

From: Paul Dulberg Paul_Dulberg@comcast.net
Subject: Re: Dulberg v Popovich et al; Deposition dates?
Date: February 1, 2020 at 2:16 PM
To: Julia C. Williams jwilliams@williamsllawchicago.com
Cc: Ed Clinton ed@clintonlaw.net, Mary Winch marywinch@clintonlaw.net

PD

Hi Julia,
I have a few concerns on the demand.

If we use the ADR award as you outlined:

I had to pay new attorneys to take the case and they wouldn't do it for the regular 1/3 contingency fee.

1. I had to pay the Baudin's 40% plus I paid all costs up front and out of pocket.

On this I have to go back and find exactly how much I paid for things like Dr Lanford's expert opinion before giving you the total costs I paid. I will need a few days to dig all that up and we may get a more accurate number from Baudin.

I believe that we are all responsible for the likely and probable consequences of our actions.
On that note:

But not for Popovich/Masts actions:

1. I would not have filed for Bankruptcy and had to pay the costs associated with it nor suffered the credit consequences.

2. The Bankruptcy Judge and trustee wouldn't have had the authority to order the suit be settled by ADR

3. This case most likely would have gone before a jury.

4. I know from the only comprehensive study done in the nation by a university in California that jury's typically give judgements 10x that of an ADR award. This study compared nearly identical cases across a large spectrum of suits that went the two different routes over many years. Now assuming the university findings are correct, $660,000 \times 10 = 6,600,000$

5. Gagnon's and McGuire's assets could not have paid for a Jury award anywhere close to 6,600,000 but collectively their insurance and assets together at the time would be worth somewhere between 900,000 and 1,200,000. We can get their exact worth at that time from an asset check that I am willing to pay for.

6. I would have received between 900,000 and 1,200,000 which is a considerable step up from the ADR award of 660,000 even if the jury award was 8x less than that study done in California found to be the norm.

7. I understand that going this route may take longer and require risking a jury to decide the issues and amount, if any, the McGuire's and Gagnon's would have been liable for.

Is this risk worth adding a possible 240,000 to 540,000?

This we need to talk about before we limit ourselves by sending the demand letter.

Please feel free to weigh in and let me know what I am missing or got dead wrong

Thanks,
Paul

On Jan 31, 2020, at 1:30 PM, Julia C. Williams <jwilliams@williamsllawchicago.com> wrote:

Dear Paul,

Thank you for the clarification.

We have a duty to produce everything that is in your possession and control, thus if there are email attachments that were not produced, we should produce them if you have them.

Also, it is likely an appropriate time to make a demand in this case.

Given that the total award Gross Award of \$660,000 with 15% comparative fault in the Gagnon matter for an award of \$561,000, I believe that it would be hard to prove that if Gagnon and the McGuire's were tried or arbitrated together, you would somehow get a larger award. I think there is a good argument to say that Gagnon and the McGuire's would have been jointly liable for the award of \$561,000. You recovered \$300,000 from Gagnon, the remainder would have been paid by the McGuire's through their insurance. Thus, your damages for dismissing the McGuire's is about \$261,000 less the \$5,000 you obtain from them for total damages of \$256,000.

Do you want me to make a demand of \$256,000 from Defendants in this case?

Best Regards,

Julia C. Williams
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On Jan 31, 2020, at 7:44 AM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Morning Julia,
Last night I was able to read the Emails around Saul Ferris and Brad Balke in context.
It appears the email I sent yesterday which contained (Hans Mast2-56.pdf) showed me piking up the documents (defendants depositions and mailed correspondence) I had been given to read from Mast earlier.
It was not the case file.
The case was was obtained at later date.
Thought it was important to clarify this.
Thanks,
Paul

On Jan 30, 2020, at 10:26 AM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Morning Julia,

This Morning I looked up when Brad Balke filed his appearance and I found the attached document I named Balke Appearance.pdf
It was March 19, 2015.
This is what was filed in the public record.
This should have been in the Gooch files.
Looking back, I never received the digital Gooch files that were turned over to your office. Confirmed in email dated April 18,2019.
The Gooch files should have included the entire case file that Mast turned over to me and the addition of the Balke and Baudin files as well as all communication records, bankruptcy documents, disability records, etc...
Gooch took 6+ months to get all those records scanned in and I never was able to confirm he actually scanned in all of them.

