

Supplemental to 'Dulberg's theory of corruption', covering the proof of evidence #10 and #11

The evidence is contained in the timeline of the following communications.

2013-09-04 McGuire Letter to Popovich, cc Gagnon:

Back in early July we discussed my desire to depose Mike Thomas. You advised that you would reach out to your client for contact information on Mr. Thomas. Shortly thereafter (July 15, 2013), you issued a letter advising that you would make arrangements for Mr. Thomas' deposition. Your letter requested that I propose some open dates for his deposition.

On July 25, 2013, I sent a letter to you offering up seven dates for Mr. Thomas' deposition. Apparently none of the dates worked, as I did not hear back from you or your office.

Following the hearing on August 14, 2013, I asked your colleague (Theresa Freeman) to follow-up with you about Mr. Thomas' deposition. I am not sure if the message got to you but I did not hear from you or your office.

In any event, I remain interested in depositing Mr. Thomas. Please check with him and offer two or three deposition dates in September or October so we can get his deposition done. look forward to hearing from you. Thank you.
(POP 000210)

* (Note:

This was not turned over to Dulberg with the first or second case files Mast released in the underlying case and was only turned over in the instant case.)

2013-09-06 Popovich Letter to Dulberg:

Please be advised that the defense has scheduled the depositions of your treaters as follows:

Dr. Levin on October 1, 2013;

Dr. Sagerman on October 15, 2013; and Dr. Talerico on October 16, 2013.

If you have any questions, please feel free to call.

(POP 000212)

(Dulberg 006250)

(Dulberg 006251)

2013-09-13 10:06am Dulberg emails Douglass:

Not sure if your the right person to ask this question but thanks in advance for any insight or help you may be able to provide. Is it ok to file for bankruptcy while applying for SSDI?

If so, do you work with anyone who handles this?

I have been living off of credit cards for over 2 years now since I was injured and my mom was paying the minimum payments for me. The minimum payments are going to exceed what she can afford. She also pays my mortgage payment every month. It's too much and I have to do something. I have never considered bankruptcy before and know nothing about it. I would like to keep my house if it is possible. I don't have anything else of real value. Most of the credit card usage was for gasoline and medical treatment.

(Dulberg 001553)

(Dulberg 005194)

(Dulberg 007062)

(Dulberg 007455)

*(Notes:

- Janet Douglass is with the SSDI attorney.

- Dulberg is stressing about bills and is asking questions about the rules when applying for SSDI because he is exploring the various options available to us all. This exploration of options started after something funny happened with the dynamic hand therapy lien and Colleen from dynamic hand therapy started calling Dulberg on the phone threatening court action and taking Dulberg's home.

*** Need to come back to this and add here the bates numbers of the emails Dulberg sent to Mast about Dynamic Hand Therapy threats and the dates. I haven't figured out what happened to the dynamic hand therapy lien to cause the threats but in January of 2015 Dynamic Hand therapy tries to get the lien back in the case immediately after Mast hears from the bankruptcy trustee for the first time. Add the bates stamps to those documents from January 2015 here as well.)

2013-09-13 10:21am Dulberg emails Popovich:

I sent the letter below to Janet the person helping with SSDI. Thought I would ask you the same.

To: Janet Douglass September 13, 2013, 10:06am

Not sure if your the right person to ask this question but thanks in advance for any insight or help you may be able to provide. Is it ok to file for bankruptcy while applying for SSDI?

If so, do you work with anyone who handles this?

I have been living off of credit cards for over 2 years now since I was injured and my mom was paying the minimum payments for me. The minimum payments are going to exceed what she can afford. She also pays my mortgage payment every month. It's too much and I have to do something. I have never considered bankruptcy before and know nothing about it. I would like to keep my house if it is possible. I don't have anything else of real value. Most of the credit card usage was for gasoline and medical treatment.

(Dulberg 001553)

(Dulberg 005194)

(Dulberg 007062)

(Dulberg 007455)

*(Notes:

- This is not in the Popovich documents.

- Janet Douglass is with the SSDI attorney.

- See notes from 2013-09-13 10:06am Dulberg emails Douglass:)

2013-09-18 Gagnon Notice to Popovich and McGuire's:

NOTICE OF DISCOVERY DEPOSITION(S)

PLEASE TAKE NOTICE that the undersigned attorney will take the deposition of:

NAME: Dr. Apiwat W Ford

DATE: October 23, 2013

TIME: 2:00 PM

PLACE: Northern IL Medical Center 4201 Medical Center Drive McHenry, IL 60050

upon oral examination, before Merrill Legal Solutions, certified shorthand reporters, or some other officer duly authorized by law to take depositions. The deposition(s) is/are being taken for the purpose of discovery, or for such other purposes as are permitted under the applicable and governing Illinois Rules of the Supreme Court.

I HEREBY CERTIFY that on 9/18/13, a true and correct copy of the foregoing Notice of Deposition was mailed to:

Hans A. Mast Law Offices of Thomas J. Popovich, P.C. 3416 W Elm St McHenry IL 60050

Cicero, France, Barch & Alexander PC 6323 East Riverside Blvd Rockford, IL 61114

(Dulberg 001755 - Dulberg 001756)

(Dulberg 004286 - Dulberg 004287)

(Dulberg 005987 - Dulberg 005988)

*(Notes:

- This is not in the Popovich documents.)

2013-09-19 16:04(UTC) 11:04am Dulberg Emails Mast:

Received a call yesterday from your secretary concerning Mike Thomas. I'm not really sure what she was asking. Something about treating him as a hostile witness or something?

Give me a call.

(POP 000208)

(Dulberg 001552)

(Dulberg 001547 - Dulberg 001548)

(Dulberg 001549 - Dulberg 001550)

(Dulberg 001551)

(Dulberg 002682)

(Dulberg 005188 - Dulberg 005189)

(Dulberg 005190 - Dulberg 005191)

(Dulberg 005192)

(Dulberg 005193)

(Dulberg 007056 - Dulberg 007057)

(Dulberg 007058 - Dulberg 007059)
(Dulberg 007060)
(Dulberg 007061)
(Dulberg 007450)
(Dulberg 007451 - Dulberg 007452)
(Dulberg 007453)
(Dulberg 007454)

(Note: (POP 000208) is only the header, The content of the email is missing.
(Dulberg 001552) has the correct timestamp CDT not UTC.)

2013-09-20 10:12am Popovich Emails Dulberg:

Paul...we need to set his deposition. Can you have him call me.. thanks
(POP 000208)

(Dulberg 001547 - Dulberg 001548)(Dulberg 001549)(Dulberg 001551)(Dulberg 002682)(Dulberg 005188 - Dulberg 005189)(Dulberg 005190 - Dulberg 005191)(Dulberg 005192)(Dulberg 007056 - Dulberg 007057)(Dulberg 007058 - Dulberg 007059)(Dulberg 007060)(Dulberg 007449 - Dulberg 007450)(Dulberg 007451 - Dulberg 007452)(Dulberg 007453)

2013-09-20 10:41am Dulberg Emails Popovich:

I sent Mike Thomas your contact info.
Please let me know if he calls.

(POP 000208)
(Dulberg 001551)
(Dulberg 001547 - Dulberg 001548)
(Dulberg 002682)
(Dulberg 005188 - Dulberg 005189)
(Dulberg 005192)
(Dulberg 007056 - Dulberg 007057)
(Dulberg 007060)
(Dulberg 007449 - Dulberg 007450)
(Dulberg 007453)

2013-09-20 11:09am Dulberg Emails Popovich:

Mike Thomas just told me he doesn't want to be involved because he is afraid that it will be found out he paid me in cash rather than a 1099 or w2 and he doesn't want any trouble with the IRS.
I tried to tell him none of that matters but he is afraid and won't call you.

Here is his contact info if you want to try. Mike Thomas
Mobile:

(262) 758-8966

Email: mike@winpromos.com Website: <http://www.winpromos.com/> Home:

460 Waldeck Drive
Twin Lakes WI 53181 United States
Work:
5512 May Ave Richmond IL 60071
United States
(Dulberg 001549 - Dulberg 001550)
(Dulberg 005190 - Dulberg 005191)
(Dulberg 007058 - Dulberg 007059)
(Dulberg 007451 - Dulberg 007452)

2013-09-20 4:21pm 11:21am Dulberg Emails Popovich:

Just spoke with Mike Thomas and he doesn't want to call you because he is afraid of getting caught by the IRS for paying me in cash. Tried to tell him how he paid me doesn't matter but he's afraid and doesn't want to get involved.
Here is all the contact info I have on him.

Mike Thomas
Winning Promotions, LLC

Phone:
(262) 758-8966

Email:
mike@winpromos.com

Website: <http://www.winpromos.com/>

Work address:
5512 May Ave Richmond IL 60071 United States

Home address:
460 Waldeck Drive Twin Lakes WI 53181 United States"
(POP 000208)
(Dulberg 001547 - Dulberg 001548)
(Dulberg 005188 - Dulberg 005189)
(Dulberg 007056 - Dulberg 007057)
(Dulberg 007449 - Dulberg 007450)

*(Note: (POP 000208) has a timestamp of 4:21pm.
(Dulberg 001547) has a timestamp of 11:21am.)

2013-09-25 10:19am Popovich Letter/Fax to McGuire's and Gagnon:

"I have tried to contact Mr. Michael Thomas, but apparently he does not want to get involved in the suit. If we have named him as a witness I am happy to withdraw him as a witness. However, if you

wish to contact him yourself, you may subpoena him at his home at 406 Waldeck Drive, Twin Lakes, WI 53181."
(POP 000205 - POP 000206)

2013-09-25 12:53pm Dulberg emails Popovich and Douglass:

Today I met with Dr. Kathryn Kujawa at Alexian brothers hospital. She diagnosed my right arm as task specific Focal Dystonia and said it can be treated on a temporary basis with Botox injections every 3 months or so. My next appointment is for November 19th at 9:45 am to start the treatments. She said it is definitely caused from the trauma in my right arm. I have included her offices contact info below. If you need anything else please let me know.

Dr. Kathryn Kujawa
Eberle Building, 800 Biesterfield Road, Suite 610 Elk Grove Village, IL. 60007
847-981-3630
(Dulberg 001546)
(Dulberg 005187)
(Dulberg 007055)

*(Note:

- This is not in the Popovich documents.
- Douglass is included for SSDI.
- Mast knows that both Dr Levin and Dr Kujawa have diagnosed Dulberg with dystonia.)

2013-09-26 Alexian Brothers Medical Group
Billing Statement - \$43.00
(POP 000856)
(Dulberg 002422)
(Dulberg 004819)

2013-10-01 9:00am Deposition of KAREN LEVIN:

(Dulberg 000768 - Dulberg 000827)(Dulberg 003681 - Dulberg 003740)

(Dulberg 000768) Page 1:

The discovery deposition of KAREN LEVIN, M.D., taken in the above-entitled cause, before Angela M. Ingham, a Notary Public within and for the County of Cook and State of Illinois, and a Certified Shorthand Reporter of said state, at 1900 Hollister Drive, Suite 250, Libertyville, Illinois, on the 1st day of October, 2013 at the hour of 9:00 a.m.

(Dulberg 000769) Page 2:
APPEARANCES:

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

(3416 West Elm Street McHenry, Illinois 60050
815.344.3797), by MS. THERESA M. FREEMAN, On behalf of the Plaintiff;

LAW OFFICE OF STEVEN A. LIHOSIT (200 North LaSalle Street Suite 2550 Chicago, Illinois
60601

312.558.9821

perry.accardo@allstate.com), by MR. PERRY A. ACCARDO, On behalf of the Defendant David
Gagnon;

CICERO, FRANCE, BARCH & ALEXANDER, P.C.

(6323 East Riverside Boulevard Rockford, Illinois 61114

815.226.7700 rb@cicerofrance.com),

by MR. RONALD A. BARCH, On behalf of the Defendants Caroline McGuire and Bill McGuire.

(Dulberg 000770) Page 3:

INDEX

WITNESS.....EXAMINATION

KAREN LEVIN, M.D.

By Mr. Accardo.....4

By Mr. Barch.....50, 56

By Ms. Freeman.....55

EXHIBITS

NUMBER.....MARKED FOR ID

Levin Deposition Exhibit

No. 1 Dr. Levin's curriculum vitae....4

(Dulberg 000771) Page 4:

(Whereupon, Levin Deposition Exhibit No. 1 was marked for identification.)

(Witness duly sworn.)

MR. ACCARDO: Doctor, could you please state your name and spell it for the court reporter.

THE WITNESS: Karen Levin, L-e-v-i-n.

MR. ACCARDO: Let the record reflect this is the discovery deposition of Dr. Karen Levin taken pursuant to notice, taken in accordance with the rules of the Circuit Court of McHenry County and the rules of the Supreme Court of the state and all other applicable local court rules.

KAREN LEVIN, M.D., called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. ACCARDO:

Q. Dr. Levin, I'm going to be asking you some questions this morning about a patient of yours by the name of Paul Dulberg, okay?

A. Correct.

Q. All right. I assume that you've given depositions before?

(Dulberg 000772) Page 5:

A. Yes.

Q. Your failure with the ground rules governing depositions, things of that nature?

A. Yes.

Q. All right, great. We've been tendered your CV which has been marked as Levin Deposition Exhibit No. 1. Is that relatively current and up-to-date?

A. Yes, it is.

Q. All right. Are there any changes on it, or is it up-to-date?

A. It's up-to-date.

Q. All right. You are a neurologist, is that correct?

A. Correct.

Q. All right. And you're currently affiliated with Associated Neurology in Libertyville, Illinois?

A. Correct.

Q. And how long have you been affiliated with Associated Neurology?

A. It will be coming up on 20 years next year.

Q. And within neurology do you have any

(Dulberg 000773) Page 6:

specialities?

A. Not anymore. I did a fellowship in electrophysiology and epilepsy, but that's 20 years ago. I've been practicing general neurology since.

Q. And you have a couple publications listed in your CV?

A. During fellowship, yes.

Q. Okay. Would either of those be applicable to this case, or is there any information that we can glean from those that would be useful in this case?

A. Only that they were related to EMG studies and he had an EMG but, other than that, not really.

Q. All right, great. Are you board certified?

A. Yes.

Q. All right. And what does that board certification mean?

A. In neurology there's two parts you have to pass, a written board and then an oral board, and then every 10 years recertification.

Q. All right. Do you have any independent recollection of Paul Dulberg?

A. Some, but I still would need my notes

(Dulberg 000774) Page 7:

also.

Q. And you have your notes here. Is that your complete chart for Paul Dulberg?

A. Yes, it is.

Q. And would that be the complete chart for Associated Neurology then as well?

A. Correct.

Q. Now, it looks like Mr. Dulberg treated with Associated Neurology back in the early 2000's, is that correct?

A. Correct, with somebody else in the office, right.

Q. Than that was Dr. Grobman?

A. Correct.

Q. And that was all as a result of an automobile accident and involved the left side of Mr. Dulberg's body, is that correct?

A. Per the notes I have, yes.

Q. All right. Now I looked through those notes and the best I could. Some of the writing I couldn't read; but in those notes related to the prior automobile accident, are there any complaints or anything related or anything that mentions any problems that Mr. Dulberg had with anything on the

(Dulberg 000775) Page 8:

right side of his body, in particular his right arm? I didn't say any.

A. I actually see there's a note on August 23rd of 2002. That's an exam that says pressure in the right superclavicular fossa elicits pain, digits 3 and 4 of the right hand dorsally?

Q. And that's August 23rd --

A. Of 2002. And, again, I don't know if it was supposed to be left because that's the only time I see it right. It's not my notes. I can't tell you.

Q. Okay.

A. Other than that, it looks like it is all saying left.

Q. Okay. Just going back to that August 23, 2002, whether or not it's supposed to be left and says right, if it were, in fact, right sided, could you explain in layman's terms what that part of the note means?

A. That when he gave pressure like right under the neck area he had some sensations in the pinky and the finger next to it.

Q. And, again, that's the only mention you see of the right sided?

(Dulberg 000776) Page 9:

A. Correct.

Q. And I know you're not the doctor that treated Mr. Dulberg at that time. I know it was Dr. Grobman; but if he were in the office for left-sided problems, would there be any particular reason that you would think of for the examination or for this pressure to be put on the right side?

A. You would just do a full exam. Again, I suspect with everything else looking in here that that was supposed to say left because it's the only mention anywhere of right.

Q. Okay. All right.

A. And Mr. Dulberg, I think the first time I saw him, had said he had never had any right-sided problems.

Q. Before the deposition today, did you review any other documents other than the records contained within your chart?

A. No.

Q. Okay. Now it looks like the first time that Mr. Dulberg came to see you was on July 28th of 2011, is that right?

A. Correct.

Q. And why is it that he came to see you?

(Dulberg 000777) Page 10:

A. He had an injury while holding a branch; and a chain saw cut his right forearm.

Q. And he filled out a health questionnaire at that time?

A. Correct.

Q. And he was 41 years old at the time?

A. Correct.

Q. And right handed?

A. Correct.

Q. Now jumping back a little bit to the prior treatment that was done for the left arm, what type of procedure was performed on Mr. Dulberg's left arm? He lists a left arm ulnar nerve trans?

A. Right. That would be an ulnar nerve transposition. Behind the elbow, the nerve kind of gets caught in an area called the ulnar groove, and

(Dulberg 000778) Page 11:

they sort of take it out, and it's basically the carpal tunnel of the elbow, So they just move the nerve over a little so you don't get the symptoms of pressure on the nerve.

Q. Okay. Going to the second page of the health questionnaire, I don't know if it's the second page necessarily but it's --

A. My examination sheet.

Q. Okay. That would be your examination sheet?

A. Yes.

Q. And is that two pages then?

A. Yes, It's a front and a back.

Q. Okay, all right. The first page under explanatory notes there's a little diagram of a hand. What does that show? What are the little hashmarks for?

A. It's where he had a cut mark.

Q. Okay. Under reflexes it looks like there are some marks. What do those indicate?

A. That his upper extremity reflexes were symmetric and what we call one. Reflexes are graded between one and four, and his were one.

Q. One being best?

(Dulberg 000779) Page 12:

A. No. It's just how strong they are, but it's just more of a symmetry thing. Four is an abnormally brisk reflex; but between one and three, you're just looking to see if they are symmetric on both sides, and his were.

Q. And then going on to the second page, there's a little diagram and some notes next to it. What does that say, and what does that indicate on that diagram?

A. In that area where I have the darkness which is the distribution of the ulnar nerve, he had -- actually it can be ulnar or C8 based on that diagram. He had decreased sensation to light sensation, pinprick sensation, and temperature sensation.

Q. All right. And how are those tests performed, the light touch, the pinprick, and the temperature?

A. It's comparing side to side parts of the arm using -- light touch is a tissue, pinprick is a safety pin, and temperature is a cold tuning fork.

Q. Would you consider those to be objective or subjective?

A. Subjective.

(Dulberg 000780) Page 13:

Q. And are there some notes then underneath the diagram?

A. Sure.

Q. What do those say?

A. It says likely branch sensory neuropathy check an EMG, and may need to see hand surgeon.

Q. And what is branch sensory neuropathy?

A. That is as opposed to cutting one of the main nerves that he had cut sensory nerves that are kind of on the ends, the tiny little branches that go to do the sensation peripherally in the hand.

Q. And it looks like then following your July 28th visit you wrote a letter to Hans Mast, who is Mr Dulberg's attorney?

A. I'm glad you knew who that was because that's what I was looking through a little bit before now when I was here, trying to figure out who Mr. Mast was, yes.

Q. The mysterious Mr. Mast. All right, yes, and that was prepared following your examination of July 28th?

A. Correct.

Q. Is there any indication as to how it was that Mr. Dulberg came to see you? Was it on the

(Dulberg 000781) Page 14:

Basis of a referral, another physician?

A. I looked at his patient information sheet and referred by is empty, so I don't know. Probably because he had been here before would be my guess.

Q. Okay, all right. And in that letter -- I know you already mentioned that Mr Dulberg told you that he had never had many difficulties with his right arm?

A. Correct.

Q. All right. And other than the one sentence that talks about holding a branch for a neighbor when a chainsaw came up and cut his right forearm, did Mr. Dulberg give you any other details about how the accident happened?

A. No, He did not.

Q. Does your chart contain any of the emergency room records? It would be from Northern Illinois Medical Center?

A. No.

Q. And in that letter, he indicates that he had originally very significant pain but as the pain was getting better he started noticing that he had numbness in his fifth digit and the inner

(Dulberg 000782) Page 15:

aspect of the forearm, is that correct?

A. Correct.

Q. Is there any indication in your notes as to how long this significant pain lasted or when it was that it started to get better and he noticed this numbness and tingling as far as time goes?

A. No.

Q. And the fifth digit, which one is that?

A. Pinky.

Q. It also indicates he had not been dropping things. Is that significant to you?

A. The weakness. First signs people have a weakness is they can't grasp things or they're dropping them.

Q. Needless to say, that would be a good thing he was not dropping things?

A. Correct.

Q. And he talked about him undergoing nerve conductions. Is that EMG that is talked about in a note?

A. Correct.

Q. And he talked about him undergoing the nerve conductions. Is that the EMG that is talked about in the note?

A. Correct.

(Dulberg 000783) Page 16:

Q. All right. And when was that done? When was that performed?

A. On August 11th -- or actually August 10th of 2011, which I know is interesting that it's prior to the date on this letter, and I don't know. They must have just dated the letter the date of his evaluation as opposed to when I actually dictated it.

Q. All right. You anticipated my next question. And what is an EMG?

A. There are two parts to it. An EMG actually is -- the first part is called nerve conduction velocities, which check how your nerves conduct the impulse, stimulated at one point and recorded in another, and see how fast the response is, the size, shape, and speed of the response, comparing it to normal.

The second part is a part where you actually put a pin into muscles. He did not have that part because what I was looking for was to see how the nerve conductions were working.

So we kind of group it all together and call it an EMG even though in reality when all he really had

(Dulberg 000784) Page 17:

was the nerve conduction part.

Q. And what were the results of the nerve conduction?

A. That it showed that all the big branch nerves were conducting the electricity the way they should, the medial nerve and the ulnar nerve, which are your two big nerves in your arm.

Q. And when you say "the big branch nerves," is that as sensitive as the test gets, or would it go into any other smaller nerves?

A. No, that's as sensitive as it gets is looking at the big nerves. It doesn't pinpoint down to the nerve endings themselves.

Q. Okay. Is there any type of test that can figure out or tell you what's going on with the nerve endings or the smaller nerve endings?

A. After you get from the median nerve or the ulnar nerve, no, you can't really differentiate into the little branches that come off of it, so no.

Q. And then following that EMG which would have been on 8-10-11 -- oe, I'm sorry, the nerve conduction study. I guess it's better to call it that. You indicated that you recommended that he

(Dulberg 000785) Page 18:

see a hand surgeon?

A. Correct.

Q. Okay. And why was it that you wanted him to see a hand surgeon?

A. Just to make sure that they didn't feel that there was anything else that needed to be explored or anything that they thought could be done with the scar that was there, anything else like that.

Q. Do you have any idea as to whether or not Mr. Dulberg ever went to see a hand surgeon?

A. Yes, he did.

Q. And who was that he went to go see?

A. The first person he saw in December 2nd of 2011 was at Mid-America Hand and Shoulder, Dr Marcus Talerico, T-a-l-e-r-i-c-o.

Q. And do you have a report back from Mr Talerico?

A. Yes, I do.

Q. And what did that indicate?

A. It says there is no evidence of complete injury to his ulnar nerve on physical exam. His complaints are likely muscular in origin. He may have some superficial sensory complaints as well.

(Dulberg 000786) Page 19:

They did not think he needed surgery.

Q. And there was another doctor or another hand surgeon that he went to see?

A. On February 29th of 2012, he saw Dr. Sagerman, Scott Sagerman, S-a-g-e-r-m-a-n.

Q. And do you have a report back from Dr. Sagerman?

A. Yes.

Q. What kind of doctor is Dr. Sagerman?

A. He's a hand surgeon.

Q. Okay. And what did Dr. Sagerman tell you in his report back to you?

A. Well, actually it was Dr. Sek, S-e-k, who had sent him there, so I was just getting a copy of it.

Q. Do you know who Dr. Sek is?

A. No, I don't. His note said that there was the scar in his forearm, tenderness and sensitivity in the -- that area over the scar, and sensitivity in the -- that area we were talking about behind the elbow, what's called the cubital tunnel. He thought that there was partial ulnar nerve injury, and he referred him for an EMG.

Q. Do you have any idea -- or did you get a report back on the second EMG?

(Dulberg 000787) Page 20:

A. Actually that's why I had the note because he came here on March 13th of 2012.

Q. And that was at the recommendation of Dr. Sagerman?

A. Correct.

Q. All right. And what were the results of that 3-13-12 EMG?

A. It was normal, and this time both the needle part and the nerve conductions were done.

Q. Okay. Was there any more follow-up that your chart shows with Dr Sagerman or any other communication between the offices?

A. I spoke to Dr. Sagerman on that March -- May 16th of 2012. Is that the EMG date? Now I've got to look back. That was March. Okay, so a couple months later I have a note here on May 16th I spoke to Dr. Sagerman, and Dr. Sagerman would like the patient on neuropathic pain medications. I was just trying to figure out why the patient was here, so he was in to be put on what we call neuropathic pain medicine, gabapentin, Lyrica. There's other ones, too, but those are the two common that help with unusual sensations. And I believe I spoke with Dr. Sagerman

(Dulberg 000788) Page 21:

sometime this year also. I'm not seeing if it's in my notes or I just vaguely remember speaking to him sometime this year about Dr. Sagerman wanted to get another opinion from another neurologist. I don't see my note on it, but that's one of my independent recollections.

Q. And do you recall as to why Dr. Sagerman wanted to get another opinion from another neurologist?

A. Well, when Mr Dulberg had come back in in August complaining of a new symptom of contractors in his hands.

Q. And contractors meaning what?

A. Well, something that's called a dystonia-like symptom where his hand was cramping up.

Q. And that was something new as of --

A. Well, the first time I had seen it was in August, August 14th of 2013, but Mr. -- let me look through my notes here. Yes, Mr Dulberg said he had been having those spells since his original injury and they had only been rarely and now they were several times a day.

Q. Now when was the last time that

(Dulberg 000789) Page 22:

Mr. Dulberg came to your office?

A. August 14th of 2013.

Q. And before that when did he come?

A. February 14th of 2013.

Q. And before that?

A. May 16th of 2012.

Q. I don't think I have records from February 4th or August 14th of 2013. Would we be able to get copies of those?

A. Sure. So February 13th of '12 is that the last note you have?

Q. The last I have is -- yes, I think I have 5-16-12.

A. You do have that, okay.

MR. BARCH: Here is where the notes ended, right there, so you can see your page has some --

THE WITNESS: Okay.

MR. BARCH: The very top page has some entries after that.

(Discussion had off the record.)

BY MR. ACCARDO:

Q. Now backing up a little bit -- I think I'm getting a little ahead; but backing up, are there any handwritten notes other than the notes for your

(Dulberg 000790) Page 23:

examination that we talked about from the July 28, 2011 Initial visit?

A. Yes. Anytime that Mr. Dulberg would call in and talk to my assistant there would be a note that says mostly PC for phone call.

Q. Okay.

A. Or if records were released, they will be saying per subpoena records released.

Q. Okay. Could I see the handwritten notes from 7-28-11 because I don't think I have that either. That would have been his initial visit.

A. Oh, yes, that there wouldn't have been. It would have just been the sheet you had here and then I dictated out, so that there's no -- there's isn't anything.

Q. All right. So then he comes back. His second visit was August 10, 2011. We talked about that a little bit, and do you suspect then that this letter of July 28, 2011 was prepared after the August 10, 2011 visit?

A. Correct, it would have been put together on that August 10th.

Q. Now that August 10, 2011 note, You indicate that he likely will improve somewhat over

(Dulberg 000791) Page 24:

the next several months?

A. Correct.

Q. Why is that you believed at that time that he would improve somewhat over the next several months?

A. The typical pattern of this type of an injury.

Q. And by several months, what are we talking about?

A. Well, it used to be said that between six to seven months and a year would be the most for recovery. Now we say even up to maybe 2 years you can have a little recovery back, but certainly the majority of it is going to be between six months and a year.

Q. And in your letter you indicate sort of the same thing, that that may improve or you indicate that it may be permanent numbness?

A. Cutting of a nerve can result in terminate numbness often; but, again, it's just usually a numb sensation in the distribution of that little

(Dulberg 000792) Page 25:

peripheral nerve.

Q. And Just to be clear, when he came to see you both on July 28, 2011 and August 10 of 2011, his complaints were of numbness and tingling, not pain, is that a fair statement?

A. Correct. He had mentioned as the pain was getting better he started noticing the numbness and tingling.

Q. And in your notes there's no specific complaints of him having trouble with pain in the right forearm?

A. Correct.

Q. Okay. Did he ever mention to you any problems or anything associated with the area where the scar was or the scar itself?

A. At that point in time, no.

Q. Now after August 10th of 2011, he came back to the office on January 30th of 2012?

A. Correct.

Q. And why was it that he came in at that time?

A. His therapist asked him to be re-evaluated.

Q. And by "therapist," we are talking about a

(Dulberg 000793) Page 26:

physical therapist, I presume?

A. Correct.

Q. Do you know where he was undergoing physical therapy or anything like that?

A. No, I don't.

Q. Do you have any idea who recommended or who ordered him to undergo any physical therapy?

A. No, I don't.

Q. Given the symptoms that he was complaining of back in August of 2011, would any type of physical therapy have been something that would have been something that would have been your recommendation?

A. No. We had asked him to see the hand surgeon, so it's very likely they recommended it.

Q. As far as making a decision regarding therapy for the symptoms that he was complaining of back in August of 2011, would you defer to a hand surgeon for a decision regarding physical therapy or the need for it?

A. Yes.

Q. Did you ever get any records from any physical therapists? I'm guessing not since you didn't know where he got it but...

A. That was the hand surgeon's notes I was

(Dulberg 000794) Page 27:

just going back to look; and actually, yes, it does look like in the hand surgeon's notes that they sent over there was some therapy notes, Dynamic hand Therapy. That would have been February 6th of '12, so it would have been after. So after we saw him we must have asked for some notes from the therapist.

Q. Now going to the January 30, 2012 visit, what were his complaints when he came back in for this re-evaluation?

A. He was complaining of numbness and tingling and burning on the ulnar side, kind of the inner side of his arm and hand; and if bent his little finger, it made the pain worse. He had been filing for disability for disk disease and wanted to make sure that the symptoms he was having weren't related to the disk disease.

Q. Do you know what he's talking about as far as the disk disease, what part or parts of his body he's talking about?

A. No, I don't. If he was working about being from his arm, though, usually that would be cervical disk, not lumbar; but I don't know what he was applying for. I certainly was not the one

(Dulberg 000795) Page 28:

giving him disability.

Q. All right. Now I know that in his initial intake with you he had indicated a history of neck pain?

A. Correct.

Q. Did he give you any more details about that?

A. No, but it was with his health questionnaire of 2002.

Q. Okay. And I think going back to the little diagram of the person back from July 28th of 2011 you had mentioned, I think, there being a C8 involvement or ulnar nerve involvement in that particular area

--

A. Correct.

Q. -- that he was complaining of?

A. The distribution that he had, it could be C8 or ulnar. The EMG kind of excluded both of those.

Q. Okay. C8, however, that would be the cervical spine?

A. Correct, the cervical nerve root lesion, but his EMG was normal.

Q. This indication of burning on January 30th

(Dulberg 000796) Page 29:

of 2012, was that something new?

