

TABLE 7: 17LA377 OFFICERS OF THE COURT APPLYING CURRENT ILLINOIS LAW AND DULBERG'S CASE

| TABLE 7: Judge Meyer Describing the Relation between <i>Suburban Real Estate v Carlson</i> and Dulberg's case: |
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| <p>I'm not buying that. The arbitrator's award gave you insight as to the value. Where you lose me is -- Well, let me rephrase that. It gave you their insight as to what they perceived the value of the case to be. It did not tell you whether or not you could have known that there was a viable cause of action against another defendant --</p> |
| <p>I fail to understand how an arbitrator's award would explain that because I can't imagine -- I certainly don't -- I'm not an arbitrator, I don't know what they put in their decisions, but I would be surprised if they spend a lot of time telling you about people you could have sued but for malpractice, so the issue for me is knew or should have known, and I am going to direct production of those documents.</p> |
| <p>But that's a different argument. That's a rule -- that's an argument related to the applicability of -- or, in my analysis, of how the rule applies to the circumstances that we have. It doesn't address the issue of whether you should have known of the existence of the cause of action, and the information I have is that you did not and could not have known about the cause of action until the disclosure from the expert or from Mr. Gooch, and if we're going to explore that issue, you've got to produce that. You've put those items into evidence or at issue, so defense has a right to see them.</p> |
| TABLE 7: Judge Berg describing the relation of <i>Suburban Real Estate v Carlson</i> to Dulberg's case: |
| <p>He was clearly alerted. Let's cut to the chase. He was hesitant -- he was hesitant to ever even sign the settlement agreement to the point where it took him over two months to do it. He clearly had his doubts. He clearly had his lack of faith. He signed the settlement agreement anyway. A year later, the attorneys withdrew. He went to another attorney, still raised the issue. Went to another attorney, still raised the issue.</p> |
| <p>Met with hundreds of attorneys. He was clearly alerted. When did the pecuniary loss occur? Here is the amazing part, and this is what -- where the disconnect comes on this case and it's why I'm having so much trouble with it, I'm being urged that the pecuniary loss occurred when the decision was given on the binding mediation.</p> <p>But the reason I believe that's a disconnect is because -- for two reasons. The loss that occurred on the binding mediation that is being urged upon the Court is a loss of what appears to be \$360,000. The difference between the \$660,000 that the mediator indicated the -- were the appropriate measure of damages against Mr. Gagnon and the \$300,000 insurance policy limit, that \$360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that somebody entered into. We don't know who that somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge</p> |

TABLE 7: Judge Berg describing the relation of *Suburban Real Estate v Carlson* to Dulberg's case:

But didn't the pecuniary loss itself, in fact, occur if there was a cause of action to which you were alerted? **The pecuniary loss occurred when he only got \$5,000.** I agree with defense counsel.

TABLE 7: Defendants Popovich and Mast (Flynn) describing relation of *Suburban Real Estate v Carlson* to Dulberg's case:

The **only case cited by the plaintiff in its response with respect to the accrual of the injury was a Suburban Real Estate case which is a transactional legal malpractice case, not a litigated matter.** I think the -- all of the cases we have cited and including the dicta in that Suburban Real Estate case indicates that the accrual date in a litigated matter is the date of settlement, judgment or dismissal.

TABLE 7: Legal Malpractice Attorney Gooch applying Illinois law to Dulberg's case:

Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award
based on the expert's opinions that DULBERG retained for the mediation
received independent opinion from a legal malpractice attorney on or about December 16, 2016.

TABLE 7: Legal Malpractice Attorneys Clinton and Williams applying Illinois law to Dulberg's case:

Only after Dulberg obtained an award against Gagnon...
Following the execution of the mediation agreement and the final mediation award...in December of 2016
based on the expert's opinions that DULBERG retained for the mediation

1. The arguments in *Suburban Real Estate Servs. v. Carlson*, 2020 Ill. App. 191953 (Ill. App. Ct. 2020) reference 5 other key cases:

Successful Appellant *Suburban Real Estate* relied on *Lucey*¹ and *Warnock*² (and *Northern Illinois Emergency Physicians*³)

Unsuccessful Appellee *Carlson* relied on *FagelHaber*⁴ and *Nelson*⁵ (and *Goran*⁶)

2. None of the statements in Table 7 made by Judge Meyer, Judge Berg, Defendants Popovich and Mast, Dulberg's former attorneys Gooch, Clinton and Williams reference or are based on any of the case law cited in paragraph 201 (which is current Illinois law applicable to Dulberg's case).

