

**THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS**

PAUL DULBERG,)	
)	
Plaintiff,)	
)	
)	
v.)	Case No. 17LA 377
)	
THE LAW OFFICES OF THOMAS J.)	
POPOVICH, P.C., HANS MAST,)	
Thomas J. Popovich, Individually and Thomas)	
J. Popovich P.C. +++)	
Defendants.)	

THIRD AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as “DULBERG”), by and through his attorney, THE LAW OFFICE OF ALPHONSE A. TALARICO, complaining against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as “POPOVICH”), HANS MAST (hereinafter also referred to as “MAST”), Thomas J. Popovich, individually and Thomas J. Popovich P.C. +++ as follows:

LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.
2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry

County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast was an agent, employee, associate, or shareholder of The Law Offices of Thomas J. Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Third Amended Complaint.

4. Hans Mast is individually liable for his own legal and settlement malpractice done while acting as an agent, employee, associate or shareholder of The Law Offices of Thomas J. Popovich, P.C.

5. As an agent, employee, associate, or shareholder in The Law Offices of Thomas J. Popovich, P.C., The Law Offices of Thomas J. Popovich P.C. is liable for Mast's actions alleged herein.

6. Thomas J. Popovich, at all times relevant herein, was a licensed attorney in the State of Illinois, engaged in the practice of law in McHenry County, Illinois, and a shareholder in The Law Offices of Thomas J. Popovich, P.C.

7. Thomas J. Popovich is individually liable for his own legal and settlement malpractice done while acting as an agent, employee, or shareholder in The Law Offices of Thomas J. Popovich, P.C.

8. As an agent, employee, or shareholder in The Law Offices of Thomas J. Popovich, P.C., The Law Offices of Thomas J. Popovich P.C. is liable for Thomas J. Popovich's actions alleged herein.

9. Venue was and is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their offices are located.

B. Relevant Facts

10. On or about June 28, 2011, Dulberg assisted Caroline McGuire (“Caroline”), William McGuire (“William”) (Caroline and William collectively referred to herein as “the McGuires”), and David Gagnon (“Gagnon”) in trimming long branches of a pine tree on the McGuires’ property.

11. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois (“the Property”).

12. David Gagon is Caroline’s son and William’s stepson.

13. Paul Dulberg (Dulberg) lives in the next neighborhood over from the McGuire family.

14. Dulberg was invited to the McGuire’s property to see if he wanted any of the wood from the tree.

15. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

16. The McGuire’s purchased and owned the chainsaw that was being utilized to trim, remove branches and cut down the tree.

17. William physically assisted with removing the cut branches from the work area while supervising Gagnon’s actions.

18. Caroline physically assisted by retrieving and providing any and all tools requested by William McGuire and David Gagnon while supervising Gagnon’s and William’s actions.

19. Gagnon was acting on behalf of the McGuires’ under their supervision and at the McGuires’ direction.

20. Caroline, William, and Gagnon all knew, or show have known that a chainsaw was

dangerous and to take appropriate precautions when utilizing the chain saw.

21. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

22. The safety information indicated that the failure to take appropriate caution and safety measures could result in serious injury.

23. The safety information indicated that the likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

24. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

25. Caroline McGuire, William McGuire, and David Gagnon had notice of the potentially dangerous conditions by acquiring a chain saw that was provided with attached warnings and safety information implying that a reasonable person should exercise appropriate caution and follow the safety instructions for the chainsaw.

26. Caroline, William, and Gagnon failed to act as reasonable persons by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

27. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being trained in operating the chainsaw.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

