on the statement of facts. I did follow that format with Judge Meyer in another summary judgment motion that was granted. This case was originally before Judge Meyer. So --

THE COURT: I take no offense. I take no offense by anybody. The pleadings were what they were, and I had no issue reading them. Thank you all very much for your time.

MR. TALARICO: Thank you, Judge.

THE COURT: Thank you, sir.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, JUDY CARLSON, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Judy A. Carlson

Certified Shorthand Reporter
License No. 084-003347

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AFFIDAVIT

Saira Pasha, being first duly sworn on oath, deposes and states as follows:

1. I am a licensed attorney in Illinois. I graduated from Chicago-Kent College of Law in 2012 and was admitted to the bar the same year. I have a Bachelor of Science degree in Operations and Information Management with an emphasis in information systems from Northern Illinois University. Since August 2020, I have worked as an independent consultant and testifying expert specializing in audit trail analysis, specifically in medical malpractice cases. I consult for and testify on behalf of both plaintiffs and defendants. A large portion of my work focuses on data integrity and completeness of production, such as obtaining prior versions of modified records and identifying, requesting, and obtaining data and records that were created but have not yet been produced. I have reviewed over 300 audit trails from more than 20 electronic medical record systems. The underlying concepts of audit trails for systems and the storage and retrieval of data from a database are essentially universal and apply to many kinds of systems, including court filing systems.

2. An audit trail is a timestamped report of actions performed by all users in a system, such as view, edit, add, delete, print, etc. In addition to audit trails, there are other reports and analytical tools that can be performed on record systems to conduct a comprehensive forensic analysis of electronically stored information.

3. I have been retained as a consultant by The Law Office of Alphonse A. Talarico for the purpose of evaluating file content discrepancies and missing file contents for a case under appellate review.

4. I reviewed the following materials for my analysis:

    - Transcript of court proceeding from 9/16/2022 titled “Dash Dash 09-16-2022 17LA377 Dulberg”
    - Transcript of court proceeding from 9/16/2022 titled “Dilatory Dilatory 09-16-2022 17LA377 Dulberg”
    - Emails to and from court reporters related to the transcripts listed above
    - Report titled “[Compare Report] Dash Dash 09-16-2022 17LA377 Dulberg”
    - Table of Contents of the Report of Proceedings filed on 4/24/2023 for the appellate case (2-23-0072) listing all Report of Proceedings in the file in chronological order
    - McHenry County Circuit Court’s Public Case Access website information for the underlying case (2017LA000377)

5. Based on my analysis of these materials, I conclude to a reasonable degree of professional certainty and recommend as follows:

- There are multiple substantive differences, including modifications and deletions, between two transcripts for the same court proceeding that took place on 9/16/2022. One of the edits is about a material issue: whether expert discovery was closed. To verify the accuracy of what was said at this proceeding, I recommend a forensic investigation, including but not limited to obtaining a copy of the original recording and obtaining an audit trail for the recording system itself. Based on what the audit trail from the audio recording system shows, a live forensic inspection of the system may be warranted.

- The Table of Contents for the Report of Proceedings for the appellate review that was filed on 4/24/2023 does not list all court proceeding recordings that were created in the underlying matter. It is also inconsistent with representations made on the McHenry County Circuit Court Public Case Access website. I recommend an audit trail of the appellate court's filing system(s) be produced to objectively determine which documents were uploaded to its system(s), when they were uploaded, the user(s) who uploaded the documents, and if applicable, which documents were removed from the appellate review file. Based on what the audit trails from the systems show, a live forensic inspection of the systems may be warranted.

- Because there are allegations of removing the existence of recordings from specific court proceedings from the public access website for the McHenry County Circuit, I recommend an audit and forensic investigation to obtain objective facts and the timeline of when data was added and then removed from the underlying case's record. I recommend obtaining the audit trails for McHenry County Circuit Court's filing system(s) and performing a live forensic inspection of the system if warranted by the audit trail data.

Discrepancies between two transcripts for the 9/16/2022 court proceeding

6. A court proceeding was held on 9/16/2022 in Judge Meyer's courtroom in the McHenry County Circuit Court courthouse for the underlying case (2017 L 000377).

7. The McHenry County Circuit Court courthouse uses technology that creates audio recordings of court proceedings which court reporters can access to create transcripts of those proceedings.

8. There are two distinct transcripts for this proceeding. The first transcript was emailed from a court reporter to Plaintiff on 9/26/2022 and is titled "Dash Dash 09-16-2022 17LA377 Dulberg." The second transcript was emailed from a different court reporter to Plaintiff on 9/27/2022 and is titled "Dilatory Dilatory 09-16-2022 17LA377 Dulberg." (The names of the files were presumably created to distinguish the transcripts).

9. There are multiple substantive differences between the two transcripts. Below is one example of a significant substantive difference in a statement made by defense counsel George Flynn about a material issue: expert discovery. The first transcript includes the phrase "You gave a ruling that expert discovery is completed" (page 5, lines 12-13)

So those (indiscernible) all relied on facts regarding the accident itself that would have taken, you know, additional five to ten pages of facts that are -- So we'd like to do that separately. In fact, we might wait until -- You gave a ruling that expert discovery is completed, but I'm going to (indiscernible) but I think (indiscernible).

10. The second transcript includes phrase "if and when expert discovery is completed" for the same page and line numbers:

So those (indiscernible) all relied on facts regarding the accident itself that would have taken, you know, additional five to ten pages of facts that are -- So we'd like to do that separately. In fact, we might wait until if and when expert discovery is completed, but -- I'm going to have some more thoughts, but I think we have plenty to chew on now.

11. These two statements are not only substantively different, they also do not sound alike when spoken aloud.

12. Another substantive difference between the two transcripts is the inclusion of the word "dilatory" in two sentences.

13. In the "Dash Dash 09-16-2022 17LA377 Dulberg" transcript (page 11, line 2) the court reporter uses "(indiscernible)", implying that the word stated by Mr. Flynn could not be understood. In the next line, there are hyphens at the end of "do" in Mr. Talarico's response, implying Mr. Talarico never said any word after "do."

```
just don't see what the issue is.  It seems as if
it's a (indiscernible) tactic to avoid --
    MR. TALARICO:  I don't do --
    THE COURT:  Hold on.  I can't rule on the motion
until I see it.  I can't rule -- I can't determine
```

14. In "Dilatory Dilatory 09-16-2022 17LA377 Dulberg," page 11, line 2, the transcription of defense counsel's statement by replacing the "(indiscernible)" with "dilatory " On the next line, plaintiff's Mr. Talarico's response is transcribed as "I don't to dilatory.." implying that the word was spoken, while the original transcript indicates no word was spoken nor was there an indiscernible sound.

```
I just don't see what the issue is.  It seems as if
it's a another dilatory tactic to avoid --
    MR. TALARICO:  I don't do dilatory --
    THE COURT:  Hold on.  I can't rule on the motion
until I see it.  I can't rule -- I can't determine
```

15. These are two examples of significant and substance differences between the two transcripts that warrant further investigation to confirm accuracy.

