

TABLE 3: FIVE INCORRECT VERSIONS OF THE ORIGIN OF A \$300,000 ‘UPPER CAP’ PLACED ON THE VALUE OF 12LA178 GIVEN BY DULBERG’S COUNSEL

TABLE 3: SOURCE OF THE \$300,000 ‘UPPER CAP’ PLACED ON 12LA178 ACCORDING TO DULBERG’S ATTORNEYS	
Version 1 2017-11-28 Gooch	“Unfortunately, a “high-low agreement” had been executed by DULBERG, reducing the maximum amount he could recover to \$300,000.00 based upon the insurance policy available.”
Version 2 2018-05-10 Gooch	<p>WALCZYK: ...And then it looks like there was a high-low agreement signed.</p> <p>THE COURT: Was it signed by Mr. Mast?</p> <p>MS. WALCZYK: Oh, I believe it was signed by Mr. Dulberg. I haven’t seen it.</p>
Version 3 2018-06-07 Gooch	“DULBERG was only able to collect \$300,000.00 based upon the insurance policy available.”
Version 4 2018-12-06 Williams-Clinton	“Dulberg was only able to recovery approximately \$300,000 of the award from Gagnon’s insurance and was unable to collect from Gagnon personally.”
Version 5 2019-09-04 Williams-Clinton	“And the trustee did resolve -- there was an arbitration based on the trustee’s recommendation in the bankruptcy for the individual”

SOURCE OF THE 5 INCORRECT STATEMENTS

On November 28, 2017 the following statement appeared in COMPLAINT AT LAW:¹

16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of \$660,000.00 in gross, and a net award of \$561,000.00. **Unfortunately, a “high-low agreement” had been executed by DULBERG**, reducing the maximum amount he could recover to #300.000.00 based upon the insurance policy available. The award was

¹ [Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf](#)

substantially more than the sum of the money, and could have been recovered from the McGuire's had they not been dismissed from the complaint.

In this first version (of 2017-11-28) by Gooch an upper cap was "executed by Dulberg".

1. On May 10, 2018 the following exchange took place between Gooch counsel Sabina Walczyk and opposing counsel Flynn:¹

page 5, line 19"

Mr Flynn: "The high-low agreement, which is very confusing to me and to my client, frankly, because he's never seen it, and as I understand it, that's outside of the four corners --

THE COURT: It is outside, but it did lead to an area where I was also a little bit confused. And I -- and I think you touched on -- I'll ask you: Is the complaint having to do with the settlement with the McGuires, or does it somehow relate to the suit that continued with respect to Gagnon and the high-low agreement?

MS. WALCZYK: Well, I think it's a little bit of both, because it started with the suit against McGuires, which settled. And then **it looks like there was a high-low agreement signed.**

THE COURT: Okay.

MS. WALCZYK: And --

THE COURT: Was it signed by Mr. Mast?

MS. WALCZYK: Oh, **I believe it was signed by Mr. Dulberg. I haven't seen it.**

THE COURT: Okay.

MS. WALCZYK: However, we can attach it if -- if you want --

THE COURT: If -- if you are going to allege malpractice as a result of entering into the high-low agreement, yes, I would require you, then, to attach it and to make that a little more explicit.

MS. WALCZYK: Yes.

THE COURT: Because I -- I came away thinking that was not part of your complaint, but I wasn't a 100 percent sure."

In this second version (of 2018-05-10) his own attorney states they have never seen the agreement and they think "Dulberg signed it".

2. In the FIRST AMENDED COMPLAINT Gooch stated:²

1 [Exhibit 226_2018-05-10_ROP 17LA377.pdf](#)

2 [Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf](#)

“24. Thereafter, DULBERG retained other attorneys and proceeded to a Court ordered binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of \$660,000.00 in gross, and a net award of \$561,000.00. However, due to the settlement with the McGuires, **DULBERG was only able to collect \$300,000.00 based upon the insurance policy available.** A copy of the aforesaid Mediation Award is attached hereto as Exhibit G.”

In this third version (of 2018-06-13) by Gooch the \$300,000 cap just seemed to *show up*. The Judge ordered Gagnon to pay much more but Gagnon apparently didn’t because of the “insurance policy available” (and apparently Dulberg pursued the matter no further).’

3. In the SECOND AMENDED COMPLAINT Williams stated:¹

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

53. 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.

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

In this fourth version (of 2018-12-06) by Clinton and Williams also the \$300,000 cap just seemed to *show up*. The Judge awarded an amount that Gagnon *just decided not to pay* (and Dulberg apparently pursued the matter no further).’