1 Lucey v. Law Offices of Pretzel & Stouffer, Chartered, 301 Ill. App. 3d 349 (1998)

2 Warnock v. Karm Winand & Patterson, 376 Ill. App. 3d 364 (2007)

3 Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd., 216 Ill. 2d 294, 306 (2005)

4 Construction Systems, Inc. v. FagelHaber, LLC, 2019 IL App (1st) 172430

5 Nelson v. Padgitt, 2016 IL App (1st) 160571

6 Goran v. Gliberman, 276 Ill. App. 3d 590, 595-96 (1995)

3. This notion of a “financial injury” on December 12, 2016 consistent with Illinois law in *Suburban Real Estate v Carlson* was never explained to Dulberg by Gooch, Clinton, or Williams, not even as a suggestion or possibility. Opposing counsel Flynn found no relevance in *Suburban Real Estate v Carlson*. It was not used or referenced in any of the 14 items in Table 5A and 5B. There is no notion of financial injury or application of Illinois law *Suburban Real Estate v Carlson* in any of the versions in Table 4A and 4B. Neither Judge Meyer or Judge Berg saw any relevance in *Suburban Real Estate v Carlson* and did not recognize any notion of a ‘financial injury’ occurring on December 12, 2016 consistent with *Suburban Real Estate v Carlson* in Dulberg’s case.

4. None of the statements made in Table 3 are accurate though Dulberg’s attorneys entered them into the record on behalf of Dulberg. None of the entries in Table 4A and Table 4B are in accordance with Illinois law cited in paragraph 201. None of the entries of Table 5A or Table 5B are in accordance with Illinois law cited in paragraph 201.

5. Even if taking Flynn’s dates of discovering the pecuniary injury as true, Popovich and Mast’s fraudulent concealment of the initial offer to Barch/McGuire on October 22, 2013 (which remained concealed until May 30, 2018) is a legitimate legal justification for Dulberg to toll the statute of limitations.

6. On February 1, 2023, Judge Berg, in his first day as Judge in the case, granted¹ the opposing counsel’s arguments in support of an Motion for Summary Judgment based on statute of limitation arguments Flynn gave. Judge Berg tolled the statute of limitations this way:

Dulberg’s ‘injury’ was the settlement with the McGuires (receiving \$5,000)

The settlement with the McGuires took place in January, 2014

Dulberg “knew or should have known” of his “injury” since January, 2014 (because it was public information).

Dulberg may have experienced another “injury” on December 12, 2016 due to an ‘upper cap’ limit that was placed on the value of PI case 12LA178 but that injury happened way after Popovich and Mast were “out of Dodge”.

7. On February 1, 2023 Flynn made the following claims against Dulberg in court.

So Mr. Gooch met with him. Allegedly provided an opinion that there was a case without any reason and then almost a year later filed a lawsuit. Again, first Mr. Dulberg raised privilege when I asked him how -- how and what -- how you became aware of this legal malpractice case, the injury and the wrongful causation, he claimed privilege. Finally, that was waived or otherwise disposed of, and then, he admitted he couldn’t -- I said the legal opinion Dulberg received from Gooch was verbal. Gooch simply stated you have a case here. You have a valid case. When asked did he tell you exactly what they did wrong in connection with the representation, Dulberg said he probably did. I’m not recalling it right now. I’m pulling a blank. There are no specifics.

¹ [Exhibit 145_2023-02-01_ROP dismissal of case.pdf](#)

8. Gooch misled Dulberg into believing a false claim that the toll starts on December 16, 2016 because Dulberg met with Gooch and Gooch is an expert in such matters. The quote in paragraph 184 by opposing counsel Flynn shows how a permanently disabled client was set up through collaboration between opposing attorneys and was intentionally misinformed by his own attorney from the first meeting. Gooch was playing with his permanently disabled client by setting Dulberg up in December, 2016 so that Flynn could make the above accusations against Dulberg on February, 2023.

9. As Flynn implied in the quote (long after Gooch resigned, was fired or changed his claim) Dulberg is left hanging as if it was **Dulberg's idea** that the toll starts when he met Gooch for the first time. Then Dulberg is pressed, "why does the toll start when you first met Gooch?" "What happened during the first meeting to toll the statute? Gooch must have known from his first meeting with Dulberg that Gooch was setting Dulberg up to later be accused like Flynn does in paragraph 184.