16. To verify the accuracy of both transcripts and determine what was actually said by the parties on 9/16/2022, I recommend obtaining the original recording of the proceeding from the McHenry County Circuit Court's audio recording system. I also recommend simultaneously obtaining an audit trail for the specific audio recording file at issue, from 9/16/2022 through present, to identify all parties who accessed the recording, when they accessed it, if any edits were made to the recording, and other objective data pertaining to the veracity of the recording.

Missing recordings of court proceedings from January and February 2018

17. The Table of Contents for the Report of Proceedings from the appellate case was filed on 4/24/2023. It lists all reports of proceedings from the underlying case included in chronological order beginning on 5/10/2018, as seen in the excerpt below:

Table of Contents 2-23-0072

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

DULBERG, PAUL
Plaintiff/Petitioner

v.

MAST, HANS ET AL
Defendant/Respondent

Reviewing Court No: 2-23-0072
Circuit Court/Agency No: 2017LA000377
Trial Judge/Hearing Officer: JOEL D BERG

E-FILED 2
Transaction ID: 2-23-0072
File Date: 4/24/2023 10:03 AM
Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

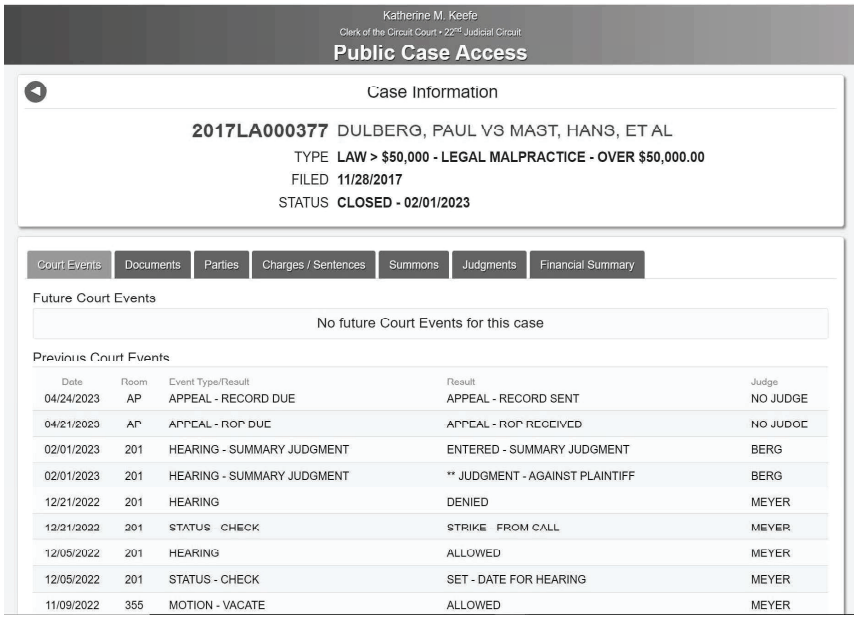
APPELLATE COURT, STATE OF ILLINOIS FIAT JUSTITIA JULY 1, 1877 SECOND DISTRICT

REPORT OF PROCEEDINGS - TABLE OF CONTENTS

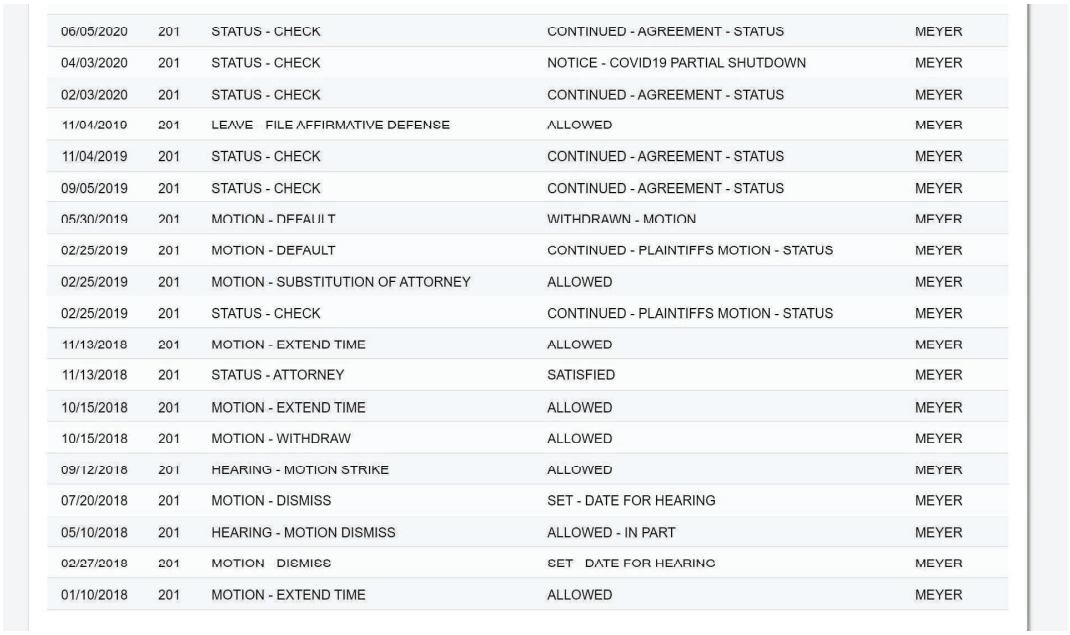
Page 1 of 2

Date of Proceeding	Title/Description	Page No.
05/10/2018	HEARING - MOTION DISMISS	R 3-R 14 (Volume 1)
07/20/2018	MOTDIM	R 15-R 18 (Volume 1)
09/12/2018	HEARING - MOTION STRIKE	R 19-R 28 (Volume 1)

18. The public case access website for the McHenry County Circuit Court allows users to search for court events and documents related to cases. For the underlying case at issue, the top of the "Court Events" tab looks like this:



