



ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION  
of the  
SUPREME COURT OF ILLINOIS

One Prudential Plaza  
130 East Randolph Drive, Suite 1500  
Chicago, Illinois 60601-6219  
(312) 565-2600 (800) 826-8625  
Fax (312) 565-2320

3161 West White Oaks Drive, Suite 301  
Springfield, IL 62704  
(217) 546-3523 (800) 252-8048  
Fax (217) 546-3785

Paul Dulberg  
Via Email: [paul\\_dulberg@comcast.net](mailto:paul_dulberg@comcast.net)

Chicago  
June 17, 2024

Re: William Randal Baudin, II  
in relation to  
Paul Dulberg  
No. 2023IN03897

Dear Mr. Dulberg:

Attached is a copy of William Baudin, II's response to your complaint, submitted by the attorney's counsel, Allison Wood.

If you believe the response is inaccurate or if you wish to comment or provide additional information, please write to me within fourteen days. You may submit comments or additional information to me by email through ARDC paralegal Theresa Bulatovic at [tbulatovic@iadc.org](mailto:tbulatovic@iadc.org). If you send more information by regular mail, please do not staple or bind your correspondence and do not use exhibit tabs.

We will evaluate the matter and advise you of our decision. Again, thank you for your cooperation.

Very truly yours,

*Myrrha B. Guzman*

Myrrha B. Guzman  
Senior Counsel  
ARDC Intake Division

MBG:kof  
Attachment



June 7, 2024

***VIA EMAIL***

Myrrha B. Guzman  
Senior Counsel  
ARDC Intake Division  
Illinois Attorney Registration and  
Disciplinary Commission  
One Prudential Plaza  
130 East Randolph Drive, Suite 1500  
Chicago, Illinois 60601-6219

**Re: *In Re William Randal Baudin, II in relation to Paul Dulberg  
Commission No. 2023IN03897***

Dear Ms. Guzman,

First, let me thank you for the professional courtesy of additional time to provide you with the information you requested in relation to the above-referenced matter.

The purpose of this letter is to provide a response to your letter wherein you seek information that relates to the matters raised in the complaint that was submitted to your office by Paul Dulberg. Please note that Mr. Dulberg is a former client of Mr. Baudin.

This letter will provide you with background information about Mr. Baudin; a brief description of the nature of the matters that involve Mr. Dulberg; and a discussion about the claims raised by Mr. Dulberg and Mr. Baudin's responses to his claims. This letter will conclude with a discussion as to why we believe this investigation should be closed.

**I.**

**Brief Background on Mr. Baudin**

Mr. Baudin obtained his law degree from The John Marshall Law School (now the University of Illinois Chicago School of Law) in 1997 and received his Illinois license to practice law that same year. After obtaining his law license, Mr. Baudin joined the *Law Offices of Baudin & Baudin* and he is still currently working at what is now known as the *Baudin Law Group, Ltd.*,

Keeping good lawyes out of trouble and  
providing ARDC defense when they need it  
205 North Michigan Avenue,  
Suite 810, Chicago, Illinois 60601

Allison L. Wood, Principal  
(312) 396-4060  
aw@legalethicsconsulting.com  
www.legalethicsconsulting.com



currently located at 820 E Terra Cotta Ave #138, Crystal Lake, Illinois 60014. The firm handles accidents and personal injury matters. Mr. Baudin was a former police officer with the Crystal Lake Park District Police Department. Since 2019, he has served as a police sergeant at the Oakwood Hills Police Department. Mr. Baudin is on the Board of Directors of Elite Veteran Outfitters, NFP., which serves the needs of disabled veterans.

## II.

### **A Discussion About Mr. Dulberg's Matters**

Paul Dulberg was a neighbor of Caroline McGuire and William McGuire (the "McGuire's"), and David Gagnon ("David"). David is Caroline McGuire's son and William McGuire's stepson. On June 28, 2011, Mr. Dulberg visited the McGuire's property when David was cutting down a tree. Mr. Dulberg offered to assist him and in return, he was offered wood to be used as firewood. While David was operating the chainsaw, it came in contact with Mr. Dulberg's right arm causing him to sustain serious life threatening injuries.

On December 1, 2011, Mr. Dulberg retained attorneys Hans Mast and Thomas J. Popovich to represent him in bringing a lawsuit against David and the McGuire's, in a matter that was styled as, *Paul Dulberg v. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, individually*, Case No. 12LA 178 (22<sup>nd</sup> Judicial Circuit, McHenry County) (herein "the lawsuit"). It is our understanding that Mr. Popovich later determined that the claims against the McGuire's would not succeed, particularly since David was not a minor. Mr. Popovich obtained a settlement with the McGuire's for \$5,000, which Mr. Dulberg agreed to and accepted. David would remain in the lawsuit. It is also our understanding that Mr. Popovich found Mr. Dulberg to be a difficult client and withdrew from the representation shortly thereafter.

As a result of his inability to work and his mounting medical bills, Mr. Dulberg filed for Chapter 7 bankruptcy on November 26, 2014, in a matter styled as, *In re Paul Dulberg*, Case No. 14 835 78 (herein "the bankruptcy case"). The Trustee handling the bankruptcy case was Joseph D. Olsen (herein "the Trustee").

On March 19, 2015, Mr. Dulberg retained attorney Brad Balke, who initially indicated that he would be willing to take the case to trial against David. It is our understanding that after reviewing the file and engaging in discussions with opposing counsel, Mr. Balke concluded that



an offered settlement of \$50,000 would be the best option for resolving the lawsuit. Mr. Dulberg declined the settlement offer and Mr. Balke withdrew from the case.

### III.

#### **A Discussion About Mr. Baudin's Representation of Mr. Dulberg**

On September 22, 2015, Mr. Dulberg hired Mr. Baudin's firm.<sup>1</sup> Pursuant to the attorney agreement, Mr. Dulberg paid a non-refundable fee of \$3,331.33. The Baudin firm would receive one-third of any recovery as a result of a settlement. If the matter went to trial, the Baudin firm would receive 40% of any amount recovered.<sup>2</sup>

The parties agreed that the best way to bring the personal injury case to resolution was for the case to go to binding mediation. Mr. Baudin advised the Trustee that the parties had agreed to binding mediation and the Trustee agreed with this approach as well. On October 4, 2016, the Trustee filed a Motion to Employ the Baudin firm as Special Counsel to prosecute the lawsuit; and a Motion for Authority to Enter into a Binding Mediation Agreement.<sup>3</sup> Both motions were granted by the court.

On December 8, 2016, the case was presented to a mediator. On December 18, 2016, the mediator awarded Mr. Dulberg a gross award of \$660,000. The mediator found Mr. Dulberg to be 15% at fault and reduced the award to \$561,000.<sup>4</sup> Because the Binding Agreement set forth the parties agreement that Mr. Dulberg would not receive less than \$50,000 and no more than \$300,000, the \$561,000 award was reduced to \$300,000. The funds went into Mr. Dulberg's bankruptcy estate. The Baudin firm received \$117,084.63 from the bankruptcy estate for their attorney's fees. The remaining funds, except for a statutory exemption of \$15,000, were applied to the debts owed by Mr. Dulberg as set forth in his bankruptcy case.<sup>5</sup>

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<sup>1</sup> Mr. Baudin and Kelly Baudin worked on Mr. Dulberg's case but since the instant complaint is against Mr. Baudin only, he will be referred to throughout even if certain services may have been provided by Kelly Baudin or any other firm members.

<sup>2</sup> A copy of the Fee Agreement is attached.

<sup>3</sup> Both Motions, the Binding Agreement, and the Court Order are attached.

<sup>4</sup> A copy of the mediator's findings is attached.

<sup>5</sup> 735 ILCS 5/12-1001(h)(4) provides that the debtor's right to receive funds on account of a personal injury is limited to \$15,000.



#### IV.

#### **Mr. Dulberg's Claims Against Mr. Baudin and Mr. Baudin's Response**

On October 21, 2023, Mr. Dulberg filed a complaint against Mr. Baudin with your office, advancing multiple complaints about the representation he received from Mr. Baudin. From what we can discern from his 50 page complaint with reference to various documents that were not attached, his claims can be categorized as: (a) his objections to Mr. Baudin's engagement with the Trustee of his bankruptcy case; and (b) his dissatisfaction with the outcome of his personal injury case. We will address these claims below.

#### **(a) Mr. Dulberg's Bankruptcy Filing Put the Trustee In Charge of His Personal Injury Case.**

Mr. Dulberg filed for bankruptcy relief on October 4, 2016. Under the United States Bankruptcy Code, when a debtor files for bankruptcy an estate comprised of "all legal or equitable interests of the debtor," with few exceptions, is created. 11 U.S. Code § 541(a). A trustee may be appointed to oversee the estate in the bankruptcy case any time after it has commenced, either for cause, like incompetence, or "if such appointment is in the interests of creditors." 11 U.S. Code § 1104. The bankruptcy filing also triggers the placement of an automatic stay of certain collection actions against the individual. 11 U.S. Code § 362. This automatic stay prevents most creditors from collecting from the filer's bankruptcy estate during proceedings. Contrary to assertions made by Mr. Dulberg in his complaint, the automatic stay did not prevent his personal injury lawsuit from going forward.

Under 11 U.S.C. 541(a) (1), Mr. Dulberg's property, including his legal claims and causes of action, became part of the bankruptcy estate. The bankruptcy code is explicit that the trustee in a bankruptcy case "is the representative of the estate" and has the "capacity to sue and be sued." 11 U.S.C. 323(a) & (b). A bankruptcy trustee is required to "collect and reduce to money the property of the estate for which such trustee serves" and "examine proofs of claims and object to the allowance of any claim that is improper." 11 U.S.C. 704(a)(1) & (5). The claim by Mr. Dulberg that the Baudin firm inappropriately represented him knowing that he didn't have standing demonstrates a misunderstanding of the bankruptcy process. It is the Trustee who had standing to pursue the personal injury case. Mr. Baudin recognized that the Trustee became the person making



decisions about what would be in the best interest of the estate. Mr. Baudin discussed the lawsuit with the Trustee and the Trustee decided to make Mr. Baudin Special Counsel so that Mr. Baudin could move forward with the personal injury case. The Trustee filed a Motion to Employ Mr. Baudin for this reason and this Motion was granted by the Court. Certainly, if the Bankruptcy Court thought the employment of Mr. Baudin was improper, it would not have granted the motion. Further, the Trustee has the discretion to enter into agreements or settlements to resolve the case and to use the proceeds to settle Mr. Dulberg's debts. See 11 U.S.C. 323. In sum, there was nothing improper about the Trustee employing Mr. Baudin to pursue Mr. Dulberg's personal injury case.

**(b) Mr. Dulberg's Dissatisfaction with the Outcome of the Personal Injury Case Does Not Mean that Mr. Baudin Did Anything Wrong.**

Mr. Dulberg claims that he didn't agree to binding mediation, that he didn't understand the high/low provisions that would reduce his award to \$300,000, and that it is Mr. Baudin's fault that he did not recover a greater award from the mediator. None of these claims have merit.

Mr. Dulberg agreed to the binding mediation and the high/low provisions were explained to him. Mr. Baudin encouraged Mr. Dulberg and his mother to enter into a binding mediation. He explained the benefits this approach had to his case and the nature of the proposed agreement. The parties would agree to place a \$50,000 floor and a \$300,000 ceiling on Mr. Dulberg's potential award. Notably, Mr. Dulberg had been offered \$50,000 so making this figure the floor ensured that he would receive at least that much if the case went to mediation, even if the mediator awarded a sum less than \$50,000. The ceiling of \$300,000 represented the maximum amount the defendants would have to pay, even if the mediator awarded a larger sum. This is a compromise where each side knows the stakes beforehand. On July 20, 2016, Mr. Dulberg advised Mr. Baudin that he wanted to proceed with the mediation.

As discussed herein, it was the Trustee who had standing to pursue the personal injury case and it was the Trustee who agreed to seek the court's authority for the parties to enter into a Binding Mediation Agreement. Mr. Dulberg's agreement or consent for this approach was not required. While Mr. Dulberg argues that he could have received more without the cap, the inverse is also true, he could have received less without the floor of \$50,000. Submitting the case to a mediator was a risk for both parties. It was the zealous advocacy and hard work of Mr. Baudin





that ultimately resulted in an award of \$300,000. Mr. Dulberg's dissatisfaction with the outcome has no bearing on the quality of the representation he received.

## V.

### **Mr. Baudin Fulfilled His Ethical Obligations**

What happened to Mr. Dulberg was a tragedy. He suffered serious injuries such that he was no longer able to work. He incurred a mountain of medical bills. He wanted to go to trial to hold the McGuires and David accountable for his injuries, and he likely expected a substantial recovery. However, because he filed for bankruptcy, he no longer had control over his case. The Trustee took over the case and made decisions that did not require Mr. Dulberg's consent or agreement. The Trustee decided to employ the Baudin firm to pursue the case. The Trustee agreed that Binding Mediation was the most efficient way to bring a resolution to the case. The Court approved the Trustee's decisions. As a result of Mr. Baudin's zealous advocacy, he recovered an award of \$300,000 for Mr. Dulberg's personal injury claim, six times more than the offer of settlement that was obtained by his previous lawyer. As we have demonstrated, Mr. Baudin has done nothing wrong. He fulfilled his ethical obligations to Mr. Dulberg; and he worked with the Trustee to bring the personal injury case to a resolution.

Dissatisfied with the resolution of his case, Mr. Dulberg has filed disciplinary complaints and/or legal malpractice lawsuits against every attorney who handled his personal injury case, including Mr. Baudin.<sup>6</sup> In addition, he sued the Trustee of his bankruptcy matter as well as his law firm; the ADR Systems of America in relation to the mediation of his personal injury case; and Allstate Property and Casualty Insurance, the insurer for one of the defendants in his personal injury case. None of these actions will change the outcome of his personal injury case or his bankruptcy case.