10. Flynn again used the way Gooch set up Dulberg to make the following claim:¹

Mr. Dulberg had every opportunity in discovery through interrogatories, production requests, I took his deposition. **I asked him over and over again in several different ways how he first became aware of his injury and that it was wrongfully caused. The only response he could give was that a lawyer told him that he had a case. He couldn't provide any specifics.** He has a burden of proving the -- a late discovery. He cannot meet it. He will never be able to meet it.

11. The only notions of an "injury" Dulberg received from Gooch, Clinton and Williams is included in Tables 4A and 4B. The only notions by Gooch, Clinton and Williams of how Dulberg "first discovered" his "injury" and when are in Tables 4A, 4B and Table 5B. The only reason both Gooch and Clinton and Williams gave for tolling from December 8, 2016 is because Dulberg "read Lanford's letter". At no time over 6 years did Gooch, Clinton or Williams claim, write or inform Dulberg that December 12, 2016 tolls Dulberg's financial injury. Gooch, Clinton and Williams all omit or ignore that McGuire's Vicarious Liability for its agent's negligent actions could be quantified and realized for the first time on December 12, 2016 as a financial or pecuniary injury for when the statute of limitations begins in 735 ILCS 5/13-214.3 (b).

12. Over a period of 6 years Gooch, Clinton and Williams never referred to pecuniary injury as cited in ***Suburban Real Estate v Carlson*** or the related cases² cited within and they all omitted or ignored that McGuire's Vicarious Liability for its agent's negligent actions could be quantified and realized for the first time on December 12, 2016 as a pecuniary injury. Neither Judge Meyer nor Judge Berg could see any relevance in ***Suburban Real Estate v Carlson*** or the notion of receiving a 'financial injury' on December 12, 2016. Judge Meyer "didn't buy" the claim. Judge Berg found no relevance in the claim of a 'financial injury' that was received on December 12, 2016.

1 [Exhibit 145_2023-02-01_ROP dismissal of case.pdf](#)

2 See paragraph 209

13. On *Suburban Real Estate v Carlson* opposing counsel Flynn also found no relevance and stated:

The only case cited by the plaintiff in its response with respect to the accrual of the injury was a Suburban Real Estate case which is a transactional legal malpractice case, not a litigated matter. I think the -- all of the cases we have cited and including the dicta in that Suburban Real Estate case indicates that the accrual date in a litigated matter is the date of settlement, judgment or dismissal.

The above quote is the only comment opposing counsel Flynn made concerning a claim of 'financial injury' on December 12, 2016 over a period of about 6 years.

14. About the 'upper cap' Judge Berg stated:

So how is his change in strategy somehow extend -- so in other words, what you're saying -- well, I'm trying to wrap my head around this. You are saying that that agreement your client never wished to enter into, he didn't sign, Popovich didn't sign, Mr. Mast didn't sign. His actual third attorney signed it, Mr. Baudin, not even Mr. Balke. But because that was somehow signed and in effect, then the cause of action against Mast and Popovich for legal malpractice is extended out to the date of the final mediation hearing because of an agreement and limitation on damages at the mediation hearing over which they had zero control?

Judge Berg referred to "a change of strategy" as if Dulberg changed his story to try to make Popovich and Mast responsible for the effect of an 'upper cap' that took place on August 10, 2016 in 12LA178 in violation of the bankruptcy courts automatic stay and was executed on December 8, 2016.

Mr. Talarico, and please correct me if I'm wrong because this is where I'm getting the disconnect, the but-for portion of this analysis but for the high-low agreement limiting damages to the policy amount of \$300,000, he would have had a judgment for the entire \$660,000 if Tom Popovich and Hans Mast had never even existed. What I'm asking is isn't the failure to recover the \$660,000 as opposed to 300,000 attributable to the high-low agreement that was entered into well over a year or if not two or more years after Popovich and Mast were out of the case? But again, counsel -- but again, my point being I don't really care if he signed it or didn't sign it. My point being that it is that agreement that limited his damages, and that agreement was entered into way after Popovich and Mast withdrew from this case, right?

Judge Berg claimed that the 'upper cap' is Dulberg's "injury". Judge Berg doesn't know how the 'upper cap' came into being, doesn't care and doesn't care if Dulberg signed the agreement. The simple point according to Judge Berg is that it has nothing to do with Popovich and Mast so none of it matters in this case.