A. Well, when I had seen him July 28th, he was complaining of tingling and numbness, no burning at that time.

Q. Okay.

A. That kind of all goes together. It's we call paresthesias, so they kind of all do run with each other.

Q. It's not significant to you at all that he's coming and complaining now of burning feeling in January of 2012? It's just pretty much lumped all together?

A. Correct.

Q. Okay. And the area in which he's complaining of symptoms, was it the same in January, on January 30th of 2012, or had it expanded or contracted at all?

A. Same area.

Q. How about bending his little finger aggravating the pain and I think it also said sets it off all day, does that have any significance to you?

A. Not really explainable why that should be doing it.

(Dulberg 000797) Page 30:

Q. And did you perform an examination of him then on January 30th of 2012?

A. Yes.

Q. And what were the results of that examination?

A. He had shown decreased strength in moving his little finger out but not in. Abduction is out but --

Q. Out being away from --

A. Away from the middle. If your hand is together, pulling your fingers apart but not pulling it in.

Q. And would that be an objective or subjective finding?

A. You ask somebody to give you their full strength. Obviously they don't have to be giving you their full strength, but you would presume they are.

Q. Any other abnormal findings in that examination?

A. When he flexed his fifth digit, he complained of this pain up his arm. So bending your pinky is what flexing your fifth digit means.

Q. And, again, would that be subjective or

(Dulberg 000798) Page 31:

objective?

A. Subjective

Q. And can you think of any reason or if -- there's no explanation for why that would be the case?

A. Right. I was trying to come up with maybe there was some type of a neuroma, which is a little bundle of nerves endings somewhere on the nerve that he's irritating, somewhere on the tendon. So that's why I recommended he get an MRI.

Q. Okay. And so the area where he had the scar, it was raised?

A. Yes, is it was a flat scar. It was raised off, still in the healing stage likely also. Scars take years to change.

(Dulberg 000799) Page 32:

Q. And the bump, was that something that was visible, or is it something that you found upon examination?

A. To feel and that's why I even have it as a question, so was there a bump or wasn't there. So, again, I wanted to get an MRI just to make sure.

Q. And did he have the MRI then?

A. Yes, he did.

Q. And what did the MRI show?

A. No neuromas, normal tendons.

Q. And when was that MRI done?

A. On February 3rd of '12.

Q. And he came back to see you on February 13th of 2012?

A. Correct.

Q. And I presume that you gave him the results of the MRI?

A. Correct.

Q. And in your handwritten notes, what does that say under here for results of MRI?

A. MRI negative, I do not know why patient has continued symptoms, not sure why when he bends his little finger things get worse with pain in entire arm. I suggested he get a third opinion

(Dulberg 000800) Page 33:

with Scott Sagerman.

Q. And it looks like that was a relatively short visit?

A. Ten Minutes. That's -- our follow-ups are usually between ten and fifteen minutes.

Q. And then we talked about he went to see Dr. Sagerman and Dr Sagerman then sent him back to your office for this second EMG that took place on May 13th of 2012?

A. Correct.

Q. Okay. I'm just trying to get the timeframe --

A. Actually it's March 13th of 2012.

Q. Oh, March 13th, I'm sorry. All right. And the next contact with your office then was on May 4th of 2012?

A. It looks like somebody asked for records. Records release to Thomas somebody.

MS. FREEMAN: Popovich.

THE WITNESS: There we go.

BY MR. ACCARDO:

Q. Okay. So no office visit, no contact with Mr. Dulberg?

A. Correct.

(Dulberg 000801) Page 34:

Q. Just a records release?

A. My office manager sent out some records.

Q. Okay. He came into your office on May 16th of 2012?

A. Correct.

Q. All right. And why was he there on May 16th of 2012?

A. Scott Sagerman wanted him to be on neuropathic pain medicines.

Q. And we had already talked about that, or you had mentioned some of those earlier?

A. Correct.

Q. Did you put him on some pain meds at that time?

A. Yes. We started Gabapentin, 300 milligrams, and then to increase that to twice a day within a week.

Q. And what was that for?

A. It -- originally actually gabapentin was an anti seizure medicine. It's a lousy antiseizure medicine. It works better on nerves that fire wrong. Someone years ago thought, oh, if seizures are nerves that fire wrong, why can't it work for

(Dulberg 000802) Page 35:

peripheral nerves, and it does. Basically no one knows why. Probably what happens when it's an irritated nerve, instead of -- like if you think of an electrical cord, instead of your impulses going down each little cord, they jump from cord to cord and then they -- or jump from nerve to nerve in this case, and the gabapentin stops that jumping. It's all theory, though, but it works.

Q. Are there side effects for that medication?

A. Generally that one is very well tolerated. That's why it's the first we like to use.

Q. And the dosage that you put him on, was that a standard --

A. Still very small. Some people -- even getting him up after that week, he would be on a total of 600 milligrams. Some people need as much as 3 grams. So we just build it up to, (a), symptoms are gone, (b), you tolerate, or, (c), about 3 grams. After that, it really won't do much good.

Q. And what were his complaints then, or what did he tell you during the May 16, 2012 visit?

(Dulberg 000803) Page 36:

A. He thought his strength was bad. He thought the pain was still there. He wasn't sure if it was as bad as it was but only lasting a few seconds. Doing physical therapy or small things, small work with the hand -- that's why its small caliber is small things with the hand -- brings the pain on at the scar. He wears his splints at night.

Q. Do you know who it was that put him in a splint?

A. I guess it would be Dr. Sagerman, but I would have to go back to look at the records from him to see.

Q. And then you talk about adding the drug then?

A. Correct. And then he's going to call in two weeks or if he had anything he thought was unusual, any side effects, to call sooner.

Q. Did you perform an examination of him at that time, or was it pretty much just him telling you those things?

A. Just telling me.

Q. Your next contact with Mr. Dulberg was on June 1st of 2012?

(Dulberg 000804) Page 37:

A. No. He spoke with Mellissa, my clinical assistant, on June 1st that said that he had done some gardening two days ago and his symptoms were increasing. So we increased the medication to 600 milligrams twice a day.

Q. And that was just a telephone call?

A. Correct.

Q. And it looks like there was another call on June 11th of 2012?

A. Correct.

Q. And what was he complaining of at that time?

A. Still been noticing frequent twinges of pain, discomfort from the nerve when he uses the arm. So we increased him now to 900 milligrams twice a day.

Q. Now I noticed during the subsequent visits and certainly after Mr. Dulberg was seeing Dr. Sagerman and undergoing the physical therapy that he talks a little bit more in the records or there's more mention in the records of there being pain with the use of his arm where there didn't seem to be that initially.

Can you offer any explanation, or is that significant to you at all?

(Dulberg 000805) Page 38:

A. I can't offer a good explanation for it, no.

Q. Okay. That is not something that you would normally expect to see given the nature of Mr. Dulberg's injury that there being a later onset of pain with use --

A. Correct.

Q. -- is that a fair statement?

A. Correct, unless something like a neuroma had developed which we looked and hadn't. That's what the MRI was for.

Q. Okay. Now it looks like it gets a little bit cut off down here at the bottom. Is that July 16th of 2012?

A. Yes. Again, it looks like my office manager faxed records this time to SSA, which should be Social Security Administration, I'm assuming, so he must have been applying for some kind of disability.

Q. And then it looks like in July of 2012, September of 2012, and November of 2012 that's all dealing with records and releases and things like that?

A. Correct.

(Dulberg 000806) Page 39:

Q. And there was a telephone call. Then the next contact was July 23rd of 2013?

A. Phone call from January.

Q. Sorry January 23rd of 2013.

A. Correct.

Q. And what did he indicate during that phone conversation?

A. He's -- again, he spoke with my clinical assistant, said there was an overwhelming flash that comes over him, confused, hard to breathe, responsive driving, and no loss of consciousness, because we always want to make sure if somebody is talking about that they're okay driving, and not sure if it's a panic attack. He wasn't sure where to go with this. She talked to my associate who was on call. I was probably not in town at that point in time, and my associate said he should make an appointment to see me.

Q. Okay.

MR. BARCH: That's good advice.

BY MR. ACCARDO:

Q. Good, solid advice. All right. And did he then come into the

(Dulberg 000807) Page 40:
office?

A. Yes.

Q. And that was on February 4th of 2013?

A. Correct.

Q. All right. And what were his complaints at that time?

A. He had been on a medication named fluoxetine. He abruptly stopped it, and then for two weeks he was getting those spells like were described above.

Q. What is fluoxetine --

A. I'm sorry, I say it the other way. He stopped it for two weeks, and the spells got better. Then it says none since back on medicine, so somebody put him back on. It's usually used as an antidepressant, but I don't know what he was on it for.

Q. Okay.

A. Then it said he had surgery with Dr. Sagerman to remove the scar tissue. Since then he had been feeling a lot better, but the strength hasn't come back; and also when he uses his hand the burning comes back.

Q. Okay.

(Dulberg 000808) Page 41:

A. He was also now complaining of symptoms on the left side and headaches and went into some things about his headaches. He uses hydrocodone for his headaches. He had never been on Triptans,

which are headache medications; and his examination was normal at that point in time, and we recommended some headache medications for him and then to continue on his gabapentin for his arm.

Q. As far as the physical examination of his right arm and the area involved, that was normal?

A. Right. We had been looking at strength, and in this exam I probably didn't go into a detailed sensory exam in a follow-up. That was mostly now for his headaches.

Q. Can you think of any reason why headaches would be associated with injury that he may have suffered to his right forearm?

A. No, there's no connection.

Q. Did you get any surgical notes from Dr. Sagerman as far as what procedure was performed?

A. No.

Q. Safe to say then that you would defer to

(Dulberg 000809) Page 42:

Dr. Sagerman regarding any procedure that was performed by him and relating it back to the accident or the need for it related to any injuries that Mr. Dulberg is claiming?

A. Correct.

Q. Was there any examination or anything undertaken regarding his left arm since he was then complaining of left, quote, unquote, tennis elbow?

A. No.

Q. Tennis elbow, is that essentially the same thing that he had been complaining about related back to the prior care following 2002 accident?

A. Correct.

Q. And I guess in not laymen's terms what is tennis elbow?

A. Pain behind the elbow that effects that nerve that goes to the groove back there and can cause trouble down your arm.

Q. And given the procedure that Mr. Dulberg underwent for his left arm back in 2002, is that a condition that can come back or --

A. Yes, it can.

Q. Okay. And under what circumstances or for

(Dulberg 000810) Page 43:

what reasons would something like tennis elbow come back or show itself?

A. Continued receptive use of that area, same thing as why do people who have carpal tunnel get carpal tunnel again, continuing the same things that cause it. And I have not reviewed his records from 2002, whether his was traumatic back then; but once you have it, receptive use of the elbow can certainly do it.

Q. And then it looks like on -- is it May 29th of 2013 there was a telephone call?

A. Correct.

Q. And what were his complaints at that time?

A. A migraine, unrelated to his injury.

Q. Any complaints at all regarding the right forearm or the left arm at that time?

A. No.

Q. Then another call on august 12th of 2013?

A. Correct.

Q. And what was that in regards to?

A. It says he had been taking his gabapentin until July and then he stopped it back because he

(Dulberg 000811) Page 44:

didn't think it was doing anything for him, but now he was realizing it was helping him, and the physical therapist recommends he restart it. So we recommended he come back to be seen if he wanted to restart the medicine.

Q. The medication that he was on, the gabapentin, is that something that you would recommend somebody stop on their own accord?

A. No.

Q. Okay. Why not?

A. Well, for one reason because it is an antiseizure medicine. If you abruptly start it, you can cause a seizure, so you want to taper those kind of medications.

Q. Abruptly stop it?

A. I'm sorry, abruptly stop it, yes. So those are the kind of medicines you like to taper, not just stop.

Q. Not just stop cold turkey?

A. Correct.

Q. All right.

A. Pretty much a good idea on any medicine to check with your doctor first.

Q. More useful advice, thank you.

(Dulberg 000812) Page 45:

He came in on August 14th of 2013?

A. Correct.

Q. All right. And that's the last time he has physically been in the office?

A. Correct.

Q. Okay. Why did he come in on August 14th of 2013?

A. Again, he stopped his medication. He was now noticing spells of tingling and burning in the scar area, and contraction in the scar area, and his whole hand including the wrist contracts and curls up.

Q. And he indicated that that condition would stay for a few seconds?

A. Correct. He said at other times he thinks the strength is bad. He said that Dr Sagerman had told him there was scar tissue. He had told me that these spells of the hand contracting had actually been there since his original injury, they had been rare, and now were happening several times a day.

Q. And that was the first mention to you of the spells of contraction?

A. Or my seeing any contractions in his hand

(Dulberg 000813) Page 46:

in his exam.

Q. And was there an examination performed?

A. Yes.

Q. And what was the results of that examination?

A. Strength looked normal. There was no atrophy, which is shrinkage in the muscles which you would see from continued contractors or continued disuse of the hand, and his reflexes were equal.

MS. FREEMAN: I'm Sorry. Court Reporter, can you repeat her answer?

(Record read as requested.)

BY MR. ACCARDO:

Q. During that office visit of August 14th of 2013, were there any complaints regarding the left arm?

A. Not that I have written down.

Q. And what was your impression then on August 14th of 2013?

A. Confusion. Not knowing why he was still having these -- why he was having these dystonia symptoms, I recommended he go back and see the hand surgeon and put him back on the gabapentin since he

(Dulberg 000814) Page 47:

thought it was helping.

Q. And by, I guess, saying confusion, safe to say then that there were no -- or there was no clinical correlation that you could find between your findings upon examination and the complaints that Mr. Dulberg was complaining of at that time?

A. Correct.

Q. Is that a better way that?

A. A. Yes. And, like I say, over the course of seeing him all these times, I had never seen any of these things he was now complaining of that he said he had continually from the beginning, which is a bit unusual.

Q. And it looks like the last -- well, no. There was a telephone call on September 25th of 2013?

A. Correct.

Q. Okay. What did he say during that telephone call?

A. He said he had seen another neurologist, Dr. Kujawa, and he said that Dr. Kujawa had told to call us about his gabapentin. None of this was making any sense to me since Dr. Kujawa is a neurologist. So we got some of her records, and

(Dulberg 000815) Page 48:

actually she's going to be giving him Botox for his dystonia, and she's going to be managing his Neurontin.

Q. Botox for his dystonia?

A. Yes.

Q. Could you explain that to me a little bit?

A. Well, if someone has continued contractions, Botox is a treatment for it. I'm just a little concerned in that I see in Dr. Kujawa's notes again he said that he had this curling continually for 18 months. I'm not sure that it has actually been there for those 18 months, so I'm not sure that I would use Botox on this gentleman. I don't do Botox anyhow, so I couldn't use it anyway, but he's not someone I recommend for Botox, let's put it that way.

Q. And the last contact with Mr Dulberg was on September 30th of 2013?

A. Again, Melissa basically called him back to say we got Dr Kujawa's notes and what she was saying is that she can manage his care, so she would be.

Q. Okay. And are you failure with

(Dulberg 000816) Page 49:

Dr. Kujawa?

A. Yes.

Q. So, as far as your concerned, presently Mr. Dulberg is under the care of Dr. Kujawa for the problems that he had been seeing your office for?

A. Correct.

Q. Do you have an opinion within a reasonable degree of medical and neurological certainty as to what, if any, injury Mr. Dulberg suffered as a result of the June 28, 2011 incident with the chain saw?

A. Yes, I do have an opinion.

Q. And what is that opinion?

A. He had a branch nerve disturbance that would cause some sensory changes in his forearm and hand.

Q. Which could possibly result in a permanent injury?

A. Permanent numbness and potentially even some -- what we call paresthesias, the tingling numbness feeling in an isolated distribution.

Q. And as far as any continuing care or treatment for Mr.Dulberg, would it be limited to the medication that you had put him on?

(Dulberg 000817) Page 50:

A. That's what I would feel, correct.

Q. The injury that you believe that Mr Dulberg suffered as a result of the accident, would that result in any loss or use of the right arm or hand, or are we just talking about the numbness and tingling sensation?

A. Numbness and tingling sensation.

Q. Okay. So he should be able to use his right hand and his right arm normally?

A. Correct.

Q. I don't think I have anything else. Thank you, Doctor.

EXAMINATION

BY MR. BARCH:

Q. Dr. Levin, my name is Ron Barch. I'm here on behalf of a couple of the defendants in the case as well. Mr. Accardo did a good job covering everything, but I do have a couple follow-ups. Just as a lay person -- I don't play a doctor on TV or anything -- from an anatomy standpoint we've been talking about the ulnar nerve and the median nerve. Do those emigrate somewhere in the neck? I think you mentioned something about C8 nerve roots?

(Dulberg 000818) Page 51:

A. All nerves start as nerve roots that come out of the neck. They kind of get together under your arm into a brachial plexus, which then distributes out to the nerves down the hand, down the arm and hand. The two final branches in your arm, in your forearm, and going into your hands and fingers are called the median and ulnar nerves. They run deep. They weren't disturbed in this case.

Q. That was one of the questions. Now you mentioned something about the elbow. Do those nerves come to the elbow before they get into the forearm?

A. Correct. The ulnar nerve wraps behind the elbow before it --

Q. And there's no question he had the laceration on the forearm. You saw the evidence of the scar, correct?

A. Correct.

(Dulberg 000819) Page 52:

Q. And I take it it's your opinion then that laceration on the forearm did not go deep enough to actually hit either the ulnar or the median nerve?

A. Correct.

Q. But from those nerves there's little branches of nerves that come out which innervate the forearm muscles and things?

A. Well, some do the muscles; some do sensation.

Q. Okay.

A. His ones for sensation in that forearm and down even some that may have went down to the finger were disrupted.

Q. And that's what you talked about in response to Mr. Accardo's questions. You do believe that he did suffer an injury to those nerve branches that emigrate from the ulnar and median nerve, the sensation part of it?

A. Correct, absolutely. The branch nerves for sensation were disturbed.

Q. If you get an injury to the nerve branches that come out into the forearm and then down into the hand, would you expect it to cause any problems up in the elbow area?

(Dulberg 000820) Page 53:

A. No.

Q. And I don't want to get too rudimentary, but you would maybe see some symptoms downstream with the nerves but not upstream?

A. Correct.

Q. So if he ended up having a surgery on the elbow to address thickening and scarring associated with the ligament and the ulnar nerve floor and the cubital tunnel, that would not be associated with the laceration to the forearm?

A. Correct.

Q. And I think I caught your comment about this, and we just talked about a moment ago that the C8 Level in the cervical spine is where those nerves come out from the neck and then make their way down the arms?

A. Correct.

And that EMG was done, I think -- was it in March of 2012? I can't recall.

A. Correct., March 13th of 2012.

Q. Did that for you confirm that the problems he was having with respect to the branch neuropathy were unrelated to any injury to his cervical spine?

A. Correct.

(Dulberg 000821) Page 54:

Q. If someone had problems as Mr. Dulberg had, branch neuropathy after his laceration, would you expect that to somehow evolve into a tennis elbow situation?

A. No.

Q. And the tennis elbow that you mentioned earlier, laypeople call that -- that's carpa; tunnel in the elbow?

A. That's the best way to look at it, yes. It's called an ulnar nerve entrapment but, yes, cubital tunnel syndrome; but the cubital tunnel is the equivalent of the carpal tunnel in the wrist in the elbow.

Q. And to get the tennis elbow, I take it it's going to be some type of repetitive engagement in that elbow or maybe an actual injury right to that location?

A. Correct. Or if you lean on your elbows a lot, that's a real common one; and nowadays with people using computers, you'll be leaning on your elbows. Keeping your elbows bent out of your car window is a common one, left sided usually, but, yes anything that traps that area there.

Q. What if somebody decided because of the

(Dulberg 000822) Page 55:

branch neuropathy they were going to favor their left arm as opposed to their right arm, would that result in -- the non-use of the arm create carpal tunnel or tennis elbow in that elbow?

A. On that side, no. If you're overusing your other side, it might on the other side, but it wouldn't cause it in the unused side.

Q. I think that's all I have. Thank you.

EXAMINATION

BY MS. FREEMAN:

Q. Like two, three questions, Doctor. You had just said that if he gave you a description or a scenario where if somebody is not using their right arm or mobilizing that elbow and they're using their left arm to do things because of pain or problems in that, that could result in tennis elbow of the left arm, correct?

A. If your overusing the left arm, yes.

Q. Okay. One other thing I had to ask you about. You talked about that your recommendation or what you would recommend for continuing treatment is the medicine that you discussed before, correct?

A. Correct, if that one is working or one of

(Dulberg 000823) Page 56:

the other nerve medications.

Q. Do you think Mr. Dulberg will need these medications for the rest of his life?

A. There's a potential of that. You need to be on some medication and see a neurologist about once a year for the treatment of that, for the prescription of that.

Q. And do you have any other opinions regarding Amy other care that he may need?

A. In regard to this accident, I don't believe he should need any other care besides that.

Q. Besides the medicine and seeing a neurologist once a year?

A. Correct.

Q. Okay. That's all.

FURTHER EXAMINATION

BY MR. BARCH:

Q. That just prompted a couple more follow-ups, sorry. Now with respect to the right arm and whether he was using the left arm, if I understood your earlier comment, there was nothing about this branch neuropathy that prevents him from using his right arm?

(Dulberg 000824) Page 57:

A. Correct.

Q. All right. And is there anything in your contact with him relative to this right arm branch neuropathy that renders him in your opinion either partially or totally disabled?

A. No, there is nothing there.

Q. If he was pursuing disability and somebody did declare him disabled, I take it it would be from your vantage point something other than branch neuropathy?

A. Absolutely.

Q. Thank you.

MR. ACCARDO: I don't have anything else.

MS. FREEMAN: Doctor, do you want to do signature?

THE WITNESS: Waived.

MR. ACCARDO: All right. Thank you, Doctor.

FURTHER DEPONENT SAITH NOT

(Dulberg 000825 - Dulberg 000827) Page 58 - 60:

Certification

(Dulberg 000768 - Dulberg 000827)

(Dulberg 003681 - Dulberg 003740)

*** (Note:

- Add more later

- Go back and add dates from deposition to timeline

- Dulberg had to order this after Popovich withdraws

- Page 13 - July 28th 2011 letter to Mast, Levin answers yes??? - the date has got to be wrong because Dulberg meets Mast on December 1 2011 just over 4 months after the letter. Idea, look at all faxed stamped documents between Levin and Mast and see if this letter shows up and place appropriately in timeline.

- Page - 24 letter dated July 28, 2011 to Mast is placed after August 10, 2011. still makes no sense.

- Levin screws up when saying tennis elbow is ulnar groove)

2013-10-07 Dynamic Hand Therapy:

Billing Statement - \$24,604.00

(POP 000830 - POP 000844) - Payment as last page

(Dulberg 002205 - Dulberg 002219) - Certification as last page

(Dulberg 004597 - Dulberg 004611) - Certification as last page

(Dulberg 005581 - Dulberg 005595) - Payment as last page

*(Notes:

- Not sure why one set has payment and the other has certification as last page)

2013-10-14 16:12 Dr Sagerman Fax to Popovich:

1. Cover page

2. Notice of healthcare services lien

(POP 000061 - POP 000062)

(Dulberg 002126) - Notice of healthcare services lien only

(Dulberg 006336) - Notice of healthcare services lien only

(Dulberg 006344) - Notice of healthcare services lien only

2013-10-14 Printed mapquest:

Location of Dr Sagerman's office

(POP 000064)

*(Notes:

- This was not turned over in either of the 2 case files in the underlying case.)

2013-10-14 15:50 Hand to Shoulder Associates Fax to Popovich:

(POP 000929) - Cover sheet only

Pages 2-8, 12-19, 22

(Dulberg 002338 - Dulberg 002353) - Missing Cover sheet and pages 9-11 20-21 23-39

Pages 2-8, 12-19, 22

(Dulberg 004732 - Dulberg 004747) - Missing Cover sheet and pages 9-11 20-21 23-39

Pages 2-25

(Dulberg 007705 - Dulberg 007728) - Missing Cover sheet and pages 26-39

Pages 27-39

(Dulberg 007729 - Dulberg 007736) - Missing Cover sheet and pages 2-26

Pages 26-31
(Dulberg 007737 - Dulberg 007742)

*(Notes:

- Popovich documents - only has cover page
- Dulberg documents - are fragmented and do not have the cover page
- This is a mess there are supposed to be 39 pages in total. They are all there just fragmented)

2013-10-15 9:24am Deposition of DR. SCOTT SAGERMAN:

(Dulberg 001095 - Dulberg 001160)(Dulberg 003993 - Dulberg 004058)

(Dulberg 001095) PAGE 1:
The deposition of DR. SCOTT

(Dulberg 001096) PAGE 2:
SAGERMAN, taken before Jill S. Tiffany, CSR, a notary public within and for the County of Lake and State of Illinois, on October 15, 2013, at the hour of 9:24 a.m., at 515 West Algonquin Road, Arlington Heights, Illinois.

APPEARANCES:

MR. ROBERT LUMBER, of the Law Offices of Thomas J. Popovich, P.C. 3416 West Elm Street McHenry, Illinois 60050 appeared on behalf of plaintiff;

MR. PERRY A. ACCARDO, of the Law Office of Steven A. Lihosit 200 North LaSalle Street, Suite 2650 Chicago, Illinois 60601, appeared on behalf of Defendant David Gagnon;

MR. RONALDA. BARCH, of the firm of Cicero, France, Barch & Alexander, P.C. 6323 E. Riverside Boulevard Rockford, Illinois 61114, appeared on behalf of Defendants Caroline McGuire and Bill McGuire.

INDEX

(Dulberg 001096) PAGE 3: ***(Note: This page is missing)

(Dulberg 001096) PAGE 4:
WITNESS:
DR. SCOTT SAGERMAN

EXAMINED BY:.....Page
MR. ACCARDO.....4
MR. BARCH.....52, 61
MR. LUMBER.....59, 62

EXHIBITS:

No. 1.....5

(Dulberg 001098) PAGE 5:

(Exhibit No. 1 was marked for identification.)

DR. SCOTT SAGERMAN, called as a witness and having been first duly sworn under oath, was examined and testified as follows:

EXAMINATION

BY MR. ACCARDO:

Q. Doctor, could you please state your name and spell it for the court reporter?

A. A. Scott David Sagerman, S-A-G-E-R-M-A-N, M.D.

MR. ACCARDO: Let the record reflect this is the discovery deposition of Dr. Scott Sagerman taken pursuant to notice, taken in accordance with the Rules of the Supreme Court of the State of Illinois and any other applicable Local Court Rules.

Q. Good morning, Dr. Sagerman. I'm going to be asking you some questions today about a patient of yours by the name of Paul

(Dulberg 001099) PAGE 6:

Dulberg, okay?

A. Yes.

Q. You've given depositions before?

A. Yes.

Q. You're familiar with the ground rules governing depositions?

A. Yes.

Q. Now, we've been tendered a copy of your C.V. which we've marked as Exhibit No. 1 for identification. Is that relatively current and up-to-date?

A. Yes.

Q. And what kind of doctor are you?

A. Orthopedic surgeon.

Q. And do you have a specialty within the orthopedic field?

A. Yes.

Q. And what is that?

A. Hand and upper extremities.

Q. And you're currently affiliated with Hand to Shoulder Associates?

A. Yes.

Q. And that is in Arlington Heights, Illinois?

(Dulberg 001100) PAGE 7:

A. Yes.

Q. And that's where we're located today; is that correct?

A. Yes.

Q. Now, do you have any independent recollection of Paul Dulberg?

A. Somewhat.

Q. You have your chart here today for Mr. Dulberg; is that correct?

A. Yes.

Q. And what you have in front of you, does that comprise your entire chart for Paul Dulberg?

A. I think he had a Volume 1 chart from previous treatments in 2003 and 2004. I don't have that whole chart, but I have the typed office notes from that chart.

Q. Okay. And then in regards to this accident or care and treatment starting in 2012, you have your complete chart for Mr. Dulberg; is that correct?

A. Yes.

Q. Feel free to refer to your records and your notes when you need to. Now, the

(Dulberg 001101) PAGE 8:

accident that we're here to talk about took place on June 28th of 2011. And it looks like Mr. Dulberg first came to see you on February 27th of 2012?

A. Yes.

Q. And he was referred to you by a Dr. Frank Sek; is that correct?

A. I'm not sure. Dr Sek was the addressee of my correspondence from the first office note.

Q. Q. Do you know what kind of doctor Dr. Sek is? Is he an internist?

A. I don't know. But Mr. Dulberg had been to my office before that when he had treatment in 2003 and 2004.

Q. Right. Let's talk a little bit about that 2003 and 2004 treatment. What did he come to your office for generally?

A. He came for a left arm condition of cubital tunnel syndrome.

Q. And what is cubital tunnel syndrome?

A. Ulnar nerve disfunction due to compression at the elbow.

(Dulberg 001102) PAGE 9:

Q. And what is the ulnar nerve?

A. The ulnar nerve is one of the main peripheral nerves in the arm that passes behind the elbow in a region called the cubital tunnel before it extends down to the inner side of the hand to provide sensation and motor function to the muscles.

Q. Generally what were Mr. Dulberg's complaints in relation to his left arm when he came to see you back in 2003, 2004?

A. Numbness and tingling in the ulnar nerve distribution of the left hand.

Q. And what is the ulnar nerve distribution of the left hand?

A. The inside of the hand, the ring and small finger especially.

Q. And is there an indication from those records from 2003 and 2004 as far as the onset or triggering event for those symptoms that Mr. Dulberg complained of back then?

A. He said it was following a motor vehicle accident which occurred in March of 2002.

(Dulberg 001103) PAGE 10:

Q. Did he describe to you at all how that accident happened or explain any type of mechanism of that particular injury or those symptoms that he was claiming?

A. I don't recall, and those are not reflected in my notes.

Q. And what would be some common causes of cubital tunnel syndrome?

A. Well the cause is compression on the nerve which may arise spontaneously. But there are some other factors that can contribute to it or cause it such as a direct injury to the vicinity of the nerve, or sometimes strenuous manual activities can contribute to the nerve compression.

Q. Can repetitive use -- typing, using the computer using a mouse, anything like that -- can that cause cubital tunnel syndrome?

A. No, I wouldn't think so; not those type of sedentary activities.

Q. When you said a direct impact to the vicinity of the nerve, where are we talking about? We're talking about over the

(Dulberg 001104) PAGE 11:

elbow?

A. Yeah. It's the inner side of the elbow, toward the back where the nerve runs behind the joint.

Q. And you performed a couple of procedures to correct that cubital tunnel syndrome on Mr. Dulberg back then?

A. Yes.

Q. And were those procedures successful as far as you know?

A. I think so.

Q. So now when he first came to see you in February of 2012, what did he come to see you for?

A. For a right arm laceration of the forearm from a chain saw accident which occurred on June 28, 2011.

Q. Did he tell you at all or give you any description of how this chain saw accident occurred?

A. No, not specifically.

Q. And I'm looking -- I'm referring to your February 29th letter to Dr. Sek. Mr. Dulberg indicates that he developed symptoms

(Dulberg 001105) PAGE 12:

of numbness in the small finger with weakness; is that correct?

A. Yes.

Q. Is there any indication of when those symptoms started? Was it something that was immediate? Did it take some time?

A. I don't know.

Q. Did Mr. Dulberg ever provide you with any records from the emergency room shortly following this particular accident or did your office ever obtain any?

A. No, I don't believe so.

Q. His past medical history indicates remarkable for arthritis and cervical disk disease. Is the arthritis, would that have been located in the neck?

