

From: PAUL DULBERG paul_dulberg@comcast.net  
Subject: Fwd: Middle of Gooch communications
Date: November 17, 2018 at 12:12 PM
To: juliawilliams@clintonlaw.net
Cc: ed@clintonlaw.net

PD



Automatic reply/
Dulber...a_.eml



Re/ Dulberg vs_
Law Of...a_.eml



Re/ Dulberg vs_
Law Of...a_.eml



Transcript-
Report...gs.eml



Re/ Transcript-
Report...gs.eml



Dulberg v_
Popvich.eml

From: Thomas W. Gooch III goocho@goochfirm.com
Subject: Automatic reply: Dulberg vs. Law Offices of Thomas J. Popovich, P.C., et al.
Date: September 7, 2018 at 10:08 AM
To: Paul Dulberg pdulberg@comcast.net



I will be on a well deserved vaction thru the morning of September 12. I will however be taking cell phone calls as needed and will be checking email at least twice a day. I will have access to client files. My colleague, Sabina Walczk will be available and may be contacted at our office.

From: Sabina Walczyk swalczyk@goochfirm.com 
Subject: RE: Dulberg vs. Law Offices of Thomas J. Popovich, P.C., et a.
Date: September 19, 2018 at 11:52 AM
To: Paul Dulberg pdulberg@comcast.net, Office Office office@goochfirm.com
Cc: Thomas W. Gooch III gooch@goochfirm.com, Nikki nikki@goochfirm.com

SW

Hi Paul we are still waiting for the transcript but attached is the Order.

Sabina D. Walczyk
Associate Attorney
The Gooch Firm
209 South Main Street
Wauconda, Illinois 60084
(847) 526-0110 (phone)
(847) 526-0603 (fax)

This communication is covered by the Electronic Communications Privacy Act, found at 18 U.S.C. 2510 et. seq. and is intended to remain confidential and is subject to applicable attorney/client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and all attachments. Do not deliver, distribute or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments.

From: Paul Dulberg <pdulberg@comcast.net>
Sent: Wednesday, September 19, 2018 9:07 AM
To: Office Office <office@goochfirm.com>
Cc: Thomas W. Gooch III <gooch@goochfirm.com>; Sabina Walczyk <swalczyk@goochfirm.com>; Nikki <nikki@goochfirm.com>
Subject: Re: Dulberg vs. Law Offices of Thomas J. Popovich, P.C., et a.

Hi Tom, Sabina,

May I get the digital copy of the court order and transcript from 9/12/2018?

Thanks,
Paul
847-497-4250

On 9/12/2018 12:33 PM, Paul Dulberg wrote:

Hi Sabina, Tom,
I missed either of you in court this morning. I did not bring my phone into the courthouse so I couldn't call you. Hope nothing bad happened to delay you and that everyone is okay.

From what I understood, Judge Meyer moved forward without you and struck down the vast majority of our amended pleading as conclusions or redundant.
I have a pink copy of the courts order that I can drop off at your office this afternoon.
Judge Meyer suggested that we get a copy of the hearing transcript that would better explain his order.

Do I need to go get the transcript at the county administrative office or is this something you can do digitally?

Thanks,
Paul

On 8/31/2018 9:00 AM, Office Office wrote:

Dear Mr. Dulberg:

Attached please find the Defendants Reply in Support of their Motion to Dismiss along with their letter to the Judge.

Please note there is a hearing on their Motion to Dismiss set for September 12, 2018 at 10:00 a.m. We will keep you advised of what transpires that day in Court.

If you have any questions, please let me know.

Melissa J. Podgorski
Paralegal
The Gooch Firm
209 South Main Street
Wauconda, Illinois 60084
(847) 526-0110 (phone)
(847) 526-0603 (fax)

This communication is covered by the Electronic Communications Privacy Act, found at 18 U.S.C. 2510 et. seq. and is intended to remain confidential and is subject to applicable attorney/client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and all attachments. Do not deliver, distribute or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments.



Order
9.12.18.pdf

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

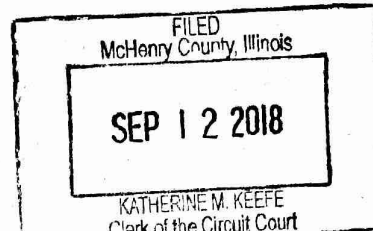
STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17 LA 377
☒ Jury ☐ Non-Jury

Dulberg

VS.