On another note,
I found this: 05-08-15_Hans Mast2-56.pdf which is also attached.
You may have this as, Hans Mast2-56.pdf
This was provided to you on or around 11/17/2018 when I sent you all the communications I had.
I did not find this in any of the bates numbered documents.
It shows that the file was sent back to Saul Ferris and that I picked it up and delivered it to the firm named Danahu and Walsh at the direction of Balke.

Paul

<Balke Appearance.pdf>
<05-08-15_Hans Mast2-56.pdf>

On Jan 29, 2020, at 8:21 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Julia,

I have answered each of the concerns in black bold text below in the body of your email.

I have also attached the attachments to this email.

**The program that converted the emails to pdf's did not include the attachments.
My goal at the time was to capture the discussion within the emails, not necessarily the attachments.**

This has me second guessing, Should I go through all the emails I have and save out the attachments just to be sure we got everything?

On second thought, It may be best to get the attachments from the source, the Baudin's and any other author of an email that shows an attachment as my emails are not necessarily 100% complete.

Please advise after reading my answers to the concerns raised.

Thanks.

Paul

On Jan 29, 2020, at 3:49 PM, Julia C. Williams <jwilliams@williamslawchicago.com> wrote:

Dear Paul,

I have addressed your concerns below in black.

Further:

1. Opposing Counsel is requesting a more comprehensive affidavit of completeness for document discovery. I have attached a copy for your signature.

Please sign and return via email the attached verification.

Signed and attached to this email as Signed-Dulberg 214 Verification 2020 Jan 28.pdf

<Signed-Dulberg 214 Verification 2020 Jan 28.pdf>

2. I see that there are some emails with Brad Balke. See Bates Stamp Dulberg 1322-1323, 1334, 1319, 1321. It appears that Brad Balke obtained your legal file from Hans Mast, reviewed it, but did not represent you, and turned the file over to you. ***Is that correct?***

I pulled this from memory but believe I have documented most or all of this within the emails but I would need a few days to dig through and cite the documentation.

You are partly correct and partly incorrect.

Balke did get the legal file and did represent Dulberg for a very short while.

Balke was outright fired by Dulberg.

Balke did make the file available to Dulberg much quicker than Mast. Balke left the file for Dulberg to pick up at an attorney office who was named Donahue in McHenry.

3. You produced to us a number of emails that were sent promo The Baudin Law Group. A few of those emails had attachments that were not directly attached to the emails. As part of our document production, we produced the documents that you gave us to opposing counsel. It appears that some of the attachments are missing. We need to confirm that either (1) we have previously produced the attached, or (2) we have not produced it but we have it, or (3) we have not produced it and do not have it. I will address each document in turn below here, but first I will be sending all of the documents we produced so you have it all to review.

The program that converted the emails to pdf's did not include the attachments.

This has me second guessing, Should I go through all the emails I have and save out the attachments just to be sure we got everything?

Each document has a "bates stamp" number on the bottom right corner. I am going to refer to each document by its bates stamp.

Note that there are three sets of documents:

First Set "Dulberg Documents Disclosure FINAL 2019 May 29" contains Bates Stamp 1-2598

Second Set "Dulberg BK Files Bates 2599" contains Bates Stamp 2599-2619.

Third Set "Dulberg Bates 2620" contains Bates Stamp 2620-2638.

If we have more documents, we should produce them. If not, we will try to get them from their source. Most of these are from the Baudin Office. We can get them from Baudin if we need to.