Mr. Dulberg's repeated and baseless attacks against Mr. Baudin are unjust. He provided Mr. Dulberg with quality representation and achieved for him a favorable resolution of his personal injury case. This matter should be closed.

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<sup>6</sup> Mr. Dulberg filed a legal malpractice case against Mr. Baudin on December 8, 2022 in a matter styled as *Paul Dulberg and The Paul Dulberg Revocable Trust v. Baudin a/k/a Baudin & Baudin et.al.* Case No. 2022L 010905. Counsel for Mr. Baudin filed a Motion to Dismiss which was granted on August 29, 2023. A copy of the Motion and the dismissal order are attached.



### **Conclusion**

We appreciate the opportunity to provide this submission to you and we hope that we have addressed your concerns such that this investigation of Mr. Baudin can now be closed.

Warm Regards.

*Allison Wood*

Allison L. Wood

Enc:

Keeping good lawyes out of trouble and  
providing ARDC defense when they need it  
205 North Michigan Avenue,  
Suite 810, Chicago, Illinois 60601

**Allison L. Wood, Principal**  
(312) 396-4060  
aw@legalethicsconsulting.com  
[www.legalethicsconsulting.com](http://www.legalethicsconsulting.com)



### FEE AGREEMENT

I, Paul Dulberg, hereby agree to retain and employ BAUDIN & BAUDIN, an association of attorneys, to prosecute and/or settle all suits and claims for damages, which may include personal injuries and property damage, against responsible parties, including their insurance companies and my insurance companies, or any other responsible insurance companies, arising out of events which occurred on or about the 28<sup>th</sup> day of June, 2011, at or near 1016 W. Elder Avenue, McHenry, Illinois.

I agree to pay BAUDIN & BAUDIN as compensation for services (1) a non-refundable retainer fee of \$3,333.33; AND (2) a sum of money equal to one-third (1/3) of the gross amount realized from this claim by settlement prior to trial of this matter, OR, if this matter proceeds to trial, which is defined as any time after the final pre-trial conference with the Court has concluded, I agree to pay BAUDIN & BAUDIN as compensation for its services a sum of money equal to forty percent (40%) of the gross amount realized from such action. Should this matter conclude by way of settlement, negotiations, trial, arbitration or judgment in my favor, BAUDIN & BAUDIN agrees to reduce its percentage fee by an amount of \$3,333.33 as an offset for the non-refundable retainer fee; however, in no event will the \$3,333.33 be refunded to me once this agreement has been executed.

I realize, understand and agree that all expenses and costs related to my claim, such as medical expenses for my/our care and treatment and related costs such as costs for obtaining medical records and bills, as well as court costs, including filing fees, costs of depositions, costs of experts, etc. are my obligation and responsibility and shall be paid as those bills become due from time to time.

It is further agreed and understood that there will be no further charges for legal services over and above the \$3,333.33 non-refundable retainer fee by BAUDIN & BAUDIN (with the exception of the aforesaid expenses and costs referred to in paragraph 3) unless recovery is made in this claim, and that no settlement will be made without the consent of the claimant(s).

I hereby authorize and direct that BAUDIN & BAUDIN is authorized to endorse and deposit any proceeds received in regard to the aforesaid claim herein, and to disburse those funds for purposes of client payments, resolution of liens, reimbursement of costs advanced, and attorney's fees.

This cause was not solicited either directly or indirectly from me/us by anyone. This agreement is being executed with duplicate originals.

Signed this 22nd day of September, 2015, and copy received by claimant(s) or claimant(s)'s representative.

\_\_\_\_\_  
Claimant

Paul Dulberg  
\_\_\_\_\_  
Claimant

BAUDIN & BAUDIN  
2100 N. Huntington Drive, Suite C  
Algonquin, IL 60102  
847.658.5295 FAX: 847.658.5015

Revised 9/2015

EXHIBIT

1

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

IN RE: ) CHAPTER 7  
DULBERG, PAUL )  
Debtors. ) CASE NO. 14-83578  
)  
) JUDGE: THOMAS M. LYNCH

**AFFIDAVIT OF W. RANDAL BAUDIN, II PURSUANT TO RULES 2014(a),  
2016(b) AND 5002 TO EMPLOY BAUDIN LAW GROUP, LTD.  
AS SPECIAL COUNSEL FOR THE TRUSTEE**

STATE OF ILLINOIS )  
 ) ss  
COUNTY OF McHENRY )

Personally appeared before the undersigned officer, duly authorized to administer oaths, W. Randal Baudin, II, and after being duly sworn, states as follows:

1. I am a member of the law firm of Baudin Law Group, Ltd. located at 304 South McHenry Avenue, Crystal Lake, IL 60014 and in that capacity I have personal knowledge of, and authority to speak on behalf of the firm of Baudin Law Group, Ltd., with respect to the matters set forth herein. This Affidavit is offered in support of the Application of the Trustee for Authorization to Employ Baudin Law Group, Ltd. as special counsel for the Trustee. The matters set forth herein are true and correct to the best of my knowledge, information and belief.

2. Baudin Law Group, Ltd. has no partners, associates or other professional employees who are related to any judge of the United States Bankruptcy Court for the Northern District of Illinois.

3. Neither the firm of Baudin Law Group, Ltd. nor I have agreed to share any compensation or reimbursement awarded in this case with any persons other than partners and associates of the firm of Baudin Law Group, Ltd..

4. Baudin Law Group, Ltd. shall be compensated for their services on a contingent fee basis pursuant to terms of the attached agreement.

5. To the best of my knowledge, information and belief, Baudin Law Group, Ltd. does not hold or represent a party that holds an interest adverse to the Trustee nor does it have any connection with the Debtor's creditors, or any party in interest or their respective attorneys and accountants with respect to the matters for which Baudin Law Group, Ltd. is to be employed, is disinterested as that term is used in 11 U.S.C. § 101(14), and has no connections with the United States Trustee or any person employed in the Trustee's office, except that said firm has represented the Debtors prepetition with respect to the subject personal injury claim.



6. I understand and agree that:

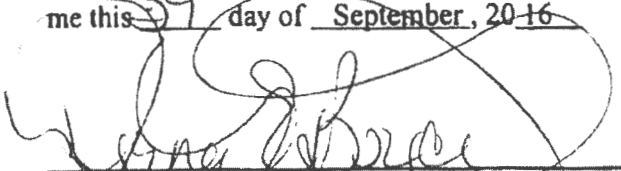
- A. My Firm and I are obligated to keep the Trustee fully informed as to all aspects of this matter, as the Bankruptcy Estate is my client until such time as the claim in question is abandoned by the Trustee, as shown by a written notice of such abandonment.
- B. All proceeds of any settlement or recovery must be paid to the Trustee in the first instance, and none may be disbursed without approval in writing of the Trustee or an Order of the Bankruptcy Court.
- C. If this application for appointment is approved, any fees or reimbursement of costs from the proceeds of any recoveries will be paid by the Trustee only after approval of the Bankruptcy Court.
- D. No settlements may be entered into or become binding without the approval of the Bankruptcy Court and the Trustee, after notice to the Trustee, creditors and parties in interest.
- E. All issues as to attorneys fees, Debtor's exemptions, the distribution of any recovery between the Debtor and the Trustee or creditors, or any other issue which may come to be in dispute between the Debtor and the Trustee or creditors are subject to the jurisdiction of the Bankruptcy Court. Neither I nor any other attorney or associate of the Firm will undertake to advise or represent the Debtor as to any such matters or issues. Instead, the Firm will undertake to obtain the best possible result on the claim, and will leave to others any advice or representation as to such issues.
- F. The Firm is not authorized to grant any "physician's lien" upon, offer to protect payment of any claim for medical or other services out of, or otherwise pledge or encumber in any way any part of any recovery without separate Order of this Court, which may or may not be granted.
- G. Authorization to hire experts. As part of this representation, I will need to hire experts to advise and assist in the conduct of this litigation, specifically medical experts, liability or forensic experts, vocational or economic experts, or other experts on issues of liability or damages. In this regard, I agree that:
  - i. My Firm or I will pay or advance any fees or cost retainers required by such experts with the understanding that such payment or advance will be included as a cost in any subsequent fee application my Firm or I make to this Court; and
  - ii. Before entering into any such retention or paying any initial fees or costs, I will consult with the Trustee, provide the Trustee any

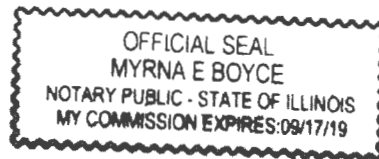
information requested including estimates of total costs and fees, provide a copy of any fee agreements, and obtain the Trustee's advance written approval to the proposed terms of retention.

- iii. I will see that copies of any bills submitted by such experts are submitted to the Trustee when I receive them and a reasonable time before I or my Firm pays them, and are approved in advance, by the Trustee, in writing.
- iv. Such fees or expenses of such experts are subject to reimbursement only by the Bankruptcy Estate, upon approval of this Court, to be paid as an administrative expense in this Bankruptcy case pursuant to 11 U.S.C. § 726, out of proceeds of any settlement or recovery in the litigation my Firm and I will be handling.

  
\_\_\_\_\_  
W. Randal Baudin, II, Affiant

Subscribed and sworn to before  
me this 27 day of September, 2016

  
\_\_\_\_\_  
Notary Public



UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

IN RE: ) CHAPTER 7  
 )  
DULBERG, PAUL ) CASE NO. 14-83578  
 )  
Debtors. ) JUDGE: THOMAS M. LYNCH

**AFFIDAVIT OF W. RANDAL BAUDIN, II PURSUANT TO RULES 2014(a),  
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STATE OF ILLINOIS )  
 ) ss  
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Personally appeared before the undersigned officer, duly authorized to administer oaths, W. Randal Baudin, II, and after being duly sworn, states as follows:

1. I am a member of the law firm of Baudin Law Group, Ltd. located at 304 South McHenry Avenue, Crystal Lake, IL 60014 and in that capacity I have personal knowledge of, and authority to speak on behalf of the firm of Baudin Law Group, Ltd., with respect to the matters set forth herein. This Affidavit is offered in support of the Application of the Trustee for Authorization to Employ Baudin Law Group, Ltd. as special counsel for the Trustee. The matters set forth herein are true and correct to the best of my knowledge, information and belief.

2. Baudin Law Group, Ltd. has no partners, associates or other professional employees who are related to any judge of the United States Bankruptcy Court for the Northern District of Illinois.

3. Neither the firm of Baudin Law Group, Ltd. nor I have agreed to share any compensation or reimbursement awarded in this case with any persons other than partners and associates of the firm of Baudin Law Group, Ltd..

4. Baudin Law Group, Ltd. shall be compensated for their services on a contingent fee basis pursuant to terms of the attached agreement.

5. To the best of my knowledge, information and belief, Baudin Law Group, Ltd. does not hold or represent a party that holds an interest adverse to the Trustee nor does it have any connection with the Debtor's creditors, or any party in interest or their respective attorneys and accountants with respect to the matters for which Baudin Law Group, Ltd. is to be employed, is disinterested as that term is used in 11 U.S.C. § 101(14), and has no connections with the United States Trustee or any person employed in the Trustee's office, except that said firm has represented the Debtors prepetition with respect to the subject personal injury claim.



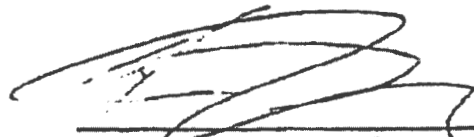
6. I understand and agree that:

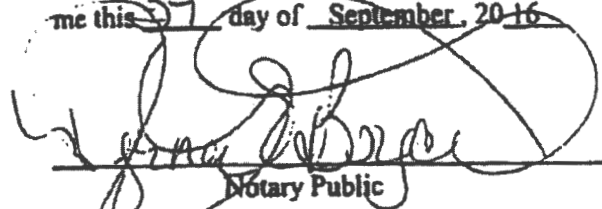
- A. My Firm and I are obligated to keep the Trustee fully informed as to all aspects of this matter, as the Bankruptcy Estate is my client until such time as the claim in question is abandoned by the Trustee, as shown by a written notice of such abandonment.
- B. All proceeds of any settlement or recovery must be paid to the Trustee in the first instance, and none may be disbursed without approval in writing of the Trustee or an Order of the Bankruptcy Court.
- C. If this application for appointment is approved, any fees or reimbursement of costs from the proceeds of any recoveries will be paid by the Trustee only after approval of the Bankruptcy Court.
- D. No settlements may be entered into or become binding without the approval of the Bankruptcy Court and the Trustee, after notice to the Trustee, creditors and parties in interest.
- E. All issues as to attorneys fees, Debtor's exemptions, the distribution of any recovery between the Debtor and the Trustee or creditors, or any other issue which may come to be in dispute between the Debtor and the Trustee or creditors are subject to the jurisdiction of the Bankruptcy Court. Neither I nor any other attorney or associate of the Firm will undertake to advise or represent the Debtor as to any such matters or issues. Instead, the Firm will undertake to obtain the best possible result on the claim, and will leave to others any advice or representation as to such issues.
- F. The Firm is not authorized to grant any "physician's lien" upon, offer to protect payment of any claim for medical or other services out of, or otherwise pledge or encumber in any way any part of any recovery without separate Order of this Court, which may or may not be granted.
- G. Authorization to hire experts. As part of this representation, I will need to hire experts to advise and assist in the conduct of this litigation, specifically medical experts, liability or forensic experts, vocational or economic experts, or other experts on issues of liability or damages. In this regard, I agree that:
  - i. My Firm or I will pay or advance any fees or cost retainers required by such experts with the understanding that such payment or advance will be included as a cost in any subsequent fee application my Firm or I make to this Court; and
  - ii. Before entering into any such retention or paying any initial fees or costs, I will consult with the Trustee, provide the Trustee any

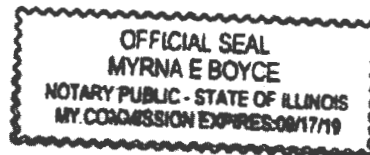


information requested including estimates of total costs and fees, provide a copy of any fee agreements, and obtain the Trustee's advance written approval to the proposed terms of retention.