Papovich + Most



Date: 9-12-18

Plaintiff's
Attorney

S. L. Walezyk

Defendant's
Attorney

George Flynn

ORDER

This matter coming to be heard on Defendants' Motion to Dismiss Plaintiff's First Amended Complaint, it is hereby ordered:

- 1) Defendants' motion is granted as more fully described on the record and below.
- 2) Paragraphs ~~24~~ 31(b), (c), (f), (g), (h), (i), (k), (l), (m), (n), and (o) are stricken as conclusions or being redundant.
- 3) Plaintiff is granted leave to reply by October 10, 2018. Defendants to file a responsive pleading by November 7, 2018.
- 4) Status hearing on November 13, 2018 at 9:00 a.m.

Prepared by: George Flynn

Attorney for: Defendants

Attorney Registration No.: 6239349

Judge: [Signature]

From: Thomas W. Gooch III gooch@goochfirm.com
Subject: RE: Dulberg vs. Law Offices of Thomas J. Popovich, P.C., et a.
Date: September 19, 2018 at 12:01 PM
To: Paul Dulberg pdulberg@comcast.net, Office Office office@goochfirm.com
Cc: Sabina Walczyk swalczyk@goochfirm.com, Nikki nikki@goochfirm.com

TG

Court order is not as problem, get it to you today. The transcript is expensive and needs to be ordered from the court which we can do but I believe is a waste of money pls advise if you wish me to order it. We are preparing the amended complaint. You need to realize it is not at all unusual to have a complaint struck and dismissed without prejudice 2 or 3 times even in a case, its based on the law and the need to say more.

In any event I am working on an amended complaint now and intend to file early. In the meantime we are going to proceed with discovery to keep things moving.

From: Paul Dulberg <pdulberg@comcast.net>
Sent: Wednesday, September 19, 2018 9:07 AM
To: Office Office <office@goochfirm.com>
Cc: Thomas W. Gooch III <gooch@goochfirm.com>; Sabina Walczyk <swalczyk@goochfirm.com>; Nikki <nikki@goochfirm.com>
Subject: Re: Dulberg vs. Law Offices of Thomas J. Popovich, P.C., et a.

Hi Tom, Sabina,

May I get the digital copy of the court order and transcript from 9/12/2018?

Thanks,
Paul
847-497-4250

On 9/12/2018 12:33 PM, Paul Dulberg wrote:

Hi Sabina, Tom,
I missed either of you in court this morning. I did not bring my phone into the courthouse so I couldn't call you. Hope nothing bad happened to delay you and that everyone is okay.

From what I understood, Judge Meyer moved forward without you and struck down the vast majority of our amended pleading as conclusions or redundant.
I have a pink copy of the courts order that I can drop off at your office this afternoon.
Judge Meyer suggested that we get a copy of the hearing transcript that would better explain his order.

Do I need to go get the transcript at the county administrative office or is this something you can do digitally?

Thanks,
Paul

On 8/31/2018 9:00 AM, Office Office wrote:

Dear Mr. Dulberg:

Attached please find the Defendants Reply in Support of their Motion to Dismiss along with their letter to the Judge.

Please note there is a hearing on their Motion to Dismiss set for September 12, 2018 at 10:00 a.m. We will keep you advised of what transpires that day in Court.

If you have any questions, please let me know.

Melissa J. Podgorski
Paralegal
The Gooch Firm
209 South Main Street
Wauconda, Illinois 60084
(847) 526-0110 (phone)
(847) 526-0603 (fax)

This communication is covered by the Electronic Communications Privacy Act, found at 18 U.S.C. 2510 et. seq. and is intended to remain confidential and is subject to applicable attorney/client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and all attachments. Do not deliver, distribute or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments.

From: Office Office office@goochfirm.com 
Subject: Transcript-Report of Proceedings
Date: September 20, 2018 at 10:43 AM
To: Paul Dulberg pdulberg@comcast.net
Cc: Thomas W. Gooch III gooch@goochfirm.com, Sabina Walczyk swalczyk@goochfirm.com, Nikki nikki@goochfirm.com

00

Dear Mr. Dulberg:

Attached please find the transcript from court on September 12, 2018.