30. Caroline and Gagnon asked Dulberg to assist.

31. Caroline, William and Gagnon failed to provide Dulberg with any of the safety Information outlined in the owner's manual.
32. Caroline and William McGuire failed to provide Gagnon or Dulberg with any of the protective equipment necessary for the type of work to be performed as written within the safety measures outlined in the owner's manual.
33. Gagnon operated the chainsaw in close proximity to Dulberg and it struck Dulberg in the right arm, Dulberg's dominant arm, cutting him severely requiring medical attention to save Dulberg's life.
34. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm which resulted in a finding of permanent disability by Social Security Administration on April 20, 2017 (Please see Exhibit A attached); current and future medical expenses in amount in excess of \$260,000.00; Dulberg's lifelong career in photography, graphic design, and commercial printing; lost wages in excess of one million dollars; and other damages.
35. On December 1, 2011 Dulberg hired Mast, Popovich, and Thomas J. Popovich, individually to represent him in prosecuting his claims against Gagnon and the McGuires. (Please see Exhibit B attached)
36. Mast, Popovich, and Thomas J. Popovich, individually entered into an attorney client relationship with Dulberg.
37. Based upon the attorney client relationship, Mast, Popovich, and Thomas J. Popovich, individually owed professional duties to Dulberg, including a duty of care.
38. At the December 1, 2011 Attorney-Client Engagement meeting Dulberg brought and submitted for safekeeping the folder from the Law Firm of Botto, Gilbert, Schottland

& Andrlle which contained Defendant David Gagnon's home address. Dulberg also submitted his originals of all relevant documentation including but not limited to Walgreens RX receipts. (Please see Exhibit C attached)

39. On December 5, 2011 Hans Mast caused to be sent two letters, one to David Gagnon and one by certified mail to Thomas Malatia, Adjuster for Auto Owners Insurance concerning "your insured" Caroline and Bill McGuire. (Please see Group Exhibit D)

40. Sometime soon after the MEMORANDUM of December 5, 2011 from Defendant Hans Mast to his supervisor Defendant Thomas J. Popovich and associates Maria, Diana, and Alarie Dullum, Thomas J. Popovich wrote on the aforesaid MEMORANDUM advising and instructing Hans Mast regarding who is available to pay the damages. (Please see Exhibit E attached)

41. On December 28, 2011 Thomas Malatia, Claims Representative for Auto-Owners Insurance wrote to Thomas J. Popovich individually, on behalf of Defendants William & Carolyn McGuire seeking required information about injured Plaintiff Paul Dulberg. (Please see Exhibit F as POP 000379 attached)

42. On December 28, 2011 Defendant Hans Mast responded on behalf of Thomas J. Popovich, individually to the December 28, 2011 inquiry by Thomas Malatia, Claims Representative for Auto-Owners Insurance regarding "Your insured: Caroline and Bill McGuire Claim No.: 13-2779-11. Please see number 41 above. (Please see Exhibit G as POP 000380 attached)

42. On March 19, 2012 the Defendant Law Office of Thomas J. Popovich P.C. (author uncredited) created "MEDICAL EXPENSE REPORT PAUL DULBERG DATE OF

ACCIDENT: JUNE 28, 2011 DATE OF REPORT: MARCH 19, 2012 (Please see Exhibit G+1 as POP 1401-POP03 attached)

42. On March 21, 2012 Plaintiff Paul Dulberg and Defendant Hans Mast engage in a series of (3) three emails to determine their next face to face meeting. (Please see Exhibit H as Dulberg 001245 attached)

43. On April 4, 2012 Plaintiff Paul Dulberg and Defendant Hans Mast next met to discuss the status of the case. During this meeting Defendant Hans Mast informed Plaintiff Paul Dulberg that David Gagnon had not responded to Hans Mast's December 5, 2011 letter, that they did not know if Gagnon was insured for the Dulberg injury, and that Dulberg should drive to Gagnon's home to confirm David Gagnon's correct address.

44. In Hans Mast's MEMORANDUM to file dated April 5, 2012 he stated "I suggested that maybe we will file suit immediately so we can at least get the case in suit and proceeding forward until we know how and when we will be able to settle the case." (Please see Exhibit I as POP 000958 attached)

45. On April 10, 2012, 131 days after Defendants Hans Mast, Thomas J. Popovich and The Law Offices of Thomas J. Popovich, P.C. were retained to represent Plaintiff Paul Dulberg, Defendant Hans Mast created a MEMORANDUM to Alarie Dullum with a copy to file stating " I want to sue the McGuire's too for failure to supervise the cutting down of the tree and failure to provide proper equipment, etc. so that it can be done safely without injuring our client." (Please see Exhibit J as POP000957 attached)