4. On September 5, 2019 Williams stated in court:²

MS. WILLIAMS: I think we produced a number of the bankruptcy issues, but we can talk about it today and definitely try to work out -- there’s definitely -- there was a bankruptcy. We’re not trying to hide that bankruptcy, so. **And the trustee did resolve -- there was an arbitration based on the trustee’s recommendation in the bankruptcy for the individual.”**

In this fifth version (of 2019-09-05) by Williams it is stated for the first time that a *bankruptcy trustee* was involved in placing an upper cap of \$300,000 on the value of the PI case 12LA178. Note that Dulberg retained Gooch on 2016-12-12 and this is the first time either the term “bankruptcy” or “trustee” were ever mentioned in relation to the ‘upper cap’ (and the last time, too).

5. Gooch crafted the first 3 versions. The first 3 versions are incompatible with each other.

6. Clinton and Williams crafted Versions 4 and 5. Version 5 contradicts Version 4. They are incompatible.

1 [Exhibit 132](#)_Second Amended Complaint

2 [Exhibit 133](#)_2018-09-12_Record of Proceedings.pdf

7. 'Bankruptcy' is never mentioned in any of the 5 versions as having anything to do with an 'upper cap'.
8. Version 1 and Version 2 blame Dulberg for executing an 'upper cap'. Version 3 blames the existence of an insurance limit as the source of an 'upper cap'. Version 4 blames 'insurance available' as the source of an 'upper cap'. Only in Version 5 'bankruptcy' is mentioned (for the first time on 2019-09-04, almost 3 years after Dulberg first met Gooch) and only in passing in a single Report of Proceedings.
9. All 5 Versions in Table 3 are inventions created by Dulberg's own attorneys to conceal the true origin of the 'upper cap'. Even though all 5 different versions are created by Dulberg's attorneys, Dulberg was described as the source of all 5 untrue and incompatible versions.

RECORD OF WHERE THE 'UPPER CAP' ACTALLY CAME FROM

Records of Proceedings of 12LA178 from June 13, 2016 to August 10, 2016 provide clear evidence of:

- a) **Who** placed a \$300,000 upper cap on the value of the personal injury case
- b) **When** the agreement was made
- c) **Where** the agreement was made

The evidence was easily available to both Gooch and Clinton and Williams the entire time (in the Reports of Proceedings of the 'underlying' case 12LA178).

- a) **Who** placed a \$300,000 upper cap on the value of the personal injury case (*The Baudins and Allstate alone*)
- b) **When** the agreement was made (*On or before August 10, 2016 in violation of the automatic stay*)
- c) **Where** the agreement was made (*In the 22nd Judicial Circuit Court*)

10. On July 11, 2016 the following exchange took place in the 22nd Judicial Circuit Court:¹

THE COURT: Dulberg. Do we have -- When do you want to come back?

UNIDENTIFIED SPEAKER: We're entering continuing the motions, is that what we're doing?

THE COURT: Yes.

UNIDENTIFIED SPEAKER: Okay. When's your next available date, Judge?

¹ [Exhibit 129_2016-07-11_CC-Civil - 12LA000178 - 3_2_2022 - - - REOP - - \(1\).pdf](#)

THE COURT: For a hearing?

UNIDENTIFIED SPEAKER: Yes.

UNIDENTIFIED SPEAKER: Or a brief.

THE COURT: Are we briefed? Has it been briefed?

UNIDENTIFIED SPEAKER: No. They're just motions that I presented as emergencies and then we continued them pending discussions.

THE COURT: Well, when -- **if it goes into mediation, the motions become moot. Or do we have to address them regardless? I don't know what they are.**

UNIDENTIFIED SPEAKER: I think the type of **mediation** we would do, it would be moot because --

UNIDENTIFIED SPEAKER: Yeah, other than, possibly, an IME. But, you know, we can certainly work -- we've worked well together so far, so we could certainly see if we can work things out.

THE COURT: Speaking generally, I'd probably grant an IME. I haven't seen your motion, though, so I don't know. I mean, I could put this over to July 21st, and that should give you enough time to decide what you want to do with mediation.

UNIDENTIFIED SPEAKER: I can be here.

THE COURT: Okay. All right. And that will be just at 9:00 o'clock for presentation of the motion, and then we'll figure out what we're going to do.

UNIDENTIFIED SPEAKER: Thank you for your time.

UNIDENTIFIED SPEAKER: Thank you. Appreciate it.