- iii. I will see that copies of any bills submitted by such experts are submitted to the Trustee when I receive them and a reasonable time before I or my Firm pays them, and are approved in advance, by the Trustee, in writing.
- iv. Such fees or expenses of such experts are subject to reimbursement only by the Bankruptcy Estate, upon approval of this Court, to be paid as an administrative expense in this Bankruptcy case pursuant to 11 U.S.C. § 726, out of proceeds of any settlement or recovery in the litigation my Firm and I will be handling.

  
\_\_\_\_\_  
W. Randal Baudin, II, Affiant

Subscribed and sworn to before  
me this 27 day of September, 2016  
  
\_\_\_\_\_  
Notary Public



UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

IN RE: ) CHAPTER 7  
PAUL DULBERG ) Case Number: 14-83578  
 )  
Debtor. ) JUDGE THOMAS M. LYNCH

**NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST**

Notified via Electronic filing: Attorney David Stretch and U.S. Trustee's Office,

Notified via U.S. Postal Service: See attached service list.

Joseph D. Olsen, Trustee has filed papers with the Court regarding his Motion for Authority to Enter into a "Binding Mediation Agreement" in accordance with the "Binding Mediation Agreement" which is attached hereto and made a part hereof as Exhibit A.

A copy of said Motion referred to herein is available for inspection at the offices of the Clerk of the U.S. Bankruptcy Court or at the offices of Yalden, Olsen & Willette, during usual business hours.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you want the Court to consider your views on the Motion, then you or your attorney must:

Attend the hearing on scheduled to be held on the 31<sup>st</sup> day of October, 2016 at 9:30 am in courtroom 3100, United States Bankruptcy Court, 327 South Church St., Rockford, IL 61101.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief.

Joseph D. Olsen, Trustee

By: YALDEN, OLSEN & WILLETTE, his attorneys

By: s/s Joseph D. Olsen

Joseph D. Olsen  
Yalden, Olsen & Willette  
1318 East State Street  
Rockford, IL 61104

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on October 4, 2016 I caused the aforesaid to be served upon all persons to whom it is directed (see attached Service List) by United States Mail by depositing the same in the United States Mail at Rockford, Illinois, at or about the hour of 5:00 p.m.

s/s Marti Maravich



Baudin 0008

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

IN RE: ) CHAPTER 7  
 ) Case Number: 14-83578  
PAUL DULBERG )  
Debtor. ) JUDGE: THOMAS M. LYNCH

**MOTION FOR AUTHORITY TO ENTER INTO A  
“BINDING MEDIATION AGREEMENT”.**

NOW COMES the Trustee, Joseph D. Olsen, by his attorneys, Yalden, Olsen & Willette, pursuant to Bankruptcy Rule 9019, and for his Motion for Authority to Enter into a “Binding Mediation Agreement”, states as follows:

1. That the Debtor, Paul Dulberg, filed his Voluntary Petition for Relief pursuant to Chapter 7 of Title 11 on November 26, 2014;

2. That Joseph D. Olsen is the duly appointed and qualified acting case Trustee of the above captioned Estate;

3. That on the date of the petition the Debtor, Paul Dulberg, had a certain claim against David Gagnon, et al for certain personal injuries suffered in a chainsaw injury. This certain personal injury case is pending in the circuit court of the 22<sup>nd</sup> Judicial Circuit, McHenry County, Illinois in cause number 12LA178.

4. Heretofore the Trustee has hired as his Special Counsel, the Baudin Law Group, Ltd. to prosecute the Bankruptcy Estate’s claim in this matter. After discussions with Randy Baudin, the lead attorney on the file, Mr. Baudin has recommended participation in the “Binding Mediation Agreement”, a copy of which agreement is attached hereto and made a part hereof as Exhibit A. There can be no guarantee of the amount of the award that is eventually provided under the “Binding Mediation Agreement” but it has a floor of no less than \$50,000.00 and a ceiling of no greater than \$300,000.00.

The Trustee, in consultation with his special counsel, believes the “Binding Mediation Agreement” would be in the best interest of the Estate.

- 2 -

WHEREFORE, the Trustee requests authority to enter into the afore-described "Binding Mediation Agreement" and to execute any document necessary or appropriate to process the Debtor's claims through that binding mediation process.

JOSEPH D. OLSEN, Trustee

By: YALDEN, OLSEN & WILLETTE, his attorneys

By: s/s Joseph D. Olsen

Prepared by:  
Joseph D. Olsen  
Yalden, Olsen & Willette  
1318 East State Street  
Rockford, IL 61104  
(815) 965-8635

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Worlds Foremost Bank NA  
4800 NW 1st Street  
Suite 300  
Lincoln, NE 68511-4463

Attorney W. Randal Baudin, II  
Baudin Law Group, Ltd.  
2100 N. Huntington Dr Suite C  
Algonquin, IL 60102



**Binding Mediation Agreement  
ADR Systems File # 33391BMAG**

**Revised for Special Billing**

**I. Parties**

- A. Paul Dulberg, by attorneys, Kelly N. Baudin and Randall Baudin, II
- B. David Gagnon, by attorney, Shoshan Reddington

**SPECIAL BILLING – Section V.B.5 – Defendant agrees to pay up to \$3,500.00 of Plaintiff's Binding Mediation Costs.**

**II. Date, Time and Location of the Binding Mediation**

Date: Thursday, December 8, 2016  
Time: 1:30 P.M.  
Location: ADR Systems of America, LLC  
20 North Clark Street  
Floor 29  
Chicago, IL 60602  
Contact: Alex Goodrich  
312-960-2267

**III. Rules Governing the Mediation**

Each party ("Party") to this agreement ("Agreement") hereby agrees to submit the above dispute for binding mediation ("Mediation") to ADR Systems of America, L.L.C., ("ADR Systems") in accordance with the following terms:

**A. Powers of the Mediator**

1. The Parties agree that The Honorable James P. Etchingham (Ret.) shall serve as the sole Mediator in this matter (the "Mediator").
2. The Mediator shall have the power to determine the admissibility of evidence and to rule upon the law and the facts of the dispute pursuant to Section III(D)(1). The Mediator shall also have the power to rule on objections to evidence which arise during the hearing.
3. The Mediator is authorized to hold joint and separate caucuses with the Parties and to make oral and written recommendations for settlement purposes.
4. The Parties agree that the Mediator shall decide all issues concerning liability and damages arising from the dispute if this matter cannot be settled, unless any of the above is waived. Any other issues to be decided must be agreed upon by the Parties, and included in this contract.
5. Any failure to object to compliance with these Rules shall be deemed a waiver of such objection.

ADR Systems • 20 North Clark Street • Floor 29 • Chicago, IL 60602  
312.960.2260 • info@adrsystems.com • www.adrsystems.com

**EXHIBIT "A"**

**B. Amendments to the Agreement**

1. No Party shall amend the Agreement at any time without the consent and approval of such changes by the opposing Party, and ADR Systems of America.
2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR Systems case manager by telephone. The agreed proposal must also be submitted to the ADR Systems case manager in writing, by fax or email, if necessary, and the contract changes MUST be made by ADR Systems. No changes made outside these guidelines will be accepted. Furthermore, if the amended contract made by ADR Systems is not signed by both Parties, the Agreement shall be enforced in its original form, without changes.

**C. Pre-Hearing Submission**

1. Mediation statements are permitted provided that the statement is shared among the other parties. The Mediation Statement may include: statement of facts, including a description of the injury and a list of special damages and expenses incurred and expected to be incurred; and a theory of liability and damages and authorities in support thereof.

**D. Evidentiary Rules**

1. The Parties agree that the following documents are allowed into evidence, without foundation or other proof, provided that said items are served upon the Mediator and the opposing Party at least 17 (seventeen) days prior to the hearing date:
  - a. Medical records and medical bills for medical services;
  - b. Bills for drugs and medical appliances (for example, prostheses);
  - c. Property repair bills or estimates;
  - d. Reports of lost time from employment, and / or lost compensation or wages;
  - e. The written statement of any expert witness, the deposition of a witness, the statement of a witness, to which the witness would be allowed to express if testifying in person, if the statement is made by affidavit sworn to under oath or by certification as provided in section 1-109 of the Illinois Code of Civil Procedure;
  - f. Photographs;
  - g. Police reports;
  - h. Any other document not specifically covered by any of the foregoing provisions that a Party believes in good faith should be considered by the Mediator; and
  - i. Each Party may introduce any other evidence, including but not limited to documents or exhibits, in accordance with the rules of evidence of the State of Illinois.
2. The Parties agree that they will not disclose any and all dollar figures relating to the high/low agreement; last offer and last demand; policy limits; and /or set-offs orally or in written form, to the Mediator at any time before or during the conference, or while under advisement, prior to the Mediator's final decision.





- a. Violation of this rule set forth in (D)(2) shall constitute a material breach of this Agreement. The non-disclosing Party must formally object to the Mediator upon learning of the breach, or the breach will be considered waived. The non-disclosing Party shall then have the option to continue the Mediation from the point of objection to its completion; or to terminate the Mediation at the point of objection as null and void. The ADR Systems case manager must be made aware of this breach at the time of the objection, so the objection is addressed in accordance with the Agreement; and
- b. If the Mediation is terminated as null and void, all costs of the Mediation will be charged entirely to the disclosing Party. A new Mediation shall then take place with a new Mediator on a new date. If the Mediation is not terminated, the costs of the Mediation shall remain the responsibility of each Party or in accordance with the Agreement.
3. The Parties agree If a Party has an objection to the evidence or material submitted by any other Party pursuant to Paragraph (D)(1), notice of the objection shall be given to the ADR Systems case manager and opposing counsel by telephone and in writing at least seven days prior to the Mediation. If resolution cannot be obtained, the case manager will forward the objection to the Mediator to be ruled upon before or at the Mediation. The case manager will notify each of the Parties of the objection. The objection may result in a postponement of the proceedings. If the objection is because of new material being disclosed with the submission for the first time (for example, new or additional reports, additional medical/wage loss claims, etc.) then the disclosing party shall be charged for the total cost associated with the continuance.
4. The Parties agree that any Party desiring to introduce any of the Items described in Paragraph (D)(1) without foundation or other proof, must deliver said Items to the Mediator and to the other Parties no later than **Monday, November 21, 2016**.
5. The Items are considered delivered as of the date that one of the following events occur:
- a. If mailed, by the date of the postmark;
- b. If delivered by a courier or a messenger, the date the Item is received by the courier or messenger; and
- c. The date transmitted by facsimile or email.
6. The Parties agree to deliver any of the Items described in Paragraph (C)(1) and (D)(1) to the following addresses:

If emailing Submissions, please send to [submissions@adrsystems.com](mailto:submissions@adrsystems.com), however, please do not send anything over 50 pages, including exhibits.

The Honorable James P. Etchingham, (Ret.) (Mediator)  
C/O ADR SYSTEMS  
20 North Clark Street  
Floor 29  
Chicago, IL 60602

Kelly N. Baudin, Esq. / Randall Baudin, II, Esq. (Plaintiff Attorneys)  
BAUDIN LAW GROUP  
304 McHenry Avenue  
Crystal Lake, IL 60039



Shoshan Reddington, Esq. (Defense Attorney)  
LAW OFFICES OF STEVEN LIHOSIT  
200 N. La Salle Street  
Suite 2550  
Chicago, IL 60601

**E. Conference Procedure**

1. The Parties may present opening statements but there will be no live testimony.
2. The Parties will attempt to reach a voluntary settlement through negotiation with the assistance of the Mediator.
3. If the Parties cannot voluntarily reach a settlement, the Mediator will advise the Parties that settlement cannot be reached. The Mediator will then take the matter under advisement and render an award that will be binding to all Parties, (the "Award"), subject to the terms of any high/low agreement that the Parties may have as described below in Paragraph (F)(1).

**F. Award Limits**

1. The Parties may agree prior to the Mediation that a minimum and maximum amount will serve as parameters for the Award (sometimes referred to as a "high/low agreement"), such that the actual amount that must be paid to the plaintiff or claimant shall not exceed a certain amount (the "high" or "maximum award") and shall not be less than a certain amount (the "low" or "minimum award").
  - a. If liability is disputed and comparative fault or negligence is asserted as an affirmative defense, the Mediator shall make a finding regarding comparative fault or negligence, if any. In the event that there is a finding of comparative fault or negligence of the plaintiff that is greater than 50% (fifty percent), the plaintiff shall receive the negotiated minimum award. In the event that there is a finding of comparative fault or negligence of 50% (fifty percent) or less against the plaintiff, then any damages awarded in favor of the plaintiff shall be reduced by the amount of the plaintiff's comparative fault or negligence, but shall be no less than the minimum parameter or more than the maximum parameter.
  - b. All award minimum and maximum parameters are subject to applicable set-offs if any, as governed by policy provisions if not specified in the Agreement.

The Parties agree that for this Mediation the minimum award to Paul Dulberg will be \$50,000.00. Also, the maximum award to Paul Dulberg will be \$300,000.00. These amounts reflect the minimum and maximum amounts of money that David Gagnon shall be liable to pay to Paul Dulberg.

**IV. Effect of this Agreement**

- A. After the commencement of the Mediation, no Party shall be permitted to cancel this Agreement or the Mediation and the Mediator shall render a decision that shall be in accordance with the terms set forth in this Agreement. When the Award is rendered, the Mediation is resolved, and any Award arising from this Mediation shall operate as a bar and complete defense to any action or proceeding in any court or tribunal that may arise from the same incident upon which the Mediation is based.