Melissa J. Podgorski
Paralegal
The Gooch Firm
209 South Main Street
Wauconda, Illinois 60084
(847) 526-0110 (phone)
(847) 526-0603 (fax)

This communication is covered by the Electronic Communications Privacy Act, found at 18 U.S.C. 2510 et. seq. and is intended to remain confidential and is subject to applicable attorney/client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and all attachments. Do not deliver, distribute or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments.



REPORT OF
PROCE....18.pdf

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF MCHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
5 MCHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.)

9 No. 17 LA 377

10 THE LAW OFFICES OF THOMAS)

11 J. POPOVICH, P.C., and)

12 HANS MAST,)

13 Defendants.)

14 ELECTRONICALLY RECORDED Report of
15 Proceedings had in the above-entitled cause before
16 The Honorable Thomas A. Meyer, Judge of the Circuit
17 Court of McHenry County, Illinois, on the 12th day of
18 September, 2018, in the McHenry County Government
19 Center, Woodstock, Illinois.

20 APPEARANCES:

21 CLAUSEN MILLER, PC, by:

22 MR. GEORGE K. FLYNN,

23 on behalf of the Defendants.
24

1 THE COURT: Counsel, which one you on?

2 MR. FLYNN: Dulberg.

3 THE COURT: Is opposing counsel here?

4 MR. FLYNN: She's not. I received an email. She
5 said she was going to be late. She's in Waukegan.

6 THE COURT: I'm sorry, how late?

7 MR. FLYNN: I'm not sure how late, Judge. She said
8 she's in Waukegan. Mr. Gooch was apparently ill today,
9 so she's going to be covering today's hearing.

10 THE COURT: And she's in Waukegan now?

11 MR. FLYNN: She's in Waukegan. Originally thought
12 she might be able to be here by 10:30, but she said the
13 judge stepped up 15 minutes late on her other matter,
14 so --

15 THE COURT: I mean, that's about an hour drive.

16 MR. FLYNN: The email I received was -- I was in the
17 car as well, so 10 or 15 minutes ago.

18 THE COURT: Okay. See if you can email her and find
19 out if we can get an ETA.

20 MR. FLYNN: Okay.

21 THE COURT: And we'll work from there.

22 MR. FLYNN: Okay. Thanks, Judge.

23 THE COURT: Thank you.

24

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

3 THE COURT: Okay. Counsel, if you can approach. So
4 Dulberg versus Mast.

5 MR. FLYNN: Good morning, Your Honor. George Flynn
6 on behalf of the defendants. I did -- I received
7 communication from counsel. She was walking to her car
8 at the Waukegan courthouse at 11 -- I'm sorry, at 10:10,
9 and she indicated that her GPS estimated she would
10 arrive here at one hour and six minutes.

11 THE COURT: 11:30-ish. Fair?

12 MR. FLYNN: Fair.

13 THE COURT: All right. Well, rather than delay
14 this, I'm going to rule from the bench based upon my
15 review of the amended complaint and consideration of the
16 briefs in support of and opposition to.

17 I'm going to strike the complaint. The basis
18 of my decision is I think the complaint states a cause
19 of action, but there are so many things in there that
20 are unsupported by factual allegations that I think it
21 best just to deal with them now rather than at a later
22 date. I reviewed -- and I'm looking for the specific
23 allegations of negligence within the amended complaint.
24 I felt that in paragraph 31, subparagraph (a) included

1 enough of a fact that I -- I'm going to tell you the
2 ones I think can stand. Then I'm going to strike the
3 rest of them and try to explain it. I think paragraph
4 (a) gave me enough of a fact that I would allow it to
5 stand. I felt that (b) was a conclusion; (c) was
6 redundant of (a); (d) I was going to allow to stand, it
7 alleges something; (e) I was going to allow to stand;
8 (f) is a conclusion, it's not a fact -- Where are we?
9 -- (g) I'm just going to strike, it's a conclusion;
10 (h), it's a conclusion, strike it; (i) it's a
11 conclusion, strike it; (j) I'm going to allow to stand;
12 (k) I'm -- I'm going to strike. It says there were
13 necessary facts, but doesn't tell me what those
14 necessary facts were. I think an allegation of coercion
15 can stand, but I'm not quite sure what it is we're
16 alleging.