A. Bates Dulberg 002625.

This document is an email from Baudin's office to you with an attachment that is described in the email as letter from Dr. Kujawa that should be dated around 11/22/2016 given the dates of the email and the fax correspondence.

I could not locate the document in the discovery that has been produced.

Please review Document 2625. Do you have the attachment?

Yes, It is attached to this email as incomingFax.pdf

<incomingFax.pdf>

B. Bates Dulberg 2631. This is an email from Baudin to you with a release for signature attached. I reviewed the documents and the document was produced as Bates Stamp Dulberg 1221-1223 appears to be the release that was attached to this email. ***Please confirm.***

Confirmed, Bates Stamp Dulberg 1221-1223 is Dulburg Release edit.pdf

I have attached Dulburg Release edit.pdf to this email

<Dulburg Release edit.pdf>

C. Bates Dulberg 2632.

This document is an email from Baudin's office to you with two attachments. They appear to be the expert report from the

IME (Craig Phillips?). I am not sure if Craig Phillips was the IME, but that may have been the person. I could not locate the document in the discovery that has been produced.
Please review Document 2632. Do you have the attachment?

No, This is strange, I cannot seem to find this attachment nor the original email. However, this was already disclosed in "Dulberg Documents Disclosure FINAL 2019 May 29" bates stamp 000343 - 000366 and 001617 - 001632
If you think we need to, we can confirm this with Baudin's office.
Please advise

Best Regards,

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On Jan 23, 2020, at 12:42 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Julia,

I am available both dates however, I have 4 major concerns before locking in a date:

1. Why depose me a week before Mast and give Mast the opportunity to read my deposition and formulate a strategy before he is questioned?
It would seem to be more fair to both parties to do both depositions on the same day to get at the truth.

This is simply a matter of logistics. At this point, we do not have any final depositions dates yet. There is a possibility that we can take yours the first day and then his the next.

The depositions can last up to three hours and I suspect they will last at least three hours in this case. Doing them both on the same day is extremely difficult given travel etc. Generally, for substantive long depositions, I take them on different days.

2. I would like to meet with you and Ed at least one week prior to Mast's deposition and discuss the series of questions that I sent you last July designed to trap Mast into telling the truth or perjuring himself.

Understood. We can go over those questions and you can provide us with any further questions that you have.

3. I would prefer to find out what was redacted in the 100+ pages of blacked out documents the defense turned over during the document disclosure so we can improve our strategy and hone our questions.

I have spoken with George Flynn, counsel for Hans, and I am tentatively planning to go to Hans' office to review his file, with George, immediately after court on Monday, February 3.

4. Do you or does the defense plan to call anyone else to be deposed?

At this time, they have not determined who else will be deposed. They have not issued any subpoenas for depositions to date.

They may depose Bill McGuire, Carolyn McGuire, Michael McArtor, David Gagnon again. But given that they all previously gave depositions in the underlying case, they may not.

Further, they may choose to depose the doctors, but maybe not, given the depositions take in the underlying case. The doctors could include Dr. Marcus Talerico, Dr. Scott Sagerman, Dr. Apiwat Ford, Dr. Kujawa.

Thanks,
Paul

On Jan 22, 2020, at 4:26 PM, Julia C. Williams <jwilliams@williamslawchicago.com> wrote:

Dear Paul,

We continue to work on discovery with opposing counsel.

As we are moving through the written discovery, we are trying to get an idea of availability for depositions.

Are you available to have your deposition taken on Feb. 12? Can you get downtown to opposing counsel's office at 150 S Wacker?

Also, we are looking at taking Hans Mast deposition on either Feb. 19 or Feb. 20. The location has yet to be determined. I would prefer to take it at my office, but we may take it in McHenry county, but we are looking for office space to do that.

If you wish to attend Mr. Mast deposition, are you available on Feb. 19 or 20?

Best Regards,

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<Dulberg 214 Verification 2020 Jan 28.pdf>