46. On April 10, 2012 Plaintiff Dulberg emailed to Defendant Mast stating:

"Here is David Gagnon's address: 39010 90th PL Powers Lake Wisconsin, 53159

Attached below is a photo of David taken yesterday in front of his house with the address on the outside. ... Apparently you already have his address because the first thing he said was, "I stopped talking to you a few months back when I received a letter at my house from your lawyer at Popovich. It really really really me off to have anything come to my house about this." (Please see Group Exhibit K designated Sent: Tue, 10 April 2012 19:26:32 -0000(UTC) as POP 00057-00059 attached)

47. The email exhibit listed in 46 above has "a placeholder" and does not display the photo that was taken on April 9, 2012 of David Gagon showing his address mounted on the wall, confirming the address Hans Mast had been previously given on December 1, 2011. (Please see Group Exhibit K designated Sent: Tue, 10 April 2012 19:26:32 – 0000(UTC) as POP00057-POP00059 attached).

48. On April 11, 2012 Minuteman Press printed (6) six copies of a partial/cropped image of the picture sent by Plaintiff Dulberg to Defendant Mast that is referenced as "a placeholder" in 47. above (Please see Group Exhibit L as POP 000619 POP 001045 POP 001046 POP 001412 attached)

49. On April 11, 2012 Plaintiff Paul Dulberg emailed Defendant Hans Mast about the Complaint to be filed against Defendants David Gagnon and the McGuires inquiring "Do I need to come in and sign anything?" Please see Plaintiff's Exhibit M Wed, 11 April 2012 14:44:30 -0000(UTC) as POP00056 attached).

50. Neither Defendant Hans Mast nor anyone from Defendant Law Offices of Thomas J. Popovich, P.C. replied to this question.

51. On April 11, 2012 Hans Mast sent a second letter to David Gagnon requesting that David Gagnon notifies his homeowner's liability insurance carrier and requesting a

conversation to avoid the necessity of filing suit. (Please see Exhibit N as POP 000371 attached)

52. On April 12, 2012 Plaintiff Paul Dulberg sent an email to Defendant Hans Mast stating "...I just received a call from David Gagon. He was a bit upset because he received another letter at his house from you asking for his homeowner's insurance. When he got to the part about calling you if he had any questions, I told him to please do so...Wish I had a tape recorder for you to hear these conversations." (Please see Exhibit O as POP 000367 attached)

53. On April 13, 2012 Defendant Hans Mast originated a MEMORANDUM to file which purports to be an incomplete written rendering of "Subject: **PAUL DULBERG-RECORDED PHONE STATEMENT FROM DEFENDANT, DAVID GAGNON**" (Please see Exhibit P as POP 001318-POP 001319 attached)

54. On April 13, 2012 Defendant Hans Mast sent an email to Plaintiff Paul Dulberg stating "You can cool him down by saying we need to do it for insurance purposes." (Please see Exhibit Q as POP 000369 attached)

55. On April 16, 2012 Plaintiff Paul Dulberg sent an email to Defendant Hans Mast stating "David Gagnon did get a hold of me again today. Said that he had talked to you and now he wanted to talk to me." (Please see Exhibit Q as POP 000369 attached)

56. On April 16, 2012 Plaintiff Paul Dulberg sent another email to Defendant Hans Mast stating "One more thing to add. He said he would give us a copy of his policy if we need it." (Please see Exhibit Q as POP 000369 attached)

57. On May 14, 2012 Defendant Hans Mast again sent Plaintiff Paul Dulberg to

personally meet with Defendant David Gagnon at David Gagnon's residence in the State of Wisconsin to obtain through personal attendance and discussion Defendant David Gagnon's homeowner's insurance information. (Please see Exhibit P as POP 000361- 362 attached)

58. On May 15, 2012 at 02:19 AM Plaintiff Paul Dulberg responded to Defendant Hans Mast's email communicating the requested Gagnon homeowner's insurance information. (Please see Exhibit R as POP 000361-362 attached)

59. On May 15, 2012 on or about 3:30 PM Defendants Mast, Popovich, and Thomas J. Popovich, individually on behalf of Dulberg filed an unverified Complaint and Summons against Gagnon and the McGuires numbered 12 LA 178 wherein David Gagnon's Homeowner's Insurance Policy information was not utilized or stated. (Please see Group Exhibit S as POP 1163-1169, POP1184-1188, POP1191-1194 and POP 000624 attached)

60. The unverified claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent David Gagnon. Please see #59 above.

61. The Complaint was filed without review, signing and verification by Party/Plaintiff Paul Dulberg. Please see number 59 above.