15. According to Judge Berg, a financial transaction that took place in December 12, 2018 cannot be connected to Popovich and Mast, who ended their contract with Dulberg in March 2015 and

are accused of “injuring” Dulberg during a settlement in January, 2014. Judge Berg cannot “wrap his mind around” Mr Talerico citing *Suburban Real Estate v Carlson* since (to Judge Berg) the claim seems so outrageous and quite a stretch. This is also what Judge Meyer “won’t buy”. Judge Berg also perceived this claim as Dulberg making a “change in strategy” implying Dulberg earlier had a “different strategy” (“injury” being settlement with the McGuires in January, 2014) and then made a “change in strategy” (“injury being capped award on December 12, 2016). This is the impression that Versions 1, 2 and 3 in Table 4A and 4B and Versions 1, 2, 3, 4 and 5 in Table 3 crafted by Gooch, Clinton and Williams were intended to create: That Dulberg somehow **changed his claim and legal strategy** since first filing his suit. Judge Berg, just like Defendants Popovich and Mast, are accusing Dulberg of changing his legal theory well after he filed his complaint.

16. According to Judge Berg, Dulberg was “injured” by an ‘upper cap’ on a settlement judgment on December 12, 2016. Popovich and Mast never signed an ‘upper cap’ so they have no relation to the ‘upper cap’ as Dulberg’s “injury”. Dulberg’s only other “injury” was during the McGuire settlement in January, 2014 which is now subject to the statute of limitations.

17. On how and when Dulberg “knew or should have known” about his “injury” Judge Berg stated:

He was clearly alerted. Let’s cut to the chase. He was hesitant -- he was hesitant to ever even sign the settlement agreement to the point where it took him over two months to do it. He clearly had his doubts. He clearly had his lack of faith. He signed the settlement agreement anyway. A year later, the attorneys withdrew. He went to another attorney, still raised the issue. Went to another attorney, still raised the issue.

Met with hundreds of attorneys. He was clearly alerted. **When did the pecuniary loss occur?** Here is the amazing part, and this is what -- where the disconnect comes on this case and it’s why I’m having so much trouble with it, **I’m being urged that the pecuniary loss occurred when the decision was given on the binding mediation.** But the reason I believe that’s a disconnect is because -- for two reasons. The loss that occurred on the binding mediation that is being urged upon the Court is a loss of what appears to be \$360,000. The difference between the \$660,000 that the mediator indicated the -- were the appropriate measure of damages against Mr. Gagnon and the \$300,000 insurance policy limit, that \$360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that somebody entered into. We don’t know who that somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge

But didn’t the pecuniary loss itself, in fact, occur if there was a cause of action to which you were alerted? **The pecuniary loss occurred when he only got \$5,000.** I agree with defense counsel. Statute of limitations lapsed. Merely denying the statute of limitation without more in the depositions and the sworn testimony does not itself create an issue of material fact.

18. Judge Berg identified Dulberg’s “injury” with a “pecuniary loss” that occurred when Dulberg

received \$5,000 from the McGuires. Judge Berg identified a different “injury” to Dulberg on December 12, 2016 which Judge Berg identified as the ‘upper cap’ placed on the award.

19. Judge Berg knew nothing about where the cap came from or why. Judge Berg didn’t know if the ‘upper cap’ was legal or illegal or whether it was fraudulent. Judge Berg didn’t care because the “injury” of the ‘upper cap’ “occurred well after they [Popovich and Mast] were out of Dodge”.

20. About the true origin of the ‘upper cap’ Judge Berg stated: “that \$360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that **somebody entered into. We don’t know who that somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge**”

21. By this statement Judge Berg implied that Popovich and Mast were so distant from the ‘upper cap’ that they couldn’t have anything to do with an “injury” that happened on December 12, 2016 through an ‘upper cap’. Nobody seems to know where the ‘upper cap’ came from and Dulberg claimed he refused to agree and refused to sign any agreement. But in this case none of it matters because any limit from an ‘upper cap’ cannot be connected to Popovich and Mast since the “**agreement occurred well after they were out of Dodge**”.

22. Dulberg’s current attorney Mr Talerico is on the record since February 10, 2021 (Mr Talerico was retained on October 23, 2020) explaining the application of *Suburban Real Estate v Carlson* to Dulberg’s case in order to claim that the statute is counted from December 12, 2016. Mr Talerico explained that *Suburban Real Estate v Carlson* makes clear that if Dulberg filed a legal malpractice suit against Popovich and Mast at any time before December 12, 2016 his filing would have been ruled premature. Mr Talerico explained Illinois law is clear that the first day that Dulberg had standing to file a legal malpractice suit against Popovich and Mast was December 12, 2016 and not one day sooner.