19. Scrolling to the bottom of the same tab reveals the court events beginning from 1/10/2018.



06/05/2020	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
04/03/2020	201	STATUS - CHECK	NOTICE - COVID19 PARTIAL SHUTDOWN	MEYER
02/03/2020	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
11/04/2019	201	LEAVE FILE AFFIRMATIVE DEFENSE	ALLOWED	MEYER
11/04/2019	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
09/05/2019	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
05/30/2019	201	MOTION - DEFAULT	WITHDRAWN - MOTION	MEYER
02/25/2019	201	MOTION - DEFAULT	CONTINUED - PLAINTIFFS MOTION - STATUS	MEYER
02/25/2019	201	MOTION - SUBSTITUTION OF ATTORNEY	ALLOWED	MEYER
02/25/2019	201	STATUS - CHECK	CONTINUED - PLAINTIFFS MOTION - STATUS	MEYER
11/13/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER
11/13/2018	201	STATUS - ATTORNEY	SATISFIED	MEYER
10/15/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER
10/15/2018	201	MOTION - WITHDRAW	ALLOWED	MEYER
09/12/2018	201	HEARING - MOTION STRIKE	ALLOWED	MEYER
07/20/2018	201	MOTION - DISMISS	SET - DATE FOR HEARING	MEYER
05/10/2018	201	HEARING - MOTION DISMISS	ALLOWED - IN PART	MEYER
02/27/2018	201	MOTION DISMISS	SET DATE FOR HEARING	MEYER
01/10/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER

20. As seen in the screen shot above, there was a court event on 1/10/2018 during which a motion to extend time was granted and a court event on 2/27/2019 during which a motion to dismiss was set for hearing. The third court event listed took place on 5/10/2018.

21. The recordings from the first two court events in the underlying case were not included in the file contents for appellate review. I did perform a line-item check for evert court event; it is possible recordings for other events are also missing.

22. The 1/10/2018 court event was listed as "Motion – Extend Time." I reviewed the Table of Contents to determine if any recording for a "Motion- Extend Time" court event existed and found one for 3/15/2021. Therefore, there is no reason to conclude that the 1/10/2018 recording was not included in the file materials because that type of court event is not recorded.

02/10/2021	HEARING - MOTION COMPEL	R 101-R 124 (Volume 1)
03/15/2021	MOTION - EXTEND TIME	R 125-R 153 (Volume 1)
03/25/2021	HEARING - MOTION COMPEL	R 154-R 159 (Volume 1)

23. Plaintiff/Appellant alleges that the public record access system for McHenry County originally listed recordings for these two 2018 proceedings under the documents tab but were removed at a later date. Below is a screen shot of the top portion of the "Documents" tab for the underlying case. As the image below indicates, "Report – Proceedings" is a type of document included in the list.

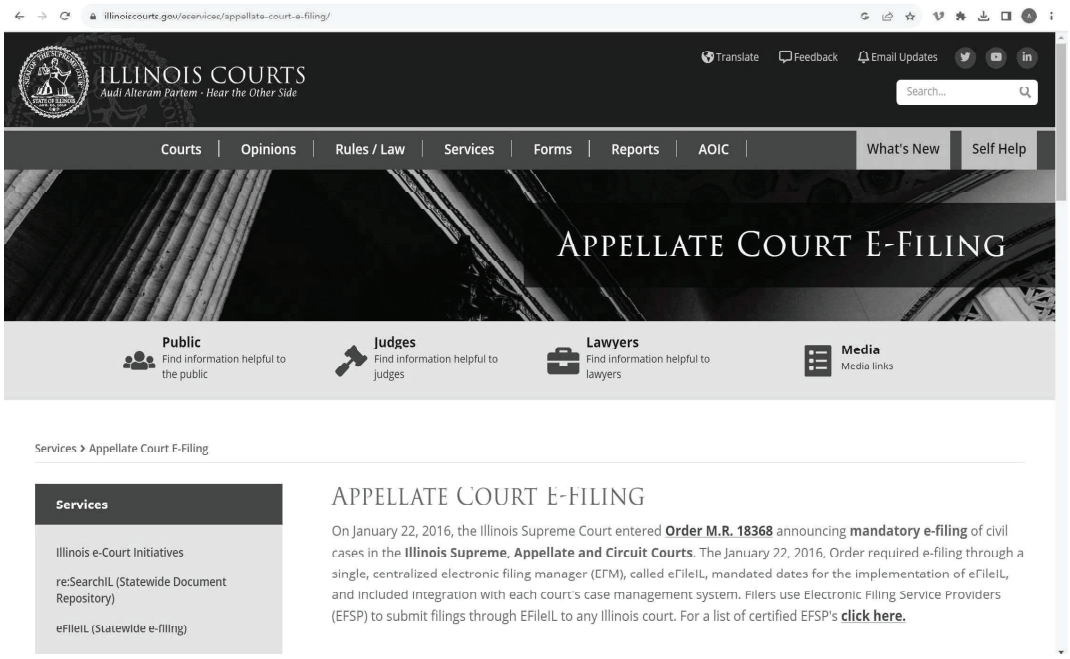


24. To objectively determine if the "Documents" tab of the McHenry County Circuit Court public portal ever included a listing of "Report – Proceedings" for the 1/10/2018 and 2/27/2018 court events, I recommend a forensic audit of the system(s) in which these data elements are stored and used to display information on the public access portal website.

25. To objectively determine if the recordings from the 1/10/2018 and 2/27/2018 court events were 1)ever part of the McHenry County Circuit Court file for the underlying, 2) were transmitted/uploaded to the appellate court filing system, and 3) were ever received or were part of the appellate court's filing system or file, audit trails from each of the respective systems must be generated and produced. Based on the data included in those reports, a live forensic inspection of the systems may be warranted. If audit trails from those systems are not produced, I recommend performing a live forensic inspection of the systems at issue.

26. To objectively determine if recordings were created for the 1/10/2018 and 2/27/2018 court events, an audit trail from the McHenry County Circuit Court audio recording system must be generated and produced. Based on the data contained in those reports, a live forensic audit of the audio recording system may be necessary.