62. Complaint 12 LA 178 included an Illinois Supreme Court Rule 222(b) Affidavit re Damages Sought. (Please see Exhibit T as POP 001170 attached)

63. The included Illinois Supreme Court Rule 222(b) Affidavit re Damages Sought was not signed by Party/Plaintiff Paul Dulberg but was signed by Defendant Hans Mast.

64. The Illinois Supreme Court Rule 222(b) Affidavit re Damages Sought stated “ 2.

That on behalf Plaintiff, PAUL DULBERG, I am hereby requesting money damages in an amount not to exceed \$50,000.00, together with the costs of this action, against each of the above-named Defendants.”

65. On May 16, 2012 Defendant Hans Mast caused to be sent by U.S. mail to Plaintiff Paul Dulberg a letter informing Plaintiff Dulberg that suit was filed on his behalf without indicating when it was filed and without including or offering Plaintiff Paul Dulberg an opportunity after filing to read the Complaint. (Please see Exhibit U as Dulberg 001679 and POP 000365 attached)

66. On May 18, 2012 Plaintiff Paul Dulberg sent an email to Defendant Hans Mast inquiring “...if David Gagnons home owners insurance policy number checked out? Thereafter Defendant Hans Mast responded “ Paul, it’s a fair concern. But until the suit is served on him and his insurance appears in the case, Im not gonna be able to tell you anything. Also, be aware that many policies have only \$100,000 in coverage. **So we need to find this out first...**” [Emphasis Added] (Please see Exhibit V as POP 000358 attached)

67. (Dynamic Hand Lien) (615-618) Signed on 127 and 12-6)

68. (Med checks)

69. On June 3, 2012 Defendants Caroline (Carolyn) McGuire and Bill (William) McGuire were served with Summons-30 Day. (Please see Exhibit V+1 attached)

69.1 On June 11, 2012 Thomas J. Popovich, individually received a letter from Attorney Ronald A. Barch indicating that Mr. Barch had been requested by Auto-Owners Insurance Company to appear and defend Mr. and Mrs. McGuire (Please see Exhibit

V+2 as POP 000349 attached)

69.2 On June 12, 2012 Plaintiff Paul Dulberg sends medical scheduling information that will take place at Northwest Community Hospital. (Please see Exhibit V+3 as POP 000350)

69.3 On June 14, 2012 Defendant David Gagnon was served with Summons-30 Day. (Please see Exhibit V+4 attached)

69.4 On June 21, 2012 at 09:05 AM Defendant Hans Mast received a fax from MidAmerica Orthopaedics by way of what is currently listed as an unallocated phone number (847-321-2043) consisting of 6 pages of which only the last 5 pages have been located. (Please see Group Exhibit V+5 as Dulberg 002189-002193 attached)

70. In the first full paragraph of the section titled "History & Physical" of the 3rd page at lines 3-5 of the fax Marcus G. Talerico, M.D. stated "**He apparently was using a chain saw when he accidentally struck the volar medial aspect of his right forearm in roughly the mid forearm range with a chain saw**" [Emphasis Added] Please see number 69.4 above.

71. On June 21, 2012 at **9:05 AM** [Emphasis Added] Defendant Hans Mast caused to be sent an email to Plaintiff Paul Dulberg stating "Paul, just a quick note. **I saw records come in from MidAmerica Hand and Shoulder Clinic- Dr. Talerico. The history of your injury suggests you were operating the chain saw yourself -not someone else.**"[Emphasis Added] This might be troublesome unless you clear that up with Dr. next visit. thanks" (Please see Exhibit W as POP 000348 attached)

72. On June 21, 2012 at **3:10 PM** [Emphasis Added] Plaintiff Paul Dulberg emailed to Defendant Hans Mast "I just called the libertyville office for MidAmerica Hand

and Shoulder Clinic. Talked with Gabby. She told me she could not change the record but would make an addendum to the record to clarify that I was not the one operating the chainsaw. She apologized for the confusion and said that it was lost between the Dr.'s notes and the person who transcribes the records. She is going to call your office and fax over the addendum. **Please let me know if you get the addendum and if it is ok**" [Emphasis Added] Please see number 71 above.