- B. The Parties further agree that any pending litigation will be dismissed, with prejudice, as to those Parties participating in this Mediation upon the conclusion thereof. Any and all liens, including contractual rights of subrogation owed are subject to existing Illinois law. By agreement of the Parties, the Mediator's Award will be final and binding and not subject to appeal or motion for reconsideration by any Party.

**V. Mediation Costs**

**A. ADR Systems Fee Schedule**

1. A deposit is required for the Administrative Fee, Mediator's estimated review, session, and follow-up time ("Mediation Costs"). Binding-Mediations are billed at a four hour per day minimum. The required deposit amount is \$2,590.00 from Party B and is due by November 21, 2016. Any unused portion of the deposit will be refunded based on the four hour minimum. If the Mediator's review, session and follow-up time go over the estimated amount, each Party will be invoiced for the additional time.
2. Mediation Costs are usually divided equally among all Parties, unless otherwise agreed upon by the Parties. ADR Systems must be notified of special fee arrangements.
3. All deposits are due two weeks prior to the session. ADR Systems reserves the right to cancel a session if deposits are not received from all Parties two weeks prior to the session.
4. ADR Systems requires 14-day notice in writing or via electronic transmission of cancellation or continuance. For Binding-Mediations cancelled or continued within 14 days of the session, the Party causing the cancellation will be billed for the Mediation Costs of all the Parties involved, which includes the four hour per day minimum, additional review time, and any other expenses incurred ("cancellation fees"). If the cancellation is by agreement of all Parties, or if the case has settled, the cancellation fees will be split equally among all Parties, unless ADR Systems is instructed otherwise. The cancellation fees may be waived if the Mediator's lost time can be filled by another matter.

|                                  |                           |
|----------------------------------|---------------------------|
| Administrative Fee               | \$390.00 (Non-refundable) |
| Mediator's Review Time           | \$450.00 per hour         |
| Session Time                     | \$450.00 per hour         |
| Mediator's Decision Writing Time | \$450.00 per hour         |
| Mediator's Travel Time (if any)  | \$75.00 per hour          |

**B. Responsibility for Payment**

**\*\*Special Billing**

1. Each Party and its counsel (including that counsel's firm) shall be jointly and severally responsible for the payment of that Party's allocated share of the Mediation Costs as set forth above.
2. All expenses and disbursements made by ADR Systems in connection with the Mediation, including, but not limited to, outside room rental fee, meals, express mail and messenger charges, and any other charges associated with the Mediation, will be billed equally to the Parties at the time of the invoice.

3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney's fees, incurred by ADR Systems in connection with the collection of any amount due and owing. Payment of additional costs incurred by ADR Systems in connection with the collection of any amount due and owing shall be made within 15 days of invoice.
4. In the event ADR Systems' session rooms are completely booked on your selected session date, ADR Systems will attempt to find another complimentary venue for your session. If ADR Systems cannot find a complimentary venue or the parties cannot agree on the complimentary venue, ADR Systems reserves the right to schedule your case in a location that may involve a facilities charge. The facilities charge will be split equally among the parties unless ADR Systems is instructed otherwise.
5. **\*\*Defendant agrees to pay up to \$3,500.00 of Plaintiff's Binding Mediation Costs.**

**VI. Acknowledgment of Agreement**

- A. By signing this Agreement, I acknowledge that I have read and agree to all the provisions as set forth above.
- B. Each Party is responsible for only his/her own signature where indicated and will submit this signed Agreement to ADR Systems within 10 days of receipt of the Agreement. Counsel may sign on behalf of the Party.

By: \_\_\_\_\_  
Paul Dulberg / Plaintiff Date

By: \_\_\_\_\_  
Kelly N. Baudin / Attorney for the Plaintiff Date

By: \_\_\_\_\_  
Randall Baudin, II / Attorney for the Plaintiff Date

By: \_\_\_\_\_  
Shoshan Reddington / Attorney for the Defendant Date

ADR Systems File # 33391BMAG  
ADR Systems Tax I.D. # 36-3977108  
Date of Hearing: Thursday, December 8, 2016



UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

IN RE: ) CHAPTER 7  
)  
DULBERG, PAUL ) CASE NO. 14-83578  
)  
Debtor. ) JUDGE THOMAS M. LYNCH

**NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST**

Notified via Electronic filing: Attorney David Stretch and U.S. Trustee's Office,

Notified via U.S. Postal Service: See attached service list.

Joseph D. Olsen, Trustee has filed papers with the Court regarding his Motion to Employ Special Counsel, Baudin Law Group, Ltd, as attorneys for the Trustee to pursue a personal injury cause of action. A copy of said Motion referred to herein is available for inspection at the offices of the Clerk of the U.S. Bankruptcy Court or at the offices of Yalden, Olsen & Willette, during usual business hours.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you want the Court to consider your views on the Motion, then you or your attorney must:

**Attend the hearing on scheduled to be held on the 31<sup>st</sup> day of October, 2016 at 9:30 am in courtroom 3100, United States Bankruptcy Court, 327 South Church Street, Rockford, IL 61101.**

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief.

Joseph D. Olsen, Trustee

By: YALDEN, OLSEN & WILLETTE, his attorneys

By: s/s Joseph D. Olsen

Joseph D. Olsen  
Yalden, Olsen & Willette  
1318 East State Street  
Rockford, IL 61104

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on October 4, 2016 I caused the aforesaid to be served upon all persons to whom it is directed (see attached Service List) by United States Mail by depositing the same in the United States Mail at Rockford, Illinois, at or about the hour of 5:00 p.m.

s/s Marti Maravich



UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

IN RE: ) CHAPTER 7  
 )  
PAUL DULBERG, ) CASE NO. 14-83578  
 )  
 )  
 )  
Debtors. ) JUDGE: THOMAS M. LYNCH

**MOTION TO EMPLOY SPECIAL COUNSEL**

NOW COMES Joseph D. Olsen, Trustee, by his attorneys, Yalden, Olsen & Willette, and for his Motion to Employ Special Counsel, hereby states as follows:

1. JOSEPH D. OLSEN is the duly qualified, appointed, and acting Trustee in the above-captioned case.

2. To perform his duties as Trustee, your movant requires the services of an attorney for the following purposes:

A. To appear for and prosecute the Estate's interest regarding a personal injury cause of action;

B. To assist in the preparation of such pleadings, motions, notices, and orders which are required;

3. For the foregoing and all other necessary and proper purposes, movant desires to retain the law office of Baudin Law Group, Ltd., as counsel for the Trustee.

4. Movant feels that the law office is well qualified to render the foregoing services.

5. The law office of Baudin Law Group, Ltd. has no connections with the Debtor(s), creditors, or any party in interest, their respective attorneys and accountants, the U.S. Trustee, or any person employed in the office of the U.S. Trustee as defined in 11 U.S.C. Section 101(14), except as follows:

Post petition the Debtor entered into a contingent fee agreement with Baudin & Baudin (the predecessor law group to the Baudin Law Group, Ltd.) whereby the Debtor paid \$3,333.33 as a nonrefundable retainer (to the offset against any future recovery) and agreed to pay Baudin & Baudin 33 1/3% as a contingency fee if the matter settled prior to trial and 40% if the matter proceeds to trial.

,  
,

- 2 -

6. The attorneys requests that they be compensated in accordance with Baudin Law Group, Ltd. fee agreement which is attached hereto and made a part hereof as "Exhibit A."

WHEREFORE, JOSEPH D. OLSEN, Trustee, prays that he be authorized to employ the law office of Baudin Law Group, Ltd., as his attorneys to render services in the areas described above and compensation be paid as an administrative expense and in such amounts as this Court may hereinafter determine and allow.

JOSEPH D. OLSEN, Trustee

By: YALDEN, OLSEN & WILLETTE, his Attorneys

By: s/s Joseph D. Olsen

Joseph D. Olsen  
YALDEN, OLSEN & WILLETTE  
1318 East State Street  
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Fax (815) 965-4573

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PO BOX 82609  
LINCOLN, NE 68501-2609

Worlds Foremost Bank NA  
4800 NW 1st Street  
Suite 300  
Lincoln, NE 68521-4463

Attorney W. Randal Baudin, II  
Baudin Law Group, Ltd.  
2100 W. Huntington Dr Suite C  
Algonquin, IL 60102



**FEE AGREEMENT**

I, Paul Dulberg, hereby agree to retain and employ BAUDIN & BAUDIN, an association of attorneys, to prosecute and/or settle all suits and claims for damages, which may include personal injuries and property damage, against responsible parties, including their insurance companies and my insurance companies, or any other responsible insurance companies, arising out of events which occurred on or about the 28<sup>th</sup> day of June, 2011, at or near 1016 W. Elder Avenue, McHenry, Illinois.

I agree to pay BAUDIN & BAUDIN as compensation for services (1) a non-refundable retainer fee of \$3,333.33; AND (2) a sum of money equal to one-third (1/3) of the gross amount realized from this claim by settlement prior to trial of this matter, OR, if this matter proceeds to trial, which is defined as any time after the final pre-trial conference with the Court has concluded, I agree to pay BAUDIN & BAUDIN as compensation for its services a sum of money equal to forty percent (40%) of the gross amount realized from such action. Should this matter conclude by way of settlement, negotiations, trial, arbitration or judgment in my favor, BAUDIN & BAUDIN agrees to reduce its percentage fee by an amount of \$3,333.33 as an offset for the non-refundable retainer fee; however, in no event will the \$3,333.33 be refunded to me once this agreement has been executed.

I realize, understand and agree that all expenses and costs related to my claim, such as medical expenses for my/our care and treatment and related costs such as costs for obtaining medical records and bills, as well as court costs, including filing fees, costs of depositions, costs of experts, etc. are my obligation and responsibility and shall be paid as those bills become due from time to time.

It is further agreed and understood that there will be no further charges for legal services over and above the \$3,333.33 non-refundable retainer fee by BAUDIN & BAUDIN (with the exception of the aforesaid expenses and costs referred to in paragraph 3) unless recovery is made in this claim, and that no settlement will be made without the consent of the claimant(s).

I hereby authorize and direct that BAUDIN & BAUDIN is authorized to endorse and deposit any proceeds received in regard to the aforesaid claim herein, and to disburse those funds for purposes of client payments, resolution of liens, reimbursement of costs advanced, and attorney's fees.

This cause was not solicited either directly or indirectly from me/us by anyone. This agreement is being executed with duplicate originals.

Signed this 22<sup>nd</sup> day of September, 2015, and copy received by claimant(s) or claimant(s)'s representative.

\_\_\_\_\_  
Claimant

Paul Dulberg  
\_\_\_\_\_  
Claimant

~~BAUDIN & BAUDIN~~

~~2100 N. Huntington Drive, Suite C~~

~~Algonquin, IL 60102~~

~~847.658.5295 FAX: 847.658.5015~~

Revised 9/2015

EXHIBIT "A"



**Binding Mediation Agreement  
ADR Systems File # 33391BMAG**

**Revised for Special Billing**

**I. Parties**

A. Paul Dulberg, by attorneys, Kelly N. Baudin and Randall Baudin, II

B. David Gagnon, by attorney, Shoshan Reddington

**SPECIAL BILLING – Section V.B.5 – Defendant agrees to pay up to \$3,500.00 of Plaintiff's Binding Mediation Costs.**

**II. Date, Time and Location of the Binding Mediation**

Date: Thursday, December 8, 2016

Time: 1:30 P.M.

Location: ADR Systems of America, LLC  
20 North Clark Street  
Floor 29  
Chicago, IL 60602  
Contact: Alex Goodrich  
312-960-2267

**III. Rules Governing the Mediation**

Each party ("Party") to this agreement ("Agreement") hereby agrees to submit the above dispute for binding mediation ("Mediation") to ADR Systems of America, L.L.C., ("ADR Systems") in accordance with the following terms:

**A. Powers of the Mediator**

1. The Parties agree that The Honorable James P. Etchingham (Ret.) shall serve as the sole Mediator in this matter (the "Mediator").
2. The Mediator shall have the power to determine the admissibility of evidence and to rule upon the law and the facts of the dispute pursuant to Section III(D)(1). The Mediator shall also have the power to rule on objections to evidence which arise during the hearing.
3. The Mediator is authorized to hold joint and separate caucuses with the Parties and to make oral and written recommendations for settlement purposes.
4. The Parties agree that the Mediator shall decide all issues concerning liability and damages arising from the dispute if this matter cannot be settled, unless any of the above is waived. Any other issues to be decided must be agreed upon by the Parties, and included in this contract.
5. Any failure to object to compliance with these Rules shall be deemed a waiver of such objection.

ADR Systems • 20 North Clark Street • Floor 29 • Chicago, IL 60602  
312.960.2260 • info@adrsystems.com • www.adrsystems.com

**EXHIBIT "A"**



Baudin 0023

**B. Amendments to the Agreement**

1. No Party shall amend the Agreement at any time without the consent and approval of such changes by the opposing Party, and ADR Systems of America.
2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR Systems case manager by telephone. The agreed proposal must also be submitted to the ADR Systems case manager in writing, by fax or email, if necessary, and the contract changes **MUST** be made by ADR Systems. No changes made outside these guidelines will be accepted. Furthermore, if the amended contract made by ADR Systems is not signed by both Parties, the Agreement shall be enforced in its original form, without changes.

**C. Pre-Hearing Submission**

1. Mediation statements are permitted provided that the statement is shared among the other parties. The Mediation Statement may include: statement of facts, including a description of the injury and a list of special damages and expenses incurred and expected to be incurred; and a theory of liability and damages and authorities in support thereof.