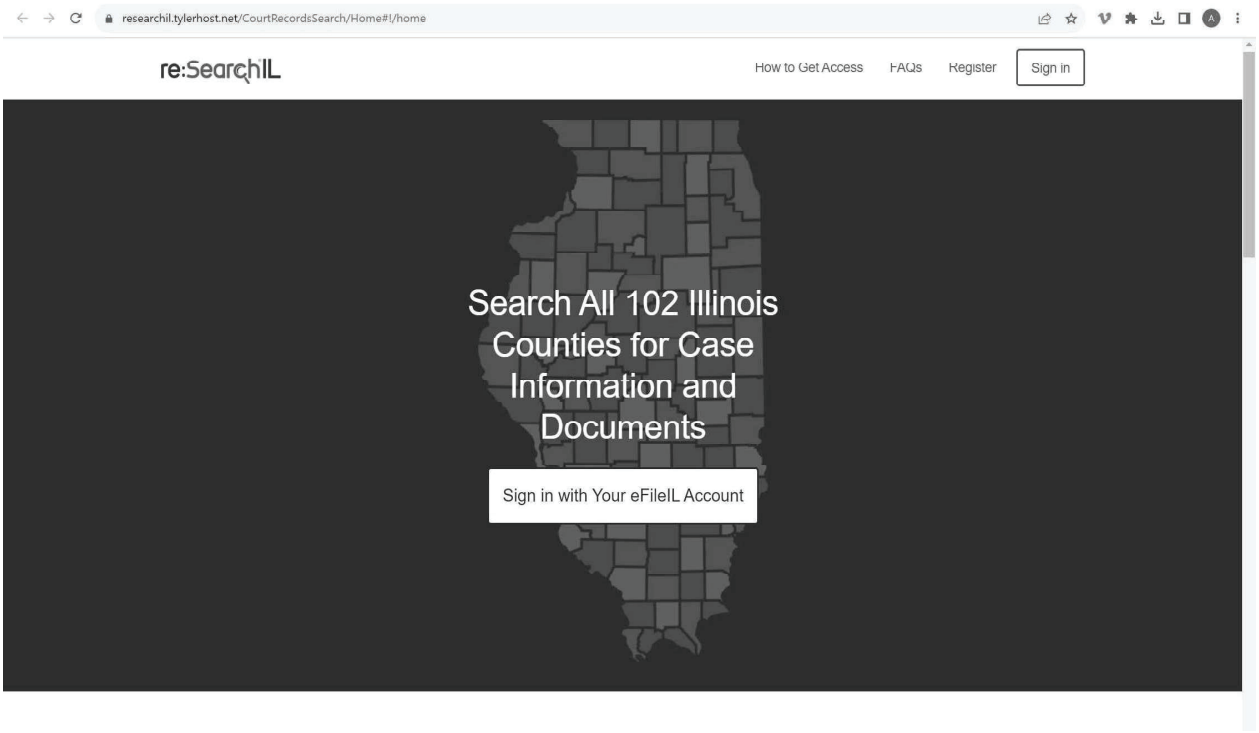
27. The website for Illinois's court systems makes reference to two distinct systems: one document repository system and efiling systems.



28. The website displays several options for efiling:



29. The document repository system link takes you to a separate system called re:SearchIL, managed by Tyler Technologies.



30. Based on my preliminary review of these websites and technologies, the systems used by both the appellate court and the circuit court in this case are capable of producing audit trails for regulatory and compliance reporting. These reports can also be used to verify the integrity of the records and data in this matter.

Under penalty of perjury, I certify the above statements are true and correct.

Saira Pasha

Exhibit F

From: **Alphonse Talarico** contact@lawofficeofalphonsetalarico.com
Subject: Fw: Appellate Court - 2nd District Case No. 2-23-0072: Record
Date: November 3, 2023 at 4:02 PM
To: Paul Dulberg pdulberg@icloud.com, Paul Dulberg Paul_Dulberg@comcast.net, T Kost tkost999@gmail.com

AT

From: DoNotReply-ILCourts@illinoiscourts.gov <DoNotReply-ILCourts@illinoiscourts.gov>
Sent: Tuesday, April 25, 2023 8:48 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Subject: Appellate Court - 2nd District Case No. 2-23-0072: Record

Record - Record on Appeal Filed has been filed by the Appellate Court - 2nd District in 2-23-0072.
This email was sent to contact@lawofficeofalphonsetalarico.com.

ILLINOIS APPELLATE COURT
SECOND DISTRICT

55 SYMPHONY WAY
ELGIN, IL 60120
(847) 695-3750

April 25, 2023

Alphonse A. Talarico
Law office of Alphonse Talarico
707 Skokie Boulevard, #600
Northbrook, IL 60062

RE: Dulberg, Paul R., v. Mast, Hans, et al.
Appeal No.: 2-23-0072
County: McHenry County
Trial Court No.: 17LA377

The electronic record on appeal in the above case has been filed. In most cases, you may access all sections of the electronic record at https://researchil.tylerhost.net. In any other case, a link to the appropriate section(s) of the electronic record will be e-mailed to you from no-reply@efilingmail.tylertech.cloud. (Please ensure that you are a service contact in Odyssey eFileIL.) The court hereby orders briefing due dates as follows:

Appellant's brief due:	05/30/2023
Appellee's brief due:	07/05/2023
Appellant's reply brief due: (Ill. S. Ct. Rs. 341, 342, 343)	07/18/2023

Jeffrey H. Kaplan
Clerk of the Court

cc: George Kenneth Flynn
Michelle Marie Blum

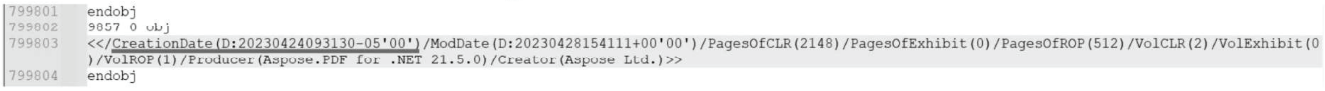
Exhibit G

Paul Dulberg <Paul_Dulberg@comcast.net>

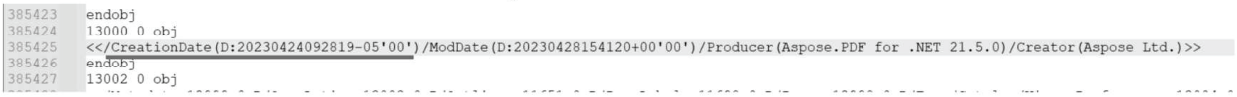
Fri 11/3/2023 4:51 PM

To:Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Common Law Record Vol 1 creation date pdf metadata:



Common Law Record Vol 2 creation date pdf metadata:



Reports of Proceedings creation date pdf metadata:

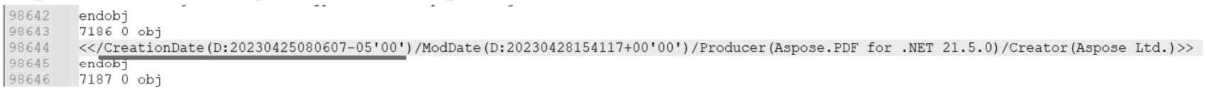


Exhibit H

Paul Dulberg <Paul_Dulberg@comcast.net>

Fri 11/3/2023 4:51 PM

To:Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

DOCUMENT	CREATION DATE	SUBMISSION DATE	
Common Law Record Volume 1	**April 24, 2023 at 9:31 AM**	ndent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:00 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **CERTIFICATION OF RECORD**	**SUBMITTED 29 MINUTES AFTER CREATED**
Common Law Record Volume 2	**April 24, 2023 at 9:28AM**	:/Respondent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:03 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **COMMON LAW RECORD - TABLE OF CONTENTS**	**SUBMITTED 35 MINUTES AFTER CREATED**
Report of Proceedings **(missing pages)**	**April 25, 2023 at 8:06AM**	Trial Judge/Hearing Officer: dant/Respondent E-FILED Transaction ID: 2-23-0072 File Date: 4/24/2023 10:03 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT **REPORT OF PROCEEDINGS - TABLE OF CONTENTS**	**SUBMITTED 22 HOURS BEFORE CREATED**

A12

ILLINOIS APPELLATE COURT
SECOND DISTRICT

55 SYMPHONY WAY
ELGIN, IL 60120
(847) 695-3750

May 26, 2023

Alphonse A. Talarico
Law office of Alphonse Talarico
707 Skokie Boulevard, #600
Northbrook, IL 60062

RE: Dulberg, Paul R., v. Mast, Hans, et al.
Appeal No.: 2-23-0072
County: McHenry County
Trial Court No.: 17LA377

The court has this day, May 26, 2023, entered the following order in the above entitled case:

Appellant's motion for an extension of time to file the opening brief is granted, and the brief is due July 31, 2023. Appellees' response brief is due September 4, 2023. Appellant's reply brief is due September 18, 2023.

Jeffrey H. Kaplan
Clerk of the Court

cc: George Kenneth Flynn
Michelle Marie Blum

A13

ILLINOIS APPELLATE COURT
SECOND DISTRICT

55 SYMPHONY WAY
ELGIN, IL 60120
(847) 695-3750

July 25, 2023

Alphonse A. Talarico
Law office of Alphonse Talarico
707 Skokie Blvd., #600
Northbrook, IL 60062

RE: Dulberg, Paul R., v. Mast, Hans, et al.
Appeal No.: 2-23-0072
County: McHenry County
Trial Court No.: 17LA377

The court has this day, July 25, 2023, entered the following order in the above entitled case:

Appellant's motion for an extension of time to file the opening brief is granted, and the brief is due September 29, 2023. Appellees' response brief is due November 3, 2023. Appellant's reply brief is due November 17, 2023.

Jeffrey H. Kaplan
Clerk of the Court

cc: George Kenneth Flynn
Michelle Marie Blum

A14

ILLINOIS APPELLATE COURT
SECOND DISTRICT

55 SYMPHONY WAY
ELGIN, IL 60120
(847) 695-3750

October 10, 2023

Alphonse A. Talarico
Law office of Alphonse Talarico
707 Skokie Blvd., #600
Northbrook, IL 60062

RE: Dulberg, Paul R., v. Mast, Hans, et al.
Appeal No.: 2-23-0072
County: McHenry County
Trial Court No.: 17LA377

The court has this day, October 10, 2023, entered the following order in the above entitled case:

Appellant's motion for an extension of time to file the opening brief is granted in part, and the brief is due November 3, 2023. Absent extraordinarily compelling circumstances, this date will not be further extended. Appellees' response brief is due December 8, 2023. Appellant's reply brief is due December 22, 2023.

Appellant's other requests for relief are denied pursuant to appellees' response.

Jeffrey H. Kaplan
Clerk of the Court

cc: George Kenneth Flynn
Michelle Marie Blum

A15

ILLINOIS APPELLATE COURT
SECOND DISTRICT

55 SYMPHONY WAY
ELGIN, IL 60120
(847) 695-3750

November 9, 2023

Alphonse A. Talarico
Law office of Alphonse Talarico
707 Skokie Blvd., #600
Northbrook, IL 60062

RE: Dulberg, Paul R., v. Mast, Hans, et al.
Appeal No.: 2-23-0072
County: McHenry County
Trial Court No.: 17LA377

The court has this day, November 09, 2023, entered the following order in the above entitled case:

Appellant's "emergency" motion is denied pursuant to appellees' response. In the interest of justice, however, appellant's opening brief is due November 22, 2023. This date is absolutely final and will not be extended under any circumstances. Appellees' response brief is due December 27, 2023. Appellant's reply brief is due January 10, 2024.

Jeffrey H. Kaplan
Clerk of the Court

cc: George Kenneth Flynn
Michelle Marie Blum

A16 This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

Instructions ▾
Check the box to the right if your case involves custody, visitation, or removal of a child.
Enter the appellate court case number.
Just below "In the Appellate Court of Illinois," enter the number of the appellate district where the appeal was filed.
If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that name. Below that, enter the names of the parties in the trial court, and check the correct boxes to show which party filed the appeal ("appellant") and which party is responding to the appeal ("appellee").
To the far right, enter the trial court county, trial court case number, and trial judge's name.

☐ **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

Appellate Case No.: 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS

Second District

In re

Paul R. Dulberg
Plaintiff/Petitioner *(First, middle, last names)*

☑ **Appellant** ☐ **Appellee**

☐ ☐

v. Hans Mast and the Law Offices of Thomas J. Popovich, P.C.

Defendant/Respondent *(First, middle, last names)*

☐ **Appellant** ☑ **Appellee**

Appeal from the Circuit Court
Of McHENRY County

Trial Court Case No.:
2017LA0003377

Honorable Joel D. Berg
Judge, Presiding

ORDER

In **1**, check the box that identifies who is filing the *Motion*.
In **2**, enter what you are asking the court to do in response to your *Motion*. This should be the same as what you asked for in Section 2 of the *Motion*.
DO NOT complete Section **3** or Section **4**. The court will complete these sections.

1. **Motion by:** ☑ Plaintiff/Petitioner-Appellant ☐ Plaintiff/Petitioner-Appellee ☐ Defendant/Respondent-Appellant ☐ Defendant/Respondent- Appellee

2. **Motion for: Extension of time to file appellant's brief to July 31, 2023**

3. **The motion is:** ☐ Allowed ☐ Denied

4. **It is further ordered** *(if applicable)*:

DO NOT complete this section. The justices will sign and date here.

ENTERED

Justice Date

Justice Date

(01/18)

Justice

Date

A17 This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

Instructions•

Check the box to the right if your case involves custody, visitation, or removal ofa child.

Enter the appellate court case number.

Just below "In the Appellate Court of Illinois," enter the number of the appellate district where the appeal was filed.

If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that name. Below that, enter the names of the parties in the trial court, and check the correct boxes to show which party filed the appeal ("appellant") and which party is responding to the appeal ("appellee").