17 MR. FLYNN: So just to clarify, Judge, you're ruling
18 that there can be an allegation of coercion, but it's
19 not supported by facts here --

20 THE COURT: Yeah.

21 MR. GLYNN: -- under the 615 standard?

22 THE COURT: Yeah.

23 MR. GLYNN: Okay.

24 THE COURT: (1) there might be some facts in there,

1 but I'm not sure what they are, so I'm going to strike
2 it. I mean, there might be a factual basis to support
3 what they're getting at, but I don't know what it is. I
4 don't think it's supported, so I think it's a
5 conclusion. I'll strike -- (m) is a conclusion, I'll
6 strike it; (n) is I think duplicative of (a) and (c);
7 and (o) is just a conclusion.

8 I will allow them to replead because I think
9 the ones I've -- and I hate to make you the note-taker,
10 but it saves you a return trip, and I was going to ask
11 questions, but these -- this is what I felt about the
12 allegations in the complaint. I think there is -- this
13 -- for going -- as far as going forward is concerned, if
14 there were more paragraphs that weren't conclusions, I
15 might have allowed the complaint to stand and just
16 strike -- strike them on their face rather than go
17 through the trouble of re-pleading. Unfortunately, most
18 of the paragraphs were conclusions that I felt had to be
19 stricken, and I'm dealing with that now. As a result,
20 I'm striking the complaint.

21 Plaintiff gets to re-plead and the -- and if
22 they just -- and if they limit it to the ones I've
23 allowed to stand that I've advised you about that I
24 think are adequate, then I'm going to -- I would deny

1 future 615 based on the same concepts.

2 Does that make sense?

3 MR. FLYNN: I -- without having gone through each of
4 the subparagraphs, yes, I understand the Court's ruling.
5 I think that the general theme of our motion was that
6 the plaintiff hasn't set forth what a breach of any duty
7 would have been as far as the McGuires and what legal
8 standard they would have been held to and how they
9 breached that.

10 THE COURT: I think --

11 MR. GLYNN: Just because they're a land owners and
12 an accident happened on their property doesn't mean
13 they're liable on this.

14 THE COURT: And I -- actually, I take that back. I
15 agree, but I think that there was enough implicit in the
16 allegations that I still felt that there was going to be
17 an adequate cause of action, and to clarify what I said
18 earlier, I would agree that they've got to explain that
19 better, but it's -- I probably -- since I'm striking the
20 complaint, I'm going to direct them to do that. I felt
21 that I could read enough in here to understand what they
22 were getting at, that I wouldn't have struck the
23 complaint solely on that basis.

24 Does that answer your question?

1 MR. FLYNN: I think so.

2 THE COURT: Okay. There's a lot to unpack here, but
3 I think that there are enough allegations and enough of
4 an understanding of where they're going that I think
5 they're going to be able to state a cause of action, at
6 least insofar as 2-615 is concerned.

7 We'll see what they say in their new complaint.
8 Do you want to give them 28 days --

9 MR. FLYNN: Sure.

10 THE COURT: -- to file?

11 What would you like to do? Twenty-eight after
12 or --

13 MR. GLYNN: Yes.

14 THE COURT: Okay. So let's put the case out
15 60 days. That will each give you plenty of time, and
16 that will take us to November 13th. That is a Tuesday.
17 Does that day work for you?

18 MR. FLYNN: Yes.

19 THE COURT: Okay. And for purposes of the record,
20 we were advised that -- about 10:15 that plaintiff's
21 counsel was about an hour drive away having been
22 detained in Waukegan. As a result, I just decided to --
23 rather than continuing the hearing and going through the
24 process I just did, I would provide my ruling and save

1 everybody some effort.

2 Questions?

3 MR. FLYNN: 9:00 o'clock status on November 13th?

4 THE COURT: Yes.

5 Mr. Dulberg, any questions? I don't really
6 want you to get substantively involved because you're
7 represented, but do you want any clarification of
8 anything I just said?

9 MR. DULBERG: Clarification, no. But I will say
10 that I don't think that we should have to try the case
11 in the pleading.

12 THE COURT: And you don't have to. And that's not
13 what I've said. That's not what he said. But there are
14 certain allegations that I didn't feel were adequate and
15 that's the basis of my dismissal.

16 MR. DULBERG: (Inaudible).

17 THE COURT: I don't want you to argue too much
18 because, again, you've got an attorney and I don't want
19 to involve you. I just -- Do you have any questions?