**D. Evidentiary Rules**

1. The Parties agree that the following documents are allowed into evidence, without foundation or other proof, provided that said items are served upon the Mediator and the opposing Party at least **17 (seventeen)** days prior to the hearing date:
  - a. Medical records and medical bills for medical services;
  - b. Bills for drugs and medical appliances (for example, prostheses);
  - c. Property repair bills or estimates;
  - d. Reports of lost time from employment, and / or lost compensation or wages;
  - e. The written statement of any expert witness, the deposition of a witness, the statement of a witness, to which the witness would be allowed to express if testifying in person, if the statement is made by affidavit sworn to under oath or by certification as provided in section 1-109 of the Illinois Code of Civil Procedure;
  - f. Photographs;
  - g. Police reports;
  - h. Any other document not specifically covered by any of the foregoing provisions that a Party believes in good faith should be considered by the Mediator; and
  - i. Each Party may introduce any other evidence, including but not limited to documents or exhibits, in accordance with the rules of evidence of the State of Illinois.
2. The Parties agree that they will not disclose any and all dollar figures relating to the high/low agreement; last offer and last demand; policy limits; and /or set-offs orally or in written form, to the Mediator at any time before or during the conference, or while under advisement, prior to the Mediator's final decision.



- a. Violation of this rule set forth in (D)(2) shall constitute a material breach of this Agreement. The non-disclosing Party must formally object to the Mediator upon learning of the breach, or the breach will be considered waived. The non-disclosing Party shall then have the option to continue the Mediation from the point of objection to its completion; or to terminate the Mediation at the point of objection as null and void. The ADR Systems case manager must be made aware of this breach at the time of the objection, so the objection is addressed in accordance with the Agreement; and
- b. If the Mediation is terminated as null and void, all costs of the Mediation will be charged entirely to the disclosing Party. A new Mediation shall then take place with a new Mediator on a new date. If the Mediation is not terminated, the costs of the Mediation shall remain the responsibility of each Party or in accordance with the Agreement.
3. The Parties agree if a Party has an objection to the evidence or material submitted by any other Party pursuant to Paragraph (D)(1), notice of the objection shall be given to the ADR Systems case manager and opposing counsel by telephone and in writing at least seven days prior to the Mediation. If resolution cannot be obtained, the case manager will forward the objection to the Mediator to be ruled upon before or at the Mediation. The case manager will notify each of the Parties of the objection. The objection may result in a postponement of the proceedings. **If the objection is because of new material being disclosed with the submission for the first time (for example, new or additional reports, additional medical/wage loss claims, etc.) then the disclosing party shall be charged for the total cost associated with the continuance.**
4. The Parties agree that any Party desiring to introduce any of the items described in Paragraph (D)(1) without foundation or other proof, must deliver said items to the Mediator and to the other Parties no later than **Monday, November 21, 2016.**
5. The items are considered delivered as of the date that one of the following events occur:
- a. If mailed, by the date of the postmark;
- b. If delivered by a courier or a messenger, the date the item is received by the courier or messenger; and
- c. The date transmitted by facsimile or email.
6. The Parties agree to deliver any of the items described in Paragraph (C)(1) and (D)(1) to the following addresses:

If emailing Submissions, please send to [submissions@adrsystems.com](mailto:submissions@adrsystems.com), however, please do not send anything over 50 pages, including exhibits.

The Honorable James P. Etchingham, (Ret.) (Mediator)  
C/O ADR SYSTEMS  
20 North Clark Street  
Floor 29  
Chicago, IL 60602

Kelly N. Baudin, Esq. / Randall Baudin, II, Esq. (Plaintiff Attorneys)  
BAUDIN LAW GROUP  
304 McHenry Avenue  
Crystal Lake, IL 60039



Shoshan Reddington, Esq. (Defense Attorney)  
LAW OFFICES OF STEVEN LIHOSIT  
200 N. La Salle Street  
Suite 2550  
Chicago, IL 60601

**E. Conference Procedure**

1. The Parties may present opening statements but there will be no live testimony.
2. The Parties will attempt to reach a voluntary settlement through negotiation with the assistance of the Mediator.
3. If the Parties cannot voluntarily reach a settlement, the Mediator will advise the Parties that settlement cannot be reached. The Mediator will then take the matter under advisement and render an award that will be binding to all Parties, (the "Award"), subject to the terms of any high/low agreement that the Parties may have as described below in Paragraph (F)(1).

**F. Award Limits**

1. The Parties may agree prior to the Mediation that a minimum and maximum amount will serve as parameters for the Award (sometimes referred to as a "high/low agreement"), such that the actual amount that must be paid to the plaintiff or claimant shall not exceed a certain amount (the "high" or "maximum award") and shall not be less than a certain amount (the "low" or "minimum award").
  - a. If liability is disputed and comparative fault or negligence is asserted as an affirmative defense, the Mediator shall make a finding regarding comparative fault or negligence, if any. In the event that there is a finding of comparative fault or negligence of the plaintiff that is greater than 50% (fifty percent), the plaintiff shall receive the negotiated minimum award. In the event that there is a finding of comparative fault or negligence of 50% (fifty percent) or less against the plaintiff, then any damages awarded in favor of the plaintiff shall be reduced by the amount of the plaintiff's comparative fault or negligence, but shall be no less than the minimum parameter or more than the maximum parameter.
  - b. All award minimum and maximum parameters are subject to applicable set-offs if any, as governed by policy provisions if not specified in the Agreement.

The Parties agree that for this Mediation the minimum award to Paul Dulberg will be **\$50,000.00**. Also, the maximum award to Paul Dulberg will be **\$300,000.00**. These amounts reflect the minimum and maximum amounts of money that David Gagnon shall be liable to pay to Paul Dulberg.

**IV. Effect of this Agreement**

- A. After the commencement of the Mediation, no Party shall be permitted to cancel this Agreement or the Mediation and the Mediator shall render a decision that shall be in accordance with the terms set forth in this Agreement. When the Award is rendered, the Mediation is resolved, and any Award arising from this Mediation shall operate as a bar and complete defense to any action or proceeding in any court or tribunal that may arise from the same incident upon which the Mediation is based.



- B. The Parties further agree that any pending litigation will be dismissed, with prejudice, as to those Parties participating in this Mediation upon the conclusion thereof. Any and all liens, including contractual rights of subrogation owed are subject to existing Illinois law. By agreement of the Parties, the Mediator's Award will be final and binding and not subject to appeal or motion for reconsideration by any Party.

## V. Mediation Costs

### A. ADR Systems Fee Schedule

1. A deposit is required for the Administrative Fee, Mediator's estimated review, session, and follow-up time ("Mediation Costs"). Binding-Mediations are billed at a four hour per day minimum. **The required deposit amount is \$2,590.00 from Party B and is due by November 21, 2016.** Any unused portion of the deposit will be refunded based on the four hour minimum. If the Mediator's review, session and follow-up time go over the estimated amount, each Party will be invoiced for the additional time.
2. Mediation Costs are usually divided equally among all Parties, unless otherwise agreed upon by the Parties. **ADR Systems must be notified of special fee arrangements.**
3. All deposits are due two weeks prior to the session. ADR Systems reserves the right to cancel a session if deposits are not received from all Parties two weeks prior to the session.
4. ADR Systems requires **14-day notice in writing or via electronic transmission** of cancellation or continuance. For Binding-Mediations **cancelled or continued** within 14 days of the session, the Party causing the cancellation will be billed for the Mediation Costs of all the Parties involved, which includes the four hour per day minimum, additional review time, and any other expenses incurred("cancellation fees"). If the cancellation is by agreement of all Parties, or if the case has settled, the cancellation fees will be split equally among all Parties, unless ADR Systems is instructed otherwise. The cancellation fees may be waived if the Mediator's lost time can be filled by another matter.

|                                  |                           |
|----------------------------------|---------------------------|
| Administrative Fee               | \$390.00 (Non-refundable) |
| Mediator's Review Time           | \$450.00 per hour         |
| Session Time                     | \$450.00 per hour         |
| Mediator's Decision Writing Time | \$450.00 per hour         |
| Mediator's Travel Time (if any)  | \$75.00 per hour          |

### B. Responsibility for Payment

#### \*\*Special Billing

1. Each Party and its counsel (including that counsel's firm) shall be jointly and severally responsible for the payment of that Party's allocated share of the Mediation Costs as set forth above.
2. All expenses and disbursements made by ADR Systems in connection with the Mediation, including, but not limited to, outside room rental fee, meals, express mail and messenger charges, and any other charges associated with the Mediation, will be billed equally to the Parties at the time of the invoice.



3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney's fees, incurred by ADR Systems in connection with the collection of any amount due and owing. Payment of additional costs incurred by ADR Systems in connection with the collection of any amount due and owing shall be made within 15 days of invoice.
4. In the event ADR Systems' session rooms are completely booked on your selected session date, ADR Systems will attempt to find another complimentary venue for your session. If ADR Systems cannot find a complimentary venue or the parties cannot agree on the complimentary venue, ADR Systems reserves the right to schedule your case in a location that may involve a facilities charge. The facilities charge will be split equally among the parties unless ADR Systems is instructed otherwise.
5. **\*\*Defendant agrees to pay up to \$3,500.00 of Plaintiff's Binding Mediation Costs.**

**VI. Acknowledgment of Agreement**

- A. By signing this Agreement, I acknowledge that I have read and agree to all the provisions as set forth above.
- B. Each Party is responsible for only his/her own signature where indicated and will submit this signed Agreement to ADR Systems within 10 days of receipt of the Agreement. Counsel may sign on behalf of the Party.

By: \_\_\_\_\_  
Paul Dulberg / Plaintiff Date

By: \_\_\_\_\_  
Kelly N. Baudin / Attorney for the Plaintiff Date

By: \_\_\_\_\_  
Randall Baudin, II / Attorney for the Plaintiff Date

By: \_\_\_\_\_  
Shoshan Reddington / Attorney for the Defendant Date

ADR Systems File # 33391BMAG  
ADR Systems Tax I.D. # 36-3977108  
Date of Hearing: Thursday, December 8, 2016



In Re:  
PAUL DULBERG

BK No.: 14-83578

Chapter: 7

Honorable Thomas M. Lynch

Debtor(s)

**ORDER TO EMPLOY SPECIAL COUNSEL**

THIS CAUSE coming on to be heard on this 31st day of October, 2016 upon the Trustee's Motion to employ the law office of Baudin Law Group, Ltd. as attorneys for the estate, the Court after considering the Motion, the statements of counsel, pleadings on file and being fully advised in the premises:

IT IS HEREBY ORDERED that Joseph D. Olsen, Trustee herein, is authorized to employ the Baudin Law Group, Ltd. to represent the estate in regards to the Debtor's personal injury claim, more fully described in the Trustee's Motion, and that the Trustee is allowed to adopt the contingency contract between Debtor, Paul Dulberg and Baudin Law Group, Ltd. as described in the Trustee's Motion, and the Trustee may execute such documents as are necessary to accomplish the matters set forth herein.

Enter:



Honorable Thomas M. Lynch

United States Bankruptcy Judge

Dated: October 31, 2016

**Prepared by:**

Joseph D. Olsen  
Yalden, Olsen & Willette  
1318 East State Street  
Rockford, IL 61104  
815-965-8635 (phone)  
815-965-4573 (fax)





UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
Western Division

In Re:  
PAUL DULBERG

BK No.: 14-83578

Chapter: 7

Honorable Thomas M. Lynch

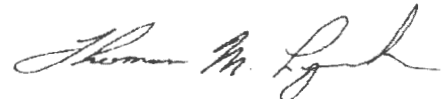
Debtor(s)

**ORDER**

THIS CAUSE coming on to be heard on this 31st day of October, 2016 upon the Trustee's Motion for Authority to Enter into a "Binding Mediation Agreement", the Court after considering the Motion, the statements of counsel, pleadings on file and being fully advised in the premises:

IT IS HEREBY ORDERED that Joseph D. Olsen, Trustee herein, is authorized to enter into a "Binding Mediation Agreement" as described in the Trustee's Motion, and the Trustee may execute such documents as are necessary to accomplish the matters set forth herein.

Enter:



Honorable Thomas M. Lynch

United States Bankruptcy Judge

Dated: October 31, 2016

**Prepared by:**

Joseph D. Olsen  
Yalden, Olsen & Willette  
1318 East State Street  
Rockford, IL 61104  
815-965-8635 (phone)  
815-965-4573 (fax)





## Binding Mediation Award

Paul Dulberg

v.

ADR Systems File # 33391BMAG

David Gagnon

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of:

Paul Dulberg

Gross Award:

\$ 660,000.

Comparative fault:

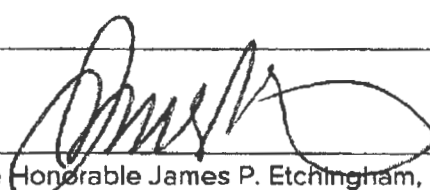
15

% (if applicable)

Net Award:

\$ 561,000

Comments/Explanation

Medical\$ 60,000.Future medical\$ 200,000.Lost wage\$ 250,000.P & S75,000.L & L75,000.
  
 The Honorable James P. Etchingham, (Ret.)

EXHIBIT

10



**Binding Mediation Agreement  
ADR Systems File # 33391BMAG**

**I. Parties**

- A. Paul Dulberg, by attorneys, Kelly N. Baudin and Randall Baudin, II
- B. David Gagnon, by attorney, Shoshan Reddington

**II. Date, Time and Location of the Binding Mediation**

Date: Thursday, December 8, 2016  
Time: 1:30 P.M.  
Location: ADR Systems of America, LLC  
20 North Clark Street  
Floor 29  
Chicago, IL 60602  
Contact: Alex Goodrich  
312-960-2267

**III. Rules Governing the Mediation**

Each party ("Party") to this agreement ("Agreement") hereby agrees to submit the above dispute for binding mediation ("Mediation") to ADR Systems of America, L.L.C., ("ADR Systems") in accordance with the following terms:

**A. Powers of the Mediator**

1. The Parties agree that The Honorable James P. Etchingham (Ret.) shall serve as the sole Mediator in this matter (the "Mediator").
2. The Mediator shall have the power to determine the admissibility of evidence and to rule upon the law and the facts of the dispute pursuant to Section III(D)(1). The Mediator shall also have the power to rule on objections to evidence which arise during the hearing.
3. The Mediator is authorized to hold joint and separate caucuses with the Parties and to make oral and written recommendations for settlement purposes.
4. **The Parties agree that the Mediator shall decide all issues concerning liability and damages arising from the dispute if this matter cannot be settled, unless any of the above is waived. Any other issues to be decided must be agreed upon by the Parties, and included in this contract.**
5. Any failure to object to compliance with these Rules shall be deemed a waiver of such objection.