To the far right, enter the trial court county, trial court case number, and trial judge's name.

0 **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

Appellate Case No.: 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS

SECOND **District**

In re

PAUL R. DULBERG

Plaintiff/Petitioner *(First, middle, last names)*

X **Appellant** **Appellee**

v.

Hans Mast et al

Defendant/Respondent *(First, middle, last names)*

Appellant X **Appellee**

Appeal from the Circuit Court

of M c H e n r y

County

Trial Court Case No.:
2017LA0003377

Honorable
Joel D. Berg

Judge, Presiding

ORDER

In **1,** check the box that identifies who is filing the *Motion.*

In **2,** enter what you are asking the court to do in response to your *Motion.* This should be the same as what you asked for in Section 2 of the *Motion.*

DO NOT complete Section **3** or Section **4.** The court will complete these sections.

1. Motion by: X Plaintiff/Petitioner-Appellant Plaintiff/Petitioner-Appellee
Defendant/Respondent-Appellant Defendant/Respondent- Appellee

2. Motion for:SECOND EXTENSION OF TIME TO FILE APPELLANT"S BRIEF UP TO AND INCLUDNG SEPTEMBER 29, 2023

3. The motion is: D Allowed D Denied

4. It is further ordered *(if applicable):*

DO NOT complete this section. The justices will sign and date here.

ENTERED

Justice Date

Justice Date

Justice Date

A18 This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

Instructions ▾
Check the box to the right if your case involves custody, visitation, or removal of a child.
Enter the appellate court case number.
Just below "In the Appellate Court of Illinois," enter the number of the appellate district where the appeal was filed.
If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that name. Below that, enter the names of the parties in the trial court, and check the correct boxes to show which party filed the appeal ("appellant") and which party is responding to the appeal ("appellee").
To the far right, enter the trial court county, trial court case number, and trial judge's name.

☐ **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

Appellate Case No.: 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS

SECOND **District**

In re _____

Dulberg, Paul
Plaintiff/Petitioner *(First, middle, last names)*

☑ **Appellant** ☐ **Appellee**

v.

Mast, Hans ET AL
Defendant/Respondent *(First, middle, last names)*

☐ **Appellant** ☑ **Appellee**

Appeal from the Circuit Court
of McHenry **County**

Trial Court Case No.:
2017LA000377

Honorable
Joel D. Berg
Judge, Presiding

ORDER

In **1**, check the box that identifies who is filing the *Motion*.
In **2**, enter what you are asking the court to do in response to your *Motion*. This should be the same as what you asked for in Section 2 of the *Motion*.
DO NOT complete Section **3** or Section **4**. The court will complete these sections.

1. Motion by: ☑ Plaintiff/Petitioner-Appellant ☐ Plaintiff/Petitioner-Appellee ☐ Defendant/Respondent-Appellant ☐ Defendant/Respondent- Appellee

2. Motion for: grant Appellant a 90-day extension of time to file Appellant's Brief, allow Appellant to amend his Docketing Statement to include related cases,order the Clerk of the 22nd Judicial District to amend the Record on Appeal to include all missing documents and Hyperlinks ...

3. The motion is: ☐ Allowed ☐ Denied

4. It is further ordered *(if applicable)*: _____

DO NOT complete this section. The justices will sign and date here.

ENTERED

_____ Justice _____ Date

_____ Justice _____ Date

_____ Justice _____ Date

A19 This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

Instructions

Check the box to the right if your case involves custody, visitation, or removal of a child.

Enter the appellate court case number.

Just below "In the Appellate Court of Illinois," enter the number of the appellate district where the appeal was filed.

If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that name. Below that, enter the names of the parties in the trial court, and check the correct boxes to show which party filed the appeal ("appellant") and which party is responding to the appeal ("appellee").

To the far right, enter the trial court county, trial court case number, and trial judge's name.

☐ **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

Appellate Case No.: 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS

SECOND **District**

In re _____

Paul R. Dulberg
Plaintiff/Petitioner *(First, middle, last names)*

☑ **Appellant** ☐ **Appellee**

v.

Law Offices of Thomas J. Popovich, PC & Hans Mast
Defendant/Respondent *(First, middle, last names)*

☐ **Appellant** ☑ **Appellee**

Appeal from the Circuit Court of McHenry **County**

Trial Court Case No.: 2017LA000377

Honorable Joel D. Berg
Judge, Presiding

ORDER

In **1**, check the box that identifies who is filing the *Motion*.

In **2**, enter what you are asking the court to do in response to your *Motion*. This should be the same as what you asked for in Section 2 of the *Motion*.

DO NOT complete Section **3** or Section **4**. The court will complete these sections.

1. Motion by: ☑ Plaintiff/Petitioner-Appellant ☐ Plaintiff/Petitioner-Appellee ☐ Defendant/Respondent-Appellant ☐ Defendant/Respondent- Appellee

2. Motion for: Extension of time to file Appellant's Brief to December 8, 2023
Motion to conduct Trial Audit on ClerKs of Court involved

3. The motion is: ☐ Allowed ☐ Denied

4. It is further ordered *(if applicable)*: _____

DO NOT complete this section. The justices will sign and date here.

ENTERED

Justice _____ Date _____

Justice _____ Date _____

Justice _____ Date _____

A20

Gmail T Kost <tkost999@gmail.com>

Fw: Appellate Court - 2nd District Case No. 2-23-0072: Order - Responding Order
2 messages

Alphonse Talarico <contact@lawofficeofalphonsetalarico.com> Thu, Nov 9, 2023 at 12:28 PM
To: Paul Dulberg <pdulberg@icloud.com>, Paul Dulberg <Paul_Dulberg@comcast.net>, T Kost <tkost999@gmail.com>

From: DoNotReply-ILCourts@illinoiscourts.gov <DoNotReply-ILCourts@illinoiscourts.gov>
Sent: Thursday, November 9, 2023 11:20 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Subject: Appellate Court - 2nd District Case No. 2-23-0072: Order - Responding Order

Order - Responding Order - Denied has been filed by the Appellate Court - 2nd District in 2-23-0072.

This email was sent to contact@lawofficeofalphonsetalarico.com.

Notice of the Order - 2nd.pdf
110K

Paul Dulberg <Paul_Dulberg@comcast.net> Thu, Nov 9, 2023 at 1:07 PM
To: Law Office Of Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: Tom Kost <tkost999@gmail.com>

Dear Mr Talarico,

I just called the appellate court and they say they will be emailing me a copy of the actual court order from the emergency motion.

They informed me that my attorney has access to the orders and In the future I should get them through my attorney.

I will forward the ORDER when I receive it.