A. I don't know. He didn't specify.

Q. He was on some medications when he first came to see you?

A. Actually he did specify degenerative discs in the neck. And the medications were naproxen, paroxetine, tramadol, cyclobenzaprine.

Q. Did he ever indicate to you that

(Dulberg 001106) PAGE 13:

he ever experienced any symptoms relating to the degenerative disc disease in his neck?

A. Well, he said he had neck pain on the health information form that he filled out that day I first saw him.

Q. He didn't go into any more detail about that?

A. No.

Q. The medications, naproxen, what is that for or what is that medication?

A. That's an anti-inflammatory medication used for typically pain symptoms related to inflammation.

Q. And what about tramadol?

A. That's another type of analgesic pain medicine.

Q. And fluoxetine?

A. I don't know. He indicated it was for depression.

Q. And cyclobenzaprine?

A. he said it was for muscle spasms.

Q. Now you performed an examination when Mr. Dulberg first came to see you; is that right?

(Dulberg 001107) PAGE 14:

A. Yes.

Q. And what were the results of that examination?

A. The right forearm showed a 7 centimeter transverse scar at the ulnar aspect of the mis forearm.

Q. And what area are we talking about there?

A. The inner side of the forearm between the elbow and the wrist. There was local tenderness and sensitivity to percussion with a positive Tinel's sign and paresthesias radiating into the small finger.

Q. What is a positive Tinel's sign?

A tapping or percussion over a peripheral nerve will elicit symptoms of sensitivity or shooting pain or electric shocks indicating nerve injury or nerve dysfunction.

Q. Is that a subjective or objective finding?

A. Subjective.

Q. And then going on with his examination?

(Dulberg 001108) PAGE 15:

A. There was also sensitivity of the cubital tunnel region.

Q. And we're talking about on the right side; correct?

A. Yes.

Q. And you already talked about when he came to see you previously in 2003, 2004 about the cubital tunnel region of his left arm; is that correct?

A. Yes.

Q. And as far as --

A. I'm sorry, you said about the left arm?

Q. Right. Well, when he came to see you previously it was for the left?

A. Correct.

Q. And then we get into wrist and elbow motion are unrestricted?

A. Yes.

Q. And then going on with his examination?

(Dulberg 001109) PAGE 16:

A. There was no atrophy. He was unable to adduct his small finger.

Q. What does that mean?

A. Bring the small finger closer to the other fingers, draw it back in. Flexion strength was grossly normal. Sensation was decreased to light touch in the small finger only with inconsistent two point discrimination.

Q. What does that mean, inconsistent two point discrimination?

A. His ability to sense one or two points on the fingertip was not consistently correct.

Q. You reviewed X-rays taken of his right forearm?

A. Yes.

Q. Did you review the films themselves or just the radiologist's report or both?

A. I think the films.

Q. And those appeared to be normal --

A. Yes.

Q. -- as far as a fracture or anything

(Dulberg 001110) PAGE 17:

like that?

A. There was no fracture or foreign body.

Q. And then there was an MRI that you reviewed from February 3rd of 2012?

A. Yes.

Q. And again, would that have been the film or the radiologist's report or both?

A. The films.

Q. And that indicates that no abnormality was seen; is that correct?

A. Yes. I think I also have copies of the report of the MRI in my file, although I didn't refer to that specifically in the report.

Q. Right.

MR. BARCH: Yeah, it did come in your records.

BY MR. ACCARDO:

Q. Q. And if I could just look -- if I could refer you to the report of the MRI, under clinical history he gives complaints or a reason why this particular MRI was taken was weakness in the fourth and fifth fingers,

(Dulberg 001111) PAGE 18:

is that correct, under clinical history?

A. Yes.

Q. And which are the fourth and fifth fingers?

A. I think the ring and small fingers.

Q. And also he was indicating pain in the forearm and hand?

A. Yes.

Q. And I know that the MRI came back normal. But under impression, I just wanted to ask you a couple of questions. It says that there's no forearm abnormality appreciated, but this does not exclude the possibility of an ulnar nerve impingement or injury, but there is no gross mass or abnormal infiltration along the expected course of the ulnar nerve. What does that mean?

A. Well, nothing abnormal was appreciated on these images. And I think the radiologist is saying that the lack of an imaging abnormality does not exclude the possibility that the nerve could have been

(Dulberg 001112) PAGE 19:

injured.

Q. Then it goes on to state that there was no obvious tendon or muscle abnormality appreciated.

A. Yes.

Q. And it looks like your office received a copy of a nerve conduction report or nerve conduction study that was performed by Dr. Levin back in -- on August 10th of 2011? I have a copy of it if you want to take a look at it. It came in your records.

A. Oh, yes, I have it.

Q. Oh, okay.

A. This is a different exam here.

MR. BARCH: Is this March 13 of '12?

MR. ACCARDO: Oh, I'm sorry. That's the later one.

THE WITNESS: There's two.

BY MR. ACCARDO:

Q. Yes. You have both, right?

A. Yes.

Q. From August 10, 2011 and March 13, 2012?

(Dulberg 001113) PAGE 20:

A. Yes.

Q. All right. Lets talk about that August 10, 2011. You reviewed a copy of that report from Dr. Levin?

A. Yes.

Q. And what did that indicate?

A. No electrophysiologic evidence of diffused neuropathy.

Q. Is that significant to you at all?

A. Yes.

Q. How so? Obviously it's a negative finding?

A. Yeah. Diffuse neuropathy would possibly be a contributing cause of nerve symptoms if it was present, but this report states that it's not present.

Q. And sort of going back to when we asked you that question about, under the impression in the MRI report, about not excluding the possibility of an ulnar nerve impingement or injury, does that -- do the results from the nerve conduction study from August 10, 2011 sort of rule that out? Does that sort of take care of that little caveat,

(Dulberg 001114) PAGE 21:

if you know what I mean?

A. Well, I don't think it rules it out either. I felt that additional testing was warranted to evaluate the possibility of nerve injury.

Q. Now, after taking the history and your examination and your review of the radiological studies as well as the nerve conduction study, you came up with an impression back in February of 2012?

A. Yes.

Q. And what was that impression?

A. Right forearm laceration with probable partial ulnar nerve injury.

Q. And what indications led you to come up with the impression of a probable partial ulnar nerve injury?

A. Well, he had a scar over the region of the forearm where the ulnar nerve travels. He said it was a deep laceration, so there's a possibility that the nerve was directly injured by the chain saw. And that he had symptoms of Paresthesias, numbness and weakness, that could be attributable to an

(Dulberg 001115) PAGE 22:

ulnar nerve injury. There were findings on examination of local sensitivity and altered sensation in the distribution of the ulnar nerve that again suggests the possibility of a nerve injury.

Q. And your plan was, I think as you said before, was to send him out for some additional testing?

A. Yes.

Q. And specifically, you wanted him to go get an EMG?

A. Yes.

Q. Now, what's the difference -- he had the nerve conduction study from Dr. Levin. What's the difference the difference between a nerve conduction study and an EMG?

A. Well, an EMG is electromyography, where the muscles are tested for signs of denervation that would indicate a nerve injury.

Q. As opposed to a nerve conduction study which is what?

A. Yes. A nerve conduction study measures the velocity of the nerve impulses

(Dulberg 001116) PAGE 23:

which is another way of detecting signs of a nerve injury.

Q. Why was it then that you wanted him to have an EMG if he had already had a nerve conduction study? Just because they measure two different things?

A. Yes. I think for a more complete assessment of the nerve function, an EMG in my opinion is warranted.

Q. And you first brought up the possibility of a surgery for nerve exploration pending the results of the EMG; is that correct?

A. Yes.

Q. What is nerve exploration surgery? I'm guessing it's somewhat self-explanatory, but in laymen's terms if you could just sort of explain what you're talking about there.

A. A surgical procedure under anesthesia to expose the area of the presumed nerve injury to determine the extent of the injury and the need for nerve repair or other treatment if the nerve injury is confirmed.

Q. And he indicated that he would

(Dulberg 001117) PAGE 24:

follow up with his EMG and actually go get that; is that correct?

A. Yes.

Q. Now, you also have work status is no restriction. Did Mr. Dulberg give you any indication or do you know what he was doing for a living back in February of 2012?

A. He said he was involved in graphic design printing

Q. Did he ever make any complaints or indicate to you that he was unable to perform his job duties back in February of 2012?

A. I don't recall.

Q. So Mr. Dulberg did go have the EMG; is that correct?

A. Yes.

Q. And he went back to Dr. Levin who was the doctor that had performed the previous nerve conduction study?

A. Yes.

Q. And it looks like that EMG was done on March 13th of 2012?

A. Yes.

Q. And then he came back to see you

(Dulberg 001118) PAGE 25:

on April 2nd of 2012?

A. Yes.

Q. And he indicated there was no change in his symptoms at that time?

A. Yes.

Q. And you reviewed the report of the EMG?

A. Yes.

Q. And what did that show?

A. There was no denervation and ulnar nerve conduction was within normal limits. And the report states there was no evidence of focal or diffuse peripheral neuropathy.

Q. And is that significant to you?

A. Yes.

Q. Why or how so?

A. It means that there's no documentation that the nerve was not functioning normally.

Q. And you performed an examination again of Mr. Dulberg --

A. Yes.

Q. -- in April?

A. Yes.

(Dulberg 001119) PAGE 26:

Q. His right forearm scar was stable and non-tender?

A. Yes.

Q. And he still had a positive Tinel's sign?

A. Yes.

Q. And you indicate that adduction of the small finger remains limited, consistent with a positive Wartenberg's sign. What is Wartenberg's sign?

A. The patient will have difficulty bringing the small finger back toward the other fingers, indicating weakness in one of the intrinsic muscles of the hand.

Q. And again, this sensitivity to percussion with a positive Tinel's sign and adduction of the small finger with a positive Wartenberg's sign, are those subjective or objective findings?

A. Well, Tinel's sign is purely subjective. The Wartenberg's sign, I suppose there's a voluntary component possibly, so I don't know if I would call it purely objective. I don't know how to answer that

(Dulberg 001120) PAGE 27:

exactly.

Q. Okay.

A. I suppose it's partly both.

Q. And your plan was -- you gave him some different treatment options, and he did not wish to pursue that exploratory surgery; is that correct?

A. Yes.

Q. At least at that time?

A. Yes.

Q. You gave a referral out for some therapy?

A. Yes.

Q. For strengthening and scar management?

A. Treatment for a sensitive scar from an injury. Maybe local soft tissue modalities being applied to the scar directly or scar mobilization with massage and stretching, those type of things.

Q. Would that to be sort of just to loosen up whatever scar tissue there is in that area?

A. I suppose. Loosen up and diminish.

(Dulberg 001121) PAGE 28:

sensitivity, discomfort or abnormal sensation related to the scar.

Q. And again, his activity and work status was unrestricted?

A. Yes.

Q. He came back to see you to follow up in May of 2012?

A. Yes.

Q. And his complaints at that time were a little different than they had been previously?

A. Yes.

Q. How were they different?

A. He said he had persistent pain with use of his arm, especially gripping activities.

Q. That was something new to you?

A. Well, I didn't note that earlier. I don't know if he said it earlier or not, but it's not in my notes that way. He also had no change in other symptoms of numbness.

Q. And he indicated that the no change in his symptoms of numbness which is not bothersome?

(Dulberg 001122) PAGE 29:

A. Yes.

Q. And as far as the way that's written, would that indicate to you that his symptoms of numbness were not bothersome to him at that time?

A. Yes.

Q. And he claimed that his function was limited because of his pain?

A. Yes. That seems to be a new complaint compared to the initial evaluation.

Q. And upon examination, what were your significant findings, if any?

A. The right forearm scar was tender with a positive Tinel's sign, local sensitivity. His finger flexion was full. There was no triggering or locking, no clawing. The Wartenberg's sign was still positive. The intrinsic strength was slightly weak.

Q. What is intrinsic strength?

A. Strength of the muscles in the hand that control movement of the fingers.

Q. And how is that measured?

A. With resistance by the examiner.

(Dulberg 001123) PAGE 30:

Q. And you said that there was no --

A. I mean, it can't be graded numerically, but a judgement is made about whether the strength of the muscle is normal or weak.

Q. During that, is there any comparison made between a patient's left and right sides, whatever side their complaining of versus, I guess for a lack of a better term, a normal side or an asymptomatic side?

A. Yes. You can judge whether one hand is weak when you compare it to the other side being examined simultaneously.

Q. And you indicated no clawing. What is clawing?

A. An abnormal posture of the finger related to muscle weakness or muscle imbalance which can be seen in an ulnar nerve injury situation.

Q. And under your treatment plan you bring up again the possibility of surgery --

A. Yes.

Q. -- for ulnar nerve neurolysis.

(Dulberg 001124) PAGE 31:

What is that?

A. Neurolysis is an exploration of a nerve, surgical exploration of the nerve to determine the extent of the injury to the nerve, possibly decompress the nerve or release it from scar.

Q. Q. And he was going to follow up with Dr. Levin for medication, and then he was also going to see Dr. -- how do you pronounce his name?

A. Dr. Biafora is my partner.

Q. Does he have the same specialty as you?

A. Yes.

Q. Why was it that he wanted to go see him? Or did you send him to the other doctor for a second opinion?

A. I think I possibly suggested it, yes.

Q. And again, his activity and work status as of May 2012 was still unrestricted?

A. Yes.

Q. And did he go see your partner a

(Dulberg 001125) PAGE 32:

few days later in May of 2012?

A. Yes.

Q. And did you have a chance to review Dr. Biafora's report?

A. Yes.

Q. Was there anything significant to you in there? Was there anything different than what you had found?

A. Yes.

Q. And what was that?

A. He noted a positive Tinel's at the cubital tunnel.

Q. Why is that significant to you?

A. That's another possible location for compression or dysfunction of the ulnar nerve.

Q. Which would also explain the symptoms that Mr. Dulberg was complaining of to you?

A. Some of them. It wouldn't explain the scar symptoms at a more distal location, but it may explain nerve symptoms in the ulnar nerve distribution of the hand.

Q. And what were Dr. Biafora's

(Dulberg 001126) PAGE 33:
recommendations?

A. He thought there was a likely partial ulnar nerve injury in the right forearm and ulnar nerve neuritis. And he felt the patient may benefit from the an ulnar nerve exploration with neurolysis, including cubital tunnel decompression with possible anterior transposition, and exploration of the tender portion of the scar in the forearm.

Q. And then Mr. Dulberg follows up with you after his visit with Dr. Biafora?

A. Yes.

Q. It looks like he had started on some medication from Dr. Levin?

A. Yes.

Q. And what was that that he started on?

A. Neurontin.

Q. And what is that?

A. Medication used to treat nerve related pain.

Q. Have you used that drug to treat nerve related pain in your patients?

(Dulberg 001127) PAGE 34:

A. Well, I don't prescribe it myself, but I've had patients who were prescribed that medication by other physicians to treat nerve related pain.

Q. Why is it that you don't prescribe it yourself?

A. Well, there is a potential for side effects, and sometimes the dose has to be adjusted. And I think it's best prescribed by a physician with more expertise in that particular drug.

Q. Would a doctor with more expertise be Dr. Levin?

A. Yes, a neurologist.

Q. He did indicate no change in his symptoms despite taking this medication and that he did have some side effects. Did he tell you what those side effects were?

A. I don't recall.

Q. And indicates that interfere with functioning. Did he tell you what kind of functioning that he was talking about?

A. I don't recall. That medication can cause some drowsiness. I don't know if

(Dulberg 001128) PAGE 35:

that's what he was referring to. I don't have any recollection of this conversation.

Q. So it's not necessarily, as far as you recall or would know, specifically related to having functioning difficulties with his hand or his arm?

A. I don't know.

Q. And Mr Dulberg had then made the decision to go ahead with the surgery?

A. Yes.

Q. Now, he had been undergoing some therapy which in June of 2012 he said was discontinued due to lack of progress. Was that therapy that you had referred him out for?

A. I think at one point I had referred him for therapy. I don't know if anybody else had as well. We do have some records from the therapist. I see from one April 22, 2013 that has me listed as the referring physician. And it says discontinue occupational therapy with home exercise program.

Q. That was in April of 2013?

(Dulberg 001129) PAGE 36:

A. Yes.

Q. Who was that from, what therapy?

A. Dynamic hand Therapy.

Q. I was just sort of interested because, going back to your note from May 14th of 2012, he indicated that the therapy was beneficial, and then in June of 2012 he indicates that it was discontinued due to lack of progress. I just didn't know whether your notes reflected or if you had any of the notes from any physical therapy showing any lessening of effectiveness or anything between May of 2012 and June of 2012.

A. I don't have those in my file. They may have been received and discarded. I don't know.

Q. And your examination of Mr. Dulberg on June 6th of 2012 revealed what that was significant?

A. He had pain with gripping activities localized to the forearm region, resulting in increased numbness in the ring and small fingers with weakness in his grip.

(Dulberg 001130) PAGE 37:

The rest of it was I think unchanged from what we had previously documented.

Q. And you were able to duplicate the Positive Tinel's sign at the cubital tunnel area?

A. Yes.

Q. And it says without ulnar nerve subluxation. What does that mean?

A. The nerve did not subluxate or move out of position when the elbow was bent. So the nerve was stable.

Q. You went over your plan for surgery with him, he said everything was good to go with that, is that right, insofar as he wanted to have the procedure done?

A, yes, I think he wanted to proceed, and he understood the the risks and benefits and possible complications and the expected outcome and prognosis. And informed consent was obtained for the procedure.

Q. Now, you note the prognosis is guarded in terms of symptom improvement. Why is that or why was that at that time?

(Dulberg 001131) PAGE 38:

A. Well, we didn't know exactly how much improvement there would be, so that's why the prognosis is guarded. It's hard to predict how much better the symptoms will be when we don't know the extent of the nerve injury until we explore it. So we just couldn't make a firm prognosis without knowing the extent of the nerve injury and how it would respond to the surgical treatment.

Q. And did he have the procedure then on July 8th of 2012?

A. Yes.

Q. And you performed that surgery?

A. Me and Dr Biafora.

Q. Biafora, okay. Sorry if I'm mispronouncing his name.

A. I'll tell him.

Q. Your preoperative diagnosis and postoperative diagnoses were the same; is that correct?

A. Yes.

Q. As far as under what circumstances the procedure was performed, is that under

(Dulberg 001132) PAGE 39:

general anesthesia, local anesthesia, inpatient, outpatient?

A. I think it was outpatient surgery under regional block anesthetic which would also include sedation.

Q. Would he have been under at that time or more like in twilight? He wouldn't have been all the way under.

A. Not a general anesthetic, but he would have been sedated which you might refer to as twilight. And his arm was blocked with local anesthetic so that it was numb during the procedure.

Q. And what were your findings? Now, there are a couple of components to this procedure; is that correct?

A. Two, yes.

Q. One was to the right elbow region which would have been the cubital tunnel release; is that correct?

A. Yes.

Q. And the other one was in regards to the area of the right forearm; is that correct?

(Dulberg 001133) PAGE 40:

A. Yes.

Q. In regards to the cubital tunnel area, what procedure and what findings did you come up with during that?

A. A. Cubital tunnel release was performed and there was thickening of the cubital tunnel ligament with scarring of the ulnar nerve to the floor of the cubital tunnel and local constriction. The nerve also appeared constricted at the flexor pronator aponeurosis. And there was another structure above the cubital tunnel but no constriction of the nerve at that level.

Q. What does that mean in layman's terms?

A. That he had a pinched nerve at the elbow.

Q. Is that similar to the findings in regards to his left arm back in 2003, 2004?

A. I don't have the operative report in the records here from that procedure, so I can't tell you the specific findings that were noted.

Q. The findings at least in your

(Dulberg 001134) PAGE 41:

operative report from July of 2012 in regards to the cubital tunnel, are those consistent with cubital tunnel syndrome? Is that sort of what were talking about?

A. Yes.

Q. And we had already talked about some common causes of cubital tunnel syndrome before?

A. Yes.

Q. In regards to the area where the injury was -- strike that. In regards to the right forearm, what did you find?

A. There was an extension of the laceration into the subcutaneous tissues and fascia overlaying the flexor carol ulnas muscle. A piece of retained absorbable suture material was present. The ulnar nerve was intact beneath the muscle belly. There was no visible scarring around the ulnar nerve at this level.

Q. And again, in laymen's terms, what does that mean?

(Dulberg 001135) PAGE 42:

A. It means that the laceration from the chain saw was relatively deep -- below the skin, below the fat, and into the muscle covering -- but the muscle fibers were intact. There was suture material present presumably from when the laceration was originally repaired at the time of the injury. And the nerve was not cut or visibly scarred in that area.

Q. Was that, what you found during the procedure in regards to the right forearm, is that significant to you at all either one way or the other in regards to the complaints that Mr Dulberg had made before the surgery.

A. Yes, it's significant.

Q. How so or why?

A. Well, I think that scarring from the laceration would account for his symptoms. And fortunately, the nerve itself was not cut or scarred and we didn't have to repair the nerve, so that was fortunate.

Q. How would it be that the scarring from the laceration would cause his symptoms?

(Dulberg 001136) PAGE 43:

What exactly would have been happening there?

A. Well, it's hard to know specifically what the mechanism of the pain symptoms and nerve symptoms was. We can't be sure what's causing those symptoms, although there's certainly scarring from the laceration involving the muscle, fascia, and near the nerve. So I think that's about all we can say in terms of an explanation for his symptoms.

Q. How about what you found in regards to his cubital tunnel syndrome in relation to the complaints that he was making, could that also have been a cause?

A. Yes, I think the nerve compression could account for the symptoms of paresthesias, the numbness in that distribution of the ulnar nerve, and the weakness.

Q. And those are two independent findings or independent areas in regards to the cubital tunnel area and the right forearm; is that a fair statement?

A. Yes, two separate sites.

(Dulberg 001137) PAGE 44:

Q. Now, after the procedure you performed, he came back to see you for various follow-ups in July, August, and then in October of 2012; is that correct?

A. Yes.

Q. And how was he progressing during that time in regards to his recovery from the procedure?

A. His pain was controlled. His incisions were clean. There was no infection. The incision healed, incisions healed. He was doing well. His arm felt better. His function had increased. His symptoms had improved.

Q. Did his symptoms completely resolve or were they just improved?

A. They did not resolve completely. But through August 27th it says that his progress -- he was making progress in therapy. His strength had increased. His function had improved. There was still some scar tenderness and soreness in the elbow.

Q. And was he put on any restrictions as far as use or work?

(Dulberg 001138) PAGE 45:

A. Yes.

Q. And what were those?

A. Initially he was off work after the surgery until July 30th. Then he was given restrictions to limit activities requiring forceful gripping and avoid lifting, pushing and pulling.

Q. Would he have been limited or were the limitations that you imposed on him, would they have been in any way related to any type of use of the computer, mouse, track pad, keyboard, anything like that?

A. No, those activities would not need to be avoided or restricted because they don't require forceful gripping, lifting, pushing or pulling.

Q. And it looks like then he started to -- or he came back and, starting in December of 2012 and thereafter, started making some complaints related to his left

(Dulberg 001139) PAGE 46:

arm; is that correct?

A. Yes.

Q. And did he indicate when those difficulties with his left arm started?

A. He said recent onset. Well, That was my report saying recent onset. I don't recall if he said exactly when it started.

Q. And what type of symptoms was he complaining of in his left arm?

A. There was tenderness to the lateral epicondyle and gadded range of motion. Pain at the end range of extension and pain reproduced with resisted wrist extension. So those were consistent with lateral epicondylitis.

Q. Which is what?

A. Degeneration of the tendon organ at the elbow.

Q. Is that in any related to what people refer to as tennis elbow?

A. Yes, that's another term given to it.

Q. And what are some causes for that particular condition?

(Dulberg 001140) PAGE 47:

A. It's typically degenerative. It's wear and tear. The tendon fibers lose strength and pain symptoms can develop. There can also be injuries that precipitate symptoms like blunt force trauma to the area or certain strenuous manual activities that can aggravate it and cause symptoms to arise.

Q. Can it result from somebody overcompensating in using one arm over the other?

A. Well, that would be kind of a vague scenario, overcompensating. I think if that resulted in enough strain to the involved tendon, it could aggravate it and precipitate symptoms of it. Depends on what activities we're talking about.

Q. Starting in December and up to -- it looks like your last visit with him was in late August of 2013, were the complaints limited to the left side or was he also still making complaints of anything related to his right side?

A. Well in March of this year he said that his right forearm was sore

(Dulberg 001141) PAGE 48:

intermittently and there was mild sensitivity at the forearm scar. And then most recently, in August of this year, he described intermittent right forearm muscle cramping with discomfort.

Q. Was that cramping with use or certain activities or was it just sort of coming out of nowhere or doesn't it indicate?

A. It doesn't say for sure, but I see a note that the patient's neurologist suspected possibly dystonia and suggested a referral for evaluation and medical treatment by a neurologist who specializes in that condition.

Q. Did you make any referrals out to any other medical care providers?

A. I see a note of referral to Dr. Kujawa, a neurologist.

Q. And that would have been done by a referral that you made?

A. Yes.

Q. And in regards to his complaints of left-sided problems beginning in December of 2012, what if any treatment did you

(Dulberg 001142) PAGE 49:

provide him and what was your impression? Or I guess that would sort of go vice versa. What was your impression and what if any treatment did you provide for him?

A. The impression was left lateral epicondylitis protocol. We gave him activity and work restrictions to avoid aggravation of his symptoms. We gave him a local steroid injection in the left elbow with

continuation of occupational therapy. And then as far as the last visit in August of this year, he was allowed to follow up as needed.

Q. Does your office, as far as you know, show any future appointments scheduled with Mr. Dulberg?

A. I don't know. I don't have that information available here in the file.

Q. Is that something we would be able to check?

A. Yeah. It would be on the computer in the office.

Q. I'm going to ask you some opinion

(Dulberg 001143) PAGE 50:

questions. I would just ask that any opinions you give be within a reasonable degree of medical and orthopedic surgical certainty. Fair enough?

A. Yes.

Q. Do you have an opinion regarding what if any injuries Mr. Dulberg suffered as a result of the incident with the chain saw back in June of 2011?

A. Yes.

Q. And what is that opinion or opinions?

A. A deep soft tissue laceration in the right forearm.

Q. And what if any treatment that you rendered was related to that particular injury?

A. A. The EMG test I ordered; the supervised occupational therapy before surgery; the second opinion visit by Dr. Biafora; the surgical procedure of July 9, 2012; and the post operative therapy and the -- well, those are treatments I believe were needed as a result of the accident.

(Dulberg 001144) PAGE 51:

Q. And your prognosis, at least as far as your last visit with him on August 26th of 2013, what would your prognosis be in relation to any injury that you believe he suffered as a result of the chain saw accident, the deep soft tissue laceration?

A. The prognosis would be for symptoms to remain stable, unless the patient gets treatment by another neurologist which is effective, which I don't know. So within certainty I can say that the prognosis for symptoms to remain unchanged is expected.

Q. Are you able -- do you have an opinion as to whether the cubital tunnel syndrome that you found in the surgery that you performed, is that in any way related to the incident with the chain saw?

A. I don't think so.

Q. Are you able to differentiate between symptoms that Mr Dulberg was complaining of in relation to -- or comparing the cubital tunnel syndrome verses the deep soft tissue laceration in the right forearm?

(Dulberg 001145) PAGE 52:

A. Yes, to some degree.

Q. Could you tell me what those symptoms are? What symptoms would you attribute to which condition?

A. The forearm laceration would account for the symptoms of scar sensitivity, tenderness, pain with gripping. And the cubital tunnel syndrome would account for sensitivity at the cubital tunnel region and paresthesias in the ring and small fingers.

Q. Was any of the treatment that you rendered to Mr. Dulberg directed specifically or in part to the cubital tunnel symptoms or syndrome?

A. Yes.

Q. What treatment was that?

A. The cubital tunnel release surgery and the therapy treatments directed at the scar related to that surgery and the elbow motion.

Q. Is there any overlap in the care that he -- or the care or the treatment that he received for the soft tissue laceration

(Dulberg 001146) PAGE 53:

from the chain saw and the cubital tunnel -- I know that the surgery was for both conditions. But as far as the therapy, is there overlap there?

A. Yes. I presume they would have treated both areas at the same time.

MR. ACCARDO: All right. I don't think I have anything else. Thank you, Doctor.

EXAMINATION

BY MR. BARCH:

Q. Doctor, Ron Barch again on behalf of the McGuires. I think Attorney Accardo covered almost everything I wanted to, which will expedite my questions. Just a couple things, though, in follow-up. There were some questions earlier that Mr Accardo had about the left elbow, the tennis elbow, we were referring to that, that he developed or he saw you for in 2013. And he was asking whether overcompensating, overcompensating use of the left arm due to problems with the right arm might cause that.

(Dulberg 001147) PAGE 54:

And I'm just going back. When you said -- I think you answered, it would be dependent on the activities that they're doing with the left elbow?

A. Yes.

Q. What about just like adult daily living activities, like getting dressed or doing dishes, just doing normal, everyday things? Or are you talking about something more specific like work related repetitive trauma, that type of thing?

A. Well, I think in order to have a bearing on causation it would have to be beyond ordinary arm use, because we know that the degenerative process affects the tendon origin over time anyway. So normal, everyday tasks or usage wouldn't be expected to cause that condition beyond the chance it would already occur.

Q. And then with respect to the laceration of the arm, you talked in detail in response to Mr. Accardo's questions about the symptoms he had before the exploratory surgery and after. Anything about the left

(Dulberg 001148) PAGE 55:

arm, having seen him post-op, that would render him totally disabled? The left arm meaning the laceration part of the injury.

A. The laceration was the right forearm.

Q. Excuse me. Let me start that question over. I just need to find out whether or not you saw anything about the laceration to the right arm, the things you saw during the surgery and then your observations of him and his complaints following the exploratory surgery of the forearm injury, the laceration, anything about that that you believe would have rendered him totally disabled?

A. What do you mean totally disabled?

Q. Unable to work any job at all.

A. A. Well, for the time period after the surgery was performed, he was given a restriction to be off work. That was until July 30th of 2012. After that he was given restrictions to limit use of the right arm

(Dulberg 001149) PAGE 56:

related to that injury and that surgery. But restrictions and disability don't necessarily equate. So disability would depend on what his function was and what his capability was and what his opportunities were, I suppose.

Q. And so if I understand your testimony, with respect to -- are you talking about the elbow surgery or the forearm laceration that necessitated the restriction against pushing, pulling and lifting with the right arm?

A. Well, the restriction was given after the surgery which had two parts. Are you asking which part necessitated the restriction?

Q. And that's what I'm trying to get at. I know that there's two different areas that you focused on during the surgery; the laceration of the right forearm, which I believe you said did not actually cut or scar the nerve, correct? Having gone through that exploratory surgery, it does not appear the chain saw severed, cut or scarred that ulnar nerve in the forearm where the

(Dulberg 001150) PAGE 57:

laceration was?

A. Correct.

Q. And then there was some -- and you described in detail how deep you believe it went, having done that exploratory surgery. And then there's obviously the left -- the right elbow surgery that you did. And I know that for a period of time there was overlapping therapy for the forearm, the right forearm, and then the right elbow. And at some point he's released from care and he stopped the physical therapy on the arm totally, correct?

A. Yes, he was allowed to continue home exercises as of October 22, 2012 and advance activities with the use of his right arm as tolerated at that time.

Q. And he continued, though, if I understood your testimony in response to Mr. Accardo's question, I have the restriction on pushing, pulling and lifting with the right arm?

A. Limited gripping, lifting, pushing and pulling, yes.

(Dulberg 001151) PAGE 58:

Q. And what I'm trying to get at now is, is that because of the injury he had to the forearm, was it the cubital tunnel syndrome in the right elbow, is it both, if you're able to tell us, the ongoing restriction?