**B. Amendments to the Agreement**

1. No Party shall amend the Agreement at any time without the consent and approval of such changes by the opposing Party, and ADR Systems of America.

ADR Systems • 20 North Clark Street • Floor 29 • Chicago, IL 60602  
312.960.2260 • info@adr-systems.com • www.adr-systems.com



2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR Systems case manager by telephone. The agreed proposal must also be submitted to the ADR Systems case manager in writing, by fax or email, if necessary, and the contract changes MUST be made by ADR Systems. No changes made outside these guidelines will be accepted. Furthermore, if the amended contract made by ADR Systems is not signed by both Parties, the Agreement shall be enforced in its original form, without changes.

**C. Pre-Hearing Submission**

1. Mediation statements are permitted provided that the statement is shared among the other parties. The Mediation Statement may include: statement of facts, including a description of the injury and a list of special damages and expenses incurred and expected to be incurred; and a theory of liability and damages and authorities in support thereof.

**D. Evidentiary Rules**

1. The Parties agree that the following documents are allowed into evidence, without foundation or other proof, provided that said items are served upon the Mediator and the opposing Party at least **17 (seventeen)** days prior to the hearing date:
- a. Medical records and medical bills for medical services;
  - b. Bills for drugs and medical appliances (for example, prostheses);
  - c. Property repair bills or estimates;
  - d. Reports of lost time from employment, and / or lost compensation or wages;
  - e. The written statement of any expert witness, the deposition of a witness, the statement of a witness, to which the witness would be allowed to express if testifying in person, if the statement is made by affidavit sworn to under oath or by certification as provided in section 1-109 of the Illinois Code of Civil Procedure;
  - f. Photographs;
  - g. Police reports;
  - h. Any other document not specifically covered by any of the foregoing provisions that a Party believes in good faith should be considered by the Mediator; and
  - i. Each Party may introduce any other evidence, including but not limited to documents or exhibits, in accordance with the rules of evidence of the State of Illinois.
2. The Parties agree that they will not disclose any and all dollar figures relating to the high/low agreement; last offer and last demand; policy limits; and /or set-offs orally or in written form, to the Mediator at any time before or during the conference, or while under advisement, prior to the Mediator's final decision.
- a. Violation of this rule set forth in (D)(2) shall constitute a material breach of this Agreement. The non-disclosing Party must formally object to the Mediator upon learning of the breach, or the breach will be considered waived. The non-disclosing Party shall then have the option to continue the Mediation from the point of objection to its completion; or to terminate the Mediation at the point of objection as null and void. The ADR Systems case manager must be made aware of this breach at the time of the objection, so the objection is addressed in accordance with the Agreement; and

- b. If the Mediation is terminated as null and void, all costs of the Mediation will be charged entirely to the disclosing Party. A new Mediation shall then take place with a new Mediator on a new date. If the Mediation is not terminated, the costs of the Mediation shall remain the responsibility of each Party or in accordance with the Agreement.
3. The Parties agree if a Party has an objection to the evidence or material submitted by any other Party pursuant to Paragraph (D)(1), notice of the objection shall be given to the ADR Systems case manager and opposing counsel by telephone and in writing at least seven days prior to the Mediation. If resolution cannot be obtained, the case manager will forward the objection to the Mediator to be ruled upon before or at the Mediation. The case manager will notify each of the Parties of the objection. The objection may result in a postponement of the proceedings. **If the objection is because of new material being disclosed with the submission for the first time (for example, new or additional reports, additional medical/wage loss claims, etc.) then the disclosing party shall be charged for the total cost associated with the continuance.**
4. The Parties agree that any Party desiring to introduce any of the items described in Paragraph (D)(1) without foundation or other proof, must deliver said items to the Mediator and to the other Parties no later than **Monday, November 21, 2016.**
5. The items are considered delivered as of the date that one of the following events occur:
  - a. If mailed, by the date of the postmark;
  - b. If delivered by a courier or a messenger, the date the item is received by the courier or messenger; and
  - c. The date transmitted by facsimile or email.
6. The Parties agree to deliver any of the items described in Paragraph (C)(1) and (D)(1) to the following addresses:

If emailing Submissions, please send to [submissions@adrsystems.com](mailto:submissions@adrsystems.com), however, please do not send anything over 50 pages, including exhibits.

The Honorable James P. Etchingham, (Ret.) (Mediator)  
C/O ADR SYSTEMS  
20 North Clark Street  
Floor 29  
Chicago, IL 60602

Kelly N. Baudin, Esq. / Randall Baudin, II, Esq. (Plaintiff Attorneys)  
BAUDIN LAW GROUP  
304 McHenry Avenue  
Crystal Lake, IL 60039

Shoshan Reddington, Esq. (Defense Attorney)  
LAW OFFICES OF STEVEN LIHOSIT  
200 N. La Salle Street  
Suite 2550  
Chicago, IL 60601

**E. Conference Procedure**

1. The Parties may present opening statements but there will be no live testimony.
2. The Parties will attempt to reach a voluntary settlement through negotiation with the assistance of the Mediator.
3. If the Parties cannot voluntarily reach a settlement, the Mediator will advise the Parties that settlement cannot be reached. The Mediator will then take the matter under advisement and render an award that will be binding to all Parties, (the "Award"), subject to the terms of any high/low agreement that the Parties may have as described below in Paragraph (F)(1).

**F. Award Limits**

1. The Parties may agree prior to the Mediation that a minimum and maximum amount will serve as parameters for the Award (sometimes referred to as a "high/low agreement"), such that the actual amount that must be paid to the plaintiff or claimant shall not exceed a certain amount (the "high" or "maximum award") and shall not be less than a certain amount (the "low" or "minimum award").
  - a. If liability is disputed and comparative fault or negligence is asserted as an affirmative defense, the Mediator shall make a finding regarding comparative fault or negligence, if any. In the event that there is a finding of comparative fault or negligence of the plaintiff that is greater than 50% (fifty percent), the plaintiff shall receive the negotiated minimum award. In the event that there is a finding of comparative fault or negligence of 50% (fifty percent) or less against the plaintiff, then any damages awarded in favor of the plaintiff shall be reduced by the amount of the plaintiff's comparative fault or negligence, but shall be no less than the minimum parameter or more than the maximum parameter.
  - b. All award minimum and maximum parameters are subject to applicable set-offs if any, as governed by policy provisions if not specified in the Agreement.

The Parties agree that for this Mediation the minimum award to Paul Dulberg will be **\$50,000.00**. Also, the maximum award to Paul Dulberg will be **\$300,000.00**. These amounts reflect the minimum and maximum amounts of money that David Dulberg shall be liable to pay to Paul Dulberg.

**IV. Effect of this Agreement**

- A. After the commencement of the Mediation, no Party shall be permitted to cancel this Agreement or the Mediation and the Mediator shall render a decision that shall be in accordance with the terms set forth in this Agreement. When the Award is rendered, the Mediation is resolved, and any Award arising from this Mediation shall operate as a bar and complete defense to any action or proceeding in any court or tribunal that may arise from the same incident upon which the Mediation is based.

- B. The Parties further agree that any pending litigation will be dismissed, with prejudice, as to those Parties participating in this Mediation upon the conclusion thereof. Any and all liens, including contractual rights of subrogation owed are subject to existing Illinois law. By agreement of the Parties, the Mediator's Award will be final and binding and not subject to appeal or motion for reconsideration by any Party.

## V. Mediation Costs

### A. ADR Systems Fee Schedule

1. A deposit is required for the Administrative Fee, Mediator's estimated review, session, and follow-up time ("Mediation Costs"). Binding-Mediations are billed at a four hour per day minimum. **The required deposit amount is \$1,295.00 per Party and is due by November 21, 2016.** Any unused portion of the deposit will be refunded based on the four hour minimum. If the Mediator's review, session and follow-up time go over the estimated amount, each Party will be invoiced for the additional time.
2. Mediation Costs are usually divided equally among all Parties, unless otherwise agreed upon by the Parties. **ADR Systems must be notified of special fee arrangements.**
3. All deposits are due two weeks prior to the session. ADR Systems reserves the right to cancel a session if deposits are not received from all Parties two weeks prior to the session.
4. ADR Systems requires **14-day notice in writing or via electronic transmission** of cancellation or continuance. For Binding-Mediations **cancelled or continued** within 14 days of the session, the Party causing the cancellation will be billed for the Mediation Costs of all the Parties involved, which includes the four hour per day minimum, additional review time, and any other expenses incurred ("cancellation fees"). If the cancellation is by agreement of all Parties, or if the case has settled, the cancellation fees will be split equally among all Parties, unless ADR Systems is instructed otherwise. The cancellation fees may be waived if the Mediator's lost time can be filled by another matter.

|                                  |                                                  |
|----------------------------------|--------------------------------------------------|
| Administrative Fee               | \$195.00 per Party (Non-refundable)              |
| Mediator's Review Time           | \$450.00 per hour, split equally between Parties |
| Session Time                     | \$450.00 per hour, split equally between Parties |
| Mediator's Decision Writing Time | \$450.00 per hour, split equally between Parties |
| Mediator's Travel Time (if any)  | \$75.00 per hour, split equally between Parties  |

### B. Responsibility for Payment

1. Each Party and its counsel (including that counsel's firm) shall be jointly and severally responsible for the payment of that Party's allocated share of the Mediation Costs as set forth above.
2. All expenses and disbursements made by ADR Systems in connection with the Mediation, including, but not limited to, outside room rental fee, meals, express mail and messenger charges, and any other charges associated with the Mediation, will be billed equally to the Parties at the time of the invoice.
3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs,



3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney's fees, incurred by ADR Systems in connection with the collection of any amount due and owing. Payment of additional costs incurred by ADR Systems in connection with the collection of any amount due and owing shall be made within 15 days of invoice.
4. In the event ADR Systems' session rooms are completely booked on your selected session date, ADR Systems will attempt to find another complimentary venue for your session. If ADR Systems cannot find a complimentary venue or the parties cannot agree on the complimentary venue, ADR Systems reserves the right to schedule your case in a location that may involve a facilities charge. The facilities charge will be split equally among the parties unless ADR Systems is instructed otherwise.
5. **\*\*Defendant agrees to pay up to \$3,500.00 of Plaintiff's Binding Mediation Costs.**

#### VI. Acknowledgment of Agreement

- A. By signing this Agreement, I acknowledge that I have read and agree to all the provisions as set forth above.
- B. Each Party is responsible for only his/her own signature where indicated and will submit this signed Agreement to ADR Systems within 10 days of receipt of the Agreement. Counsel may sign on behalf of the Party.

4 By: Paul Dulberg \_\_\_\_\_ Date \_\_\_\_\_  
 Paul Dulberg / Plaintiff

4 By: Kelly N. Baudin \_\_\_\_\_ Date 12/8/14  
 Kelly N. Baudin / Attorney for the Plaintiff

4 By: Randall Baudin, II \_\_\_\_\_ Date 12/8/14  
 Randall Baudin, II / Attorney for the Plaintiff

14 By: Shoshan Reddington \_\_\_\_\_ Date 12/8/14  
 Shoshan Reddington / Attorney for the Defendant

Walter Norman

ADR Systems File # 33391BMAG  
 ADR Systems Tax I.D. # 36-3977108  
 Date of Hearing: Thursday, December 8, 2016





FILED DATE: 4/25/2023 8:44 PM 2022L010905

689.27595 – 35/11

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

FILED  
4/25/2023 8:44 PM  
IRIS Y. #3990  
CIRCUIT CLERK  
COOK COUNTY, IL  
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|-----------------------------------|---|-------------------------|
| PAUL R. DULBERG, INDIVIDUALLY AND | ) |                         |
| THE PAUL R. DULBERG REVOCABLE     | ) |                         |
| TRUST,                            | ) |                         |
|                                   | ) |                         |
| Plaintiff,                        | ) | Case No.: 2022 L 010905 |
|                                   | ) |                         |
| vs.                               | ) |                         |
|                                   | ) |                         |
| KELLY N. BAUDIN a/k/a BAUDIN &    | ) |                         |
| BAUDIN, et al.                    | ) |                         |
|                                   | ) |                         |
| Defendants.                       | ) |                         |

**BAUDIN DEFENDANTS’ SECTION 2-619.1 MOTION TO DISMISS**

NOW COME Defendants, KELLY N. BAUDIN, WILLIAM RANDAL BAUDIN, II and KELRAN INC. a/k/a THE BAUDIN LAW GROUP, LTD. a/k/a KELRAN INC. (referred to collectively as the “Baudin Defendants”) by and through their attorneys, Tribler Orpett & Meyer P.C., and, move this Court, pursuant to 5/2-619(a)(5) and (a)(9), 735 ILCS 5/2-615, and 5/2-619.1, to dismiss Plaintiff’s Complaint at Law. In support thereof, the Baudin Defendants state the following:

**INTRODUCTION**

The Baudin Defendants are two lawyers and a law firm. Plaintiff, Paul R. Dulberg, instituted this action by filing a 107-paragraph Complaint at Law (“Complaint”) arising from the Baudin Defendants’ representation of Plaintiff and then of the trustee of Plaintiff’s Chapter 7 Bankruptcy Estate (the “Bankruptcy Estate”) in an underlying personal injury claim (the “Personal Injury Claim”). (See Complaint, attached hereto as *Exhibit A.*). Through his Complaint, Plaintiff sued the Baudin Defendants for legal malpractice under a breach of

fiduciary duty theory (Count 1) and for legal malpractice under a fraudulent misrepresentation theory (Count 2). Plaintiff also sued multiple others: He sued the bankruptcy trustee for Plaintiff's Chapter 7 Bankruptcy Estate, as well as his law firm and a colleague, for legal malpractice-aiding and abetting a fraud (Count 3). He sued ADR Systems of America for breach of contract in connection with the mediation of the Personal Injury Claim (Count 4). And he sued Allstate Property and Casualty Insurance, which insured one of the individuals against whom Plaintiff directed the Personal Injury Claim, for breach of contract (Count 5).