72.1 On June 25, 2012 Northwest Community Healthcare sent a fax to Defendant Hans Mast requesting the name and address of the homeowners insurance ... Claim number, Name of responsible party and Date of Incident. (Please see Exhibit X as POP 000620- 000621 attached)

72.2 On June 25, 2012 Defendant Hans Mast causes to be made a **MEMORANDUM** to Alarie C; File regarding the need to have Plaintiff Paul Dulberg's medical expense report updated. (Please see Exhibit Placeholder as POP 000953 attached)

72.3 On June 27, 2012 Defendant Hans Mast responded to the June 25, 2012 request (please see 72.1 above) by failing to give the requested information. (Please see Exhibit Y as POP 000345- 000346 attached)

72.4 On June 27, 2012 Defendant Hans Mast causes to be filed with the Clerk of Circuit Court a **PROOF OF SERVICE** with the Document Description: **PLAINTIFF'S REQUEST FOR PRODUCTION TO DEFENDANTS, BILL McGUIRE AND CAROLINE McGUIRE, PLAINTIFF'S INTERROGATORIES TO DEFENDANTS, BILL McGUIRE AND CAROLINE McGUIRRE, RULE 237(b) NOTICE TO PRODUCE AT TRIAL AND/OR ARBITRATION TO DEFENDANTS, BILL McGUIRE AND CAROLINE McGUIRE AND NOTICE OF DEPOSITION S OF DEFENDANTS** addressed to Counsel

for Defendants Caroline and Bill McGuire. (Please see Exhibit Z attached)

72.5 On July 19, 2012 “**RELEASE OF INFORMATION PREBILL**” was sent to Thomas J. Popovich from Northwest Community Hospital. (Please see Exhibit AA as POP000626 attached)

72.6 On August 8, 2012 Defendants Carolyn McGuire and Bill (William) McGuire served Answers to Plaintiff’s Written Interrogatories and “Responses to Plaintiff’s Production” **ON PLAINTIFF. [EMPHASIS ADDED]** (Please see Exhibit BB attached)

72.7 On September 5, 2012 Defendant David Gagnon’s Appearance was filed by attorney Perry Accardo. (Please see Exhibit CC attached)

72.8 On October 1, 2012 Defendant Hans A. Mast sent to Perry Accardo, Law Office of M. Gerard Gregoire, attorney for Defendant David Gagnon (Please see 72.7 above) the previously filed Discovery Responses that were served upon and answered by Plaintiff before Defendant David Gagnon appeared. (Please see 72.4 and 72.6 above and Exhibit DD as POP 000315 attached)

72.9 On April 24, 2013 Perry A. Accardo filed with the Circuit Clerk a **NOTICE OF NAME CHANGE** indicating Defendant David Gagnon’s attorney’s Law OFFICE had changed its name from Law office of M. Gerard Gregoire to LAW OFFICE OF STEVEN A. LIHOSIT. (Please see Exhibit EE as POP 1144-POP 1145 attached)

73. On August 30, 2013 an unfiled Notice of Discovery Deposition(s) regarding Deponent Dr. Marcus Talerico was mailed to the parties’ by Defendant David Gagnon’s attorney. (Please see Exhibit FF as POP 00070-POP00071 attached)

74. On October 15, 2013 Defendant David Gagnon’s attorney sent a letter to the Plaintiff and Defendants Carolyn and William McGuire’s attorneys confirming the

discovery deposition of Dr. Marcus Talarico for **OCTOBER 16 AT 1:00 PM.**

[EMPHASIS ADDED] (Please see Exhibit GG as POP 000067 attached)