A. Well, from my examination at that time, his tenderness was at the forearm scar region and there was still some pain with gripping at the location. So I would attribute the need for those restrictions to the forearm injury as opposed to the cubital tunnel elbow condition.

Q. And then if I -- with respect to whether he's disabled as an ongoing basis from that point forward, it would be the -- he would be disabled only to the extent that he would have to accommodate those restrictions in any form of employment?

A. I suppose you would have to accommodate for his function, for his -- the word I would use would be "impairment" as opposed to "restriction."

Q. You wouldn't want him to -- I guess if I am understanding your restriction,

(Dulberg 001152) PAGE 59:

He would want to avoid work that would require pulling, pushing and lifting on a regular basis with the right arm?

A. To the extent that causes his symptoms to become intolerable.

Q. And then finally, is there anything that you saw at that time, in October when he was let go with those limitations, that rendered him incapable of working at all?

A. No. He said he was currently unemployed at that time and planned to pursue disability, but he was allowed to use his right arm as tolerated.

Q. And that's the confusing part for me. Did you see anything that you would have endorsed in terms of acquiring disability, total and complete disability?

A. I think disability can be total or partial and can depend on one's functional abilities. So I think his function could have been impaired to some degree. I don't think it would necessitate a total disability from any job, though. Is that what your

(Dulberg 001153) PAGE 60:

asking?

Q. That's what I'm asking.

MR. BARCH: Thank you. That's all I have.

MR. LUMBER: Do you have anything further?

Mr ACCARDO: No.

EXAMINATION

BY MR. LUMBER:

Q. Doctor, I just have one question that I want to follow up with you. If I understood your testimony correctly, regarding the cubital tunnel procedure that was done on his elbow, you were asked whether or not in your opinion you felt that was related to the chainsaw accident, and I believe your answer was that you didn't think so. Can you just give me a little bit of basis as to why that -- why you feel that way? Mainly because, as we had stated before, There is -- trauma and whatnot can cause cubital tunnel syndrome I believe as

(Dulberg 001154) PAGE 61:

you had testified earlier. So can you just clarify that a little bit for me as to what your basis is for why you feel that was not related to the accident?

A. I think the zone of injury for the accident was relatively distant to the area of the cubital tunnel, in the forearm as opposed to the elbow. So trauma to the area of the elbow would be suspected as a potential cause for cubital tunnel if that occurred. But I think this laceration was too distal to affect the nerve at that level of the elbow. On the other hand, even though it's not directly injuring the cubital tunnel, the need for that surgery which included the cubital tunnel arose after the accident which brought him to see me. Is I suppose there's some relationship of the injury and the surgery that included the cubital tunnel, but I don't think the specific laceration injured the nerve in the area of the cubital tunnel.

MR LUMBAR: Okay, That's all I

(Dulberg 001155) PAGE 62:

have.

MR. ACCARDO: I don't have anything else.

FURTHER EXAMINATION

BY MR. BARCH:

Q. Would it be fair to describe it, your last comment, as being there's an overlap in terms of timing but not a direct connection in terms of the injury and the location of the elbow, in relation to the elbow?

A. Yeah, there's not a direct injury to the nerve at the elbow. But the condition came to light potentially as a result of the evaluations we did for the laceration.

Q. Well, there was a period of time before you did the surgery where you were kind of struggling to figure out why he was having the paresthesia and grip weakness in the hand.

A. Yes. And I think the first time it was really brought up as a diagnosis was

(Dulberg 001156) PAGE 63:

when he saw my partner, Dr Biafora, who it seems suggested that that was part of the cause of his ongoing symptoms.

Q. And that was borne out during surgery?

A. Yes.

Q. Thank you.

A. I think the findings there were borne out.

FURTHER EXAMINATION

BY MR. LUMBER:

Q. Just one last follow-up. Any chance that any of the cubital tunnel dysfunction or ailment could have been any type of byproduct from the injury from the forearm, meaning from the injury of the forearm somehow caused this later injury to the cubital tunnel area?

A. I just don't think the mechanism would -- that one incident would cause cubital tunnel.

MR. LUMBER: Okay. Gotcha.

MR. ACCARDO: I don't have

(Dulberg 001157) PAGE 64:

anything else. I think we're done. Signature? Waived or reserved?

THE WITNESS: I can waive the signature.

MR. ACCARDO: Thank you.

(DEPOSITION CONCLUDED AT 10:41 A.M.)

(Dulberg 001158 - Dulberg 001160) PAGE 65 - 67:

Certification

(Dulberg 001095 - Dulberg 001160)

(Dulberg 003993 - Dulberg 004058)

*** (NOTES:

- This is not in the Popovich documents.
- (Dulberg 001096) PAGE 3: *** (Note: This page is missing)
- Add dates used in the dep and add them to timeline
- Add comments later)

2013-10-15 Gagnon Letter to Popovich:

Page 1 "Please be advised that the deposition of Dr. Marcus Talarico has been confirmed for tomorrow 10/16 at 1:00 PM. The location has changed to Mid America Orthopedics 1419 Peterson Road. Libertyville, IL 60048 and not in Schaumburg. Please call my assistant Dian at 312 558-9849 if you have any questions regarding this matter."

Page 2 Printed Google Map

Page 3 Turn by turn directions

(POP 000067 - POP 000069)

* (Notes:

- This was not turned over to Dulberg with the first or second case files Mast released in the underlying case and was only turned over in the instant case.)

2013-10-16 1:00pm Deposition of MARCUS G. TALERICO, M.D.:

(Dulberg 000413 - Dulberg 000434)(Handwritten Notes made by Baudin's)
(Dulberg 003326 - Dulberg 003347)

(Dulberg 000413) Page 1:

The discovery deposition of MARCUS G. TALERICO, M.D., taken under oath on October 16, 2013, at the hour of 1:00 p.m., at Mid America Orthopaedics, 1419 Peterson Road, Libertyville, Illinois, pursuant to the Rules of the Supreme Court of Illinois and the Code of Civil Procedure, before Terri A. Clark, CSR License No. 084-001957, a notary public in and for the County of Lake and the State of Illinois.

APPEARANCES:

(Dulberg 000414) Page 2:

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(Dulberg 000415) Page 3:

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WITNESS: MARCUS G. TALERICO, M.D.

EXAMINATION

BY MR. ACCARDO.....4-21

EXHIBITS.....ID

Exhibit 1 (Curriculum Vitae).....5

(Dulberg 000416) Page 4:

(Deposition start time 01:11.)

(Whereupon, the witness was administered an oath.)

MR. ACCARDO: Doctor, could you please state your name and spell it for the court reporter.

THE WITNESS: Marcus Talerico, M-a-r-c-u-s, T-a-l-e-r-i-c-o.

MR. ACCARDO: Let the record reflect this is the discovery deposition of Dr. Marcus Talerico taken pursuant to notice, taken in accordance with the rules of the Circuit Court of McHenry County, the rules of the Supreme Court of the State of Illinois, and any other applicable local court rules.

MARCUS G. TALERICO, M.D., having been first administered an oath, was examined and testified further as follows:

EXAMINATION

BY MR. ACCARDO:

Q. Good afternoon, Doctor, my name is Perry Accardo and I'm going to be asking you some questions today about a former patient

(Dulberg 000417) Page 5:

of yours by the name of Paul Dulberg. Okay?

A. Yes.

Q. You have given depositions before; is that correct?

A. Yes.

Q. You're familiar with the ground rules governing depositions, generally?

A. Yes.

Q. Now, we have been tendered a copy of your CV. I think we have marked it as Exhibit No. 1 for identification. Is that relatively current and up to date?

A. It is.

Q. What kind of doctor are you?

A. Orthopedic surgeon.

Q. And do you have a specialty within that field?

A. Hand and upper extremity surgery.

Q. And you are currently affiliated with MidAmerica Orthopaedics?

A. Yes.

Q. And that's in Libertyville, Illinois?

A. Yes.

(Dulberg 000418) Page 6:

Q. And how long have you been affiliated with them?

A. A little bit over two years.

Q. You have your chart for MR. Dulberg today?

A. I do.

Q. Does that chart contain everything, all the records in regards to Mr. Dulberg?

A. It contains the two office encounters, but no other documents that may be with this chart. I don't know that for sure. For example, the EMG which is referenced in here, I don't have that, but I commented on it.

Q. The question was everything that you have in front of you comprises the entire chart?

A. Yes.

Q. Now, you saw Mr Dulberg twice; is that correct?

A. Yes.

Q. And the first time was on December 2nd of 2011; is that correct?

A. Yes.

(Dulberg 000419) Page 7:

Q. The second time was on January 6th of 2012?

A. Yes.

Q. Have you or your office had any contact whatsoever with Mr. Dulberg since that time?

A. I believe not.

Q. I'm sorry, Doctor, it wasn't a trick question before, but on one of the records I did note, it looks like June 21st, 2012 telephone -- was it a telephone call? It's on the second page of the December 2nd, 2011 record.

A. Okay, I see that on the bottom. That was a phone call, and apparently the patient called. And VV is one of our employees, a nurse in our office, Vernice. And she must have taken this phone call where he said that he detailed the injury apparently. I didn't take that phone call and I didn't even know that till you pointed it out.

Q. It's more about him giving more detail about how the actual incident took

(Dulberg 000420) Page 8:

place as opposed to describing any additional problems with injuries or anything like that?

A. Correct. And I didn't see him at that time, that was a phone call.

Q. Backing up. Safe to say then that since June 21st of 2012 neither you nor your office has had any contact with Mr. Dulberg?

A. Correct.

Q. I would also ask any opinions that you give today, I would ask that they be within a reasonable degree of medical and orthopedic certainty. Fair enough?

A. Yes.

Q. Let's just go over the visits. The first visit on December 2nd, 2011. Was Mr Dulberg referred to you?

A. He was, by Dr. Levin, a neurologist.

Q. Do you know Dr. Levin?

A. I don't.

Q. Do you know of her?

A. I have heard her name.

Q. And Mr. Dulberg gave you a history when he came in to see you?

(Dulberg 000421) Page 9:

A. He did.

Q. And what was that history?

A. That he was using a chain saw and was accidentally struck on the right forearm, volar side.

Q. He indicates that he was seen in the emergency room; is that correct?

A. Yes.

Q. Did you ever receive any records from the emergency room?

A. No.

Q. And what were his complaints as far as pain, discomfort?

A. Persistent pain that was radiating from the laceration side in the forearm region.

Q. Where was it that the laceration was, it was in the right forearm?

A. Right Volarly, so palm side and mid forearm level. And he also had intermittent numbness and tingling.

Q. In any particular areas?

A. In the ring and small fingers.

Q. What else did he indicate?

(Dulberg 000422) Page 10:

A. Grip weakness with loss of endurance with wrist flexion and gripping.

Q. Now, before he came to see you he had seen Dr. Levin and had an EMG and nerve conduction study performed; is that right?

A. Yes.

Q. And you did not have that report at that time?

A. Correct.

Q. Did he indicate to you his work status?

A. He was currently not working at that time apparently, but was a trained graphic designer.

Q. And he reported using a computer mouse for 20 minutes causes him significant forearm pain; is that right?

A. Correct.

Q. You performed an examination?

A. Yes.

Q. And what were the results of that examination specific to his right arm or hand?

A. Basically it was a normal exam

(Dulberg 000423) Page 11:

except for the fact that he did have a well-healed laceration in the area of the forearm where the chain saw hit him. He did also have some apparent muscle incongruity, meaning some scarring at the muscle belly level deep into the skin.

Q. And just a little bit more specifically about the exam. I know you said that it was normal. It appears that there is no tenderness to palpation of the forearm?

A. Correct.

Q. And would that include the area where the laceration and the scarring was?

A. Yes.

Q. As far as his strength, was that tested?

A. It was.

Q. And what were the results of that?

A. He had intact strength. He had normal wrist flexion and extension strength. He had normal grip strength. He had normal intrinsic strength, which are the muscles in the hand.

(Dulberg 000424) Page 12:

Q. It is noted he had a negative Froment's sign. What is that?

A. That is a sign that looks for atrophy and weakness of the muscles in the hand. The implication there is an ulnar nerve injury.

Q. And a positive Wartenberg sign. What is that?

A. A Wartenberg sign is where the small finger deviates away from the ring finger when you ask them to bring in the small finger against the ring finger. That again has to do with the ulnar nerve function. So a positive sign is normally, it's attributed to an imbalance from weakness of the intrinsics of the hand.

Q. Would you consider that to be an subjective or an objective finding?

A. It's an objective finding. It's clinical significance, it's part of the big picture. So just because that's a positive sign doesn't necessarily mean anything per se. In the context with other findings is where it is helpful.

(Dulberg 000425) Page 13:

Q. Were any tests run during your examination regarding sensation? Because he was complaining of this numbness and the tingling.

A. I would test sensation by just light touch.

Q. And would that have been normal as well?

A. Yes.

Q. And what was your assessment then following that initial visit and examination?

A. My assessment was that he had a healed laceration in the forearm. I did not appreciate any obvious nerve, tendon, or artery injury. He had some scarring. And that my recommendation was therapy to try to improve his strength and his perceived weakness and the pain he had at the injury site.

Q. You also indicate under your plan that his complaints are likely muscular in origin?

A. Correct.

Q. And that he may have some

(Dulberg 000426) Page 14:
superficial sensory complaints?

A. Correct

Q. What would be the cause of these potential superficial sensory complaints given his history and given the results of your examination?

A. He could have in that area there are some sensory nerves. One in particular is the medial and brachial cutaneous nerve. He could have neuromas at that point where they could be sort of scarred ends of the nerve perhaps. That's all in the sort of differential, but I guess at that time I really didn't get the sense that that was really at play.

Q. Is there any way to test for that?

A. Well, you can try to palpate the area and try to find a specific focal area. And if you had one area that is very obviously the tender area, there is a Tinel's sign where you tap on there to see if that recreates all the symptoms. Perhaps you could explore that. You could try with an EMG. I don't

(Dulberg 000427) Page 15:

know how good they are at picking up a neuroma and sensory nerve like that. That you would have to ask a neurologist, that I'm not sure. It's normally a clinical diagnosis based on an injury, a trauma, a laceration or something, and a very specific sensory complaint.

Q. Okay. And you asked him to come back after sending him out for some therapy?

A. Yes.

Q. It looks like he did go for some of that therapy?

A. Apparently he went to one or two sessions when I saw him.

Q. The records that I had it looked like he went to three sessions. Well, actually two in between your office visits, and it looks like then one after. But okay. So two in between. So he comes back to see you then on January 6th of 2012, and how was he doing at that point?

A. He reported no improvement in his

(Dulberg 000428) Page 16:

symptoms. He felt therapy did not help him. He felt that he was getting weaker. And also burning in his forearm.

Q. The burning in the forearm, is that a new complaint or was that sort go along with the numbness and tingling?

A. I think that was all part of what he was complaining of. I might not have used that language in the first encounter, but that's my recollection of the event.

Q. Were there any new and unique complaints when he came to see you the second time in January?

A. No, not according to the note and what I recall.

Q. I know he indicated to you that he didn't feel that occupational therapy was helping, and we have established that he had the two visits. Do you have the records or the reports from the therapist?

A. I have not seen it, no.

Q. In the interim between your two visits you were able to get a copy of the EMG, the nerve conduction study?

(Dulberg 000429) Page 17:

A. Yes.

Q. What did you find when you reviewed that?

A. It was a normal study.

Q. And it looks like he also when he came to see you in January asked you about some disability paperwork. Do you recall that?

A. I don't specifically recall that question, but I did note that in the report that he did ask me about disability paperwork, yes.

Q. What type of paperwork would it be that he would have been asking for, if you know?

A. I don't know to be honest. It's just the phrase I put in there.

Q. At that time did you feel he was suffering from any type of disability?

A. No. I think that he had some scarring in his forearm and he had a lot of complaints, but I did not have any real objective findings that I could come up with a diagnosis, at least that I could treat.

(Dulberg 000430) Page 18:

Q. You did another examination of him in January?

A. Yes.

Q. And what were the results of that, that examination in comparison to the earlier examination?

A. Basically the same thing.

Q. So essentially negative?

A. Yes.

Q. And what was your assessment and plan at that time?

A. My assessment was, again, he had continued forearm pain and some scarring in the muscle. My recommendation was continued therapy. I really didn't have much else for him.

Q. Do you know if he sought out any additional therapy?

A. No idea.

Q. During the two visits when he came to see you did he ever make any complaints regarding any pain or discomfort above the area where the laceration was up into the right elbow or anything like that?

(Dulberg 000431) Page 19:

A. No, I don't recall that.

Q. It was strictly confined to the forearm and the area where the laceration was?

A. Yeah, with sort of radiating -- it doesn't say. I guess shooting, radiating from the laceration site. I didn't say which way, up or down, but radiating.

Q. And nothing in your examination or your review of the EMG indicating anything regarding any injury to the ulnar nerve; is that a fair statement?

A. Correct.

Q. Are you talking mostly about then if any nerves were involved it would have been these more branch sensory type nerves?

A. Yes.

Q. Do you have an opinion as to what, if any, injury Mr. Dulberg suffered as a result of this incident with the chain saw?

A. My sense is he sustained a laceration in the muscle belly of his forearm. That did heal. And I did not any objective weakness or real

(Dulberg 000432) Page 20:

abnormality other than his subjective complaints of shooting, burning pain, and feelings all in his forearm area.

Q. And again, none of which you could correlate clinically with any certainty?

A. To me, I have seen a lot of lacerations, and typically a laceration in a muscle will heal. And I did not note any obvious deficits. So he could have pain there, that's a subjective complaint, I have no way to measure that. I don't know what to make out of that when people tell me it's hurting. I can only look for objective findings. And I didn't find any so that's really all I could come up with for him.

Q. And just for clarification. What is the muscle belly you referred to, what's that?

A. The muscles of the flexor pronator mass, so the wrist flexors. And there is a forearm pronator, which is a deep muscle coming off of the medial epicondyle of the elbow, and they radiate across the forearm.

(Dulberg 000433) Page 21:

A chain saw going through transversely in his forearm probably went into the muscle. I think he described that he had an open wound down to the muscle. Obviously, I didn't see the open wound because I saw him six months after the injury, going by his description. So those are wrist flexors primarily. And he had perfectly normal functioning wrist flexors, so the muscle healed.

MR. ACCARDO: I don't have any other questions.

MR. LUMBER: I don't have any.

MR. BARCH: To be honest, I believe you covered it.

MR. ACCARDO: Signature?

THE WITNESS: Waived.

(Deposition concluded at 01:31 PM.)

(Dulberg 000434) Page 22:

CERTIFICATE OF REPORTER

(Dulberg 000413 - Dulberg 000434)(Handwritten Notes made by Baudin's)

(Dulberg 003326 - Dulberg 003347)

*** (Notes:

- This is not in the Popovich Documents.

- Popovich had no cross examination whatsoever.

- Talerico found a positive Wartenberg sign Talerico deemed as an objective finding with clinical significance on page 12 and later stated several times that he found no objective findings. This seems to contradict Talerico's own testimony. Wartenberg sign has the same burning and tingling sensations in the 4th and 5th digits as an ulnar nerve injury in the ulnar groove at the elbow but is usually an injury to a branch nerve off of the ulnar nerve and is not picked up by an EMG test done only of the main ulnar nerve because it is in fact an injury in one of the branch nerves that stem off of the ulnar nerve. The Wartenberg sign is also found by every Dr Dulberg had seen throughout other than the initial ER Dr who did not check neuro for anything other than for touch sensations yet admits that branch nerves could have been damaged. Also Talerico never looked at the physical therapy reports which clearly show Dulberg did not have normal wrist flexors. The right wrist cannot move as far as the left because the wrist flexors were shortened by the chain saw laceration and sutured back together in the ER also the muscle sheath was gone causing the scar tissue in the muscles to grow into the scar tissue in the epidermis further restricting the wrist flexors from moving fully.

- I'm willing to bet that Mast hangs himself by trying to use this Dr's testimony in defense of the malpractice case.

- Is this why no cross examination happened?)

2013-10-22 12:23pm Popovich Letter/Fax to McGuire's:

"I recently discussed this claim with my client. We are prepared to let your clients out of the case for \$7,500 at this point. Please advise how you wish to proceed."
(POP 000192 - POP 000193)

***** (Notes:

- This was not turned over to Dulberg with the first or second case files Mast released in the underlying case and was only turned over in the instant case.
- This asshole just sent a demand letter without Dulberg's knowledge.
- Between who, where and when did this discussion take place?
- A backdoor deal with the McGuires?
- Is the McGuire's Popovich's real client?
- There is no proof anywhere this offer was ever discussed with Dulberg.
- Popovich and Mast should both lose their law licenses for these actions against a disabled client who is on the brink of financial ruin, suffering from debilitating injuries cause by the McGuire's and Gagnon's negligence resulting in disability, major depression and financial ruin all while the client placed trust in Popovich and Mast to do what they are ethically and contractually supposed to do.
- The Popovich/Mast plot to destroy Dulberg's chances of recovery started with the Supreme Court Rule 222(b) affidavit limiting recovery to less than \$50,000 and never asking for leave of the court to amend the affidavit even after Dulberg's medical bills exceeded \$50,000.
- The removal of the timestamps on the Walgreens Rx receipts to crate a false narrative in favor of the McGuire's and test Dulberg's ability to prove the timestamps ever existed.
- Not asking Dulberg anything about the automobile trip following the hospital in Dulberg's deposition.
- Not informing Dulberg that Dulberg had a right to be present during the depositions to hear the defendants testimony first hand.
- Leading Gagnon in his deposition to say yes to going to Carolyn McGuire's home after the hospital to help create a false narrative and many other leading issues.
- Holding off and sending the altered Walgreens Rx Receipts to opposing parties 2 days prior to the McGuire depositions rather than along with the other medical bills, etc... that went to to the McGuires in the previous year.
- Guiding and Leading Caroline McGuire to say she paid for Dulberg's medications to finish the false narrative and make Dulberg out to be a liar since Dulberg turned in the Walgreens RX receipts as part of the expenses incurred as a result of the accident.
- Mast calling Dulberg and leaving a message about the Dr's depositions claiming the injuries are not medically linked without Mast actually sitting in during the depositions and before the memorandums of the depositions were written for Mast to read and not acknowledging that the injuries only had to be linked to the accident not medically linked to each other. The purpose was to create a phone record at the phone company so that Mast could later claim he talked with Dulberg prior to the secrete \$7,500 offer sent to the McGuire's.
- Making a secrete offer of \$7,500 to only the McGuire's without Dulberg's knowledge or consent.
- Meeting with Dulberg and his mother Barbara in Popovich's office and asking for permission to look into the possibility of a settlement for the first time weeks after sending the McGuire's the secrete offer of \$7,500.
- Mast constantly Sends emails to Dulberg Lying about the facts the defendants and doctors testified to, the liabilities of the defendant's and how the laws pertain to Masts altered facts.
- Mast refuses to talk with the McGuire's neighbor who had seen the work being done at the McGuire's home and would contradict the McGuires claim that the were inside all day and had nothing to do with the tree work.

- Mast refuses to have the hospital audio and video footage subpoenaed after Dulberg asks for it because Mast tells Dulberg that Gagnon is claiming he discussed with Dulberg making money from this at the hospital.
- Meeting with Dulberg and his brother Tom Kost after presenting Dulberg with the McGuire counteroffer as an original offer.
- Lying to Dulberg about Gagnon being an independent contractor and legally what an independent contractor is.
- Providing Dulberg with case laws that should have no bearing on Dulberg's case to falsely justify to Dulberg why homeowners are not responsible for the damages to third parties by independent contractors.
- Lying to Dulberg about the McGuire's liabilities now claiming they are just homeowners and not vicariously liable as employers.
- Withholding from Dulberg the defendants depositions, some for more than 300 days and the others just shy of that until Dulberg finally demanded to see them.
- Constant Sending of more emails to Dulberg Lying about the facts the defendants and doctors testified to, the liabilities of the defendant's and how the laws pertain to Mast's altered facts.
- Never sharing with Dulberg the McGuire's answers to the interrogatories, never receiving answers to the interrogatories sent to Gagnon nor filing a motion with the court compelling Gagnon to answer the interrogatories even though the codefendants McGuire's compelled Gagnon to answer their interrogatories.
- In less than an hour after Dulberg's first read of the defendants depositions, Mast emails, and calls Dulberg, threatens and Lies to Dulberg saying the McGuires have already filed and will win on summary judgement so take the \$5,000 right now or you get nothing before Dulberg even had a chance to digest anything the defendants testified to that could challenge the false narrative Mast had been feeding Dulberg about the McGuire's liabilities.
- Mast/Popovich then lied and claimed this was an informed, fair and equitable deal between Dulberg and the McGuire's to the court and the McGuire settlement was accepted by the court.
- Then after a couple months Mast and Popovich start the manipulation all over again on Dulberg over the only defendant remaining Gagnon.
- Another year passes with many events, including but not limited to Mast and Popovich lying and telling Dulberg Gagnon's insurance only has \$100,000 and that Dulberg should consider bankruptcy as a real option and even send Dulberg names of attorneys who handle bankruptcy, and after a year Mast/Popovich still can't close on Dulberg by manipulating information and forcing Dulberg into a second nonsensical deal with Gagnon in 2015.
- I'd have to say that with that much manipulation of information along with the patients to play this out over a number of years, Popovich and Mast have done something like this before. This is not their first rodeo.
- Popovich and Mast not only should be held accountable to make Dulberg whole again but should also be banned from practicing law in Illinois forever because no unsuspecting client that places trust in them can ever be safe from them.
- Dulberg first discovered this \$7,500 offer on July 4, 2019 in the "Dulberg Def Doc Production POP 00001-001455.pdf" containing 1455 pages of discovery for the instant case and was given to Dulberg by Julia Williams on June 28, 2019.
- Okay, at this point I'm done ranting. I get angry when I see secret deals were made behind my back and I needed to let loose some steam.
- The points above are Dulberg's rant about most of the events that took place and do not include nearly everything, please keep reading and see the actual documented dates, times and conversations and how everything played out as Mast and Popovich manipulated, forged, hid, lied, misrepresented, etc, etc... to

get Dulberg to let the McGuire's off the hook and tried all over again with the remaining defendant Gagnon before the bankruptcy trustee forced their hand.

***** Pick up here *****

2013-10-22 1:24pm Dulberg emails Popovich:

I'm not sure what you meant by saying there was no medical link from dr Sagermans deposition.
Medical link to what?

Weakness, spasms, loss of feeling, etc...

What has to be linked and why?

(Dulberg 001545)

(Dulberg 005186)

(Dulberg 007054)

(Dulberg 007447)

*(Notes:

- This is not in the Popovich documents.
- Dulberg is replying to a phone message left by Mast about Dr Sagerman's deposition.
- Mast did not attend Dr Sagerman's deposition and 8 days from now on 10/30/2013 MR. ROBERT LUMBER creates a MEMORANDUM from Bob to Mast on Dr Sagerman's deposition.
- One hour after Mast unilaterally sends McGuires a \$7,500 offer and Dulberg makes no mention of the offer because Dulberg is in the dark.
- Mast does not reply to this email.
- Dulberg follows up on this email 3 days later on 10/25/2013 (Dulberg 001544) about the phone message from Mast.
- Was the phone call just to make a phone record so Mast could lie and say Mast spoke with Dulberg over the phone?)

2013-10-25 18:24(UTC) 8:18am Dulberg Emails Popovich:

Wanted to touch base this morning because the call from you about something not being medically linked has been on my mind. I'm not sure what was said during that deposition with the drs that prompted the call but I have been thinking about what it could be. Most likely it was the right elbow procedure. During my deposition I remember being asked if the two were linked and I answered yes. Let me explain my answer to you. If the chainsaw had not gone through my arm then the procedure on my elbow wouldn't have happened. That procedure was exploratory to find what was bothering the arm from the chainsaw. Upon opening up the arm they did find some compressions which from my understanding was nothing unusual for a male of my age and very well may or may not have happened during my retreat from the chainsaw when I ended up half way across the yard on the ground. Incidental finding or not it still would not have been found if I hadn't had the chainsaw incident. So as I see it they are linked good or bad and cannot be separated. The exploratory procedure was to find and possibly fix issues relating to the chainsaw incident. They also removed a ton of scar tissue in the forearm on the same day during the same exploratory procedure that was a direct result of the chainsaw.

Hope this helps explain things better.

Let me know

(POP 000195)(POP 000203)(Dulberg 001538 - Dulberg 001539)(Dulberg 001541)(Dulberg 001542 - Dulberg 001543)(Dulberg 001544)

*(Note: (Dulberg 001544) has the correct timestamp in CDT not UTC.

This is Dulberg's 2nd attempt to replying to a phone message left by Mast on 10/22/2013 that said something about the injuries not being medically linked.

Dulberg initially followed up to the phone message left by Mast in an email on 10/22/2013 at 1:24pm (Dulberg 001545) and did not get a response from Mast.

Take special note that Mast was not present at the deposition and Bob Lumbar, who was present at the deposition did not submit his memorandums of the dr's depositions for Mast to read before Mast called Dulberg about this.

Nor does Mast ever order up the dr's deposition to read for himself or show it to Dulberg.

This is only 3 days after Mast had made the offer of \$7,500 to the McGuires and Mast makes no mention of it, nor does Dulberg because Dulberg is in the dark.

I'm still not sure of the significance of one injury not being medically linked to the other injury if both injuries are linked to the accident. Why do the injuries need to be medically linked to each other if they both can be linked to the initial complaints made by Dulberg in the Emergency Department at the hospital, the Emergency Departments Dr Ford's notes and reports and testified to by Dr. Ford in his deposition?

Again, why does Mast make a big deal that the injuries are not medically linked when it is clearly established that the Hospital's Emergency Department's Dr Ford reported and testified to the same injury complaints being present on the day of the accident.

Why does it matter if the injuries are medically linked to Mast?

I believe Mast was being an opportunist here and using the fact that the injuries were not medically linked while ignoring the evidence that says they are both present and linked to the accident as yet another means of trying to torture and corner Dulberg into accepting the paltry settlement offers Mast unilaterally created in the dark.

Keep this in mind as you read email communications between Mast and Dulberg where Mast repeatedly tells Dulberg the medical side is strongly contested because the injuries are not medically linked.)

2013-10-28 MEMORANDUM from Bob to Mast:

DISCOVERY DEPOSITION OF DR. MARCUS TALERICO

"As a brief history to this case, this is the case of Paul Dulberg who was injured when a chainsaw cut his right forearm while assisting at a friend's house. He ended up having some numbness and tingling in his pinky and ring finger in that hand as well as some pain and issues involving gripping or holding on to things, which he claims were from this accident. Prior to Dr. Talerico's appointments with Paul, he did go and see Dr. Karen Levin. She then sent him on to Dr. Talerico and then subsequently to Dr. Sagerman. Dr. Talerico ended up seeing him 2 times in his office, 1 being on December 2, 2011 and another on January 6, 2012. Reportedly, there was also a phone call placed to Dr. Talerico's office on June 21, 2012 in which Paul wished to clarify how the chainsaw was being used to him. This is possibly from Paul seeing his medical records. It is unknown as to why he would call 6 months later to discuss it, but in the records, Dr. Talerico noted that Paul was using the chainsaw. It is possible that Paul called to clarify that in those medical records, but there were no other discussions on that date.