Plaintiffs' claims against the Baudin Defendants are fatally flawed for multiple reasons. First, Plaintiff cannot prevail on the proximate cause element of his claims. Plaintiff claims that the Baudin Defendants "forced" Plaintiff into mediation at which the Personal Injury Claim was resolved for an amount less than what Plaintiff believes the claim to have been worth, but Plaintiff ignores that the Bankruptcy Estate—not Plaintiff—owned and controlled the Personal Injury Claim, including any decision whether and on what terms to resolve the claim by mediation or otherwise.

Second, Plaintiff's claims are barred by the two-year statute of limitations. Plaintiff complains that the Baudin Defendants caused the Personal Injury Claim to proceed to mediation on terms with which Plaintiff did not agree, but he waited to file suit until six years after the mediation that he attended and until just days short of six years after he acknowledges having learned of the result of the mediation, including the terms of which he now complains.

Third, Plaintiff's claims suffer from general pleading deficiencies, including the fact that although Plaintiff claims to have sued on behalf of the Paul R. Dulberg Revocable Trust, he pleads no allegation as to how he has the power to act for the trust, no allegations of any duty owed to the trust, and no allegations of damages allegedly incurred by the trust.

## STATEMENT OF FACTS

This case arises from a personal injury lawsuit that Plaintiff filed against his neighbors in 2012, in a matter captioned *Paul Dulberg v. David Gagnon, et al.*, Case No. 2012 LA 178, in the Twenty-Second Judicial Circuit, McHenry County, Illinois (the “Personal Injury Lawsuit”). (Ex. A, ¶ 19.) There, Plaintiff claimed to have been injured (the “Claimed Injury”) when his arm was struck with a chainsaw operated by the neighbor, David Gagnon.

On November 26, 2014, Plaintiff filed for Chapter 7 bankruptcy protection in the matter of *In re: Paul Dulberg, Debtor*, Case No. 14-bk-83578 in the Northern District of Illinois Bankruptcy Court (the “Bankruptcy Case”). (See Docket Report, No. 14-bk-83578, attached hereto as **Exhibit B**.<sup>1</sup>) Dulberg eventually listed on an Amended Schedule B the personal injury suit as an asset in his Chapter 7 bankruptcy, claiming that \$15,000 of the proceeds of the claim would be exempt pursuant to 735 ILCS 5/12-1001(h)(4). (See Plaintiff’s Amended Schedule B, line 21, attached hereto as **Exhibit C**.) Specifically, he identified the following among his personal property:

Pending personal injury claim. Paul Dulberg, Plaintiff, v. David Gagnon, et al., Defendants. McHenry County, Illinois Case No. 12 LA 178 Estimate value of claim, \$55,000.00, subject to medical liens and attorney fee. Contact: Hans Mast, Attorney, Law Offices of Thomas J. Popovich, P. C., 3416 West Elm Street, McHenry, Illinois 60050, Telephone: 815-344-3797.

(Id.)

While the Bankruptcy Case remained pending, Plaintiff’s original attorney in the Personal Injury Lawsuit withdrew. On September 22, 2015, Plaintiff retained the Baudin Defendants to represent him in the Personal Injury Lawsuit. (Ex. A, ¶¶ 15-16; and Contingency Fee Agreement, attached as Ex. 7 to Ex. A.) The Baudin Defendants appeared as Plaintiff’s

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<sup>1</sup> The Baudin Defendants ask this Court to take Courts judicial notice of the public bankruptcy records and other court records in accord with *Kopnick v. JL Woode Mgmt. Co., LLC*, 2017 IL App (1st) 152054, ¶ 26.

counsel in early November 2015. (See Appearance, attached hereto as *Exhibit D*.)

In July 2016, the Baudin Defendants recommended to Plaintiff that they should mediate the PI Case subject to a high-low agreement, with a cap of \$300,000. (Ex. A, ¶¶ 24-35.) According to Dulberg, he wanted a higher floor and rejected the mediation proposal. (Ex. A, ¶¶ 42, 46.) Then, in late September 2016, the bankruptcy trustee reached out to the Baudin Defendants, instructing them not to settle the Personal Injury Claim without authorization of the bankruptcy trustee and seeking to retain the Baudin Defendants to prosecute the Personal Injury Claim on behalf of the Estate. (September 27, 2016, letter from Bankruptcy Trustee, attached hereto as *Exhibit E*.)

On October 4, 2016, the bankruptcy trustee filed two motions in the bankruptcy court. Through the first motion, the bankruptcy trustee sought authority to enter into a binding mediation agreement. (Ex. 4 to Ex. A.) Attached to the motion is an unsigned copy of the binding mediation agreement. (Id.) Relative to this motion, the bankruptcy trustee gave notice to creditors and other parties in interest, including Plaintiff at 4606 Hayden Court, McHenry, Illinois 60051.<sup>2</sup> (Ex. 4 to Ex. A.) Through the second motion, the trustee sought leave to retain the Baudin Defendants to represent Plaintiff's Bankruptcy Estate in pursuing the Personal Injury Claim, (See Ex. 5 to Ex. A.) Again, the bankruptcy trustee gave notice to creditors and other parties in interest, including Plaintiff at his Hayden Court address. (Id.) Neither Plaintiff nor anyone else objected to either motion. (See Ex. B and transcript of bankruptcy hearing, attached as Group Ex. 6A to Ex. A.)

On or about October 9, 2016, the Baudin Defendants spoke with Plaintiff and informed him that the binding mediation would proceed with or without Plaintiff's consent as "the

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<sup>2</sup> In Paragraph 5 of his Complaint, Plaintiff alleges that he lives at 4606 Hayden Court, McHenry, Illinois, 60051.

bankruptcy trustee and judge had the authority to order the process into a binding mediation agreement without [Plaintiff's] consent.” (Ex. A, ¶ 50.)

On October 31, 2016, the Bankruptcy Court heard the BK Trustee's motions and entered an order authorizing the Bankruptcy Trustee to retain the Baudin Defendants to represent Plaintiff's bankruptcy estate in pursuing the Personal Injury Claim and for giving the bankruptcy trustee the power to execute any documents necessary to enter into a binding mediation agreement relative to the Personal Injury Claim. (Ex. 7 to Ex. A.) In its order, the Bankruptcy Court authorized the bankruptcy trustee to adopt the contingency contract previously entered into between Plaintiff and the Baudin Defendants. (Id.) The Bankruptcy Court also authorized the trustee to “execute such documents as are necessary to accomplish the matters set forth herein.” (Id.) As for the latter set of relief, the bankruptcy court stated: “I will approve – authorize, if you will, for you [the BK Trustee] to enter into the binding mediation agreement, see where it takes you.” (Transcript of BK hearing, pp. 2, 5, attached as Group Ex. 6A to Ex. A.)

The mediation went forward on December 8, 2016. (Ex. A, ¶ 57.) Plaintiff attended with his mother. (Id.) The Baudin Defendants and the defense attorney executed the binding mediation agreement that day. (Ex. 11 to Ex. A, at p. 6.) The agreement also appears to bear Plaintiff's own signature. (Id.) Pursuant to the binding mediation agreement, the minimum recovery would be \$50,000 with a cap of \$300,000. (Ex. 11 to Ex. A, at p. 4.)

On December 12, 2016, the mediator, who was not aware of the high-low agreement, assessed Plaintiff's damages at \$660,000 and reduced that sum by 15% for Plaintiff's own comparative fault, resulting in a net award in Plaintiff's favor of \$561,000. (See Ex. 10 to Ex. A.) That day, the Baudin Defendants called Plaintiff to inform him of the award. (Ex. A, ¶ 65.) Plaintiff responded: “Yeah, you two did good, real good, and I thank both of you sincerely. I just

can't help it, what I see here is a gift of \$261,000 given to those responsible for my injuries.” (Ex. A, ¶ 67.)

Plaintiff was informed that the bankruptcy trustee would receive the entirety of the award, which would be reduced to \$300,000 pursuant to the binding mediation agreement, and that the funds would be delivered to the bankruptcy trustee to pay Plaintiff's creditors. (Ex. 11 to Ex. A, at p. 6.) On January 26, 2017, the bankruptcy court entered an Order Approving Payments of the Personal Injury Proceeds, providing for payment of the Baudin Defendants' contingency fees and costs, as well as distributions to medical lienholders, payments to the mediator, and a distribution to Plaintiff of the full \$15,000 personal injury exception previously claimed by Plaintiff. (See Order of January 26, 2017, attached hereto as *Exhibit F*.) The bankruptcy estate closed in June of 2017. (See Ex. B.)

Plaintiff filed the instant lawsuit on December 8, 2022 – exactly six years after the mediation was held in the Personal Injury Lawsuit. (See Ex. A.)

In Count 1 of his Complaint, for “Legal Malpractice-Breach of Fiduciary Duty,” Plaintiff alleges that he was damaged by the Baudin Defendants having breached their fiduciary in allegedly forcing Dulberg to proceed to mediation with a \$300,000 cap against his will. (Ex. A, ¶ 73.) Plaintiff alleges that he was damaged “in an amount in excess of \$261,000,” which equals the sum awarded by the mediator less the \$300,000 paid by the defendants to the Bankruptcy Estate. (Ex. A, ¶ 74.)

In Count 2 of his Complaint, entitled “Legal Malpractice-Fraudulent Misrepresentation,” Plaintiff alleges that the Baudin Defendants misrepresented to him “that that the bankruptcy judge had the authority and did order that Plaintiff pursue his ongoing litigation in Civil Court through Binding Mediation,” and that Plaintiff relied on the alleged misrepresentation in

proceeding to the binding mediation subject to a \$300,000 cap. (Ex. A, ¶¶ 76, 80.)

In both counts against the Baudin Defendants, Plaintiff seeks not only compensatory damages and costs, but relief in the form of interest and attorneys' fees. (See Ex. A, Counts 1 and 2.)

### LEGAL STANDARDS

A motion to dismiss pursuant to challenges the legal sufficiency of a complaint. 735 ILCS 5/2-615. A complaint is properly dismissed when it fails to allege facts sufficient to state a cause of action upon which relief can be granted. *Marshall v. Burger King Corp.*, 222 Ill.2d 422, 429 (2006). Failure to allege sufficient facts is a deficiency that may not be cured by liberal construction of the pleadings or argument. *Estate of Johnson v. Condell Memorial Hosp.*, 119 Ill.2d 496, 510 (1998).

A motion to dismiss pursuant to 735 ILCS 5/2-619(a)(9) attacks the legal sufficiency of the complaint by raising affirmative matter which defeats the claim. *Illinois Graphics v. Nickum*, 159 Ill. 2d 469, 485 (1994). An "affirmative matter" is a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint. *John v. Tribune Co.*, 24 Ill. 2d 437 (1962).

A motion to dismiss under 735 ILCS 5/2-619 admits well-pleaded facts in the complaint and reasonable inferences therefrom. *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8. Section 2-619(a)(5) provides that a defendant may move for dismissal on the grounds that the action was not commenced within the time permitted by law. 735 ILCS 5/2-619(a)(5).

## ARGUMENT

**I. PLAINTIFF’S CLAIMS AGAINST THE BAUDIN DEFENDANTS SHOULD BE DISMISSED PURSUANT TO 735 ILCS 5/2-619(A)(9) BECAUSE THE PLAINTIFF COULD NOT HAVE SUSTAINED A DAMAGE AS A PROXIMATE RESULT OF THE HANDLING OF THE PERSONAL INJURY CLAIM WHERE THE PERSONAL INJURY CLAIM WAS OWNED AND CONTROLLED BY THE BANKRUPTCY ESTATE, NOT PLAINTIFF.**

In both Counts 1 and 2, Plaintiff claims to have been damaged as a result of the Baudin Defendants’ prosecution of the Personal Injury Claim, including in presenting the claim for binding mediation and thereby allegedly limiting Plaintiff’s recovery for his Personal Injury Claim. But Plaintiff had no ability to recover anything from his Personal Injury Claim because he did not own it – the Bankruptcy Estate did.

Once Plaintiff filed for bankruptcy protection, he lost standing to pursue any personal injury claims because, upon filing for bankruptcy, any such claims became part of the bankruptcy estate. When he exchanged his prospective right to pursue the Personal Injury Claim for bankruptcy protection, Plaintiff lost the ability to control the prosecution of the Personal Injury claim, either individually or through counsel. The bankruptcy trustee had the sole power to pursue and control the claim, which he exercised. As such, Plaintiff possessed no claim to have been damaged as a proximate result of any actions taken while the bankruptcy estate, rather than Plaintiff himself, owned and controlled the Personal Injury Claim.

To prove legal malpractice, the plaintiff-client must plead and prove that the defendant-attorney owed the client a duty of due care arising from the attorney-client relationship, that the defendant breached that duty, and that as a proximate result, the client suffered an injury. *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 306 (2005) (citing *Sexton v. Smith*, 112 Ill. 2d 187, 193 (1986)). “Even if negligence on the part of the attorney is established, no action will be against the attorney unless that negligence proximately caused damage to the client.” *Northern Illinois Emergency Physicians*, 216 Ill. 2d at



306-07.