20 MR. DULBERG: No.

21 THE COURT: Okay. All right. Counsel, if you could
22 draft the order.

23 MR. FLYNN: I will, Judge, based on my -- the
24 note-taking that I did, and can I reference the

1 transcript. This is recorded, I believe, --

2 THE COURT: Yeah.

3 MR. FLYNN: -- correct?

4 THE COURT: Yeah, that's fine.

5 MR. FLYNN: Okay.

6 THE COURT: Yeah, I think they're going to need the
7 transcript probably to get through all that.

8 MR. FLYNN: Fair enough.

9 THE COURT: Okay? Thank you.

10 MR. FLYNN: Thank you, Judge.

11 (Which was and is all of the evidence
12 offered at the hearing of said cause
13 this date.)

14

15

16

17

18

19

20

21

22

23

24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF MCHENRY)

4 I, Stacey A. Collins, an Official Court
5 Reporter for the Circuit Court of McHenry County,
6 State of Illinois, do hereby certify that I reported in
7 shorthand the proceedings had in the above entitled
8 cause and that the foregoing is a true and correct
9 transcript of all the proceedings heard.

10
11
12 
13

14 Stacey A. Collins, CSR
15 Official Court Reporter
16 License No. 084-002377
17
18
19
20
21
22
23
24

From: Office Office office@goochfirm.com
Subject: RE: Transcript-Report of Proceedings
Date: September 20, 2018 at 1:17 PM
To: Paul Dulberg pdulberg@comcast.net
Cc: Thomas W. Gooch III gooch@goochfirm.com, Sabina Walczyk swalczyk@goochfirm.com, Nikki nikki@goochfirm.com



We have until October 10, 2018 to file the amended complaint. I am not sure what he meant by early but we will forward you a copy as soon as it is completed. I cannot guarantee you a date since we have numerous other things due and a trial starting next week.

Melissa J. Podgorski
Paralegal
The Gooch Firm
209 South Main Street
Wauconda, Illinois 60084
(847) 526-0110 (phone)
(847) 526-0603 (fax)

This communication is covered by the Electronic Communications Privacy Act, found at 18 U.S.C. 2510 et. seq. and is intended to remain confidential and is subject to applicable attorney/client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and all attachments. Do not deliver, distribute or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments.

From: Paul Dulberg <pdulberg@comcast.net>
Sent: Thursday, September 20, 2018 12:09 PM
To: Office Office <office@goochfirm.com>
Cc: Thomas W. Gooch III <gooch@goochfirm.com>; Sabina Walczyk <swalczyk@goochfirm.com>; Nikki <nikki@goochfirm.com>
Subject: Re: Transcript-Report of Proceedings

Thank You,
Tom had mentioned that he intends to refile the complaint early.
When should I expect to get a copy to review before we file?
Thanks again,
Paul

On 9/20/2018 10:40 AM, Office Office wrote:

Dear Mr. Dulberg:

Attached please find the transcript from court on September 12, 2018.

Melissa J. Podgorski
Paralegal
The Gooch Firm
209 South Main Street
Wauconda, Illinois 60084
(847) 526-0110 (phone)
(847) 526-0603 (fax)

This communication is covered by the Electronic Communications Privacy Act, found at 18 U.S.C. 2510 et. seq. and is intended to remain confidential and is subject to applicable attorney/client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and all attachments. Do not deliver, distribute or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments.

From: Nikki nikki@goochfirm.com 
Subject: Dulberg v. Popvich
Date: September 20, 2018 at 2:01 PM
To: pdulberg@comcast.net
Cc: Office Office office@goochfirm.com, Sabina Walczyk swalczyk@goochfirm.com



Mr. Dulberg,

Please see attached Report of Proceedings from the September 12, 2018 Hearing. I was out sick yesterday and was sent the transcript from the court report from McHenry County Circuit Court via email yesterday, September 19, 2018.

Thank you,

Nikki Justiniani
Office Assistant

The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
P: 847-526-0110
F: 847-526-0603
E: nikki@goochfirm.com

This communication is covered by the Electronic Communications Privacy Act, found at 18 U.S.C. 2510 et. seq. and is intended to remain confidential and is subject to applicable attorney/client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and all attachments. Do not deliver, distribute or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments.