FAVORABLE TESTIMONY:

This was not a deposition that produced a lot of good points for our client. Whereas it is documentation of Paul's complaints that he had to his forearm which will come in significant later with Dr. Sagerman's deposition, which is the doctor Paul saw after Dr. Talerico, Dr. Talerico did not provide us with a lot of good opinions with regards to Paul's injuries. However, he did only see him 2 times and as noted to me prior to the deposition, he did not feel he could give anything else to Paul and thought Paul was somewhat of an odd individual. Whereas I don't have any real facts to back this up, it seemed like he was not interested in treating Paul for his injuries.

UNFAVORABLE TESTIMONY:

Overall the doctor simply testified as to what was noted in his medical records which doesn't appear to be too promising for Paul. I should note also that after the deposition, I felt it was somewhat alarming to me and borderline unprofessional that the doctor made a comment in front of myself as well as to the defense counsel as to his suspiciousness of Paul's claims. He gave indications that he did not feel there was really anything wrong with Paul. I did advise him prior to the deposition that Dr. Sagerman's deposition had already been taken and that Dr. Sagerman was clear in the injuries to Paul's forearm which would be causing some of the pain and problems that Paul had. Dr. Talerico advised that he was aware of Dr. Sagerman and certainly did not want to discredit him, however, it was clear that Dr. Talerico was not a fan of Paul Dulberg as a patient and will not serve as a benefit for us in any testimony that he may give about him.

Dr. Talerico identified himself as Dr. Marcus Talerico and he gave us his CV which was put in as Exhibit No. 1 which is up to date and will be attached to this memo. He described that he is an orthopedic surgeon specializing in hand and upper extremities. He had 2 office encounters with Paul after he was sent to him from Dr. Levin. The first visit was on December 2, 2011 and the second was on January 6, 2012. He had no other visits or treatment of Paul Dulberg.

The first visit was on December 2, 2011. In his deposition, the doctor basically read the history as noted in his medical records. Even though Paul was seen in the emergency room, Dr. Talerico did not get the emergency room records. He said that Paul complained mostly of pain radiating from the laceration site in his forearm and mid forearm as well as numbness and tingling in the pinky and ring finger. He also noted to him grip weakness and loss of endurance in the hand. An EMG had been previously done however he did not have that on that date or noted. Paul was not working at the time as it was noted to the doctor that his job as a graphics person caused him pain in using the mouse. He conducted the exam as noted in his medical records. He noted no tenderness topalpatation and noted the exam as relatively normal. He felt that his strength was okay and his wrist and grip strength were also okay. The Froment sign which looks for weakness in the hand was also negative. He also did a Wartenberg test which was positive and described it as an objective finding in which the small finger pulls away from the other fingers in the hand. This did show positive with Paul. Any sensation test that he would have given were normal. As for his diagnostics and assessment, he didn't see any nerve or tendon injury to Paul. He prescribed physical therapy. He felt that the pain Paul was feeling was muscular nature at that time. He noted in his medical records that he did not see the EMG that was done and he would like to obtain that report and have Paul come back once he sees that report. He noted that there is no evidence of a complete injury to the ulnar nerve on the physical exam. Again, he thinks its more muscular in origin. He also felt that he may have some "superficial sensory complaints" as well. He felt that there may be some nerve issues but didn't feel it was significant. He asked Paul to come back after some physical therapy was done and once he

obtained those reports. Paul ended up going to 1-2 physical therapy sessions and then came back on January 6, 2012

The next visit was on January 6, 2012. Paul reportedly showed no improvement and the physical therapy didn't help. He told the doctor that he had burning in his forearm and he said it was getting worse. But he had no new complaints. He didn't think that the occupational therapy was helping him. Dr. Talerico did get a copy of the EMG and noted that it was normal. As to whether he was asked about any disability paperwork, the doctor didn't remember any conversation regarding that. The doctor did then give an opinion that he did not think that Paul was disabled. He said there were no objective signs to this. He conducted the same exam on him and felt that it was the same results as the prior exam. He felt that he should continue therapy and really didn't have any other help that he could provide to Paul. He did not note any pain above the laceration on this visit being up in the elbow area. He did note that there wasn't anything radiational so from the laceration up or down his arm. He saw no evidence of an ulnar nerve injury. He noted that he had normal wrist flexor muscles as well. He did note that there was the scar on Paul's arm and that there was a laceration in the muscle belly that had healed. He noted that he did not see any abnormality other than Paul's subjective complaints. Lastly, his opinion is that he did not have any subjective findings to support or justify Paul's complaints."

S:\Main\DULBERG, PAUL\Memos\Memo ro DEP of Dr. Talerico 10-28-13.wpd
(POP 000893 - POP 000894)(POP 000916 - POP 000917)(POP 000885)

*(Note: POP 000885 is missing the 2nd page.

Bob is Mr. Robert Lumbar an attorney at the Popovich firm.

How was Mast able to determine that there was no medical link before the message he left on Dulberg's phone on 10/22/2013 if Mast didn't attend the deposition on 10/16/2013 and Mr Lumbar didn't create this memorandum for Mast until 10/28/2013?

Why did it take Mr Lumbar 12 days after the deposition to generate this memorandum for Mast?

Mast unilaterally made the \$7,500 offer to the McGuire's on 10/22/2013.

Was the delay in this memorandum a creative process for Mast to become an opportunist over injuries not being medically linked to each other while ignoring the fact that the initial complaints made by Dulberg in the hospital on the day of the accident link the injuries to the accident?

Why wasn't Dulberg ever allowed the opportunity to read either the deposition or even this memorandum?

Check the other dr's depositions and compare the lag time from the date of the deposition to the date of the memorandum and compare it to the lag time here.)

2013-10-30 MEMORANDUM from Bob to Mast:

DISCOVERY DEPOSITION OF DR. SCOTT SAGERMAN

"On October 15, 2013, I attended the discovery deposition of Dr. Scott Sagerman regarding his treatment of our client, Paul Dulberg. To review, Paul was injured in a chainsaw accident in which his right forearm was significantly injured and damaged after a chainsaw struck it while helping a friend cut down a tree limb.

FAVORABLE TESTIMONY:

In summary, the doctor was able to tie the forearm pain and symptoms being muscle pain and weakness in gripping and pulling things in his forearm to the accident. It was a deep laceration to his forearm and

there was some injury to those muscles and nerves which may have been causing the pain in that area. The surgery to the forearm and treatment of that he felt he could easily relate to the accident.

UNFAVORABLE TESTIMONY:

In contrast to the positive points, the cubital tunnel injuries and subsequent surgeries and treatment that Paul had in his right elbow would be difficult to relate back to the accident and the doctor basically said that it was too far distal from where the chainsaw struck him to have been caused by the accident. Furthermore, any subsequent pain Paul would have had to his left arm would also be a stretch to show that that was somehow related to overcompensate him from the right arm. The doctor did note that it was possible, but I don't know that we can firmly count on his testimony to show that to be a viable claim.

SUMMARY:

On October 15, 2013, I attended the discovery deposition of Dr. Scott Sagerman in Paul Dulberg's case. The doctor identified himself as an orthopedic surgeon with specialties in hand and upper extremities. He did have some recollection of Paul from the numerous treatments of him. This accident occurred on 04/28/11 and the first visit with Dr. Sagerman was on 02/27/12. He does know that he had seen Dr. Sek prior to this as well as Dr. Levin and Dr. Talerico.

The doctor did note that he had seen Paul sometime in the past in 2003 and 2004 when he was diagnosed with cubital tunnel syndrome in his left arm. This is an ulnar nerve condition regarding compression of the nerve in the elbow. The ulnar nerve is the main nerve behind the elbow in the cubital tunnel area. It extends to the inner side of the hand and provides muscle function to the hand. The symptoms of this syndrome would be numbness and tingling on the inside of the hand, mainly the ring finger and the small finger especially. This is significant as it also notes the same symptoms that Paul had displayed, along with others, in his current treatment with Dr. Sagerman. It is further significant because Dr. Sagerman was not able to tie that cubital tunnel syndrome and symptoms to the chainsaw accident. This earlier treatment in 2003 and 2004 showed the same symptoms and the same type of ailment as he was currently claiming of with his right hand now. The onset of this prior treatment was a motor vehicle accident in March, 2002. The doctor did not have anything else specific regarding that. He noted that the common causes of cubital tunnel syndrome is a compression on the nerve. It may be spontaneous or as a result of injury to the vicinity or it can also be from strenuous activities. As to whether it can be caused simply by repetitive use, he doesn't think so. He noted that these quite type of activities generally cannot create such an ailment. Back then, surgery was done to correct the cubital tunnel and it was successful.

Bring us up to more modern times, in February, 2012, he first came to him for the injury resulting from the chainsaw accident. He didn't really know how it occurred but he does have some history in his medical records. In February, 2009, he did send a letter to Dr. Sek regarding his treatment with Paul which he had on his first visit on February 27, 2012. He noted in that letter that Paul developed symptoms of numbness in the small finger as well as weakness and that he treated it with therapy and had an EMG test and an MRI scan. He noted that he did not have the emergency room notes at that time. Regarding the past medical history, it does note some arthritis as well as cervical disc disease. The doctor did not know much about this but it looked like it was in the neck area. There were various medications that he was on at the time as well and noted that they were for anti-inflammatory, a pain medicine, depression, and for muscle spasms. Regarding his exam on that first appointment of February 27, 2012, the doctor basically read from his notes on that day. He noted there was a large scar

on the mid forearm between the elbow and the inner side in the wrist. He noted positive Tinel sign which is conducted by tapping over the nerve area and it will show pain or indicated nerve dysfunction or injury. This is a subjective finding. On the cubital tunnel region on the right side, there was sensitivity there also. Wrist and elbow motion were unrestricted and there were no visible signs of atrophy. He noted that he was able to abduct the small finger which is to pull it sideways from the other fingers. His flexion strength was normal. X-rays showed no fracture. He reviewed the films of the MRI from February 3, 2012 and noticed no abnormalities. The MRI report noted weakness in the ring and small finger. He noted that even though there was nothing abnormal in the images that he was not too exclude the possibility that the nerve was still injured. He noted that just because it's not in the film that there may still be some nerve injuries in and around the point where Paul was complaining. The nerve conduction study was also conducted on August 10, 2011, and there was no evidence of neuropathy. This is a negative finding, however, it does not rule out the possibility of the nerve injury. Same as the MRI report. That being said, it is important to note that simply because these two studies, being the MRI and nerve conduction study, did not show anything abnormal, that does not mean that there is not a nerve injury still present. His impression was that the right forearm was a laceration with probable partial ulnar nerve injury. At the scar area, he noted there was a deep laceration there and there may be ulnar nerve issues. It is possible that the nerve could have been directly damaged. He was showing signs of an ulnar nerve injury and local sensitivity in that area of his forearm. That is further suggestions of such a nerve injury. He then sent him for a follow up for an EMG. This is different from a nerve conduction study in that the nerve conduction study studies and evaluates the velocity of the nerve impulses. An EMG tests the muscle to be indicative of an injury. He wanted the EMG because it will give a more complete analysis. He felt in his opinion that was warranted. They also brought up surgery at that point as a nerve exploration to expose the area of injury. The EMG was ordered and no work restrictions were put into place. The EMG was done with Dr. Levin on March 13. The next visit with Dr. Sagerman was on 04/02/12.

On 04/02/12, Dr. Sagerman had another appointment with Paul Dulberg in his office. He had the EMG tests which was done by Dr. Levin and it showed no evidence of neuropathy. It also showed that the nerve conduction was within normal limits. At that point, there was no documentation that the nerve was not functioning properly. There was still a positive Tinel sign which is subjective and there is still the abduction of the small finger with a positive Wartenberg's sign. It is noted that he did not wish to pursue surgery at this time but there were some recommendations given for strength exercises and scar management.

The next visit was on 05/14/12 and there were new complaints at this point. Paul was having issues with persistent pain with the use of his arm as well as gripping and squeezing things. There was no change in the symptoms of numbness or tingling in his fingers, but that was not bothersome to him. His function in the arm was limited due to pain symptoms. Upon examination, he found that the Wartenberg sign is still positive and his intrinsic strain is slightly weak. This weakness was of the muscles in the hand that control the fingers. There was also no clawing. This would be an abnormal posturing to the finger due to the muscle issues. This is commonly seen in ulnar nerve injuries. However, there were no signs of clawing in Paul on that date. The discussion was had regarding possible surgery for an ulnar nerve neurolysis. This was more of an exploratory issue to find out what was bothering the nerve and to decompress the nerve. His next visit, he was ordered to follow up with a different doctor, being Dr. Sam Biafora. This was to get a second opinion on his pains and it was suggested by Dr. Sagerman to do this.

The next visit was on 05/17/12 with Dr. Sam Biafora. Dr. Sagerman testified as to what Dr. Biafora had noted in his records which we have. He noted in his records that he was to see Paul for a second

opinion after being referred to him by Dr. Sagerman. He noted that Paul sustained a chainsaw injury to his right forearm. He noted that Paul told him that he had a partial nerve injury in the emergency room. On this day he noted weakness in his right hand as well as numbness in his right small and ring fingers at rest with occasional tingling. He also reported a shooting, burning type of pain which radiates proximally and distally from the area of the injury in the proximal forearm. He noted this occurs several times a day at rest and more predictably with use. Upon physical exam, Dr. Biafora noted that there is a positive Tinel at the cubital tunnel through to approximately several centimeters distal to that. There was also transverse swelling and a healed scar several millimeters in length at the proximal third of the forearm on the ulnar side. He also noted that there is a positive Tinel over the scar and at the most volar radial aspect of the scar. There is also significant tenderness at the scar to deep palpation on its most ulnar and distal border near the ulna. He also noted Tinel over the most volar and radial aspect of the scar radiates into the ulnar digits. He noted there was still positive Wartenbergs signs. He did have good strength and flexation of the small and ring fingers but there is pain at the scar on its most dorsal and ulnar border with resisted DIP flexion of the small finger. His assessment was that he felt there was approximately a 1 year status post the laceration and there was likely a partial ulnar nerve injury with ulnar nerve neuritis. Dr. Sagerman explained this to be that at the site of injury, there was a potential at that location for dysfunction of the ulnar nerve. That would explain some of the symptoms Paul has had and he has been experiencing in the ulnar nerve in his hand as well. Dr. Biafora also recommended surgery and felt that the patient "may benefit from an ulnar nerve exploration with neurolysis". He also noted that he would recommend this also to include the cubital tunnel decompression with possible anterior transposition. He noted that it will not likely improve the motor deficits in his hand but it may improve the pain that Paul is experiencing in his forearm. He noted that he also had separate and distinct tenderness in the most dorsal ulnar aspect of the wound and it may require exploration of that portion of the scar as well. Paul noted that he wanted some time to think about it before he made a decision and will follow up with Dr. Sagerman in four weeks.

The next visit was with Dr. Sagerman on 06/06/12. He noted that prior Dr. Levin had given him Neurontin to treat the nerve pain that he was having. Dr. Sagerman normally doesn't give that drug and he feels there is problems with side effects and there is a better prescription for him to have. On that date he reported no change in his symptoms despite that medication. However, he is noting some side effects from that medication which may interfere with his functioning. Paul at that time noted he would like to proceed with the surgery that was discussed with Dr. Biafora previously. He also had had additional therapy but it was discontinued due to lack of progress. He went on with the physical examination and noted that the right elbow and forearm was unchanged. There was a positive Tinel sign present at the cubital tunnel without ulnar nerve subluxation. The forearm scar is stable with tenderness and sensitivity to percussion. He indicates he had pain when he was trying to grip things which was localized to the forearm region and resulted in increased numbness in his ring and small fingers as well as weakness in his grip. The surgery was discussed and Paul noted that he feels that any improvement in the symptoms will be beneficial in terms of his arm functioning normal. There was a bit of a discrepancy here between this visit and the last one in which on 05/14 it was noted that physical therapy seems to be getting him some benefit but as of the 06/06 appointment, it is noted that physical therapy is not helpful. The doctor could not explain the difference between the 2 or why that was the case.

Paul then had his surgery on 07/09/12. The doctor noted at that time that prior to the surgery regarding Paul's prognosis, the doctor was very guarded in his prognosis. He didn't really know how much improvement there was going to be as it is hard to predict how much better it is when you don't know the extent of the nerve injury, which is all the more reason why you are going in for the exploration to determine the extent of the surgery.

The surgery was on July 9th. The pre-operative diagnosis was the same and this was an outpatient type surgery. There were 2 things that they were going after in the surgery. No. 1 was the right elbow cubital tunnel issue and release and there was also the pain in the right forearm. Regarding the cubital tunnel release which is done in the right elbow, it did show thickening of the cubital tunnel ligament with scarring of the ulnar nerve to the floor of the cubital tunnel with local constriction. This basically meant a pinched nerve in the elbow area. This was in essence the same type of procedure or injury Paul had suffered back in 2003 and 2004. However, the doctor could not 100% confirm that as he did not have those records. What he found would be consistent with cubital tunnel syndrome and its causes. He did note regarding the surgery to the right forearm that there was a very deep laceration into the muscle which covered the nerves but the muscle fibers were actually intact. He noted in his report that the site of the previous chainsaw laceration revealed extension to the subcutaneous tissue and fascia overlying the flexor carpi ulnaris muscle. He noted that the nerve was not cut and there was no visible scarring around the ulnar nerve at that level. The findings in this were important for us in that it showed that these were consistent with his complaints. It seemed that from the laceration, what he found would account for Paul's symptoms. He basically went on to discuss the scarring of the muscle and whereas it is maybe difficult to say, he felt the scarring of the muscle may have caused the ailments that Paul was suffering from. He also noted that as far as the cubital tunnel, that would account for the ailments that Paul was suffering in his ring and pinky finger. These are two separate independent findings at two different sites. In summary as I will go over later, it basically noted that the doctor would tie the injury to the forearm and that weakness and lack of grip to our accident. However, he would not tie the cubital release in his elbow to the accident as he felt it was too distal from where the accident actually occurred.

The next visit was on 7/11/12. There did not seem to be any real issues at that time and the patient was doing well. His function had increased and his symptoms had improved and his strength had increased. He still had some soreness in his elbow and that was normal. As far as restrictions at work, he did not feel that Paul should have any as doing work sitting at a computer.

The next visit was on 07/23/12. At that time, Paul seemed to be doing fine.

He then saw him on 07/30/12 and noted also that he was doing well and his arm feels much better and he has increased function and feels that his symptoms have improved.

The next visit was on 08/27/12. On this, he noted that Paul was doing okay and that his elbow was sore and he was participating in therapy. His progress at this time was satisfactory and his grip strength had increased and his hand function had improved. There were no signs of infection or any other issues. He was told to continue his therapy and come back in about 6 weeks.

His next visit was on 10/22/12 and he noted he was feeling better. His function has improved and he is gaining strength. The sensation in his fingers has improved and he is pleased he can now grasp objects better than he did before the surgery. He still has some difficulty with certain activities regarding gripping and pinching of small objects. He was examined and it was noted that he will continue his home exercises as well as those given by his therapist. He can also advance in his activities as tolerated. He noted on this time that they discussed work activities and that Paul noted he is currently unemployed and plans to pursue disability. They noted the next visit in 6 weeks.

The next visit was on 12/03/12. On this date, he was in for an evaluation of his right hand and right arm. He noted he still has some weakness and pinch strength and difficulty grasping objects. But he is

performing his home exercises. It is at this point that he also notices an onset of left elbow symptoms with no preceding trauma. After an examination, the doctor's impression was that he had a left lateral epicondylitis. This is a degeneration of the elbow which basically is tennis elbow. Causes are normal wear and tear and are degenerative. The fibers lose their strength and it causes issues. This can be caused by blunt trauma or certain actions can cause it also. As to whether it will be caused by over compensation, that would seem to be a stretch, according to Dr. Sagerman. Most of it was the same and this examination was predominantly on the left arm and again, as stated before, he did not really feel that these injuries would be caused by over compensating from the injury he had to his right arm.

The next visit was on 03/25/13 and all is really noted regarding the right arm on this visit is he did have some intermittent soreness in the right forearm area. Nevertheless, the scar was stable and there was mild sensitivity at the most ulnar aspect of it. At the right forearm scar, a padded elbow sleeve was provided for protection and he may follow up on an as needed basis if symptoms worsen. On that date, it looks like he gave a steroid injection, but was not asked significantly about this during the deposition. Again, this seems to be an unrelated ailment.

The next visit was on 08/26/13. On that visit, he did come in for some slight intermittent pains in his right forearm in the muscle cramping area. He noted that the right forearm scar was stable with no focal tenderness to sensitivity. But he did describe intermittent muscle spasms with discomfort despite the medication. Dr. Kathleen Kujawa suspects possible dystonia. He was then referred out to a neurologist.

Regarding the doctor's opinions of his injuries in relation to the chainsaw accident, he noted that the chainsaw injury was a deep laceration of the right forearm. He felt that the injury to the forearm from the chainsaw was definitely related to our accident. He felt also that the surgery to that forearm was also related to the accident and the pain and symptoms that he was feeling in his right forearm would all be relatable to the chainsaw accident. As for the prognosis of that, he felt Paul should remain stable within a certain degree of certainty, the symptoms should remain unchanged as to what he would expect.

Regarding the cubital tunnel syndrome, he did not feel that that was related to the accident. He felt that the injury to the elbow where the cubital tunnel is located as well as the surgical procedure that they did there was too far from the forearm to relate it to the accident. As to whether the injury to the forearm could be some kind of a by-product of the cubital tunnel, he really didn't think so. He felt that the injury from the chainsaw was too distal to the elbow to effect the elbow in the way that they found. The injury would account for the scarring as well as the lack of grip and weakness that he was having in his forearm. However, the cubital tunnel would account more for the numbness and tingling in his fingers and that he could not attribute the accident.

Regarding any disability, as for the forearm, he would have difficult time pushing, pulling or lifting certain things at times. He would have to accommodate for that impairment in doing those activities. He could do some of those things to the extent that his forearm and the strength would allow him to do that. As to whether he can work at all from the forearm injury, he can work as it is tolerated. The doctor did note as to whether that makes him totally disabled would probably not be the case. Especially with the fact that he works at a computer most of the time. As to whether there is any overlap between the injury to the forearm which is relatable and the cubital tunnel which does not seem to be relatable, the doctor did note that you really have to look at the medical records to evaluate which of the charges could be deemed relatable versus not. They are two distinct and separate surgeries and incidents, but nevertheless, there are probably is some overlap between the two of them and there is treatment for both areas on any number of the doctor visits. As to whether the left elbow pain could anyway be related, the doctor felt it would be quite a stretch to do that but it really would depend on what you are doing with your left elbow. He would not commit. After surgery, as to whether he had full disability, it

really depended on his function and his abilities to do what ever it is he was being asked to do. Again, as to whether it is a total disability, the doctor felt it was hard to say. But if it was a computer based job and he would not have to do any strenuous work, such as pulling, pushing, lifting, or whatnot, and if he stuck mostly to the computer-based jobs, he doesn't know if he could say he would be totally disabled."

(POP 000909 - POP 000914)

(POP 000919 - POP 000924)

(POP 000886) - missing 5 of 6 pages

(Dulberg 001719 - Dulberg 001724)

*(Notes:

- Bob is MR. ROBERT LUMBER an attorney at the Popovich firm.

= (Dulberg 001719 - Dulberg 001724) has handwritten notes by Baudin's

- How was Mast able to determine that there was no medical link before the message he left on Dulberg's phone on 10/22/2013 if Mast didn't attend the deposition on 10/15/2013 and Mr Lumber didn't create this memorandum for Mast until 10/30/2013?

- Why did it take MR. ROBERT LUMBER 15 days to create this memorandum?

- Mast unilaterally made the \$7,500 offer to the McGuire's on 10/22/2013.

- Was the delay in this memorandum a creative process for Mast to become an opportunist over injuries not being medically linked to each other while ignoring the fact that the initial complaints made by Dulberg in the hospital on the day of the accident link the injuries to the accident?

- Why wasn't Dulberg ever allowed the opportunity to read either the deposition or even this memorandum?

- Check the other dr's depositions and compare the lag time from the date of the deposition to the date of the memorandum and compare it to the lag time here.)

2013-10-30 COURT ORDER:

Continued to 1/3/2014 for status

(POP 001121)

(Dulberg 001912)

*(Notes:

- Handwritten - sloppy and hard to read - Not entirely transcribed to legible text above.

- Lumber in court.)

2013-10-30 9:34am Popovich Emails Dulberg:

Paul, here are my thoughts regarding your case. There are two issues. The first liability, or whether Mr. Gagnon is liable for your injury. If he is not proven liable, then it does not matter how badly you were hurt since he will not be found responsible for your damages. The second issue is your damages, or to what extent you were injured due to Mr. Gagnon's acts.

Both of these issues are strongly contested in your case.

As to liability, there were no witnesses to the accident. So, whether Mr. Gagnon will be held responsible for your damages is uncertain and a gamble. That is because it is your word against his word. Our argument is that you were simply holding a limb when he caused the chain saw to strike you. His argument is that you moved your arm in the path of the chain saw unexpectedly. If the jury determines that we did not prove your "version" of the accident, then they can find against you and in favor of Mr. Gagnon at trial.

As to damages, the issue is complicated. That is because your treating physicians do not all agree on exactly what injury you suffered or whether you had a fully recovery or not.

Dr. Talerico at MidAmerica Hand and Shoulder, saw you twice. The first time was in December, six months after your injury. He was not supportive of your claim in most respects. He didn't really feel there was anything wrong with you - as to the forearm. He said that you complained mostly of pain radiating down the forearm from the laceration site with numbness and tingling. On exam he noted no tenderness and it was mostly a normal presentation. Strength was good. He did not see any nerve problem. He prescribed physical therapy due to a muscular sort of symptomology - not nerve related. Apparently you did only 2 sessions of therapy and returned January, 2012. No new complaints at the time. The EMG was normal. He did not believe you were disabled. He continued you on therapy. He saw no evidence of nerve problems. The only symptoms were subjective - not represented by any abnormal exam finding.

Dr. Sagerman has also been deposed. I will summarize his testimony for you soon. His was more favorable, but still limited in what he related to the chain saw accident. Apparently he does not believe you presently have any symptoms relatable to the chain saw injury.

Think about these issues. I will provide you Dr. Sagerman's summary soon.
(POP 000202 - POP 000203)(Dulberg 001538)(Dulberg 001540 - Dulberg 001541)(Dulberg 001542)

*(Note: Mast is pressuring Dulberg with Mast's opinion without giving Dulberg the opportunity of reading the Dr's deposition.

This is a mind-fuck perpetrated by Mast trying to inflict intentional harm on Dulberg.

Wartenberg's sign is not subjective, it's an objective finding and is nerve related...

This is only 8 days after Mast had made the offer of \$7,500 to the McGuires and Mast makes no mention of it.

Add more later...)

2013-10-30 12:57pm Dulberg Emails Popovich:

Quick ?

Are they pitting Dr. Talerico against My other dr's?

He only saw me twice for approx 5-10 minutes and there is a reason I stopped seeing dr Talerico.

(POP 000202)(Dulberg 001537)(Dulberg 001540)(Dulberg 001542)

*(Note: Dulberg is replying to Mast's twisted opinions.

Dulberg was not given the Dr's depositions.)

2013-10-30 1:09pm Popovich Emails Dulberg:

Yes. That's how it works.

(POP 000202)(Dulberg 001537)(Dulberg 001540)

*(Note: Mast is pressuring Dulberg with Mast's opinion without giving Dulberg the opportunity of reading the Dr's deposition.

This is only 8 days after Mast had made the offer of \$7,500 to the McGuires and Mast makes no mention of it.)

2013-10-30 18:26(UTC) 1:26pm Dulberg Emails Popovich:

Lol, ok.

Hans, if your sick and this dr you don't know says your not, do you go see someone else or do you take his word for it and continue to suffer?

Ask dr Talerico that question.

This dr Talerico guy has no intimate knowledge of my injuries other than 2 very short visits that I walked out of feeling like I was waisting my time because there was no real examination.

I don't even agree with paying for his services.

I have been seeing Dr. Levin and Dr. Sagerman for a couple of years now. And I get to choose who is the best dr for me. Not David or his insurance.

(POP 000202)(Dulberg 001537)(Dulberg 001540)

*(Note: (Dulberg 001540) Hast the correct timestamp in CDT not UTC.

Dulberg is replying to Masts twisted opinions.

Dulberg was not given the Dr's depositions.)

2013-10-30 2:08pm Popovich Emails Dulberg:

I understand that Paul. The problem is that you are preaching to the choir. The jury - that will decide this case - doesn't know you or the doctor. If a treating doctor says he doesn't think you were injured badly, they can accept it or believe it. That is the jury's job. And in cases that have complicated medical issues, many times the jury will not be so accommodating and give you the benefit of the doubt. That's why Plaintiff's always have a more difficult time at trial, because they have the burden of proof. And, if the jury doesn't like the evidence they can find against you.

(POP 000202)(Dulberg 001537)

*(Note: Here is Mast's opining rather than giving Dulberg the actual deposition.

Why does Mast refuse to give Dulberg the depositions to read and only gives Dulberg Mast's opinions of what was said to go on?

Mast is controlling what testimonies and factual information Dulberg is allowed to see.

Who gave Mast the right to hide the depositions from the client/owner of the lawsuit?

This is only 8 days after Mast had made the offer of \$7,500 to the McGuires and Mast makes no mention of it.)

2013-10-30 19:57(UTC) 2:57pm Dulberg Emails Popovich:

I don't believe that any reasonable person sitting in a jury is going to give dr Talerico's 5 minute evaluation much credit next to dr Sagerman's extensive examinations. I'd bet the farm on Dr. Sagerman over Talerico any day.

Next issue?

(POP 000202)(Dulberg 001537)

*(Note: (Dulberg 001537) has the correct timestamp in CST not UTC.

Dulberg is replying to Mast's twisted opinions.

Dulberg was not given the Dr's depositions.)

2013-10-30 3:10pm Popovich Emails Dulberg:

"I understand what you're saying. But my 20 years of experience before a jury causes me to believe otherwise unfortunately. When you have time, I'm happy to sit down with you and explain what I mean. It's hard to do this by email. But the reality of the situation is that the Plaintiff/victim loses in a "close" argument on any issue, unfortunately. We have very conservative juries in

McHenry county and they don't lean toward the victim. Also, the defense will likely hire their own expert to say the same thing as Dr. Talerico -so dr. T will sound more credible. That's just how these things are handled.

(POP 000202)

*(Note: Find Dulberg's bates stamped documents on this email.

This is only 8 days after Mast had made the offer of \$7,500 to the McGuire's and Mast makes no mention of it.)

2013-10-30 3:37pm Dulberg Emails Popovich:

"If you want to sit down and talk that's fine, we can do that.

If the defense wants to pay some expert, who has never examined me, to testify as to what my injuries are I'm going to laugh all the way to the bank. No one will believe a dr or anyone else if that dr. never actually examined the patient and knows nothing of the real injury.

The jury needs to be made aware of that.

What exactly is it that dr Talerico is going to testify to?

That I had no injury?

That I had no scar tissue that needed to be removed from the wound?

That I have no major nerve damage?

First? Is obvious I had an injury

Second? Did he cut open and look at the injured muscles like dr Sagerman and can he feel the difference in pain/strength level or feel better like I can since the procedure was done?
Third, I don't have major nerve damage. All tests say I don't. It's all just branch nerves that were damaged and the usual numbness, tingling, burning pains associated with branch· nerve damage.

I don't exactly know what it is he can testify to that's so damaging other than to give an opinion on every short examination. >>>>>>>

Your making me feel sorry for even mentioning this guy's name (dr. Talerico) but I thought honesty was the best policy."
(POP 000201 - POP 000202)

2013-10-30 3:58pm Dulberg Emails Popovich:

"Something you should consider, is dr Talerico covering his own ass because something was done to make my injury better and he didn't find it or because he told me I was fine and brushed me away because I had no insurance?