Paul

> On Nov 9, 2023, at 12:28 PM, Alphonse Talarico <contact@lawofficeofalphonsetalarico.com> wrote:
>
> **From:** DoNotReply-ILCourts@illinoiscourts.gov <DoNotReply-ILCourts@illinoiscourts.gov>
> **Sent:** Thursday, November 9, 2023 11:20 AM
> **To:** Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
> **Subject:** Appellate Court - 2nd District Case No. 2-23-0072: Order - Responding Order
>
> Order - Responding Order - Denied has been filed by the Appellate Court - 2nd District in 2-23-0072.
> This email was sent to contact@lawofficeofalphonsetalarico.com.
> <Notice of the Order - 2nd.pdf>

A21

ILLINOIS APPELLATE COURT
SECOND DISTRICT

55 SYMPHONY WAY
ELGIN, IL 60120
(847) 695-3750

December 4, 2023

Alphonse A. Talarico
Law office of Alphonse Talarico
707 Skokie Blvd., #600
Northbrook, IL 60062

RE: Dulberg, Paul R., v. Mast, Hans, et al.
Appeal No.: 2-23-0072
County: McHenry County
Trial Court No.: 17LA377

The court has this day, December 04, 2023, entered the following order in the above entitled case:

Appellant's motion for leave to file a reply is denied.

Appellant's motion to reconsider is denied. As appellant has failed to file an opening brief pursuant to this court's order of November 9, 2023, this appeal is dismissed.

THIS ORDER IS FINAL AND SHALL STAND AS THE MANDATE OF THIS COURT.
(McLaren, Hutchinson, Schostok, JJ.)

Jeffrey H. Kaplan
Clerk of the Court

cc: George Kenneth Flynn
McHenry County Circuit Court
Michelle Marie Blum

A22

Gmail T Kost <tkost999@gmail.com>

HUTCHINSON ISSUE

4 messages

Paul Dulberg <Paul_Dulberg@comcast.net> Sat, Dec 9, 2023 at 2:42 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: Tom Kost <tkost999@gmail.com>

Dear Mr Talarico,

As you should know, I did inform you about Judge Hutchinson before during and after we filed the appeal in the Popovich case.

Obviously I would have asked for a substitution of Judge had I been informed Hutchinson was assigned to the panel.

I first learned of Hutchinson's involvement in the final court order dated December 4, 2023.

I need to know in writing and with supporting documentation the first time you were informed by the court which Judges were assigned to the appeal.

Thank You,
Paul

Begin forwarded message:

From: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Subject: Fw: Appellate Court - 2nd District Case No. 2-23-0072: Order - Responding Order
Date: December 7, 2023 at 12:18:05 PM CST
To: Paul Dulberg <pdulberg@icloud.com>, Paul Dulberg <Paul_Dulberg@comcast.net>, T Kost <tkost999@gmail.com>

From: DoNotReply-ILCourts@illinoiscourts.gov <DoNotReply-ILCourts@illinoiscourts.gov>
Sent: Monday, December 4, 2023 4:09 PM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Subject: Appellate Court - 2nd District Case No. 2-23-0072: Order - Responding Order

Order - Responding Order - Denied has been filed by the Appellate Court - 2nd District in 2-23-0072.

This email was sent to contact@lawofficeofalphonsetalarico.com.

Begin forwarded message:

From: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Subject: Fw: Appellate Court - 2nd District Case No. 2-23-0072: Order - Responding Order
Date: December 7, 2023 at 12:18:05 PM CST
To: Paul Dulberg <pdulberg@icloud.com>, Paul Dulberg <Paul_Dulberg@comcast.net>, T Kost <tkost999@gmail.com>

From: DoNotReply-ILCourts@illinoiscourts.gov <DoNotReply-ILCourts@illinoiscourts.gov>
Sent: Monday, December 4, 2023 4:09 PM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Subject: Appellate Court - 2nd District Case No. 2-23-0072: Order - Responding Order

Order - Responding Order - Denied has been filed by the Appellate Court - 2nd District in 2-23-0072.

This email was sent to contact@lawofficeofalphonsetalarico.com.

Notice of the Order - 2nd.pdf
111K

Paul Dulberg <Paul_Dulberg@comcast.net> Sat, Dec 9, 2023 at 8:42 AM
To: Law Office Of Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: Tom Kost <tkost999@gmail.com>

Dear Mr Talarico,

Thank you.

Knowing that you learned it the same way I did is a huge relief.

I believe that I can make the argument that the Judges names were actively concealed from us. Who in this country doesn't get to know the name of the Judge/s that will be deciding the issues before them?

By concealing the names of the judges assigned to the appeal, the appellate court deprived us of the same rights everyone else enjoys that goes to court, the right to ask for a substitution of Judge before any major decisions are made.

Of coarse any legal advise you have on the issue and how to move on it is always welcomed and appreciated.

Thank you again,
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Dear Mr. Dulberg,

The first time I was made aware was by the order dismissing the case dated December 4, 2023.

Alphonse A. Talarico Esq.

312-808-1410
312-608-1410

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Sent: Saturday, December 9, 2023 2:42 AM
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Cc: Tom Kost <tkost999@gmail.com>
Subject: HUTCHINSON ISSUE

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From: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Subject: Fw: Appellate Court - 2nd District Case No. 2-23-0072: Order - Responding Order
Date: December 7, 2023 at 12:18:05 PM CST
To: Paul Dulberg <pdulberg@icloud.com>, Paul Dulberg <Paul_Dulberg@comcast.net>, T Kost <tkost999@gmail.com>

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Cc: Tom Kost <tkost999@gmail.com>

That's 2 out of 3 of the Judges assigned to the appellate panel in our case with issues.

We have no record of which Judge voted which way. McLaren may have been outvoted.

Watch the panel claim since we used McLaren's quote we knew who was assigned the case.

By dumb luck, you hit it dead on with the quote by McLaren.

How do we proceed?

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I believe that I can make the argument that the Judges names were actively concealed from us. Who in this country doesn't get to know the name of the Judge/s that will be deciding the issues before them?

By concealing the names of the judges assigned to the appeal, the appellate court deprived us of the same rights everyone else enjoys that goes to court, the right to ask for a substitution of Judge before any major decisions are made.

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To: Law Office Of Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Cc: Tom Kost <tkost999@gmail.com>

Dear Mr Talarico,

Per our phone conversation…

When I questioned the appellate court orders being signed by the clerk, you told me that they have the ability to adopt that rule.

Since then I googled and think I found the local rules adopted this year by the 2nd district appellate court and could not find any reference or adopted rule allowing a clerk to sign the courts orders.