9.12.18 Report
of Proc...gs.pdf

1 THE COURT: Counsel, which one you on?

2 MR. FLYNN: Dulberg.

3 THE COURT: Is opposing counsel here?

4 MR. FLYNN: She's not. I received an email. She
5 said she was going to be late. She's in Waukegan.

6 THE COURT: I'm sorry, how late?

7 MR. FLYNN: I'm not sure how late, Judge. She said
8 she's in Waukegan. Mr. Gooch was apparently ill today,
9 so she's going to be covering today's hearing.

10 THE COURT: And she's in Waukegan now?

11 MR. FLYNN: She's in Waukegan. Originally thought
12 she might be able to be here by 10:30, but she said the
13 judge stepped up 15 minutes late on her other matter,
14 so --

15 THE COURT: I mean, that's about an hour drive.

16 MR. FLYNN: The email I received was -- I was in the
17 car as well, so 10 or 15 minutes ago.

18 THE COURT: Okay. See if you can email her and find
19 out if we can get an ETA.

20 MR. FLYNN: Okay.

21 THE COURT: And we'll work from there.

22 MR. FLYNN: Okay. Thanks, Judge.

23 THE COURT: Thank you.

24

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

3 THE COURT: Okay. Counsel, if you can approach. So
4 Dulberg versus Mast.

5 MR. FLYNN: Good morning, Your Honor. George Flynn
6 on behalf of the defendants. I did -- I received
7 communication from counsel. She was walking to her car
8 at the Waukegan courthouse at 11 -- I'm sorry, at 10:10,
9 and she indicated that her GPS estimated she would
10 arrive here at one hour and six minutes.

11 THE COURT: 11:30-ish. Fair?

12 MR. FLYNN: Fair.

13 THE COURT: All right. Well, rather than delay
14 this, I'm going to rule from the bench based upon my
15 review of the amended complaint and consideration of the
16 briefs in support of and opposition to.

17 I'm going to strike the complaint. The basis
18 of my decision is I think the complaint states a cause
19 of action, but there are so many things in there that
20 are unsupported by factual allegations that I think it
21 best just to deal with them now rather than at a later
22 date. I reviewed -- and I'm looking for the specific
23 allegations of negligence within the amended complaint.
24 I felt that in paragraph 31, subparagraph (a) included

1 enough of a fact that I -- I'm going to tell you the
2 ones I think can stand. Then I'm going to strike the
3 rest of them and try to explain it. I think paragraph
4 (a) gave me enough of a fact that I would allow it to
5 stand. I felt that (b) was a conclusion; (c) was
6 redundant of (a); (d) I was going to allow to stand, it
7 alleges something; (e) I was going to allow to stand;
8 (f) is a conclusion, it's not a fact -- Where are we?
9 -- (g) I'm just going to strike, it's a conclusion;
10 (h), it's a conclusion, strike it; (i) it's a
11 conclusion, strike it; (j) I'm going to allow to stand;
12 (k) I'm -- I'm going to strike. It says there were
13 necessary facts, but doesn't tell me what those
14 necessary facts were. I think an allegation of coercion
15 can stand, but I'm not quite sure what it is we're
16 alleging.

17 MR. FLYNN: So just to clarify, Judge, you're ruling
18 that there can be an allegation of coercion, but it's
19 not supported by facts here --

20 THE COURT: Yeah.

21 MR. GLYNN: -- under the 615 standard?

22 THE COURT: Yeah.

23 MR. GLYNN: Okay.

24 THE COURT: (1) there might be some facts in there,

1 but I'm not sure what they are, so I'm going to strike
2 it. I mean, there might be a factual basis to support
3 what they're getting at, but I don't know what it is. I
4 don't think it's supported, so I think it's a
5 conclusion. I'll strike -- (m) is a conclusion, I'll
6 strike it; (n) is I think duplicative of (a) and (c);
7 and (o) is just a conclusion.

8 I will allow them to replead because I think
9 the ones I've -- and I hate to make you the note-taker,
10 but it saves you a return trip, and I was going to ask
11 questions, but these -- this is what I felt about the
12 allegations in the complaint. I think there is -- this
13 -- for going -- as far as going forward is concerned, if
14 there were more paragraphs that weren't conclusions, I
15 might have allowed the complaint to stand and just
16 strike -- strike them on their face rather than go
17 through the trouble of re-pleading. Unfortunately, most
18 of the paragraphs were conclusions that I felt had to be
19 stricken, and I'm dealing with that now. As a result,
20 I'm striking the complaint.