He made the insurance issue way too clear to me in his office and brushed me off.

That's the main reason I fired him. I felt this man was not going to give me the time, respect, or attention I'm accustomed to and would expect from any dr."

(POP 000201)

*(Note: Find dulberg bates stamped documents on this email.)

2013-10-30 4:14pm Popovich Emails Dulberg:

"All of the issues your raising are reasonable considerations. But what you have to understand is the jury will not feel as strongly about these issues as you will. There will be more than Dr. Talerico testifying. So they will be listening to all of the testimony including the other treaters as well as the defendant's expert. They will also be determining whether Mr. Gagnon is even liable. Depending on how they answer that question they may not have to get to the medical issues."

(POP 000201)

*(Note: Find dulberg bates stamped documents on this email.

This is only 8 days after Mast had made the offer of \$7,500 to the McGuire's and Mast makes no mention of it.)

2013-10-30 4:17pm Dulberg Emails Popovich:

"Liable or negligent?"

(POP 000201)

2013-10-30 4:26pm Popovich Emails Dulberg:

"Same thing."
(POP 000201)

*(Note: Find dulberg bates stamped documents on this email.
This is only 8 days after Mast had made the offer of \$7,500 to the McGuires and Mast makes no mention of it.)

2013-10-30 4:39pm Dulberg Emails Popovich:

"In that case we are fine.

The uncontested fact that both parties agree to is that he (David G) used the chainsaw and it cut me. He (David G) was obviously in too close of proximity of another person to be operating it. He (David G) did not provide adequate safety while working and he obviously disregarded anyone's safety around him. That chainsaw did not operate itself. Basically his (David G) brain fart was that he did not give any care to those around him when he was using that equipment.

Bottom line.... He failed to exercise the care that a reasonably prudent person would exercise in like circumstances.

I don't see any jury denying the liability to pay for the dr's care under those circumstances. What do we need to do to make a jury understand exactly that?

Let's talk strategy soon and thank you so much for your help.
(POP 000200 - POP 000201)

2013-10-30 4:44pm Popovich Emails Dulberg:

"Paul. I really think you are misunderstanding the whole process. While the points you bring up are understandable I don't think you understand the reality of a trial and how it's all going to be decided... Let's meet and talk this through"
(POP 000200)

*(Note: Find dulberg bates stamped documents on this email.
This is only 8 days after Mast had made the offer of \$7,500 to the McGuires and Mast makes no mention of it.)

2013-10-30 4:49pm Dulberg Emails Popovich:

"Ok when is a good time to meet?"
(POP 000200)

2013-10-30 10:09pm Dulberg Emails Popovich:

"One more thing.

If I were to accept their position that dr Talerico is correct it means I lose anyway even without a trial. I have a ton of medical bills after I met that man and just the thought that I agree to not getting those paid for means I lose my home and everything I've ever worked for. I'd take my chance with a jury if that's the only options I have. I'd rather flip a coin with the jury than agree to not pay the good folks who helped me.

Please let me know when we can meet."
(POP 000200)

2013-11-04 17:31(UTC) 11:31am Dulberg emails Popovich:

Curious if I should bring anything with me at 3 pm?

Mind if my Mom comes along?

Thanks and see you soon

(Dulberg 001531)(Dulberg 001533)(Dulberg 001534)(Dulberg 001535)(Dulberg 001536)

*(Note: This is not in the Popovich documents.
(Dulberg 001536) has the correct timestamp in CST not UTC.)

2013-11-04 11:49am Popovich emails Dulberg:

No need to bring anything, your mom is welcome...
(Dulberg 001531)(Dulberg 001533)(Dulberg 001534)(Dulberg 001535)

*(Note: This is not in the Popovich documents.

Dulberg's mom, Barbara, is expected to testify as to the discussion at this meeting. At this meeting Barbara witnesses Mast's first time asking Dulberg if he can probe the defendants to see what kind of settlement is possible.

Neither Dulberg nor Barbara know or were told that Mast had already made a settlement offer on October 22, 2013 for \$7,500 to the McGuires without Dulberg's knowledge.

This is Mast's attempt to cover his tracks.

Add more about this meeting later...

This is now 13 days after Mast had made the offer of \$7,500 to the McGuires and Mast makes no mention of it.)

2013-11-04 3:00pm - Placeholder for meeting with Barbara Dulberg present:

This is now 13 days after Mast had made the offer of \$7,500 to the McGuires and Mast makes no mention of it.

Rather, Mast asks Dulberg if he can probe and see what's out there for a possible settlement.

Mast says Dulberg can't win against an old lady.

Add more later...

2013-11-04 4:52pm Dulberg emails Popovich:

I forgot to take a copy of dr Sagermans dep. when I was there.
(Dulberg 001535)

*(Note: This is not in the Popovich documents)

2013-11-04 22:54(UTC) 4:54pm Dulberg emails Popovich:

Also,

Any chance the hospital (centegra) has video of their parking lots?

This could disprove David's claim of talking before entering the ER.

(Dulberg 001531)(Dulberg 001533)(Dulberg 001534)

* (Note: This is not in the Popovich documents.

(Dulberg 001533) and (Dulberg 001534) have the correct timestamp in CST not UTC.

Notice that Dulberg is speaking of David's claim of talking "before" entering the ER, while in the deposition David claims it is after the ER.

This is the problem with Dulberg replying to Mast's 3rd person opinions and not being given the deposition to read the testimony for himself.

Mast hid all depositions from Dulberg and distorted what was testified to throughout the course of representation until Dulberg started demanding to be able to read them.

Gagnon's deposition was hidden from Dulberg for over 300 days yet Mast twisted and used all the depositions on Dulberg like a weapon.

Mast refuses to help Dulberg obtain the audio or video footage from the hospital.)

2013-11-05 3:13am Dulberg Emails Popovich:

Just spoke with John Choyinski a lifelong friend of myself and David Gagnon.

First off I should mention that John has suffered a brain injury in his youth and did spend a few months in a coma and rehab but that was over 20 years ago and he's improved dramatically since. If you should talk with him you will notice something's off about him and I thought the heads up would help. One important note and you have to take my word for this till you talk to him and realize it for yourself, it is that John is damn near incapable of lying. Ask him anything and he's so darn honest he gets himself in trouble and doesn't know it. He often says way too much and I'm sure that can't be good except it's what makes him so darn believable.

John is willing to talk about certain aspects of what David has said to him in confidence. John is extremely hesitant to go against David in fear of retribution and rejection from his lifelong friend and is on guard in his reactions and words but this can easily be avoided by asking him questions that skirt around the issue rather than directly at it until he already answered it.

John explained to me tonight that Dave is not the same person I knew a decade ago. These days Dave is all about himself and he has become money hungry. John told me I would have known that if I hadn't been off working all those years and been around more often. John went on to say that he knows that David is lying about how it happened because David seems to think he will have to pay more for insurance and he's so cheap he'd rather screw Paul over than paying 1 penny more or have to admit he did something wrong for no money. John went on to say that David was upset at having to do his Mom's tree, didn't want to be there because he wasn't getting money for it and that he was trying to go too fast, didn't tell Paul what he was doing and that's how it happened. At this point Johnny showed confusion and said "um well I mean Paul moved his arm.... Ohhh whatever, I don't want to talk about it any more."

Hans, Johnny is David's longest lasting friend. These two were the closest of buddies growing up. Johnny said he would be willing to talk with you not to go against David but because he knows the troubles I have doing normal things that I used to be able to do very well.

If you start by asking Johnny about my grip or things I have trouble with like hand shakes or opening jars, writing or typing he will go on and on, he needs to be guided a bit in the right direction and soon you will have what you should need about his conversations with David.

But be forewarned, Johnny can go off on tangents and most of what you hear won't have anything to do with what he is there for and I'm more than positive he will say things that will ruin his own credibility.

When I asked Johnny if it was ok for you to speak with him he said yes but to give you his home number and not his cell because he doesn't answer calls if he doesn't know the number. He also went on to say his parents told him to stay out of the issue between Dave and I because of David. They fear David may do something drastic if he feels Johnny went against him.

Best time to call him at home is either early morning before 9 am or at 6 pm but he is in and out all day.

John Choyinski Jr. Home. (815) 385-8483

Hans, John has issues and may not make the best witness in my opinion but he is Dave's lifelong friend and if handled correctly can't lie or should I say can't keep one up for very long.
(POP 000179)(POP 000189)(Dulberg 001532)

2013-11-05 9:00am Popovich emails Dulberg:

no chance, sorry
(Dulberg 001531)

* (Note: This is not in the Popovich documents.

This is in reply to the email Dulberg sent to Mast on 11/04/2013 22:54(UTC)

Mast won't get the audio and video footage but uses Gagnon deposition claims of conspiring to get money at the hospital on Dulberg as problematic to the case.

Mast is controlling what evidence is gathered by Dulberg by refusing to use his subpoena to get what is clearly available to any other person who had to go to the hospital and ends up in litigation.

It becomes very clear as this case progresses that Mast actively suppresses any and all evidence Dulberg knows of, including witnesses, that can perjure the false narrative Mast injected in both Gagnon's and the McGuire's testimonies.)

2013-11-05 9:43am Dulberg emails Popovich:

Below is a link to an article talking about the integration of digital cameras at the centegra facilities.

A friend of mine who works at NIMC for well over a decade just replied to me and she says everything is recorded and available exactly for the purposes we discussed.

<http://www.sdmag.com/articles/print/success-stories-in-integrating-video-surveillance>
(Dulberg 001531)

* (Note: This is not in the Popovich documents.

This article is no longer at the above link but may be found on something like the way back machine or another similar site which keeps a history of internet web pages collected by the spiders that crawl the web taking a picture of each web page they encounter.

Mast tells Dulberg to get the video himself. Dulberg contacts Centegra and can't get the video without an attorney or Judge issuing a subpoena. Mast refuses to subpoena the video footage saying it does not show how the injury happened so it's of no use to us.)

2013-11-05 Popovich Letter to Dulberg:

"Please find enclosed the deposition notes from Dr. Sagerman's deposition taken October 15, 2013 regarding your care and treatment for your review.

Be advised that Dr. Ford's deposition is currently scheduled for November 20, 2013."
(POP 000190)

*(Note: These are notes from the deposition and not the deposition itself.

Missing - deposition notes are missing - Find and add here.

Dulberg only was given a memorandum and not the actual deposition. Why?

Memorandums are a third parties opinions thus here-say and are not fact.

Dulberg should have been given the facts, in other words, the deposition.)

2013-11-05 9:22am Gagnon fax of Notice to Popovich and McGuire's:

NOTICE OF DISCOVERY DEPOSITION(S)

PLEASE TAKE NOTICE that the undersigned attorney will take the deposition of:

NAME: Dr. Apiwat W Ford

DATE: November 20, 2013

TIME: 10:00 AM

PLACE: Northern IL Medical Center 4201 Medical Center Drive Medical Building Office, B100
McHenry, IL 60050

upon oral examination, before Merrill Legal Solutions, certified shorthand reporters, or some other officer duly authorized by law to take depositions. The deposition(s) is/are being taken for the purpose of discovery, or for such other purposes as are permitted under the applicable and governing Illinois Rules of the Supreme Court.

I HEREBY CERTIFY that on 11/5/13, a true and correct copy of the foregoing Notice of Deposition was faxed mailed to:

Hans A. Mast Law Offices of Thomas J. Popovich, P.C. 3416 W Elm St McHenry IL 60050 815 344-5280

Cicero, France, Barch & Alexander PC 6323 East Riverside Blvd Rockford, IL 61114 815 226-7701
(Dulberg 001757 - Dulberg 001758)
(Dulberg 001759 - Dulberg 001760)

*(Notes:

- This is not in the Popovich documents.
- (Dulberg 001757 - Dulberg 001758) has handwritten notes:
11/20
D with a circle around it and a check mark
4309-
Med off Building-
Conf'd 11/19 w/Diane (Accardo).
- (Dulberg 001759 - Dulberg 001760) has handwritten notes:
D with a circle around it and a check mark.)

2013-11-06 NORTHWEST COMMUNITY HOSPITAL

Account summary statement \$6,366.00
(POP 000680)

2013-11-07 Popovich Letter/Fax to Gagnon:

"Please find enclosed a note from Paul's treating neurosurgeon Dr. Kathy Kujawa concerning Paul's diagnosis of post-traumatic dystonia of the right hand and treatment with botox. We intend to call Dr. Kujawa to testify at the time of trial to her diagnosis, treatment and the necessity for ongoing medical care.

I am not sure of your client's position with regard to settlement at this point. I realize that liability is being disputed. However, if your client is interested I am happy to sit down with my client to figure out a reasonable demand.

In my view, liability falls directly on your client. While Mr. Gagnon tried to argue Paul was contributorily at fault for moving his arm in to the path of the chainsaw during his deposition, Mr. Gagnon's recorded statement- which he admitted in his deposition was properly transcribed- said nothing about Paul repositioning his arm at the time, but instead Gagnon stated that Paul was injured when Gagnon "hit the crotch [of the branch and] it flexed." This statement places liability squarely on Mr. Gagnon, since Gagnon struck Paul's arm while he was holding the branch when it "flexed". Mr. Gagnon stated several times during the recorded phone statement that he was being "complete and truthful" in the statement. I do not think a jury will accept Mr. Gagnon attempting to modify his account at the time of trial to avoid liability.

As to damages, there is some difference of opinion as to why Paul is continuing to have pain in the right arm. As Dr. Kujawa's note states, she believes it is due to the "trauma" suffered in the chainsaw accident. I believe Dr. Sagerman has stated the same thing in his deposition. The only question is whether the cubital tunnel injury is causally related.

Again, if you are interested in some initial pre-trial settlement discussion, I am happy to meet with my client and provide a demand. With over \$50,000 in medical expense, a surgery and ongoing pain and limitation, its easy to see how this case may turn out if Mr. Gagnon is determined liable at trial. Still, if your client prefers having the jury evaluate the respective conduct of each party, further settlement discussions clearly would not be fruitful.

(POP 000184 - POP 000186)(POP 000187 is a partial)

***** (Note: Popovich stated "In my view, liability falls directly on your client." Remember this for later as Popovich continues to tell Dulberg liability is a strongly contested issue and Dulberg can't win. Also, Mast had capped the suite to \$50,000, Reported to Dulberg Gagnon's Insurance limit of \$100,000 and Demands \$135,000

Also, on a special note: The 11/04/2103 meeting Mast asked if he could probe for a settlement with the McGuires after he made an offer of \$7500 on 10/22/2013. Not with Gagnon.

Does Mast believe at this point Allstate didn't see his \$50,000 cap?

Find the Kujawa letter supposed to be attached and add it here.

*****Add more on this letter later.)

2013-11-11 9:29am Medchex Fax to Popovich:

CASE UPDATE REQUEST

Open Advanced MRI of Round Lake

(POP 000609 - POP 000610)

2013-11-11 12:30pm Popovich Fax to Medchex:

CASE UPDATE REQUEST
Open Advanced MRI of Round Lake
(POP 000611)

2013-11-15 PROOF OF SERVICE - PLAINTIFF'S SUPPLEMENTAL ANSWERS TO INTERROGATORIES

Sent to McGuire's and Gagnon, signed by Mast
(POP 001141)

2013-11-15 1:55pm Dulberg emails Popovich:

Reading through the summary of Dr. Sagermans Deposition I'm curious as to whether Dr. Levin has been deposed? The reason for this question is because of the EMG tests. Dr. Levin only conducted both the tests from just above the scar in the right forearm to the right hand and fingers. She never tested the right elbow which most likely would have identified the compression in the ulnar nerve earlier. She told me she didn't see any reason to give a full test beyond the scarred area even though The Dr asked for a full test of the nerve. She did tell me that all of the branch nerves in the forearm were severed but that is considered minor nerve damage and most likely wouldn't repair itself. Those minor nerves that were ripped out is what caused the loss of feeling in the right forearm and loss of fine motor skills in the areas they control. Again, no major nerve damage was found, only minor nerves but they still hurt like hell and play a significant part.

As far as the MRI, I was told the test cannot tell the difference between scar tissue and good tissue by both Dr. Sagerman and Dr Levin and neither expected to see much from the test.

As far as proving the elbow is a direct, indirect or hypersensitive result from the chainsaw, I don't think anyone can prove or disprove this let alone bet their medical license on this. All I can say to this is that it never bothered me before the incident and I didn't have any of the numbness or tingling prior to the incident. It is possible that the compression existed before the incident and that the trauma to the arm aggravated the nerve causing a hyper sensitivity resulting in the sensations or lack of them. I don't know how or when the compression in the elbow happened. I believe it happened during the incident but cannot prove it. I was in panic mode followed by extreme shock following the chainsaw being lifted into my arm. All I do know is it didn't bother me at all prior to the chainsaw incident or I would have seen a Dr. about it.

On another note, Dr. Sagermans comment about sitting in front of a computer all day shows he has no idea how repetitious keyboarding is or how much work a graphic designer does. I'm curious as to the context of the question he was asked to reply this way and why he doesn't see typing as an extremely repetitious task requiring good dexterity. Every time I try to go at the keyboard, mouse or even write I don't get very far without suffering a spasm in the damaged muscles. It affects much more than just typing. My grip is shot as well and I have a lot of trouble doing regular daily activities like cooking, cleaning, driving, etc... Those spasms happen anytime I try to use those muscles for more than a few minutes repetitiously. Sit at your keyboard and type with your right hand and feel the muscles in your forearm at the same place the chainsaw entered, dug deep and tore out a huge chunk of my arm and ask

yourself if issues in those muscles would affect your ability to type or use your fingers for anything. This is a no brainer, of coarse they do. I don't believe dr Sagerman gave this much thought or may have been asked this question in a context that would put computer keyboarding as a physically non stressful job overall but did not consider the extreme repetition, dexterity or fine motor control it takes to be a professional keyboardist 40-70 hours a week. If all I did was sit in front of a computer all day his statement would be true but to do my job requires one hell of a lot of keyboarding. Wish I could get paid to just sit in front of a computer and not have to type anything. Lol.

On another note, I did not see anything about the self dissolving stitches the Hospital used the day of the incident that never dissolved and Dr. Sagerman had to remove later. He said that accounted for the feeling of needles poking me in my arm and I believe he was right as those feelings stopped after he removed them. That was over a year of feeling those stitches aggravate the forearm and was a huge relief when they were found and removed. Removing those helped to pinpoint the Dystonia.

As far as the disability claim. This incident is what triggered me to file for disability but is only the piece of straw that broke the camels back so to speak and not the sole reason I filed. Disability looks at the whole body and not just this incident. In no way do I suggest the chainsaw is the sole reason I may or may not get disability. It is a cumulation of serious injuries I have suffered that will be the determining factor.

That's all I have for now but I'm sure more will come to mind as time goes on.

Oh, one more thing... You said a trial is like a theatrical production. If we had to go to trial how much approximately would you need in cash to make an overwhelmingly convincing production happen. Let me know so I have an idea of the ballpark figure and can secure the funds needed.

Hans, I'm asking that when you consider either a settlement or a trial that you ask yourself what it would be worth to you if you had to suffered this type of injury that profoundly changed your day to day living and career.

(Dulberg 001529 - Dulberg 001530)

*(Note: This is not in the Popovich documents.

Dulberg only was given a memorandum and not the actual deposition. Why?

Memorandums are a third parties opinions thus here-say and are not fact.

Dulberg should have been given the facts, in other words, the deposition.)

2013-11-15 22:41(UTC) 4:41pm Dulberg Emails Popovich:

Just spoke with John Choyinski again about talking with you.

I am leaving your number with him as he has agreed to talk with you about David Gagnon.

I believe he will try and call sometime tomorrow.

Paul

Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.

Sorry for the rant but Dave was a complete ass all the way and deserves this.
(POP 000182)(Dulberg 001516)(Dulberg 001520)(Dulberg 001522)(Dulberg 001524)(Dulberg 001525
- Dulberg 001526)(Dulberg 001528)

*(Note: (Dulberg 001528) has the correct timestamp CST not UTC.)

2013-11-18 McGuire's Letter/Fax to Popovich:

Issued For Settlement Purposes Only

I am writing to confirm our telephone conversation earlier this morning, wherein I advised you that I was authorized to propose settlement of Mr. Dulberg's claim against Carolyn and Bill McGuire for a lump-sum total of \$5,000.00. The settlement would of course be contingent upon customary settlement documents, including a release, a good faith settlement finding and dismissal.

Pursuant to your request, I searched my file materials for lien notices. The only notice of lien contained in my file at this time is your Attorney's Lien (enclosed). I have asked my contact at Auto-Owners Insurance Company to confirm no lien notices have arrived on his end since Mr. Dulberg's case was assigned to me for the defense of Mr. and Mrs. McGuire. I do not anticipating any lien notices, but just wanted to be safe.

I understand that you intend to run my settlement proposal by Mr. Dulberg. I look forward to hearing from you once you have had a chance to confer with him.
(POP 000667)(POP 001203 - POP 001206)(Dulberg 001653)

*(Note: Find telephone memorandum of phone call if it exists, check POP doc disclosure and subpoenaed Barch Documents.

This is not an original offer but rather a counter offer to Popovich's \$7,500 offer made on 10/22/2013 (POP 000192 - POP 000193) without Dulberg's knowledge.)

2013-11-18 1:28pm Popovich Emails Dulberg:

Im waiting to hear from John. I tried calling him last week, but no one answered.

In addition, the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....

Let me know what you think..

(POP 000181 - POP 000182)(Dulberg 001516)(Dulberg 001520)(Dulberg 001522)(Dulberg 001523 - Dulberg 001524)(Dulberg 001525)

***** (Note: Mast does not mention his original offer of \$7,500 on October 22, 2013.

Mast chooses to present the \$5,000 to Dulberg as if it's an original offer and makes no mention that it's actually a counter offer.)

2013-11-18 6:38pm Dulberg emails Popovich:

Just heard someone issued a subpoena to Mike Thomas.
Thought you should know.
(Dulberg 001527)

*(Note: This is not in the Popovich documents.)

2013-11-18 7:40pm Dulberg Emails Popovich:

Only 5, That's not much at all.
Is this a take it or leave it or do we have any other options?

If you want a negligence case for the homeowners ask what happened immediately after the accident.

Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.
(POP 000181)(Dulberg 001515 - Dulberg 001516)(Dulberg 001519 - Dulberg 001520)(Dulberg 001521)(Dulberg 001523)(Dulberg 001525)

2013-11-18 8:07pm Popovich emails Dulberg:

Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case.
(POP 000181)(Dulberg 001515)(Dulberg 001519)(Dulberg 001521)

*(Note: again it's the ultimatum/threat/false choice; if we do not accept their 5000 they will simply file a motion and get out of the case for free)

2013-11-18 8:19pm Dulberg emails Popovich:

Thinking of what I just wrote,
Should we take the 5 and let them off David's suite and then charge them with the aftermath? The same can be done with David.
He absolutely refused me a ride to the hospital in his car because I was bleeding so bad.
(Dulberg 001523)

*(Note: This is not in the Popovich documents.)

2013-11-18 8:29pm Dulberg emails Popovich:

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through
40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
(Dulberg 001519)(Dulberg 001521)

*(Note: This is not in the Popovich documents.)

2013-11-18 8:36pm Popovich emails Dulberg:

Cause they had no say on how Dave did the work. That is what the evidence from all shows.
(Dulberg 001519)

*(Note: This is not in the Popovich documents.)

2013-11-18 9:03pm Dulberg emails Popovich:

That's their personal issues of control with their own son. I will testify all day long about the things they wanted him to do that he did do throughout the day.

By claiming they had no control over the work Dave did after all the preparation, money and time spent out in the yard yelling at him that they wanted certain things done in a particular way I don't see how they get out of the direct oversight of the project because now that there is an injury they don't feel they had any real direct control over their own workers' actions?

This is ridiculous.

Hans, they have to do better than claim they had no control over David that day. If that's the case why were they there watching the work most of the day? Even Bill had hands on doing some of the work and rarely let David go to long without checking and seeing if things were being done the way Carol and Him wanted it.

(Dulberg 001519)

*(Note: This is not in the Popovich documents.)

2013-11-19 1:32am Dulberg emails Popovich:

A while back you told me that the jury's here in this county are primarily conservative and that they know the only reason we are before them is for money.

Not sure if that statement was meant to scare me or not but I do agree, they are, for the most part conservative and I would hope we should make it known we want money for damages, lawyers fees and the medical bills, etc... loud and clear.

We should also make it known to the jury that the parties or their insurance companies have never even offered to pay 1 cent for any of the medical damage and that's why we seek the jury's help in settling this dispute. Perhaps if the insurance companies would have paid for these basic things none of us would even be here. But they didn't and now yes after years of waiting I am seeking money to pay for the medical treatments, you as the lawyer and finally myself as I'm the one who has had to suffer the consequences of the Gagnon/McGuire choices on that day.

I cannot believe that a conservative jury isn't going to award anything less than the cost of the medical damages and lawyer fees from them unless something catastrophic changes. I do see them being conservative as to what I will end up with at the end but not the real medical and lawyers bills. Even the conservative juries in this county are not so conservative that they won't give the base bills.

The McGuire's insurance is free to go after David for damages if they lose.

Other than fearing a motion to dismiss the suit against the McGuire's insurance based on some false concept that because they didn't have their finger directly on the chainsaw trigger they hold no responsibility for damages.

What are the real benefits of letting them off so easy?

And I don't want to hear it because 2 parties vs 1 is much easier.

Letting off the McGuires insurance for such a small amount is anything but reasonable and I just can't see any ethical judge in this county not keeping them in the suit all the way for a jury to decide whether they had any part to play in the days events and the level of responsibility they share with David for the consequences considering it was the McGuires project, their land, their choice of who did the labor etc. etc...

When you advised me to seek a settlement with the McGuires insurance, I agreed to look at it only because they didn't have their hands directly on the trigger of the chainsaw and That you would get at the least the medical bills paid for out of it. I thought that was made clear in your office.

I know you work on approximately 33%. Is 33% of 5,000 even worth the time and money you already invested? It's only \$1650 for you and I'm sure your hourly fee eats that up rather quickly, I know mine did back when I had hands and arms that worked so I could charge.
(Dulberg 001517)(Dulberg 001518)

*(Note: This is not in the Popovich documents.)

2013-11-19 2:29(UTC) Dulberg Emails Popovich:

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
(POP 000181)(Dulberg 001515)

2013-11-20 6:59am Popovich emails Dulberg:

Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the \$5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
(Dulberg 001515)

******(Note: This is not in the Popovich documents.)

"We don't have to accept the \$5,000, but if we do not, the McGuires will get out for FREE on a motion."

Where are the communications with McGuires attorney talking about this motion they will file if Dulberg doesn't accept the \$5,000?

Oh, that's right I subpoenaed Barch's communications with Mast and there is no such discussion. What is there is Mast making an initial offer on October 22, 2013 for \$7,500 without Dulberg's knowledge.

Somehow out of thin air that initial offer is distorted to accept the 5,000 or they get off FREE on a motion.

Mast is one fucked up individual.)

2013-11-20 7:26am Dulberg emails Popovich:

Ok we can meet. I will call Sheila today and set up a time.

Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.

I need to read it myself and any links to recent case law in this area would be helpful as well.

(Dulberg 001515)

*(Note: This is not in the Popovich documents.)

2013-11-20 10:03am Deposition of Dr Apiwat Ford:

(Dulberg 000375 - Dulberg 000412)(Handwritten notes on originals made by Baudin's)

(Dulberg 000376) Page 2:

APPEARANCES:

MR. HANS A. MAST, of the Law Offices of THOMAS J. POPOVICH
3416 West Elm Street McHenry, Illinois 60050
appeared on behalf of plaintiff;

MR. PERRY A. ACCARDO, of the Law Offices of STEVEN A. LIHOSIT
200 North LaSalle Street Chicago, Illinois 60601
appeared on behalf of defendant David A. Gagnon;

MR. RONALD A. BARCH, of the Law Offices of CICERO & FRANCE
6323 East Riverside Boulevard Rockford, Illinois 61114
appeared on behalf of the Defendants Caroline McGuire and Bill McGuire.

INDEX

WITNESS:

APIWAT FORD, DO3

(Dulberg 000377) Page 3:

EXAMINATION BY: MR. ACCARDO4

EXAMINATION BY: MR. MAST28

EXAMINATION BY: MR. BARCH33

EXHIBITS

NONE MARKED

(Dulberg 000378) Page 4:

(Witness sworn.)

APIWAT FORD, DO, called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY: MR. ACCARDO

Q. Now, Doctor, could you please state your name and spell it for the court reporter?

A. Yes, my first name is Apiwat, A P I W A T. Last name is Ford, F O R D.

MR. ACCARDO: Let the record reflect this is the discovery deposition of Dr. Apiwat Ford taken pursuant to subpoena, taken in accordance with the rules of the Circuit Court of McHenry County, the Rules of the Supreme Court of the State of Illinois, and any other applicable local court rules.

BY MR. ACCARDO:

(Dulberg 000379) Page 5:

Q. Good morning, Dr. Ford. My name is Perry Accardo, and I'm going to be asking you some questions today about a patient that you saw in the emergency room back in June of 2011, okay?

A. Okay.

Q. All right. Have you given a deposition before?

A. Yes, I have.

Q. All right. And you're failure with the ground rules governing depositions then?

A. Yes

Q. All right. Great. You are a medical doctor; is that correct?

A. Yes.

Q. And you're licensed to practice medicine in Illinois?

A. Yes.

Q. What type of doctor are you? Do you have a speciality?

A. Yes, I'm emergency medicine doctor.

Q. Okay. And where are you

(Dulberg 000380) Page 6:

currently employed?

A. At Centegra Hospitals.

Q. Okay.

A. Centegra Healthcare; they are two hospitals.

Q. All right. And back in --

(After a brief interruption, the deposition resumed as follows:)

BY MR. ACCARDO:

Q. And you said that there's -- you said that there's two hospitals in the system?

A. Yes.

Q. And what are those two hospitals?

A. Centegra McHenry and Centegra Woodstock.

Q. All right. And today we're at Centegra --

A. McHenry.

Q. -- Mchenry, right?

(Dulberg 000381) Page 7:

A. Yes.

Q. Okay. Now, back in June of 2011, you were employed for Cen- -- you were employed with Centegra?

A. Yes.

Q. Okay. And also as an emergency room doctor?

A. Correct.

Q. All right. Could you just sort of briefly describe to me what an emergency room doctor specializes -- what the specialty is comprised of?

A. Well, we work in the emergency department and take care of all sorts of patients that come through the ER.

Q. Okay.

A. You know, injury fever, cough. I mean, it's like all encompassing, kind of like a jack-of-all-trade type of thing.

Q. I got you. Back in June -- actually June 28th of 2011, you were working in the emergency room?

A. Yes.

Q. Okay. And which hospital was

(Dulberg 000382) Page 8:

that at? Was that at the McHenry location?

A. Is in the McHenry location.

Q. Okay. And you had an occasion to see an individual who came into the emergency room by the name of Paul Dulberg; is that correct?

A. Yes.

Q. Do you have any independent recollection whatsoever of Mr. Dulberg or his injury?

A. I do not.

Q. Okay. That's fine. You do have your chart here today from the emergency room; is that correct?

A. Yes.

Q. And does that comprise your entire chart here today from the emergency room; is that correct?

A. Yes.

Q. And does that comprise your entire chart for the emergency room care that Mr. Dulberg received?

A. Yes.

Q. All right. Would it help you to -- when you're testifying to refer to your chart?

A. Yes.

Q. All right.

(Dulberg 000383) Page 9:

A. It will be a big help.

Q. Please feel free to do that. All right. So Mr. Dulberg came into the emergency room. Now, initially what is the procedure when one comes into the emergency room? Are they examined by a nurse initially, and at some point they see a doctor? How does that all work?