11. On July 21, 2016 the following exchange took place in 22nd Judicial Circuit Court:¹

APPEARANCES: THE BAUDIN LAW GROUP LTD., by: MS. KELLY N. BAUDIN, on behalf of the Plaintiff;

LAW OFFICE OF STEVEN A. LIHOSIT, by: MS. SHOSHAN E. REDDINGTON, on behalf of the Defendant David Gagnon.

MS. BAUDIN: Kelly Baudin on behalf of the plaintiff. Mr. Dulberg is present and approaching.

MS. REDDINGTON: Good morning, Judge. Shoshan Reddington for the defendant.

THE COURT: Good morning.

MS. REDDINGTON: We talked last night. We've got some things agreed to, so I would like to just give us a moment to discuss that and step back up.

THE COURT: Okay. I will pass.

¹ [Exhibit 130_2016-07-21_CC-Civil - 12LA000178 - 3_2_2022 - - - REOP - - \(2\).pdf](#)

MS. BAUDIN: Thank you.

MS. REDDINGTON: Thank you.

THE COURT: All right. Thank you.

(Whereupon, the above-entitled cause was passed and subsequently recalled.)

MS. BAUDIN: Okay, Judge. **As you know, we had previously been discussing binding mediation. We came to a semi-agreement, --**

THE COURT: Okay.

MS. BAUDIN: -- but we would like probably two weeks to just see if we can figure out the details and see if we can reach an agreement on how that is going to proceed. So I think we're looking at an August 4th date for that.

THE COURT: Can't do August 4th --

MS. BAUDIN: Oh, okay. I just was looking at two weeks, Your Honor.

THE COURT: -- because that's when I'm not here.

MS. BAUDIN: Oh, I see on the calendar. I apologize.

THE COURT: Any day after that.

MS. REDDINGTON: The following week, anything?

MS. BAUDIN: Grab my -- Let's say either the 8th or the 10th are probably the best.

THE COURT: Either's fine?

MS. REDDINGTON: My calendar's currently crashed on my -- so I can't answer that, but --

MS. BAUDIN: Why don't we do the 10th, just so it's --

THE COURT: Is there a date you know you're going to be here?

MS. REDDINGTON: No.

THE COURT: Okay.

MS. REDDINGTON: Judge, and I have several motions, and what I'd like to do is get the trial stricken which is on 9/- --

MS. BAUDIN: 27th I believe or 22nd?

MS. REDDINGTON: -- the 26th, and then to set it for the status instead on the 8/10, and then I also had a motion on an IME. I'm a little stymied right now because my claim rep is out this week and there's a couple of issues that I can't answer for counsel, but **if we do get the agreement in place, what we'd like to do is do the mediation and then come back for a status to dismiss it once the mediation is done, if that's agreeable.**

THE COURT: First off, with respect to the motion to strike the trial date, any objection?

MS. BAUDIN: No.

THE COURT: All right. I will -- I will strike the trial date for September 26, as well as the pretrial

date of the 23rd.

MS. REDDINGTON: Okay.

THE COURT: I will enter and continue your other motions until we're certain what's going to happen.

MS. REDDINGTON: Okay.

THE COURT: The removal of the trial date pretty much means we can do anything.

MS. REDDINGTON: Takes care of that. Okay. And **hopefully we'll come back with everything in place and then we'll just even set a date and then get a status for after that date to be able to come back and say it's done; we're willing to dismiss with prejudice because mediation's binding and it's done.**

THE COURT: All right. However you want to do it, it is fine.

MS. REDDINGTON: Thank you.

THE COURT: All right. Take care.

MS. BAUDIN: Thank you

12. On August 10, 2016, in violation of the automatic stay, the Baudins and Reddington moved to enter into binding mediation on August 10, 2016, The date of the Binding Mediation hearing was already set for December 8, 2016 by the time the following exchange took place on August 10, 2016 in the Circuit Court:¹

MS. REDDINGTON: Number one, Dulberg vs. Gagnon. Shoshan Reddington for the defendant. **We have (indiscernible) scheduled for 12-8.**

THE COURT: Okay.

MS. REDDINGTON: We'd like to have a status date after that date.

THE COURT: What date works for you? You said December 8?

MS. REDDINGTON: December 8.

THE COURT: Okay. How about the following Monday, the 12th? Or do you want to go out further? The 16th, Friday?

Even though the information is available in court records of Dulberg's underlying case against Gagnon, neither Gooch's firm nor Clinton's firm ever pointed it out to Dulberg or mentioned it in any court record. Instead, the following comments were made in court records.

¹ [Exhibit 131_12LA000178--2016-08-10--ORD_0097.pdf](#), CC-Civil - 12LA000178 - 3_3_2022 - - - REOP - - (4). pdf, (Lines 2-10)