When Plaintiff filed for Chapter 7 bankruptcy protection, all of Plaintiff's legal property interests—including his interest in the Personal Injury Claim—became property of the bankruptcy estate and the bankruptcy trustee succeeded to Plaintiff's rights in the same. 11 U.S.C. § 541(a); *Wright v. Abbott Capital Corp.*, 79 Ill.App.3d 986, 990 (1st Dist. 1979). The act of filing a petition for relief under the Bankruptcy Code commences a bankruptcy case and creates an estate in bankruptcy. See 11 U.S.C. §§ 301, 541. Upon commencement of the case, a debtor's interests in property vest in the bankruptcy estate, and the debtor surrenders the right to control estate property because property of the estate falls under the exclusive jurisdiction of the bankruptcy court. See 28 U.S.C. § 1334(e). Because property of the estate *in custodia legis* by virtue of the bankruptcy filing, it is administered exclusively by a specifically designated fiduciary, a trustee. See, e.g., 11 U.S.C. §§ 323(a), 363, and 704.

The foregoing principles relating to property of the debtor apply to pre-bankruptcy claims. Pre-bankruptcy claims are part of the debtors' estates and thus belong to the bankruptcy trustees, for the benefit of the debtors' creditors. *Biesek v. Soo Line R.R. Co.*, 440 F.3d 410, 413 (7th Cir. 2006). A debtor's bankruptcy estate includes claims and causes of action that belonged to the debtor on the petition date. *Cannon-Stokes v. Potter*, 453 F.3d 446, 448 (7th Cir. 2006); *Cable v. Ivy Tech State College*, 200 F.3d 467, 472-73 (7th Cir. 1999). Thus, a legal claim arising out of events occurring before a debtor's bankruptcy filings belongs to the debtor's estate. *In re Polis*, 217 F.3d 899, 901–02 (7th Cir. 2000).

Once a debtor files for bankruptcy, any unliquidated lawsuits become part of the bankruptcy estate; regardless of whether such claims are scheduled, a debtor is divested of standing to pursue them upon filing his petition. See *Wright*, 79 Ill.App.3d at 990; *Board of*

*Managers of 1120 Club Condominium Association v. 1120 Club, LLC*, 2016 IL App (1st) 143849, ¶ 41 (“once a bankruptcy action is initiated, all unliquidated lawsuits [in which the debtor has a potential claim] become part of the bankruptcy estate,” thus, “if a party to a lawsuit files for bankruptcy, that party is divested of standing to pursue the claim” and only the bankruptcy trustee then has standing to pursue the suit.)

Because a pre-bankruptcy claim does not belong to the debtor, the debtor “cannot pursue it in litigation.” *Biesek*, 440 F.3d at 414. A trustee’s statutory right to exclusivity ceases only if the property—in this case, a cause of action—has been abandoned. See *Cannon–Stokes v. Potter*, 453 F.3d 446, 448 (7th Cir. 2006) (if estate, through trustee, abandons a cause of action, then creditors no longer have an interest, and claim reverts to debtor’s hands); 11 U.S.C. § 554. Absent abandonment by the trustee, a debtor cannot pursue a cause of action for his or her own benefit. *In re Enyedi*, 371 B.R. 327, 333 (N.D. Ill. 2007).

By filing for Chapter 7 bankruptcy, Plaintiff relinquished ownership over the Personal Injury Claim and thereby lacked standing to pursue the claim, including in mediation. Although Plaintiff need not have identified the Personal Injury Claim as among his personal property for the claim to have become part of the bankruptcy estate, he did in fact identify the claim on an Amended Schedule B. (See Ex. C.) The Bankruptcy Estate owned the Personal Injury Claim and the Bankruptcy trustee had exclusive power to pursue and control the Personal Injury Claim, including litigation of the Personal Injury Lawsuit. The Estate and Bankruptcy trustee never relinquished that ownership or power, but instead assumed control over the Personal Injury Lawsuit, including the decision whether to mediate and on what terms.

Because Plaintiff lacked ownership of the Personal Injury Claim and standing to pursue the Personal Injury Lawsuit, he possesses no cognizable claim to have been damaged as a

proximate result of any mal- or misfeasance in connection with the prosecution of the same.

**II. PLAINTIFF'S CLAIMS AGAINST THE BAUDIN DEFENDANTS SHOULD BE DISMISSED PURSUANT TO 735 ILCS 5/2-619(A)(5) BECAUSE THEY ARE BARRED BY THE STATUTE OF LIMITATIONS IN 735 ILCS 5/13-214.3**

The statute of limitations applicable to suits against attorneys arising out of attorneys' performance of legal services is found in 735 ILCS 5/13-214.3(b) (Section 214.3(b)). Section 13-214.3(b) provides that such suits must be brought within two years from the time that the plaintiff knew or should have known of an injury due to the alleged action or inaction of the attorney. Section 13-214(b) states, in pertinent part, as follows:

An action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services ... must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.

735 ILCS 5/13-214.3(b).

The statute of limitations set forth in this Section 214.3(b) incorporates the "discovery rule," "which serves to toll the limitations period to the time when a person knows or reasonably should know of his or her injury." *Blue Water Partners, Inc., v. Edwin D. Mason, Foley & Lardner*, 2012 IL App (1st) 102165, ¶ 48 (quoting *Hester v. Diaz*, 346 Ill.App.3d 550, 553 (5th Dist. 2004)). The two-year period begins when the legal malpractice plaintiff knows or should know facts that would cause him to believe that he was injured and that the injury was wrongfully caused. *Racquet v. Grant*, 318 Ill.App.3d 831, 836 (2d Dist. 2000); *Butler v. Mayer, Brown and Platt*, 301 Ill.App.3d 919, 922 (1st Dist. 1998). Although that time is normally a question of fact, a court may decide the issue as a matter of law where the facts are undisputed and only one conclusion may be drawn from them. *Jackson Jordan, Inc. v. Leydig, Voit & Mayer*, 158 Ill. 2d 240, 250 (1994).

"The legal malpractice statute of limitations begins to run when the purportedly injured

party ‘has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue.’ ” *Blue Water Partners*, 2012 IL App (1st) 102165, ¶ 52 (quoting *SK Partners I, LP v. Metro Consultants, Inc.*, 408 Ill.App.3d 127, 130 (1st Dist. 2011)). Because the intent of the discovery rule is merely to delay the running of the statute of limitations until the plaintiff has reason to inquire further, the statute of limitations begins to run when plaintiff had a reasonable belief that his injury was caused by wrongful conduct, not when he definitively knew he had an actionable legal malpractice claim. *Butler II v. Mayer, Brown and Platt*, 301 Ill.App.3d 919, 923 (1st Dist. 1998). Although the discovery rule has been held to require that the client know or should know that he was injured and that it was wrongfully caused (see, e.g., *Romano v. Morrisroe*, 326 Ill.App.3d 26 at 28 (2d Dist. 2001)), “actual knowledge of the alleged legal malpractice ... is not a necessary condition to trigger the running of the statute of limitations.” *Blue Water Partners*, 2012 IL App (1st) 102165, ¶ 51.

Stated another way, “ ‘the phrase “wrongfully caused” does not mean knowledge of a specific defendant’s negligent conduct or knowledge of the existence of a cause of action.’ Rather, the term refers to when an injured party ‘becomes possessed of sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved.’ ” *Castello v. Kalis*, 352 Ill.App.3d 736, 744-45 (1st Dist. 2004) (internal citations and emphases omitted).

In this case, Plaintiff knew—even if he did not, he certainly should have known—of his alleged damages well over two years before he filed suit on December 8, 2022. Plaintiff claims that he did not want to proceed to mediation under the proposed terms of the binding mediation agreement and that he was damaged as a proximate result of the Baudin Defendants having caused the entry of a binding mediation agreement “with a \$300,000 cap against [Plaintiff’s]

stated desire and instructions for an uncapped jury trial. (Ex. A, ¶¶ 46, 50, 51, 73.)

The mediation took place exactly six years before Plaintiff filed suit, on December 8, 2016. (Ex. A, ¶ 57.) Plaintiff attended the mediation in person. (Id.) He acknowledges that the Baudin Defendants informed him of the mediation award four days later, on December 12, 2016. (Ex. A, ¶ 67.) On that date, he told the Baudin Defendants that the arbitration award, reduced to \$300,000 was “a gift of \$261,000 given to those responsible for my injuries.” (Ex. A, ¶ 67.)

Plaintiff knew or should have known well over two years before filing suit not only of the result of the mediation, but that the mediation award was reduced to the \$300,000 cap by virtue of the binding mediation agreement. As such, the two-year statute of limitations expired long before Plaintiff filed her Complaint and dismissal is appropriate pursuant to 735 ILCS 5/13-214.3(b).

**III. PLAINTIFF’S CLAIMS AGAINST THE BAUDIN DEFENDANTS SHOULD BE DISMISSED PURSUANT TO 735 ILCS 5/2-615 BECAUSE PLAINTIFF FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED FOR MULTIPLE REASONS.**

Plaintiff purports to have sued not only in his individual capacity, but on behalf of the Paul R. Dulberg Revocable Trust (the “Trust”). (See Ex. A.) Throughout his lengthy complaint, Plaintiff makes no allegation as to how he has the power to act for the Trust, as to how the Baudin Defendants owed or breached any duty to the Trust, or as to any damages sustained by the Trust. Absent all of the foregoing, Plaintiff has failed to state a claim on behalf of the Trust.

This Court should also dismiss the claims against the Baudin Defendants, or at least strike certain elements of Plaintiff’s claimed damages, because Plaintiff improperly prays for relief in the form of, among other items, prejudgment interest and attorney’s fees. (See Ex. A, Counts 1 and 2.)<sup>3</sup> Illinois adheres to the “American Rule” whereby a successful party generally is responsible for his or her own attorney fees in the absence of a statute or contractual agreement

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<sup>3</sup> Although Plaintiff’s prayers for relief seek “interest” without specifying that Plaintiff is seeking *prejudgment* interest, it is clear that Plaintiff is seeking prejudgment interest, as post-judgment could not be awarded as part of a judgment – post-judgment interest does not accrue until thereafter.

allowing the recovery of fees. *Duignan v. Lincoln Towers Insurance Agency, Inc.*, 282 Ill.App.3d 262, 268 (1st Dist. 1996). No statute or contract allows the recovery of attorney fees in an action such as this, so Plaintiff's request for attorney's fees is improper and should be dismissed.

Plaintiff's request for prejudgment interest likewise has no basis in Illinois law. In Illinois, "[i]t is well settled that interest is not recoverable absent a statute or agreement providing for it." *City of Springfield v. Allphin*, 82 Ill.2d 571, 576 (1980). See also *Blakeslee's Storage Warehouses, Inc. v. City of Chicago*, 369 Ill.480, 482-83 (1938) (holding that interest may only be recovered when contracted for or when specifically authorized by statute). Section 2-1303 of the Code authorizes the recovery of post-judgment interest in some cases. See 735 ILCS 5/2-1303. However, there exists no corresponding statutory provision authorizing pre-judgment interest. As such, Plaintiff's request for prejudgment interest is improper and should be dismissed.

### CONCLUSION

WHEREFORE, Defendants, KELLY N. BAUDIN, WILLIAM RANDAL BAUDIN, II and KELRAN INC. a/k/a THE BAUDIN LAW GROUP, LTD. a/k/a KELRAN INC., respectfully request that this Honorable Court enter an order dismissing with prejudice all claims against such Defendants, including those contained within Counts 1 and 2 of Plaintiff's Complaint at Law and for any other relief that is fair and just.

Respectfully submitted,

TRIBLER ORPETT & MEYER, P.C.

By: /s/Jeremy N. Boeder

One of the Attorneys for Defendants, KELLY N. BAUDIN, WILLIAM RANDAL BAUDIN, II and KELRAN INC. a/k/a THE BAUDIN LAW GROUP, LTD. a/k/a KELRAN INC.

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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

PAUL DULBERG and THE PAUL DULBERG )  
REVOCABLE TRUST, )

Plaintiffs, )

v. )

KELLY N. BAUDIN, *et al.* )

Defendants. )

Case No. 2022 L 010905

**ORDER**

This matter coming before the Court for hearing on Defendants Kelly N. Baudin, William Randal Baudin, II and Kelran Inc. a/k/a The Baudin Law Group, Ltd.'s (the "Baudin Defendants") motion to dismiss; and for status on Defendant Allstate Property and Casualty Insurance Company's ("Allstate") motion for summary judgment; a hearing having been held and the Court being fully advised in the premises;

IT IS HEREBY ORDERED:

1. The Baudin Defendants' motion to dismiss is GRANTED on statute of limitations grounds, only. In light of the order of dismissal, the Court makes no ruling on the other grounds for dismissal asserted in the Baudin Defendants' motion as they are moot. The Baudin Defendants are hereby dismissed with prejudice from this cause.
2. The previously-set hearing on Defendant Allstate Property and Casualty Insurance Company's ("Allstate") motion for summary judgment, set for September 21, 2023, at 11:15 a.m., shall stand.
3. The hearing on the Allstate's motion will be held in-person and via Zoom (Meeting ID: 768 225 2047 | Passcode: 902018 | Call In #: 312-626-6799).

Judge Michael F. Otto

AUG 29 2023

Circuit Court – 2065

Order Prepared By:

Jeremy N. Boeder

**TRIBLER ORPETT & MEYER, P.C.**

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(312) 201-6400

*jnboeder@tribler.com*

Firm I.D. No. 39950

Attorneys for Baudin Defendants

Date: August 29, 2023

Entered: \_\_\_\_\_

Hon. Michael F. Otto