A. Yes, usually when they come through the emergency department, they're first seen by the triage nurses out in the receiving area, and then the nurse go over the vital signs and the complaints and everything and then kind of set the criteria whether this is -- like how serious this situation is level. If it's like a -- They give a ranking number like 1 to 5, if it's real critical, not as critical or, you know, that type of thing and then the patient will be put on the computer and will come through the ED, you know, the -- by the priority of the severity of the illnesses.

Q. Okay. And that initial

(Dulberg 000384) Page 10:

assessment is made by the triage nurse?

A. Triage nurses, yes.

Q. All right. Now, in looking at -- Well, actually let me ask you this: When the triage nurse does the initial examination and I guess, for lack of a better term, intake, do they make their own notes and fill out their own part of the chart?

A. They do, yes.

Q. All right. Now, in your chart, what part of it is filled out or completed by the triage nurse? Because I have a couple of different things, I have the emergency room admission assessment and then I have the emergency physician record.

A. Okay.

Q. I just want to know who did what.

A. This is -- This part right here we'll put together that -- this part (indicating). You see the...

Q. The emergency admission assessment?

(Dulberg 000385) Page 11:

A. Yes. Yeah, assessment, yeah, that was done by the triage nurse.

Q. Okay. And that -- it looks like it consists of three pages?

A. Yes, that is what it looks like.

Q. All right. Okay. And that's done initially upon presentation then?

A. Correct.

Q. Okay. In this particular case what did the triage nurse indicate as far as vital signs?

A. The vital signs?

Q. Yeah.

A. Appear to be stable.

Q. Okay. And what was the reason that Mr. Dulberg was in the emergency room that day?

A. It says the -- states the chain saw versus the right arm.

Q. All right.

A. 15 minutes ago at home.

Q. And it also indicates --

A. He was feeling light-headed.

(Dulberg 000386) Page 12:

Q. Okay. Going on to the second page then, there's under admission assessment. Is there any indication that Mr. Dulberg was complaining of Pain at that time? I'm looking at the top?

A. On the top, yes.

Q. Yeah.

A. Yes.

Q. Okay. And he rated the pain as a 9 to 10 on a scale of --

A. 9 out -- 9 out of 1 through 10, yes.

Q. All right. Was there -- Then does a triage nurse perform just a general physical examination at that point?

A. Yes.

Q. Okay. What were the results of that general physical examination?

A. He was oriented times three, conscious, alert. The cardiovascular, it is pink and warm, the skin, and then his radial pulse in both arms present, and he has good capillary refill, lung sounds are good, and there's no other problem with

(Dulberg 000387) Page 13:

ENT. Everything seemed to be okay except for the -- Besides the complaint of the arm, the other assessment is good, I think.

Q. Okay. And it looks like he was, at least under the handwritten notes there down at the bottom of the second page --

A. Right.

Q. -- he was accompanied by somebody?

A. Coworker.

Q. Okay. The patient was initially sent out for an Xray?

A. Yes.

Q. Okay. Was that X-ray done, as far as you know?

A. I think it was done. Yes. It was done, yes.

Q. Okay. And --

A. And then I did look at it. I have my notes on the X-rays, yeah.

Q. And what were the results of that X-ray?

A. It just says there's no

(Dulberg 000388) Page 14:

fracture or malalignment of the bone.

Q. Okay. Did it -- Did it show the laceration to the right forearm?

A. The X-ray?

Q. Yeah. Would that -- Would that show up at all on that?

A. Sometime it can show up, but I don't recall. I mean, if It's not a real -- like it doesn't gape open, it doesn't necessarily show up on the X-ray.

Q. Okay.

A. It doesn't --

MR MAST: Soft tissue. It doesn't show soft tissue.

THE WITNESS: Yeah, it doesn't show the soft tissue.

MR MAST: That's the X-ray report.

BY MR ACCARDO:

Q. Does that mention anything about the laceration?

A. There's a deep -- Yeah, there's -- There's a deep soft tissue laceration along the ventral surface of the

(Dulberg 000389) Page 15:

mid forearm.

Q. And would that be more of the inner side of the right forearm?

A. Yes. It's on the -- yeah, on the inner side. We refer to that as ventral surface of forearm belly; this is what it refers to.

Q. Okay. And it indicates in there that it was a deep laceration?

A. Yes.

Q. Is there a general classification of -- I mean, how do you rank lacerations and in terms of severity? I mean is there some kind of standardized language for that, whether they be --

A. No.

Q. -- minor?

A. It just des- -- Well, it just describes the depth. You know, usually when we see, we have to go like does it go down deep to the muscle, to the bone? We just describe what we see.

Q. Okay. I guess jumping ahead a little bit, when you saw Mr. Dulberg, you

(Dulberg 000390) Page 16:

examined him; is that correct?

A. Yes.

Q. Was there any -- any type of measurement or anything like that made as far as what the depth of the laceration was? I mean how --

A. The depth of the laceration?

Q. How far down it actually went down?

A. Let me see. You really can't -- You know, you can't really measure the depth. You can just tell like how deep it goes to. You can't -- Measurement like by the ruler, is that what you mean by that?

Q. No, Even -- Even just visual --

A. Like a visual.

Q. Right.

A. Yeah, usually I would say.

MR MAST: You have the length. I don't know about the --

BY THE WITNESS:

A. They have the length. They

(Dulberg 000391) Page 17:

didn't have -- Oh, I have my description on the laceration page.

Q. Yes.

A. Under laceration I put down it was -- the wound is irregular shape and it went down to the muscle level. That's what I have down there.

Q. Okay. Would you consider that to be a deep laceration, something --

A. It's --

Q. Something more than superficial, I would imagine?

A. More than superficial, yes.

Q. Okay. Would you consider that to be a deep laceration?

A. It's -- It's deeper than superficial. That's how I, you know...

Q. Okay.

A. I just describe it as it went down to the muscle level. I mean that is, Yeah, deeper than superficial for sure.

Q. Okay. What would be then below the muscle level had it gone lower?

A. Had it gone lower? Blood

(Dulberg 000392) Page 18:

vessels, bone, nerves.

Q. Okay, In your examination of Mr. Dulberg, was there any evidence or any indication of any nerve injury resulting from this laceration and looking at the results of your examination?

A. I have here he -- You know, in my note it says numbness on the right fifth finger, but on my note it says near exam is intact.

Q. Those appear to be in conflict a little bit or at least don't correspond?

A. Yeah. Maybe a little bit of conflict. Numbness the fifth finger. I didn't really go down -- I didn't -- When I examined, I didn't really go to the detail of the fifth finger; I just did the -- around the, you know, the wound and then I checked all the function of all the -- the function of all the muscles and the tendons appear to be intact.

Q. Okay. So he had -- he had full use of --

A. Yeah, all the tendon.

(Dulberg 000393) Page 19:

Q. -- his arm and hand?

A. Yes.

Q. And his fingers?

A. Definitely.

Q. Would that indication of the numbness in the right fifth finger, would that have been the result of a complaint that Mr. Dulberg would have made or something that he would have vocalized to you?

A. He did, yeah, because I have it noted. I put it on the side of my chart that numbness in the right fifth finger.

Q. Is there any type of exam or test that you would have run during the course of your examination to test or at least to correlate that complaint of numbness in the right fifth finger, any type of sensation test or anything like that?

A. Yeah, usually just -- I just do the touch, you know, like touch the finger and everything and see if it's really intact and he can feel me touching the

(Dulberg 000394) Page 20:

fingers. That's what I usually do, yeah. That's the complaint and that's the examination.

Q. Yeah.

A. I usually touch the fingers, I mean to see -- to indicate whether he can feel; that's what I usually do.

Q. And in this particular case the results of the test or examination would have been normal?

A. It appear to be normal. I put down sensation intact in my note.

Q. Okay. What was done to repair the laceration?

A. To repair the laceration? Well, I have in my note that the wound was contaminated so I gave him long acting anesthetic Marcaine.

Q. When you say contaminated, what does that mean?

A. Usually means there's some dirt in it. Some, you know -- Usually just mean the dirt. It's not -- The wound is not clean, yeah. Let's say, yeah, that's just

(Dulberg 000395) Page 21:

mean the wound wasn't clean.

Q. Would it be cleaned out or irrigated or something like that then?

A. Oh, definitely, yeah.

Q. Okay.

A. That's one of the things we do is to really irrigate a wound copiously. He was given -- He was irrigated with -- Well, he was cleaned with Shut-Clens, which is a cleansing agent, antibacterial agent and he was irrigated with saline, the sterile saline that we use to care for the wound care.

Q. And then what else was done? Was he stitched up, or...

A. Yes, he was stitched up. There was -- He had a little wound debridement, meaning that the wound -- I have in my note the wound was irregular, You know, the wound was very irregular. It was cut by the chainsaw so I had to do some -- debridement means skin trimming because it's so jagged so I did some of that to trim the wound edges.

(Dulberg 000396) Page 22:

Q. Would that have been like around the outside more on the -- more on the skin level?

A. Yeah, more on the skin on the outside. That's what I -- That's what I have in my note. And then -- So I did the two-layer closure. I did with the -- one of them is absorbable suture called vicryl suture, and I did that. I put in three stitches under the skin, and then I put in 4 stitches with the Prolene suture on the outside.

Q. Are those sutures or stitches that would have been removed at some point in the future, or would they be the absorbing kind?

A. No, the one on the outside, the one that's called proline, they need to be removed, but the one called Vicryl on the inside, those were absorbable.

Q. And you said there were 11 stitches on the outside?

A. On the outside.

Q. And three on the inside?

(Dulberg 000397) Page 23:

A. Three on the inside, yes.

Q. Now, I just want to clarify. Under length -- Under wound description, length is 8 centimeters; is that correct?

A. Yes.

Q. In terms of inches, How much is -- I mean, I can do the conversion, but...

A. The math?

Q. Yeah.

A. Well, it's 2.5 centimeters makes up one inch so it's 2.5...

MR MAST: Three and a half inches?

BY THE WITNESS:

A. Three and a half, yeah.

Q. Was Mr. Dulberg given any pain medication in the emergency room?

A. I gave him a numbing medication, the local anesthetic, which -- yeah, I gave it to him, the Maricaine; that's a local anesthetic.

Q. Okay. And that would have been for pain relief on the site as well as for

(Dulberg 000398) Page 24:

when you did suturing?

A. The suturing, yes.

Q. Okay. As far as discharge instructions, what were his instructions on discharge?

A. The usual thing we give is like the wound care instruction and we would give the suture removal in how many days. The standard is, like, ten days. And then we usually give the instruction if the wound appears to be infected. Like if it's, you know, it's red and swollen, pus coming out, the patients usually are instructed to come back to the ED for reexamination. Yeah, that's what -- that's what we usually do.

Q. Okay. As far as any prescriptions for pain medication, anti-inflammatories, anything like that?

A. I don't remember what I gave him. It doesn't say -- Usually I give the prescription and the nurse would write down on the discharge paper, that's what I usually do. But in this situation, I

(Dulberg 000399) Page 25:

Normally would give him -- because of the severity of the injury, the deep wound and all, I usually give antibiotic because the wound is contaminated. I'm really not sure; I didn't have it -- I don't know, I didn't write it down but usually the nurse will write down what medications were given to patients.

Q. I think -- Let me pull--

A. Do you see one in there?

Q. Yeah, let me pull the discharge instructions. This is what I have. Does that mention some medications?

A. Oh, yeah, so I gave him some pain medication, and I gave him, yeah, the antibiotic. Yes, that's usually what we would do in this situation, yeah.

Q. Okay. And there's no indication that Mr Dulberg came back to the emergency room with any of the complaints related to infection or anything like that?

A. Not -- I didn't see him again

(Dulberg 000400) Page 26:

so I never heard from him again, so I don't know. I don't think so.

Q. Okay. I also -- it looks like I have some type of restriction or release form. Does that look failure to you?

A. I don't remember but this is a form like this. Yeah, we have this kind of form, like restriction -- work restriction form.

Q. Does it look like that that's something you filled out? Is that -- Is that your hand writing or would that have been somebody else who filled it out?

A. That's done by the nurse.

Q. Okay. Under -- Under your supervision --

A. Yes.

Q. -- or under your orders?

A. Yeah well usually they would ask, you know, to give him so I said yeah, go ahead, give it because of the ...

Q. Okay. And it looks like he was taken off of work for two days?

A. Two days, according to that

(Dulberg 000401) Page 27:
note.

Q. All right. Any particular reason why he would have been taken off of work for two days? Just because of the fact that he did have a laceration?

A. Yeah, because of the injury because like -- and also I forgot exactly, a lot of time I would talk to the patient like what type of work he does, if it involved using the arm, the lifting and all that, so I would, you know, give him the time off so it wouldn't be aggravating the injury site; That's -- I usually do that.

Q. Okay. Is there -- I didn't see myself in the notes, is there any indication or do you have any independent recollection of what Mr. Dulberg may have told you about what he did for a living that would have prompted two days off work?

A. No, He did not tell me. I mean, I don't have a, you know, recollection of what.

Q. Okay. Given the nature of his

(Dulberg 000402) Page 28:

injury and the care that you gave him, is the two days off of work pretty standard? I mean --

A. Yes.

Q. -- that's not unusual.

A. Yeah, it's not unusual. And what happened is like the patient, a lot of time they have their own doctor, you know, so we'll give two days off work and then if they need more, they are encouraged to follow up with a doctor and then, you know, if they need more days to be off work, they can get that extension from the doctor.

Q. Okay.

MR. ACCARDO: All right. I don't think I have anything else. Thank you, Doctor.

EXAMINATION

BY: MR. MAST

Q. I don't know if you put it in the notes because I haven't read the discharge, but was he told or was it just

(Dulberg 000403) Page 29:

expected that he would follow up with his own doctor if he had any other issues or to get the stitches removed, things like that?

A. The procedure, he can follow up with his own doctors or come back to the ED if he needed to.

Q. It was left up to him then?

A. Left up to him, yes.

Q. Okay. All right. You didn't -- I mean, the -- I thought you said the numbness, he had a complaint of some numbness in the finger?

A. Yes.

Q. Okay. You did an examination and didn't -- The exam -- Were you able to discount the numbness or you just weren't able to find the reason for the numbness or what was the exam and how did that relate to his complaint?

A. I can only go by my exam, and it says the neuro is intact, you know.

Q. But does that -- When you say it's intact, does that mean he didn't have

(Dulberg 000404) Page 30:

the numbness or there wasn't really anything at that point going on to be a serious issue that needs to be followed up on?

A. I didn't think it was serious, and another thing is when somebody has a laceration, there is a possibility that the nerve would have been, you know, out too, you know, and if there's like a tiny little nerve, you really can't repair those, you know, and then a lot of time the numbness, patient will regain that back.

Q. Okay.

A. People come in and complain like that and we do the exam and it's intact and then we just have to see because everybody that has a cut can't go to microsurgery to get the nerve.

Q. Right.

A. You know a lot of time this function will come back.

Q. All right. And that's what I'm trying to understand.

A. Yeah.

(Dulberg 000405) Page 31:

Q. Is he had numbness. You did the exam and there wasn't anything significant on the exam?

A. No, nothing significant.

Q. So that's all you could do at that point and hopefully later on resolves, right?

A. Yes.

Q. You're not saying your exam discounted the fact that he had the numbness? You accept the fact he might have had numbness, correct?

A. Yes.

Q. Okay. The exam doesn't discount the fact that he had numbness; it just discounts the severity of any issue that's ongoing at that point?

A. Yes.

Q. Were you able in your exam at all to negate or discount any nerve involvement, or is that left up to later on other doctors?

A. I can't negate a nerve involvement.

(Dulberg 000406) Page 32:

Q. Okay. That's up to the other doctors then?

A. Yes.

Q. Because you didn't see him since?

A. No.

Q. So whether there was any nerve or even some significant muscle involvement, your not here to say that it was or wasn't that's up to somebody else later on down the road?

A. The muscle part, I mean I can only go by my note. There's some muscle involvement. I don't know. I don't have an independent recollection of you know.

Q. Right. How much the muscle got involved, is that what your saying?

A. Yeah, I can't

Q. Okay. That's what I'm saying though, to the extent of the muscle involvement or whether there was any nerve issue later on, that is something your not able to say yes or no about; that's something that other doctors that have seen

(Dulberg 000407) Page 33:

him since would have to talk about; is that correct?

A. Yes.

Q. Okay.

MR. MAST: That's all I have.

MR. BARCH: I have a couple questions, follow up.

THE WITNESS: Yes.

EXAMINATION

BY: MR. BARCH

Q. If I understand your earlier testimony, the wound -- the laceration that you -- did reach the muscle but it didn't get deep enough to catch, for instance, the ulnar nerve itself?

A. I don't think so.

Q. Okay. But there are smaller nerves that come off the ulnar nerve which innervate the muscles and also out to the skin for sensation; those might have been cut?

A. Possible, yes.

(Dulberg 000408) Page 34:

Q. Okay. But you didn't test that to know for sure?

A. No.

Q. Okay.

MR BARCH: That's all I have. Thank you.

MR. MAST: All right. Thank you, Doctor.

THE WITNESS: Thank you so much.

MR ACCARDO: Signature? Would you like to waive it, reserve it? Do I need to explain it?

THE WITNESS: Yeah, would you explain it to me?

MR. ACCARDO: If you -- If you waive it, it basically means that you're trusting that the court reporter took everything down accurately. If you reserve it, you have the right to read the transcript before it's actually finalized. You have to sign off on it and when you read it, you can make any --

THE WITNESS: Amendment?

MR. ACCARDO: -- corrections for

(Dulberg 000409) Page 35:

typographical errors.

THE WITNESS: Okay.

MR. ACCARDO: Things like that. You can't change your answers, but you can look for typographical errors and things like that. So it's up to you. I'll tell you that probably 99 percent of doctors usually waive their signatures.

THE WITNESS: I can waive it.

MR. ACCARDO: All right. We'll show signature waived then.

THE WITNESS: Okay.

MR. ACCARDO: All right. Thank you, Doctor.

THE WITNESS: Thank you so much.

(Dulberg 000410 - Dulberg 000412) Page 36, 37, 38:

Certification

(Dulberg 000375 - Dulberg 000412)(Handwritten notes on originals made by Baudin's)

*** (Note: this is not in the Popovich Document disclosure
Dulberg had to order this deposition after Popovich withdrew)

2013-11-20 MEMORANDUM - DISCOVERY DEPOSITION OF DR. APIWAT FORD:

On November 20, 2013, I appeared for the discovery deposition of Dr. Apiwat Ford, who is an ER doctor at NIMC, before court reporter, Margaret Maggie Orton at Vale Reporting Service, 847/244-4117, the transcript was not ordered by our office, but ordered by defense.

Dr. Apiwat Ford is a very cooperative witness. He is very thoughtful and did meet with me before the deposition to talk about the issues in the case. He is the ER doctor and therefore, only saw Paul once and that was the short hours after Paul's accident.

The favorable testimony is as follows:

FAVORABLE TESTIMONY:

1. He only saw Paul once and it was the day of the accident within hours of the injury on June 28, 2011 and Paul gave a history of a chainsaw laceration across the right forearm.
 2. The nurse did a triage assessment and he was stable. When he saw Paul, Paul had pain 9 out of 10 and although he had a normal neurological examination, he did have numbness reported in the right fingers, but upon examination he was not able to find any significant abnormalities or compromise neurologically of his right arm or hand.
 3. The laceration was 8 centimeters long or 3.5 inches and it went down into the muscle, although he did not measure the depth. He had to stitch 3 interior stitches and 11 exterior stitches. He believes the laceration was more than superficial and it went down into the muscle tissue, but how far into the muscle he doesn't know. It would have gotten into the muscles and possibly - although he doesn't know - into some peripheral nerves but not into the ulnar nerve.
 4. He tried to assess initially any type of nerve involvement by doing a neurological examination, but he was not able to discount the fact that there was some nerve involvement that would arise later on or compromise him at some point.
 5. On his exam, he did not go into the details of the fingers, numbness or tingling, just did a general neuro exam and found it to be normal. The muscle and tendons were intact, but he did not go into the detail onto how much involvement the laceration had into muscles or tendons.
 6. On his exam, he found the wound to be contaminated with dirt and he gave him an anaesthetic, cleaned out the laceration and then stitched it up. It was an irregular and jagged laceration that he had to cut back some skin as well. The sutures were going to be removed 10 days after discharge. He was to return if it got infected, otherwise follow up with his own physician. He was off of work for two days.
- (POP 000906 - POP 000907)(POP 000887)

*(Note: Missing pages - POP 000887 is not complete and suggests pages are missing)

2013-11-20 10:44am Dulberg Emails Popovich:

Talked with the McGuire neighbor Brian Beebe

Brian Beebe
815-669-0655
1015 oak leaf ave.
McHenry, IL 60051

He remembers the day the tree work was done and said he watched for a while and talked with the people over there because they had asked him to borrow his chainsaw for the same project but doesn't remember the incident itself. He did tell me he has been used as an expert witness for chainsaw incidents because of the kind of work he does.

He did say that his "x" lived with him at the time and is going to ask her if she remembers anything at all and will get back to us. He seems very willing to help.

He has both yours and my number.

(POP 000177)(Dulberg 001514)

(Note: Popovich never follows up with possible eye witness that can testify to who was out working in the yard and debunk Both McGuires testimonies.

After the previous email in the morning, Dulberg went out door to door looking for McGuires neighbors who were home on the day of the accident because Mast told Dulberg the McGuires didn't have anything to do with the work.

Mast should have provided McGuire's answers to the interrogatories and the depositions so Dulberg could locate the neighbors who were home on the day of the accident well over a year earlier.

Not talking with and deposing eye witnesses who watched the work being done that day is more reason to suspect that Mast was actively protecting the McGuires while representing Dulberg.

Why call in Mike McArtor for a deposition who knew nothing of the work being done or the accident itself yet let neighbors who watched the work done that day go without asking them what they had seen?)

2013-11-20 MEMORANDUM Mast to Jennifer:

"We have a co-defendant that is not really responsible in this case and they have offered a nominal settlement of \$5,000 in the case. I would like to accept it but I want to have a settlement memo prepared first to show how the money will be disbursed for the client to sign. Therefore, we will not need to call on the balances but we will only need to provide a settlement memo containing only any liens listed on the settlement memo.

Can you please prepare the settlement memo for me as soon as possible so that I can talk to the client about the offer."

(POP 001207)

*(Note: "not really responsible", either they are or are not responsible there is no "not really responsible".

Mast decided he gets to play Jury here and Mast determines the McGuire's are "not really responsible". Didn't know Attorney's had the power of the jury to determine unilaterally who is and is not liable without any one else's say in the matter, particularly the client

This is written as if it is an original offer of \$5,000 from the McGuire's and makes no mention that this is a counter offer to Mast's original offer of \$7,500 made on 10/22/2013 without Dulberg's knowledge)

2013-11-20 MEDICAL EXPENSE REPORT:

(POP 000805 - POP 000809)(Dulberg 001709 - Dulberg 001712)

*(Notes:

- (Dulberg 001709 - Dulberg 001712) is missing 1st page which is nothing more than a title page.)

2013-11-20 Popovich calls for and has meeting with Dulberg and Thomas Kost:

Documents given to Dulberg during meeting (Dulberg 000204 - Dulberg 000225, Dulberg 000301 - Dulberg 000305)

Tom Kost kept a rough set of notes of this meeting (Dulberg 001217)

****(Note: Dulberg was also given Tilshner v Spangler decision. Clinton firm did not add this to bates numbered documents yet it was scanned in by Gooch

Add many notes as to the common law 318 issues raised at this meeting by Mast and the time sensitivity Mast artificially created to put pressure on Dulberg)

2013-11-20 Memorandum of meeting with Dulberg and Tom Kost - Mast to File:

"On November 20, 2013, I met with Paul and his friend to discuss the McGuire's \$5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the \$5,000 offer. Paul wants to read the depositions of the McGuire's and also wants us to order his and Dave's deposition to review. I agreed to do so.

By copy of this memo, I ask Sheila to order copies of Paul and Dave's depositions. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals."

(POP 000003)(POP 001209)

(Note: Tom Kost kept a rough set of notes of this meeting)

2013-11-20 7:05pm Dulberg emails Popovich:

Just got done reading those deps.

First off, Glad I'm not a lawyer.

Secondly, it's full of half truths and flat out lies.

Your right, going after those half truths are probably not worth anything in the long run but I do have to comment about the tiller because that one was hysterical.

Dave's best friend John Choyinski was with me when I delivered the tiller and he was the one unloading the trailer and I'm more than positive he would testify to that effect.

It's just amazing how families lie and exaggerate to protect each other but I do understand it, it is Caroline's son.

If there is anything in them we could use or need to be weary of let me know and we can go over it.
(Dulberg 001513)(Dulberg 001509 - Dulberg 001510)(Dulberg 001511)

*(Note: This is not in the Popovich documents

(Dulberg 001509 - Dulberg 001510) does not show a timestamp

(Dulberg 001511) shows this as one email with another on 11/22/2013 at 5:27am.

I believe this was copied and pasted to write the new email and forgotten to be deleted before sending. From the early morning hour on the 11/22/2013 email it appears I didn't have coffee yet and goofed this.

I am placing this here in the timeline because it is when it originally was sent.)

2013-11-22 6:27am Dulberg emails Popovich - Part 1:

(Dulberg 001509 - Dulberg 001510)(Dulberg 001511)

*(Note: This is not in the Popovich documents.

(Dulberg 001509 - Dulberg 001510) does not show a timestamp for this email. Add when found. Was this copied and pasted to the next email as one or did I forward the email? It was obviously early in the morning and I screwed something up. Either way, whatever happened here this one is first.

(Dulberg 001511) shows this as one email with the next so I made the timestamps the same. I named this Part 1.

Check this against the email on 11/20/2013. It seems these are out of order by date.)

2013-11-20 9:24pm Dulberg emails Popovich:

I'd like to read David's dep before accepting the McGuire offer.

Even after reading the McGuire depositions and seeing how things easily get skewed in all honesty, I can't blame Carol or Bill for Dave's actions I just thought I was covered under their insurance. I know Carol & Bill thought I was covered as well irregardless of all the half truths in their deposition.
(Dulberg 001512)

*(Note: This is not in the Popovich documents.

Also, check this against emails listed on 11/22/2013 Part 1 & 2. Seems those should be before this email.

Is this date incorrect or the ones on 11/22/2013?)

2013-11-21 Deb Fisher Billing to Popovich:

Deposition of Paul Dulberg (Condensed copy) with Postage - \$453.20
(POP 000592, POP 000593)

*(Note: Popovich never had a copy of Dulberg's deposition before this.)

2013-11-22 5:27am Dulberg emails Popovich:

If we take the McGuires off the suit can their depositions still be used against us in any way?

John Choyinski stopped by yesterday and I asked him about the tiller. He openly admits being the one who loaded and unloaded the tiller. I recorded the conversation and my Mom was also present and on the tape. Both knew I was recording it in my home. I can send it to you if you need it.

Brian Beebe, McGuire's neighbor told me he saw the McGuires out working in the yard most of the day. He doesn't know their names but said he would recognize them if he saw them.

If their depositions can or will be used in any way against us can or should we bring provable perjury charges and have them thrown out?

(Dulberg 001509)(Dulberg 001511)

*(Note: This is not in the Popovich documents.

Another reference to Brian Beebe.

(Dulberg 001511) shows a timestamp of 5:27am this as one email with another sent earlier on 11/20/2013. I believe the part not listed here was copied and pasted to write the new email and forgotten to be deleted before sending. From the early morning hour on the 11/22/2013 email it appears I didn't have my coffee yet and goofed this.

(Dulberg 001509) shows a timestamp of 6:27am - not sure why it is off by exactly one hour from the original.

I removed the second part of the email at this location in the timeline because it is located in the timeline when it was first sent on 11/20/2013 and stamped as (Dulberg 001513). A correction to remove the confusion to my early morning error.)

2013-11-22 5:44am Popovich emails Dulberg:

Paul there is no reason nor purpose for even discussing perjury. Just because someone has a different recollection doesn't mean the Maguires lied. Anyway it's not an issue that is anything to do with your suit.

But if the Maguires settle they still can be witnesses in the case
(Dulberg 001509)

*(Note: This is not in the Popovich documents.

Mast refuses charging the McGuires with perjury.

Remember Mast altered the timestamps on the RX Receipts then led Gagnon in questioning creating a way for Caroline McGuire to get away with lying about going to her house immediately after the hospital and paying almost the exact amount needed for Dulberg's prescriptions then Gagnon driving Dulberg through two towns, past 3 other pharmacies, to the closest pharmacy to the hospital in record breaking time during rush hour.

Of course Mast has no purpose for witnesses that prove perjury. Mast is working for the McGuires, protecting them.

Mast must have been waiting for this to come out, look at the hour 5:44am. Is this the earliest he's ever replied? Actually come back and check.)

2013-11-22 6:23am Dulberg emails Popovich:

I hope not.

Sounded to me like they claimed to be hiding in their home all day when the neighbor saw them outside actively participating all day.

And Carol seeing me pick up a 200 lb. tiller alone with her own eyes when it was really someone she knew very well since the 1970's and sees once a week at least. This shows a desperate wanting to prove my claim of injury as false.

Those are a bit more than a bad recollection by anyone's standard.

I would feel better if we had in reserve and were ready to use all tools needed to win.

(Dulberg 001509)

*(Note: This is not in the Popovich documents.

Another reference to Brian Beebe as a witness.)

2013-11-22 Deb Fisher letter to Popovich:

Enclosed please find Exhibits 1 through 3 which were marked during the course of Paul Dulberg's deposition. The exhibits should have been attached to the transcript when it was sent to your office but were inadvertently left behind. My apologies for any inconvenience this has caused.

(Dulberg 001665)

*(Notes:

- Locate and add bates numbers here for missing exhibits that came with this letter.)

2013-11-23 9:12am Dulberg emails Popovich:

After reading the McGuire depositions it led me to do a lot more searching online and now I realize the difficulties I created in my own deposition when asked about the right elbow and left arm tennis elbow being a natural progression of injury from the original cause. I probably shouldn't have commented on them at all even though I believe it's all connected.

Is there any way to amend the suit to correct for my ignorance and confusion?

I'm not a doctor and tried to say in my deposition that I don't want to pretend to know what doctors mean when they say things.

(Dulberg 001501)(Dulberg 001502 - Dulberg 001503)(Dulberg 001507)(Dulberg 001508)

*(Note: This is not in the Popovich documents.)

2013-11-23 9:33am Popovich emails Dulberg:

No. What is said cannot be unsaid. Sorry.

(Dulberg 001501)(Dulberg 001502)(Dulberg 001507)

*(Note: This is not in the Popovich documents.)

2013-11-23 15:48(UTC) 9:48am Dulberg emails Popovich:

Well, luckily I'm not a professional medical doctor and my opinion doesn't or shouldn't hold much weight with anyone.

(Dulberg 001501)(Dulberg 001502)(Dulberg 001507)

*(Note: This is not in the Popovich documents.

Dulberg 001507 is the best copy with the correct timestamp CST not UTC

(Dulberg 001501) and (Dulberg 001502) have UTC timestamps)

2013-12-02 Popovich Letter to Dulberg:

"Please find enclosed a copy of your deposition transcript taken January 24, 2013 for your review."
(POP 000176)

*(Note: This is the first time in 11 months that Dulberg gets to see his own deposition.