This is a reminder to you to check the local rules adopted by the 2nd appellate court for anything that would grant the clerk any authority to sign the orders of the court for the various judges or any rule that allows the required proposed order filed with each motion to be tossed aside.

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A23

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

Instructions

Check the box to the right if your case involves custody, visitation, or removal of a child.

Enter the appellate court case number.

Just below "In the Appellate Court of Illinois," enter the number of the appellate district where the appeal was filed.

If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that name. Below that, enter the names of the parties in the trial court, and check the correct boxes to show which party filed the appeal ("appellant") and which party is responding to the appeal ("appellee").

To the far right, enter the trial court county, trial court case number, and trial judge's name.

☐ **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

Appellate Case No.: 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS

SECOND **District**

In re

Paul R. Dulberg
Plaintiff/Petitioner *(First, middle, last names)*

☑ **Appellant** ☐ **Appellee**

v.

Hans Mast and the Law Office of Thomas J. Popovich, P.
Defendant/Respondent *(First, middle, last names)*

☐ **Appellant** ☑ **Appellee**

Appeal from the Circuit Court of McHenry **County**

Trial Court Case No.: 2017LA000377

Honorable Joel D. Berg
Judge, Presiding

MOTION

In **1**, check the box that identifies who is filing the *Motion*.

1. ☑ Plaintiff/Petitioner-Appellant ☐ Plaintiff/Petitioner-Appellee

☐ Defendant/Respondent-Appellant ☐ Defendant/Respondent- Appellee

In **2**, state specifically what you want the court to give you (e.g., "35 more days to file my brief"). This should be a short statement. You will give your reasons in the next section.

2. State what you want the court to do for you: Appellant moves for a ruling on his Motion to Reconsider filed on November 21, 2023 and for a ruling on his Motion to allow Appellant to file a Reply to Appellees' Response to Appellant's Motion to Reconsider filed on November 28, 2023 pursuant to the common-law of the State of Illinois, most currently stated by the Illinois Supreme Court in (Docket No. 128474) THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v. BRYAN N. BRUSAW, APPELLEE. (November 30, 2023) and the earliest statement found in CASE v. PHILLIPS 182 Ill. 187, 55 N.E. 66 (1899).

Enter the Case Number given by the Appellate Court Clerk: 2-23-0072

In **3**, write down the reasons why the court should give the relief you are asking for (e.g. "I need more time to finish and file my brief, because [insert reasons]").

3. State the reasons why the court should do what you have asked it to do:

Pursuant to the Illinois common law holdings that a motion that is not ruled upon by the trial court (in THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v. BRYAN N. BRUSAW, Appellee) or that is not ruled upon by the Appellate Court (in CASE v. PHILLIPS 182 Ill.187, 55 N.E.66) (1899) is presumed to have been abandoned or waived by the movant.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the *Motion* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name.

/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

Enter your complete current address and telephone number.

707 Skokie Boulevard #600
Street Address

Northbrook, Illinois 60062
City, State, ZIP

(312) 808-1410
Telephone

Enter the Case Number given by the Appellate Clerk: 2-23-0072

PROOF OF SERVICE

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

1. I sent this document:

   a. To:

   Name: George K. Flynn
   First *Middle* *Last*

   Address: 200 S. Wacker Drive, Suite 2550 Chicago Illinois 60606
   Street, Apt # *City* *State* *ZIP*

   Email address: gflynn@karball.com

   b. By:
   - ☐ Personal hand delivery
   - ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

     Address of Post Office or Mailbox
   - ☐ Third-party commercial carrier, with delivery paid for at:

     Name (for example, FedEx or UPS) and office address
   - ☑ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
   - ☐ Email *(not through an EFM or EFSP)*
   - ☐ Mail from a prison or jail at:

     Name of prison or jail

In **c**, fill in the date and time that you sent the document.

   c. On: December 3, 2023
   Date

   At: 9:00 ☐ a.m. ☑ p.m.
   Time

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

2. I sent this document:

   a. To:

   Name: Michelle M. Blum
   First *Middle* *Last*

   Address: 200 S. Wacker Drive, Suite 2550 Chicago Illinois 60606
   Street, Apt # *City* *State* *ZIP*

   Email address: mblum@karballaw.com

   b. By:
   - ☐ Personal hand delivery
   - ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

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   - ☐ Third-party commercial carrier, with delivery paid for at:

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Enter the Case Number given by the Appellate Court Clerk: 2-23-0072

- [x] The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
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If you are serving more than 3 parties or lawyers, fill out and file 1 or more *Additional Proof of Service* forms with this form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

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/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

A24

Gmail T Kost <tkost999@gmail.com>

Fw: Filing Returned for Envelope Number: 25435393 in Case: 2-23-0072, Dulberg, Paul R., v. Mast, Hans, et al. for filing Motion - Miscellaneous

Alphonse Talarico <alphonsetalarico@yahoo.com> Thu, Dec 7, 2023 at 12:20 PM
To: Paul Dulberg <paul_dulberg@comcast.net>, Paul Dulberg <pdulberg@icloud.com>, "T. Kost" <tkost999@gmail.com>

----- Forwarded Message -----
From: "no-reply@efilingmail.tylertech.cloud" <no-reply@efilingmail.tylertech.cloud>
To: "alphonsetalarico@yahoo.com" <alphonsetalarico@yahoo.com>
Sent: Tuesday, December 5, 2023 at 09:22:08 AM CST
Subject: Filing Returned for Envelope Number: 25435393 in Case: 2-23-0072, Dulberg, Paul R., v. Mast, Hans, et al. for filing Motion - Miscellaneous

ODYSSEY eFileIL™

Filing Rejected

Envelope Number: 25435393
Case Number: 2-23-0072
Case Name: Dulberg, Paul R., v. Mast, Hans, et al.

The filing below has been reviewed and has been returned for further action. **Please refile with the corrections outlined below.** Please contact your local court clerk for further information.

Return Reason(s) from Clerk's Office	
Court	Appellate Court – 2nd District
Returned Reason	Other
Returned Comments	This motion is rejected. Please see the order send on December 4, 2023. Thank you. -6

To learn how to copy the rejected filing so that you can make changes to refile, click here

Document Details	
Case Number	2-23-0072
Case Name	Dulberg, Paul R., v. Mast, Hans, et al.
Date/Time Submitted	12/3/2023 4:02 PM CST
Filing Type	EFileAndServe
Filing Description	Appellant's Motion for Rulings
Filing Code	Motion - Miscellaneous
Filed By	Alphonse Talarico
Filing Attorney	Alphonse Talarico

If you are not represented by a lawyer, we want to improve your e-filing experience. Please click here to fill out a short survey.