21 Plaintiff gets to re-plead and the -- and if
22 they just -- and if they limit it to the ones I've
23 allowed to stand that I've advised you about that I
24 think are adequate, then I'm going to -- I would deny

1 future 615 based on the same concepts.

2 Does that make sense?

3 MR. FLYNN: I -- without having gone through each of
4 the subparagraphs, yes, I understand the Court's ruling.
5 I think that the general theme of our motion was that
6 the plaintiff hasn't set forth what a breach of any duty
7 would have been as far as the McGuires and what legal
8 standard they would have been held to and how they
9 breached that.

10 THE COURT: I think --

11 MR. GLYNN: Just because they're a land owners and
12 an accident happened on their property doesn't mean
13 they're liable on this.

14 THE COURT: And I -- actually, I take that back. I
15 agree, but I think that there was enough implicit in the
16 allegations that I still felt that there was going to be
17 an adequate cause of action, and to clarify what I said
18 earlier, I would agree that they've got to explain that
19 better, but it's -- I probably -- since I'm striking the
20 complaint, I'm going to direct them to do that. I felt
21 that I could read enough in here to understand what they
22 were getting at, that I wouldn't have struck the
23 complaint solely on that basis.

24 Does that answer your question?

1 MR. FLYNN: I think so.

2 THE COURT: Okay. There's a lot to unpack here, but
3 I think that there are enough allegations and enough of
4 an understanding of where they're going that I think
5 they're going to be able to state a cause of action, at
6 least insofar as 2-615 is concerned.

7 We'll see what they say in their new complaint.
8 Do you want to give them 28 days --

9 MR. FLYNN: Sure.

10 THE COURT: -- to file?

11 What would you like to do? Twenty-eight after
12 or --

13 MR. GLYNN: Yes.

14 THE COURT: Okay. So let's put the case out
15 60 days. That will each give you plenty of time, and
16 that will take us to November 13th. That is a Tuesday.
17 Does that day work for you?

18 MR. FLYNN: Yes.

19 THE COURT: Okay. And for purposes of the record,
20 we were advised that -- about 10:15 that plaintiff's
21 counsel was about an hour drive away having been
22 detained in Waukegan. As a result, I just decided to --
23 rather than continuing the hearing and going through the
24 process I just did, I would provide my ruling and save

1 everybody some effort.

2 Questions?

3 MR. FLYNN: 9:00 o'clock status on November 13th?

4 THE COURT: Yes.

5 Mr. Dulberg, any questions? I don't really
6 want you to get substantively involved because you're
7 represented, but do you want any clarification of
8 anything I just said?

9 MR. DULBERG: Clarification, no. But I will say
10 that I don't think that we should have to try the case
11 in the pleading.

12 THE COURT: And you don't have to. And that's not
13 what I've said. That's not what he said. But there are
14 certain allegations that I didn't feel were adequate and
15 that's the basis of my dismissal.

16 MR. DULBERG: (Inaudible).

17 THE COURT: I don't want you to argue too much
18 because, again, you've got an attorney and I don't want
19 to involve you. I just -- Do you have any questions?

20 MR. DULBERG: No.

21 THE COURT: Okay. All right. Counsel, if you could
22 draft the order.

23 MR. FLYNN: I will, Judge, based on my -- the
24 note-taking that I did, and can I reference the

1 transcript. This is recorded, I believe, --

2 THE COURT: Yeah.

3 MR. FLYNN: -- correct?

4 THE COURT: Yeah, that's fine.

5 MR. FLYNN: Okay.

6 THE COURT: Yeah, I think they're going to need the
7 transcript probably to get through all that.

8 MR. FLYNN: Fair enough.

9 THE COURT: Okay? Thank you.

10 MR. FLYNN: Thank you, Judge.

11 (Which was and is all of the evidence
12 offered at the hearing of said cause
13 this date.)

14

15

16

17

18

19

20

21

22

23

24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF MCHENRY)

4 I, Stacey A. Collins, an Official Court
5 Reporter for the Circuit Court of McHenry County,
6 State of Illinois, do hereby certify that I reported in
7 shorthand the proceedings had in the above entitled
8 cause and that the foregoing is a true and correct
9 transcript of all the proceedings heard.

10
11
12 
13

14 Stacey A. Collins, CSR
15 Official Court Reporter
16 License No. 084-002377
17
18
19
20
21
22
23
24