Missing - Find the correct copy of Dulberg's deposition sent with this letter in Dulberg document disclosure).

2013-12-04 4:43pm Dulberg emails Popovich:

Just received my own dep in the mail.

Not sure why?

(Dulberg 001504)(Dulberg 001505)(Dulberg 001506)

*(Note: This is not in the Popovich documents.)

2013-12-04 5:42pm Popovich emails Dulberg:

I thought you said you wanted to review it.

(Dulberg 001504)(Dulberg 001505)

*(Note: This is not in the Popovich documents.)

2013-12-04 6:04pm Dulberg emails Popovich:

I wanted to review David Gagnons dep before letting the McGuires off the hook.

And that word "foreseeable" in the McGuire suite...

Well I suppose if I gave anyone a chainsaw and told them to use it, given enough time, an injury is foreseeable, very foreseeable just not hoped for.

And the comment about people not liking friends who sue friends, um well we all should know other than entirely random acts such as auto accidents, train derailments, air plane accidents, etc. Etc.. That most of the time it's those we know who hurt us most often than not. and if it's serious we must be able to sue even if it is or once was a friend.

(Dulberg 001504)(Dulberg 001505)

*(Note: This is not in the Popovich documents.)

2013-12-09 URBANSKI REPORTING COMPANY, INC. Billing to Popovich:

dep of Gagnon - \$772.90

(POP 000594)

*(Note: 2nd Gagnon Deposition Purchased. See 03/20/2013 for first Purchase Was Dulberg punished \$772.90 for asking to read Gagnons Deposition?)

2013-12-10 Popovich Letter to Dulberg:

"Please find enclosed a copy of David Gagnon's transcript taken February 4, 2013 for your review."
(POP 000175)

*(Note: This is the first time in 10 months that Dulberg gets to see Gagnon's actual deposition even though Popovich purchased a copy from URBANSKI REPORTING COMPANY, INC. on 03/20/2013. This is the second time Dulberg had to pay for Gagnon's deposition.
Missing - Find the correct 2nd copy of Gagnon deposition transcript in Dulberg doc disclosure sent with this letter.)

2013-12-11 Minuteman Billing to Popovich:

225 Black & White copies- Dulberg (Job 125106) \$33.75
(POP 000595)

*(Note: Match up page numbers to depositions and find out which one this belongs to. Billing suggests that Mast reordered Gagnon's deposition from the court reporter for a second time and that Dulberg's deposition was ordered for the first time. Could this be the McGuire's deposition being copied?)

2013-12-17 3:21pm Popovich emails Dulberg:

Paul, did you receive Gagnon's dep? Let me know what you want me to tell McGuire's attorney about their \$5,000 offer.
(Dulberg 001500)(Dulberg 001502)

2013-12-17 6:07pm Dulberg emails Popovich:

Just picked it up in the mail and haven't read it yet.

Is the typed version of the dep actually verbatim or edited somehow?

After reading my own it made me realize not everything said was included.

Thanks again and I'll have an answer sometime tomorrow. This thing looks like a novel.
(Dulberg 001500)(Dulberg 001502)

*(Note: This is not in the Popovich documents.

Dulberg remembers answering the question that went something like; After the chainsaw struck your arm how high up did it go? Did it make it to 12:00 straight up or was it short of 12:00? Answer; I don't know I was no longer there to see it. This isn't in the deposition though. There were other things, phrases that Dulberg uses all the time that didn't come out right in the transcript.

Memory is a funny thing but Dulberg knows he was asked how high the chainsaw ended up and answering it.
Things that make you go hmmm...)

2013-12-17 6:24pm Popovich emails Dulberg:

Neither are edited. They were Word for Word.
(Dulberg 001500)

*(Note: This is not in the Popovich documents.)

2013-12-18 11:54am Dulberg emails Popovich:

I read through David's dep. it's mostly lies with a few truths.

Where should I begin or better yet where would you like me to begin?

Almost everything he said was made up, from which end of the branch I was holding, at who's direction I was doing it under and even as to why I was even there on the McGuires property, etc...

Not to mention the nonsense of \$10,000.

The only good thing he has coming from me is my ability to hold back my primal side be civil. It's a shame we don't live in ancient times under the old eye for an eye philosophy of justice. I'd much rather take a chainsaw to his arm than get any money.

As far as the McGuires are concerned give me a call.
(Dulberg 001500)

*(Note: This is not in the Popovich documents.)

2013-12-18 Placeholder - Mast calls Dulberg

*(Note: Mast gives Dulberg ultimatum of take \$5,000 or the McGuires get off on summary judgement and you get nothing just after Dulberg Reads Gagnon Deposition for the first time, 310 days after Gagnon deposition was taken.

At this moment I'm not sure this was the final call when Dulberg agreed or if it 12/19/13 or 12/20/13. Should be able to pin it down once all emails are added.)

2013-12-19 8:16am Dulberg emails Popovich:

A while back I sent you the name and number of the McGuires neighbor. I don't have it in front of me at the moment but it's in our correspondence.

The neighbor claimed that the McGuires had asked him to borrow his chainsaw to cut down the trees on the McGuires property just a few days prior to the trees coming down.

It would seem to reason that the McGuires did not own a chainsaw at that point and tried to borrow one from a neighbor before going out and purchasing one specifically for that project.

So my question is, if the McGuires can be proved to be hiding the reason and timing of purchasing the chainsaw can this benefit us in any way?

(Dulberg 001498)(Dulberg 001499)

*(Note: This is not in the Popovich documents.
The neighbor is Brian Beebe. Email on 2013-11-20)

2013-12-19 8:43am Popovich emails Dulberg:

Not really
(Dulberg 001498)

*(Note: This is not in the Popovich documents.)

2013-12-19 9:03am Dulberg emails Popovich:

David was the one the neighbor talked to. The neighbor did not know Dave's name but described him to a T and did say he would know him if he saw him.

On another note: I noticed David had the order of cutting down the apple tree before or after the pine tree goofed. Not a big deal but I think Bill, Carols and my own deps agree it was done prior. I remember the same neighbor talking about that day prior to the big trees coming down.

That neighbor has a better view from inside his house of the McGuires back yard than the McGuires do from their own house.

I think David wasn't just confused about the timing, he was trying to show he hadn't done any work prior to this incident. Not sure why but the complete fabrication as a whole shows that David was right, he wouldn't lie to help me but he would lie to help himself.

I'm done ranting...
Reading that dep got me going. Need to let this thing rest for a bit.
(Dulberg 001498)

*(Note: This is not in the Popovich documents.
The neighbor is Brian Beebe. Email on 2013-11-20)

2013-12-20 MEMORANDUM:

"On December 18,2013, I called Paul today after an email and we had a long discussion about the McGuire's liability and he seemed to concede and understand that probably based on the testimony there is nothing we can prove against the McGurie's and he is willing to take their \$5,000 settlement offer."
(POP 000884)

2013-12-26 Popovich Letter/Fax to McGuire's:

"Please be advised that we will accept your \$5,000 settlement offer on behalf of you clients, Caroline and Bill McGuire. Please forward your settlement agreement to my attention. Also, please present a motion for good faith finding with regard to the settlement.

As I understand it, you have no liens on the file other than our attorney's lien."
(POP 000670 - POP 000671)(Dulberg 000001)

2013-12-26 3:06pm Unbilled Costs by Job:

Totals: \$1,718.63
(POP 001208)

2013-12-30 SETTLEMENT MEMORANDUM (12/30/13)

GROSS SETTLEMENT AMOUNT: \$ 5,000.00

LESS:

TOTAL EXPENSES (see attached) \$ (1,718.63)

LIENS / OUTSTANDING BALANCES

Hand Surgery Associates \$ (9,444.00)

Northwest Community Hospital \$ (6,366.00)

MedChex \$ (3,390.00)

Karen Levin, MD \$ (2,420.00)

Dynamic Hand Therapy \$ (24,604.00)

Northern Illinois Medical Center \$ (1,323.75)

TOTAL LIENS \$ (47,547.75)

TOTAL ATTORNEY FEES

(1/3 of Gross Settlement) \$ (1,666.67)

NET SETTLEMENT TO CLIENT \$ (45,933.05)

I UNDERSTAND AND APPROVE ALL OF THE ITEMS AND AMOUNTS LISTED ABOVE. I ALSO UNDERSTAND AND AGREE THAT IF THERE ARE ANY ADDITIONAL BILLS OR LIENS WHICH MAY NEED TO BE PAID IN THE FUTURE, I AM SOLELY RESPONSIBLE FOR THE PAYMENT OF SAID BILLS OR LIENS. I AGREE TO REIMBURSE THE LAW OFFICES OF THOMAS J. POPOVICH IF THEY ARE REQUIRED TO PAY ANY SUCH BILL OR LIEN NOW OR IN THE FUTURE. THE LAW OFFICES OF THOMAS J. POPOVICH HAS ADVISED ME THAT THEY HAVE NOT RECEIVED ANY LIENS FROM ANY HEALTH CARE PROVIDERS OR HEALTH INSURANCE CARRIERS OTHER THAN THOSE LISTED ABOVE, BUT THAT HEALTH OR AUTOMOBILE INSURANCE MAY HAVE PAID SOME/ALL OF THE MEDICAL BILLS AND MAY BE ENTITLED TO REIMBURSEMENT DEPENDING ON THE POLICY PROVISIONS AND WHETHER OR NOT I HAVE SIGNED A REIMBURSEMENT AGREEMENT. I HEREBY AUTHORIZE THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. TO ENDORSE MY NAME TO ANY SETTLEMENT DRAFTS FOR PURPOSES OF DEPOSITING SUCH DRAFTS AND DISBURSING SETTLEMENT FUNDS PURSUANT TO THIS SETTLEMENT MEMORANDUM.

DATED THIS__ DAY OF____,2013.

(POP 001195)

*(Note: This was not given nor shown to Dulberg. This does not have Dulberg's signature. This does not have attached expenses. Net settlement to client does not reflect a negative amount.)

2014-01-03 COURT ORDER:

Continued to 4/4/2014 for status of discovery and trial setting

(POP 001120)

(Dulberg 001886)

*(Notes:

- Handwritten - sloppy and hard to read - Not entirely transcribed to legible text above.)

2014-01-08 Medchex Letter/Fax to Popovich:

PAYOFF AMOUNT

"This letter is to inform you of the current Lien Payoff Amount due MedChex (tax ID 13-4214889) for the above referenced client. Please mail a check for the amount referenced below to the address below and we will release all claims against your client."

Payoff due before 2/17/2014 \$3,390

(POP 000599)

2014-01-08 McGuire Letter to Mike Thomas cc Popovich and Gagnon:

"I am writing in follow-up to my letter of November 4, 2013, which included a deposition subpoena and notice of deposition requiring your appearance for an oral examination under oath on January 17, 2014, at 1:00 p.m. in the law offices of Thomas J. Popovich, 3416 West Elm Street, McHenry, Illinois. In this regard, I note that the letter, subpoena and notice were sent to you via regular U.S. Mail and by certified mail. My office received a return receipt indicating Todd Tedrow signed for the certified letter on your behalf.

In any event, this letter will confirm that I am withdrawing my subpoena and my notice of deposition, as both of my clients have reached a settlement with Mr. Paul Dulberg. You are therefore no longer obligated to appear for deposition on January 17, 2014. With this in mind, kindly return the witness fee that accompanied the subpoena and deposition notice that accompanied the certified mailing. If you have any questions, please do not hesitate to call. I otherwise thank you in advance for the prompt return of the \$41.00 witness fee."
(POP 000666)

—————Between the lines may not be properly place Must be addressed

2014-01-09 McGuire Notice to Gagnon and Popovich:

NOTICE OF MOTION

YOU ARE HEREBY notified that on the 22nd day of January, 2014, at 9:00 o'clock A.M., or soon thereafter as Counsel may be heard, I shall appear before his Honor, Judge Thomas A. Meyer, in the room usually occupied by him as a Court Room (#201), or in his absence, before any other Judge that may be presiding in said Court Room, in the Courthouse in McHenry County at Rockford, Illinois, and then and there present: Defendant Bill McGuire and Defendant Carolyn McGuire's Motion for Good Faith Finding and for Order of Dismissal with Prejudice; At which time and place you may appear, if you so desire.

Dated: January 9, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon:

Attorney Perry A. Accardo
Law Office of M. Gerard Gregoire
200 N. LaSalle St., Ste 2650

Chicago, IL 60601-1092

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid, at Rockford, Illinois, at 5:00 o'clock p.m. on 1/9/14.
(POP 000575 - POP 000576)
(Dulberg 001780 - Dulberg 001781)

*(Notes:

- This is not in the Popovich documents.)

2014-01-09 McGuire Motion to Gagnon and Popovich:

MOTION FOR GOOD FAITH FINDING AND FOR ORDER OF DISMISSAL WITH PREJUDICE BY DEFENDANTS BILL McGUIRE AND CAROLYN McGUIRE

"Defendants, BILL McGUIRE (aka William McGuire) and CAROLYN McGUIRE (improperly named Caroline), by and through their attorneys, Cicero, France, Barch & Alexander, P.C., hereby move this Court to dismiss all claims against them with prejudice and further request this Court to find that the settlement set forth in this motion was made in good faith and within the meaning and contemplation of the Illinois Contribution Among Joint Tortfeasors Act, 740 ILCS 10011, et seq. In support of their Motion, Defendants Bill McGuire and Carolyn McGuire state as follows:

1. On or about March 15, 2012, Plaintiff Paul Dulberg filed a multiple count complaint seeking damages for personal injuries he generally attributes to a chain saw incident that occurred on or about June 28, 2011, at and upon the premises owned by Defendants Bill McGuire and Carolyn McGuire, known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.
2. Plaintiff generally alleges that Defendant David Gagnon injured him with a chain saw while working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire. Defendant David Gagnon denies any and all liability for Plaintiff Paul Dulberg's injuries. Defendants Bill McGuire and Carolyn McGuire also deny any and all liability for Plaintiff Paul Dulberg's injuries and further deny that Defendant David Gagnon was under their control and supervision and working or acting as their employee or agent at the time of the alleged chain saw incident.
3. On February 1, 2013, Defendants Bill McGuire and Carolyn McGuire filed a cross-claim for contribution against Defendant David Gagnon. The cross-claim for contribution seeks contribution from Defendant David Gagnon for injuries claimed by Plaintiff Paul Dulberg and is based upon the terms and provisions of the Illinois Contribution Among Joint Tortfeasors Act, 740 ILCS 100/1, et seq.

4. Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire have negotiated a settlement of all claims which Plaintiff brought or could have brought against Defendants Bill McGuire and Carolyn McGuire. The settlement was negotiated at arm's length over a substantial period of time, and with the advice of counsel on the part of both parties. There is no collusion or fraud on the part of any of the parties to the negotiation.

5. Pursuant to Section 100/2(c) of the Contribution Act, an alleged tortfeasor that settles with a claimant in good faith shall be discharged from liability for contribution to any other tortfeasors.

6. Defendants Bill McGuire and Carolyn McGuire deny and continue to deny liability to Plaintiff Paul Dulberg and further contest the nature and scope of the injuries Plaintiff Paul Dulberg attributes to the subject chain saw incident.

7. The lump-sum payment of \$5,000.00 to Plaintiff Paul Dulberg by or on behalf of Defendants Bill McGuire and Carolyn McGuire constitutes adequate consideration for purposes of a good faith settlement under Section 100/2(c) of the Contribution Act.

8. Defendants Bill McGuire and Carolyn McGuire respectfully suggest that the settlement with Plaintiff Paul Dulberg is and was made in good faith within the meaning of the Illinois Contribution Among Joint Tortfeasors Act, 740 ILCS 100/2(c).

WHEREFORE, the Defendants, BILL MCGUIRE and CAROL YN MCGUIRE, respectfully pray for the Court as follows:

(1) For an Order declaring that the settlement between Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire was made and entered into in good faith within the meaning of the Illinois Contribution Among Joint Tortfeasors Act, 740 ILCS 100/1, et seq.;

(2) For an Order dismissing all civil complaints, cross-claims, counterclaims and contribution claims currently pending against Defendants Bill McGuire and Carolyn McGuire, and arising out of or otherwise connected to the injuries claimed by Plaintiff Paul Dulberg, with prejudice;

(3) For an Order declaring that any potential future claims against Defendants Bill McGuire and Carolyn McGuire, including, without limitation, claims for contribution arising out of or otherwise connected to the chain saw incident and injuries claimed by Plaintiff Paul Dulberg, are barred;

(4) For an Order declaring for purposes of Illinois Supreme Court Rule 304(a) that there is no just reason to delay enforcement or appeal of the Dismissal Order; and

(5) That this Court enter an order granting such further relief as this Court deems just.
(POP 000579)

CERTIFICATE OF SERVICE
(POP 000577 - POP 000580)
(Dulberg 001730 - Dulberg 001733)

GOOD FAITH FINDING AND ORDER OF DISMISSAL

THIS CAUSE coming on to be heard on the Motion for Good Faith Finding and for Order of Dismissal with Prejudice filed by Defendants Bill McGuire and Carolyn McGuire, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That settlement between Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire (improperly named Caroline) constitutes a fair and reasonable and good faith settlement within the meaning of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 0.01 et seq.
2. That the good faith settlement shall henceforth constitute a bar to any and all claims that Plaintiff Paul Dulberg and Defendant David Gagnon and other known or unknown tortfeasors may have against Defendants Bill McGuire and Carolyn McGuire on account of or arising out of the injuries, if any, sustained by Plaintiff Paul Dulberg as a result of the alleged chain saw accident that occurred on June 28, 2011, whether by way of original action, third party claim, cross-claim, counterclaim, claim for contribution or otherwise.
3. That Defendants Bill McGuire and Carolyn McGuire be and are hereby dismissed from the above-captioned lawsuit as party defendants and cross-claimants, with prejudice, and in bar of further suit.
4. That that there is no just reason to delay the enforcement or appeal of this good faith finding and order of dismissal.
(POP 000581 - POP 000582)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon:

Attorney Perry A. Accardo
Law Office of M. Gerard Gregoire
200 N. LaSalle St., Ste 2650
Chicago, IL 60601-1092

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid, at Rockford, Illinois, at 5:00 o'clock p.m. on April 4, 2014.
(POP 000979)

McGUIRE DEFENDANTS' MOTION TO VACATE PROTECTIVE ORDER

Defendants, CAROLYN McGUIRE and BILL McGUIRE, by their attorneys, Cicero, France, Barch & Alexander, PC, hereby move this Court to vacate the Protective Order entered on August 8, 2012 and modified on April 3, 2013. In further support of the Motion, Defendants Carolyn and Bill McGuire state as follows:

1. On or about May 5, 2012, the Plaintiff, Paul Dulberg, filed a multiple count complaint alleging he suffered injuries as a result of negligence on the parts of David Gagnon, Carolyn McGuire and Bill

McGuire. In general, Plaintiff alleges he sustained severe and permanent injuries when a chain saw being operated by David Gagnon made contact with his arm.

2. On July 31, 2012, Plaintiff filed a Motion for Protective Order wherein he alleged that Plaintiff's counsel (Attorney Hans Mast) wanted an opportunity to photograph and inspect the subject "chain saw" and any parts, accessories and manual/paperwork pertaining to the saw. In his prayer for relief, Plaintiff requested a protective order declaring the "saw and its parts and accessories and paperwork/manual be preserved and protected without destruction or loss until further order of this court." A copy of Plaintiff's Motion for Protective Order is attached as "Exhibit A."

3. On August 8, 2012, the Court granted Plaintiff's Motion for Protective Order. A copy of the Court's order of August 8, 2012 is attached as "Exhibit B."

4. On March 20, 2013, the depositions of Carolyn McGuire and Bill McGuire proceeded with counsel for Plaintiff (Attorney Hans Mast) and counsel for Co-Defendant (Attorney Perry Accardo) present. Prior to the start of the depositions the "chain saw" allegedly involved in the injury to Plaintiff was presented for inspection and photographing. Plaintiff's counsel photographed the chain saw and also photographed the Owner's Manual.

5. On April 3, 2013, the Court's protective order was modified to allow the owners to utilize the chain saw and Owner's Manual in the ordinary course. The protective order further directed that the owners shall not sell or discard the chain saw, parts, accessories and associated paperwork without further order of the court. A copy of the Amended Protective Order dated April 3, 2013 is attached as "Exhibit C."

6. Subsequent to the entry of the amended protective order the Plaintiff reached a settlement agreement with Carolyn McGuire and Bill McGuire as to all matters in controversy, whereupon the negligence claims and contribution claims against them were dismissed with prejudice. A copy of the Good Faith Finding and Order of Dismissal entered on January 22, 2014 is attached as "Exhibit D."

7. With the claims against Carolyn McGuire and Bill McGuire fully resolved, counsel for the McGuires issued a letter to Attorney Mast and Attorney Accardo seeking an agreement to the pending protective order vacated. A copy of the February 12, 2014, letter to counsel is attached as "Exhibit E."

8. During a chance meeting in the Winnebago County Courthouse shortly after the February 12 letter issued, Attorney Accardo advised informally that he had no objection to vacating the protective order. Counsel for the McGuires has not heard from Attorney Mast.

9. Counsel for Plaintiff and Counsel for Defendant Gagnon have both had an opportunity to photograph and inspect the subject chain saw. In addition, both attorneys have copies of the Owner's Manual associated with the subject chain saw.

10. The subject chain saw was brand new on the date of Plaintiff's claimed injury and Plaintiff does not allege or claim that he was injured due to a manufacturing defect associated with the subject chain saw.

11. No prejudice will result to Plaintiff or Defendant Gagnon should this Court vacate the Amended Protective Order.

12. No just reason exists to delay the McGuires' request to vacate the Amended Protective Order.

WHEREFORE, the Defendants, Carolyn McGuire and Bill McGuire, respectfully pray this court to vacate the Amended Protective Order dated April 3, 2013.
(POP 000980 - POP 000982)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon:

Attorney Perry A. Accardo
Law Office of M. Gerard Gregoire
200 N. LaSalle St., Ste 2650
Chicago, IL 60601-1092

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid, at Rockford, Illinois, at 5:00 o'clock p.m. on (Handwritten: 4/4/14?)
(POP 000983)

Exhibit A - PLAINTIFF'S MOTION FOR PROTECTIVE ORDER
(POP 000984 - POP 000985)

Exhibit B - COURT ORDER
(POP 000986)

Exhibit C - ORDER 04/03/2013 - (Unreadable)
(POP 000987)

Exhibit D - GOOD FAITH FINDING AND ORDER OF DISMISSAL
(POP 000988 - POP 000989)(Dulberg 001284 - Dulberg 001285)

Exhibit E - McGuire Letter to Popovich and Gagnon
(POP 000990 - POP 000991)

(skipped POP 000992 - POP 001031 must still be sorted out and placed. - skipped)

—————Between the lines may not be properly place Must be addressed

2014-01-09 McGuire's Letter to Popovich:

"In view of the settlement documented by your letter of December 26, 2013, I am enclosing herewith a Notice of Motion and a Motion for Good Faith Finding and Dismissal. The motion is scheduled for presentation before Judge Thomas A. Meyer on Wednesday, January 22, 2014, at 9:00a.m.

Enclosed herewith you will also find a proposed General Release and Settlement Agreement for execution by Mr. Dulberg. Please have Mr. Dulberg execute the release before a Notary Public and return it to me. In the alternative, please call me with any questions or requested modifications you may have.

Based upon our earlier exchange of communications on the subject, it does not appear that we have any known liens to deal with other than your Attorneys' Lien. That being the case, I can secure a single settlement draft payable to you and your client as soon as I receive and executed IRS Form W-9. I am enclosing a blank IRS Form W-9 to facilitate your quick response. If you return the executed W-9 right away I may have the settlement draft by the time you are in a position to furnish me with the executed release.

Please do not hesitate to call me if you have any questions concerning the above or the enclosed. I otherwise look forward to receiving the executed IRS Form W-9 and the executed release at your earliest convenience. I will also see you or one of your colleagues on January 15."

*(Note: IRS form W-9, Settlement agreement, Notice of Motion and a Motion for Good Faith Finding and Dismissal are not attached with this letter in the POP document disclosure)

2014-01-09 McGuire to Popovich and Gagnon:

NOTICE OF MOTION

"YOU ARE HEREBY notified that on the 16th day of April, 2014, at 9:00 o'clock A.M., or soon thereafter as Counsel may be heard, I shall appear before his Honor, Judge Thomas A. Meyer, in the room usually occupied by him as a Court Room (#201), or in his absence, before any other Judge that may be presiding in said Court Room, in the Courthouse in McHenry County at Rockford, Illinois, and then and there present: McGuire Defendants' Motion to Vacate Protective Order; At which time and place you may appear, if you so desire.

Dated: January 9, 2014"
(POP 000978)

2014-01-13 Popovich Letter to Dulberg:

"Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience."
(POP 000663 - POP 000665)

2014-01-13 Popovich:

REQUEST FOR TAXPAYER IDENTIFICATION IDENTIFICATION and CERTIFICATION
(POP 000676 - POP 000677)

(Note: Filled out and signed)

2014-01-14 3:41pm Dulberg emails Popovich:

I was approved for both Alexian Assist and the medication needed for the Dystonia treatment. It's on February 6th at Alexian Brothers Hospital with Dr. Kujawa.
(Dulberg 001497)

*(Note: This is not in the Popovich documents.)

2014-01-17 19:27(UTC) 1:27pm Dulberg emails Popovich:

I just got a text saying that Mike Thomas received a letter mailed Jan. 8th that stated he didn't need to show up for the dep because the case was settled.
(Dulberg 001494)(Dulberg 001495)(Dulberg 001496)

*(Note: This is not in the Popovich documents.
(Dulberg 001496) is the best copy and the timestamp is in CST not UTC)

2014-01-17 2:09pm Popovich emails Dulberg:

As you know, we settled with the McGuires...
(Dulberg 001494)(Dulberg 001495)

*(Note: This is not in the Popovich documents.)

2014-01-17 20:26(UTC) 2:26pm Dulberg emails Popovich:

Ok, I didn't know it was the McGuires who called him in.
(Dulberg 001494)(Dulberg 001495)

*(Note: This is not in the Popovich documents.
(Dulberg 001495) is the best copy and the timestamp is in CST not UTC)

2014-01-22 Court Order:

GOOD FAITH FINDING AND ORDER OF DISMISSAL

THIS CAUSE coming on to be heard on the Motion for Good Faith Finding and for Order of Dismissal with Prejudice filed by Defendants Bill McGuire and Carolyn McGuire, and the Court being fully advised in the premises,

1. That settlement between Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire (improperly named Caroline) constitutes a fair and reasonable and good faith settlement within the meaning of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 0.01 et seq.
2. That the good faith settlement shall henceforth constitute a bar to any and all claims that Plaintiff Paul Dulberg and Defendant David Gagnon and other known or unknown tortfeasors may have against Defendants Bill McGuire and Carolyn McGuire on account of or arising out of the injuries, if any, sustained by Plaintiff Paul Dulberg as a result of the alleged chain saw accident that occurred on June 28, 2011, whether by way of original action, third party claim, cross-claim, counterclaim, claim for contribution or otherwise.
3. That Defendants Bill McGuire and Carolyn McGuire be and are hereby dismissed from the above-captioned lawsuit as party defendants and cross-claimants, with prejudice, and in bar of further suit.
4. That that there is no just reason to delay the enforcement or appeal of this good faith finding and order of dismissal.
(POP 000573 - POP 000574)(Dulberg 001282 - Dulberg 001283)

2014-01-22 McGuire's Letter to Popovich cc Gagnon:

"As you likely know, on January 22, 2014, the trial court granted my Motion for Good Faith Finding and Dismissal. I understand that copies of the signed original order should be available through the Circuit Clerk's office within a few days.

My clients and I are interested in wrapping up our settlement as soon as possible. All I need from you at this time is the fully executed release and a fully executed IRS Form W-9. I supplied both original documents to you under cover dated January 9, 2014. Please attend to these items at your earliest convenience. Thank you."

(POP 001201)

2014-01-24 11:17am Popovich emails Dulberg:

Paul, did you send me the signed settlement release yet?

(Dulberg 001494)

*(Note: This is not in the Popovich documents.)

2014-01-24 11:25am Dulberg emails Popovich:

I was looking for it to come in the mail and haven't seen it.
(Dulberg 001494)

*(Note: This is not in the Popovich documents.)

2014-01-24 Popovich Letter to Dulberg:

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL. 60051

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST
(POP 000659)

GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand (\$5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois JointTortfeasorContribution Act, 740 ILCS 100/0.01, et seq.

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

- a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.
- b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released
- c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties here to that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHERE OF, I have here unto set my hand and seal on the dates set forth below.

Dated:_____

PAUL DULBERG

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this ____ day of January, 2014.

Notary Public

(POP 000678 - POP 000679)(Dulberg 001280 - Dulberg 001281)

*(Note: General Release and Settlement Agreement - Found a blank copies separated and by itself in both the Dulberg and POP document disclosure's and placed it here.

Also, Popovich claimed in the current case 17LA377 Dulberg had until Dulberg signed the General Release and Settlement Agreement to decide on settling with McGuires for \$5,000 But the court order on GOOD FAITH FINDING AND ORDER OF DISMISSAL occurred on 01/22/2014 before Dulberg received the General Release and Settlement Agreement to read. Find when Popovich argued this claim - check Dulberg deposition in Popovich Case, if not there then check the motions and in court arguments Popovich put forth)

2014-01-29 9:30am Dulberg emails Popovich:

I received the papers to sign.

Not sure why it asks about SSDI eligibility.

Please explain.

(Dulberg 001493)

*(Note: This is not in the Popovich documents.)

2014-01-29 16:16(UTC) Dulberg emails Popovich:

Here is a copy of the first page.

It has check boxes and one of the check boxes says; I am not eligible to receive SSI or SSDI.

Another says;

I am not receiving SSI or SSDI.

As you know, I have applied for SSDI and SSI

(Dulberg 001491)((Dulberg 001492)

*(Note: This is not in the Popovich documents.)

2014-01-29 10:51am Popovich emails Dulberg:

Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...

(Dulberg 001491)(Dulberg 001492)

*(Note: This is not in the Popovich documents.)

2014-01-29 17:47(UTC) 11:47am Dulberg emails Popovich:

What and why do those questions have any relevance at all and why do they need to be part of this agreement?

Particularly the one about being eligible.

Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.

Is it possible to make this agreement blind to the McGuires or David Gagnon?

What I mean is can we make it so that the amount of money cannot be told to them in any way?

It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.

(Dulberg 001491)(Dulberg 001492)

*(Note: This is not in the Popovich documents.)

(Dulberg 001492) is the best copy and the timestamp is CST not UTC)

2014-01-29 11:49am Popovich emails Dulberg:

SSD has to be part of it...its not going to effect anything...

We can't prevent disclosure of the amount...

(Dulberg 001491)

*(Note: This is not in the Popovich documents.)

2014-01-29 1:59pm Dulberg emails Popovich:

Ok, it's signed and in the mail.

Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.

I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.

(Dulberg 001491)

*(Note: This is not in the Popovich documents.)

Dulberg was asked about this in the deposition for the current case)

2014-01-31 Popovich Letter/Fax to McGuire:

"Please find enclosed with this letter the executed Release in the above-referenced matter. Please forward the settlement draft to my attention at your earliest convenience.

As I understand it, you have no liens on the file other than our attorney's lien.

Thank you for your cooperation."

GENERAL RELEASE AND SETTLEMENT AGREEMENT
(POP 001197 - POP 001200)

*(Note: This is signed by Dulberg and dated 1/29/2014)