75. On January 9, 2014 Defendants Carolyn McGuire and Bill (William) McGuire's attorney Ronald A. Barch sent a **NOTICE OF MOTION** that on the 22nd day of January, 2014, at 9:00 o'clock A.M. "... and then and there present: **Defendant Bill McGuire and Defendant Carolyn McGuire's Motion for Good Faith Finding and Order of Dismissal with Prejudice**; At which time and place you may appear, if you so desire." The **NOTICE OF MOTION** was sent to the Plaintiff's attorney Defendant Hans Mast at the correct address but the **NOTICE OF MOTION** sent to Defendant and Cross-Defendant David Gagnon's attorney Perry A. Accardo was addressed to the previous named Law Firm at the Law Firms' previous address. (Please see Exhibit HH as POP 000575-POP 000576 attached)

attorneys. The scheduled date

Discovery Deposition was to be October 16, 2013. (Please see Exhibit as POP

000070-POP 000071 attached)

74. On October 15, 2013 at 2:56 PM an unfiled change of location and confirmation that the Discovery Deposition of Dr. Marcus Talerico will be going forward tomorrow, October 16, 2013 beginning at 1:00PM was received addressed to Defendant Hans Mast. (Please see Exhibit X as POP 000067 attached)

75. Plaintiff Paul Dulberg was represented by attorney Robert J. Lumber who didn't ask any questions of the Deponent. (Please see Exhibit Y as Dulberg 000413-Dulberg 000434 generally the uncertified Discovery Deposition of Dr. Marcus Talerico taken on October 16, 2013 attached)

76. Discovery Deponent Dr. Marcus Talarico again misstated a key fact without any challenge when he stated that the history that Plaintiff Paul Dulberg gave was " That he was using a chain saw and was accidentally struck on the right forearm, volar side." (Please see Exhibit Y page 9 line 3-5)

77. On October 28, 2013 "Bob" submitted an unsigned **MEMORANDUM** TO: Hans C: File Subject : **DISCOVERY DEPOSITION OF DR. MARCUS TALERICO**. (Please see Exhibit Z as POP 000893-POP 000898 attached)

78. In the first full paragraph of the October 28, 2013 **MEMORANDUM** "Bob" discloses his lack of preparation for the Discovery Deposition of Dr. Marcus Talerico by typing "...Reportedly, there was also a phone call placed to Dr. Talarico '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. Talarico noted that Paul was using the chainsaw.** [Emphasis Added] It is possible that Paul called to clarify

that in those medical records, but there were no other discussions on that date.”

(Please see Exhibit Z as POP 000916)

79. The source of this medical records error and the attempted correction of Dr. Talerico’s medical records error was initially discovered by Defendant Hans Mast on June 21, 2012. Please see number 71 above.

80 The attempted correction of Dr. Talerico’s medical records error was done by Plaintiff Paul Dulberg on June 21, 2012 after being alerted to this error by Defendant Hans Mast. Please see number 72 above.

81. The medical records error was again made by Dr. Talarico in his Discovery Deposition on October 16, 2013 and said medical records error went unchallenged during the deposition and uncorrected by any means. Please see number 76 above.

39. On behalf of Dulberg, Mast, Popovich, and Thomas J. Popovich, individually prosecuted claims against both Gagnon and the McGuires.

40. The claims against Gagnon were resolved later through binding mediation with new counsel.

42. In late 2013 or early 2014, Mast, Popovich, and Thomas J. Popovich individually urged Dulberg to settle the claims against the McGuires for \$5,000.

43. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the \$5,000.00, "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....

" * * * "So if we do not accept their \$5,000 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". (See Emails attached as **Group Exhibit C.**)

44. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the \$5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

45. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of \$5,000.00 and if he did not, he would get nothing.

46. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

47. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

48. Based upon Mast's erroneous advice that Dulberg's claims against the McGuires were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for \$5,000.00 which included a release of all claims against the McGuires and claim for indemnification under the McGuires insurance policy. **Exhibit D (Settlement).**

49. Mast also told Dulberg that Gagnon's insurance policy was limited to \$100,000.

50. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that

there was no possibility of any liability against William and/or Caroline McGuire and/or Auto- Owners Insurance Company and led Dulberg to believe that the matter was being properly handled.

51. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

52. After accepting the \$5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating “I trust your judgment.” (See Email attached as **Exhibit E.**)

53. Mast, Popovich and Thomas J. Popovich individually continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

54. The McGuires owned their home, had homeowner’s insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

55. Dulberg cooperated with and appropriately assisted Mast, Popovich, and Thomas J. Popovich individually in prosecuting the claims against Gagnon and the McGuires.

56. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

57. In December of 2016, Dulberg was awarded a gross amount of \$660,000 and a net award of \$561,000 after his contributory negligence was considered.

58. Dulberg was only able to recovery approximately \$300,000 of the award from Gagnon’s insurance and was unable to collect from Gagnon personally.

59. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

60. Following the execution of the mediation agreement and the final mediation award,

Dulberg realized for the first time in December of 2016 that the information Mast, Popovich and Thomas J. Popovich individually had given Dulberg was false and misleading, and that in fact, the settlement for \$5000.00 and dismissal of the McGuires was a serious and substantial mistake.

61. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast, Popovich and Thomas J. Popovich individually did not properly represent him by pressuring and coercing him to accept a settlement for \$5,000.00 on an "all or nothing" basis.

62. At all times relevant herein there existed an authoritarian and administrative hierarchy authority within Popovich such that Hans Mast reported the status and progress of the Dulberg case to Popovich and Thomas J. Popovich individually.

63. At all times relevant herein Thomas J. Popovich individually was the sole shareholder of Popovich.

64. At all times relevant herein Thomas J. Popovich individually was the director of Popovich.

65. At all times relevant herein Thomas J. Popovich individually was the president of Popovich.

66 At all times relevant herein Thomas J. Popovich individually was the secretary of Popovich.

67. At all times relevant herein Thomas J. Popovich individually was the treasurer of Popovich.

68. At all times relevant herein Popovich and Thomas J. Popovich individually received

status reports on the progress and the current relevant law of the Dulberg case from Hans Mast.

69. On at least two of the court appearances scheduled for the Dulberg case Thomas J. Popovich individually appeared for Popovich and Dulberg and identified himself for the record.

70. The two court appearances that Thomas J. Popovich individually identified himself for Popovich and Dulberg were on January 22, 2014 and February 4, 2015.

71. On every occasion Thomas J. Popovich individually appeared on behalf of Popovich and Dulberg he was fully briefed and current on the relevant law, the status and progress of the case.

72. The matter before the court on January 22, 2014 was McGuires' motion for a good faith finding that the settlement entered into between Dulberg and the McGuires for \$5,000.00 constituted a fair and reasonable and good faith settlement within the meaning of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 0.01 et seq.

73. On said date before entering an order granting the McGuires' motion that \$5,000.00 constituted a fair and reasonable and good faith settlement within the meaning of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 0.01 et seq. the Honorable Thomas A. Meyer, Judge of said Court of McHenry County, Illinois inquired of Thomas J. Popovich individually whether Thomas J. Popovich individually had (any) no objections?

74. On said date Thomas J. Popovich individually responded on behalf of Popovich and Dulberg "Not From me."

75 On January 22, 2014 the Honorable Thomas A. Meyer, Judge of said Court of

McHenry County, Illinois granted said motion.

76. Mast, Popovich, and Thomas J. Popovich individually, jointly, and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

- a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;
- b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;
- c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only \$100,000" and no insurance company would pay close to that;
- d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance of Dulberg by, for example, failing to obtain a liability expert;
- e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability to pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting all the claims against both the McGuires and Gagnon in order to obtain a full recovery;
- f) failed to canvass the neighborhood to discover witnesses to the events of June 28,

2011;

g) failed to obtain jury settlement and verdict reporters to determine the proper range of settlement negotiations;

h) coerced Dulberg, verbally and through emails, into accepting a settlement with the McGuires for \$5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

76. As a direct result of Mast and Popovich and Thomas J. Popovich individually's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast, and Popovich and Thomas J. Popovich individually in urging Dulberg to release the McGuires, and Popovich and Thomas J. Popovich individually in not objecting to the motion for a good faith finding that the settlement entered into between Dulberg and the McGuires for \$5,000.00 constituted a fair and reasonable and good faith settlement within the meaning of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 0.01 et seq., lost the sum of well over \$300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C., and Thomas J. Popovich individually.

WHEREFORE, Plaintiff Paul Dulberg prays this Honorable Court enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all-in excess of the jurisdictional minimums of this Honorable Court

Respectfully submitted by

/s/ Alphonse A. Talarico

Alphonse A. Talarico

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